



Appeal Decision

Site visit made on 17 December 2024

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 FEBRUARY 2025

Appeal Ref: APP/P5870/C/23/3322332

87 Waltham Road, Carshalton SM5 1PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Kabil Ali against an enforcement notice issued by the Council of the London Borough of Sutton.
- The notice was issued on 19 April 2023.
- The breach of planning control as alleged in the notice is without planning permission the conversion of the property and material change of use of the land from a single dwelling house (C3) into two separate dwelling houses within the last four (4) years. Also, without planning permission and within the last four (4) years:
 - (i) alterations to the two-storey extension element from the approved hipped roof to incorporate a gable end and increase in roof height
 - (ii) alterations to the single storey element approved pitched roof into a dormer with a flat roof, and
 - (iii) the installation of a canopy roof over the front entrance door.
- The requirements of the notice are to:
 - (i) Cease the use of the property as two self-contained units of residential accommodation (houses)
 - (ii) Restore the Land to the state it was prior to the breach of planning, by demolishing the unauthorised side extension and returning the planning unit to a single dwelling as it was as shown on drawing numbers 'S1772-A-01/1' and 'S1772-A-01/2' that accompanied application DM2018/01930 (drawings attached).
 - (iii) Remove from the Land all building materials, rubble and equipment arising from compliance with (ii) above.
- The period for compliance with the requirements is: six (6) months.
- The appeal was made on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variations.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. I have had regard to my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the Council.
2. In paragraph 3 of the Notice, the wording of the alleged operational development refers to 'alterations' to approved two storey and single storey extensions. This would suggest that the extensions are development that has been carried out with the benefit of a permission, but alterations meant they had deviated from an approved scheme. However, there is no reference to a planning permission or its conditions in the Notice, and paragraph 1 states that the breach falls within paragraph 171A(1)(a) of the 1990 Act. Namely that development has been carried out without the required planning permission.

3. I am satisfied that the alterations described in the breach are 'development' as defined in section 55 of the 1990 Act¹. However, as the Council alleges that all the extensions have been carried out without the required planning permission, the reference to the alterations from an approved scheme is imprecise. In the interests of clarity, the allegation needs to be corrected to describe the material change of use and the entirety of the extensions. Correcting the allegation in this manner would also ensure that it is consistent with the requirements to remove all of the extensions.
4. Both parties were consulted on whether a correction to the allegation in this manner would cause injustice and I have had regard to the observations provided. In my judgement, the defect in the allegation wording is not so fundamental that it renders the Notice a nullity. A change to the wording to provide more clarity on the unauthorised operational development would not fundamentally alter the nature of the breach. Furthermore, the Notice already requires the extensions to be removed in their entirety and the property returned to its condition before any development took place. As such, the correction to the allegation would not result in the requirements becoming more onerous.
5. I have had regard to the concerns raised by the appellant, but I am satisfied that this is an instance where I can exercise my power to correct the Notice without giving rise to injustice. The correction and variation are set out below for completeness.
6. In paragraph 3, the wording of the allegation shall be deleted in its entirety and substituted with the words, 'without planning permission, the material change of use of the land from a single dwelling house (C3) to two separate dwelling houses, and the erection of a two storey extension, a single storey extension with a rear flat roof dormer and the installation of a canopy roof over the front entrance door.'
7. In paragraph 5, step (ii), delete the wording of the requirement in its entirety and substitute it with the words 'Restore the Land and building to its condition before the breach took place, as shown on the attached drawings referenced 'S1772-A-01/1' and 'S1772-A-01/2, by demolishing the two storey extension, the single storey extension with rear flat roof dormer and removing the canopy roof over the front entrance door. '

Preliminary Matters

8. There is a historical permission for extensions that is referred to in the submissions by both parties, council reference DM2018/01930. The proposals were refused but later allowed on appeal on 12 April 2019². I will hereafter refer to it as 'the 2019 permission.' The Council also refers to an application, refused on 31 January 2022, which proposed the retention of the conversion of the property into two dwellinghouses, the erection of a dormer, a canopy roof over the front entrance door, car parking spaces and boundary treatment. I will hereafter refer to this as the 2022 refusal³. There are other applications outlined in the planning

¹ Section 55 of the 1990 Act- 'Development' is the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

² Appeal reference: APP/P5870/D/19/3222112

³ Council referenced DM2021/01577

history. However, for the purposes of this appeal, the ones referred to here are the most relevant.

9. From what I saw during my visit, it is apparent that since the Notice has been served, the appellant has made changes on site. However, sections 174(2) (b), (c) and (f) of the 1990 Act are worded in the past tense, and the question is whether the breach, as corrected, had occurred by the date of issue of the Notice and was a breach of planning control. Consequently, any changes to the development after the Notice was issued, do not form part of the appeal. For clarity, my determination concerning the appeal will relate to the extensions on the land at the time the Notice was issued.

The Appeal on Hidden Ground (b)

10. By suggesting that the layout of the dwelling and how it is used is as a single house, and not two separate dwellings, part of the appellant's case is that the breach as alleged has not occurred as a matter of fact. This amounts to a hidden ground (b) appeal. To succeed on this ground, the appellant must demonstrate that on the balance of probability, the matters stated in the Notice have not occurred.
11. The concept of a material change of use is not defined in the statute. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously. The leading authority is *Burdle*⁴, which established that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
12. The appeal concerns an end of terrace dwelling with two storey and single storey side to rear extensions. A front porch provides access to two front doors, one into the original dwelling and the other into the extensions. The extensions to the property are situated on the eastern side and include a kitchen, a living room and a bathroom as well as two bedrooms on the first floor. The original dwelling also retains a kitchen, living room, bathroom, a ground floor bedroom and three first floor bedrooms. Each area has its own staircase, and an internal wall divides the extensions and original dwelling along its length. The rear gardens were also separated by a boundary fence.
13. Based on the evidence before me, the accommodation in the extensions has the necessary facilities required for day-to-day private domestic existence and thus meets the *Gravesham* test⁵ concerning the characteristics of a dwellinghouse. The extensions can be accessed by a separate door, without having to enter the original dwelling. The two areas are physically separated by a wall internally and could function separately, with individual living spaces, kitchens, bathrooms, toilets and sleeping facilities as well as access to their own private outdoor areas. The layout of the site and facilities contained therein indicates the extensions, and the immediate area enclosed to the side and rear, form a separate planning unit to the original dwelling.

⁴ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.

⁵ *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

14. Furthermore, the Council has provided a tenancy agreement between the appellant and a tenant that was drafted for two years to commence on 15 March 2020. The tenancy agreement is not signed or dated, but it indicates that the appellant would occupy the extensions to the east and the tenants would occupy the original dwelling to the west. The 2022 refusal to retain the conversion of the property into two dwellinghouses also indicates that, before the Notice was issued, the land and property were being used as two separate dwellings.
15. With *Burdle* in mind, and based on the evidence before me, two areas within the property are physically separate and distinct, which are occupied for different and unrelated purposes. Each area has a different primary residential use, which ought to be considered as separate planning units. I have had regard to the appellant's suggestion that the layout is due to the tenant having a vulnerable relative living with them. However, there is limited detail on how the property can be used as a single household when laid out in such a way. There is no suggestion of any familial link or any specific detail on how the occupants share their living activity despite the clear physical division.
16. The information with the appeal is imprecise and ambiguous and fails to discharge the required burden of proof. When appealing on this ground, the onus of proof rests with the appellant. Based on the evidence before me, the breach as alleged has occurred as a matter of fact and there is insufficient evidence to demonstrate that the land, and property, remain a single household.
17. The appeal on ground (b), therefore, fails.

The Appeal on Ground (c)

18. An appeal on this ground is made on the basis that the matters alleged in the enforcement notice, if they have occurred, do not amount to a breach of planning control. When making an appeal on this ground the onus rests with the appellant to make their case. As part of the ground (c) appeal, the appellant indicates that the operational development comprising the roof alterations, and a porch does not constitute a breach of planning control.
19. Specifically, it is indicated by the appellant on the appeal form that roof conversions less than 40 cubic metres, and lower than the highest point of the original house, are permitted development. He also goes on to state that the front porch is permitted by being less than 3 square metres and lower than 3 meters above the ground level. There are permitted development rights to extend and make alterations to a dwellinghouse under Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). However, the appellant has not directed me to the relevant sections of the Order that he is relying upon or provided me with the necessary detail needed to assess his case.
20. Notwithstanding the above, the appellant appears to be referring to permitted development rights that are granted for alterations to roofs and to erect porches within the curtilage of dwellinghouses. However, based on the evidence before me, the two storey and single storey extensions with a hip to gable roof, a flat roof dormer and the canopy were carried out together. As such, the alleged operational development is not limited to the roof alterations and porch but comprises all of the extensions as a single building operation carried out at the property at the time the

Notice was served. As a single building operation, the extensions with the roof alterations and canopy would exceed what is deemed to be permitted by Schedule 2 of the Order.

21. Furthermore, for completeness, I acknowledge that the 2019 permission granted consent for two storey and single storey side extensions. However, due to the significant deviation from the approved scheme, the extensions on site would not be permitted, even in part, by the 2019 permission.
22. The burden of proof is on the appellant and in this case, the evidence with the appeal submissions is imprecise and unambiguous and fails on a balance of probabilities to demonstrate his case. Accordingly, based on the evidence before me, the extensions erected at the time the Notice was issued were development and a breach of planning control.
23. The appeal on ground (c), therefore, fails.

The Appeal on Ground (f)

24. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by the breach. In this case, the Notice requires the use of the property as two separate dwellings to cease, the unauthorised extensions to be removed and the land restored to its former condition. I therefore consider that the purpose of the Notice is to remedy the breach of planning control in line with section 173(4)(a) of the 1990 Act.
25. The appellant has suggested that the requirement to restore the building to its condition prior to any extensions taking place is excessive. It is indicated by the appellant that the footprint of the extensions on site accord with the 2019 permission. However, it is not clear from the appellant's submissions whether he is seeking a variation to allow amendments to reflect the 2019 permission, or it is a request to retain the extensions currently built on site. For completeness, I have addressed both matters below.
26. Where an enforcement notice is directed at a development, which differs materially from an approved scheme, the Notice can require that either the development be removed or altered to comply with an approved planning permission. However, to vary the requirements in this manner, the permission being considered must be capable of implementation in accordance with its conditions and limitations. Based on the evidence before me, the 2019 permission was not initiated in accordance with condition 1 and would have expired on 12 April 2022, before the issue of the Notice. Consequently, the 2019 permission has expired, and if I varied the requirements in this way the appellant would not be able to comply with it.
27. From what I saw on site, the appellant has carried out works to alter the extensions since the Notice was served. The extensions have a similar external appearance and footprint as the 2019 permission. However, in cases where there is no accompanying ground (a) appeal and the Notice seeks to remedy the breach, I can not consider the planning merits of an alternative scheme. I can only consider whether the requirements exceed what is necessary to remedy the breach. The requirement to cease the use of the property as two separate dwellings and the

removal of the extensions does no more than what is required to remedy the breach.

28. For these reasons, the appeal on ground (f) fails.

The Appeal on Ground (g)

29. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within six months of the Notice taking effect. The additional time requested is based on the need for the tenant and her family to find alternative living accommodation. Also, demolishing the extensions and restoring the land to its condition before the development took place can only be carried out once the tenant has moved.
30. When considering the appeal on this ground, I have had regard to rights conveyed within the Human Rights Act (1998), which refers to the peaceful enjoyment of property. Having regard to the loss of the tenant's home, and the fact that steps (ii) and (iii) would have to be undertaken following their departure, extending the time for compliance and altering it to a staged approach would be more appropriate. I am also mindful of the fact that the extensions have been significantly changed on site. Although it was not open to me to allow the ground (f) appeal, in my judgement, it is reasonable to conclude that an extended period would be appropriate to allow the appellant time to explore the planning merits of the alternative extensions currently erected on site.
31. Due to the uncertainty regarding the tenant and her family finding alternative accommodation, the appellant has not proposed a time frame. However, in my judgement, an 8 month period to cease the use and an additional 3 months to carry out the remedial works and remove the waste would be acceptable. It would strike an appropriate balance between the harms resulting from the unauthorised development, the tenant's human rights and allowing sufficient time to comply with the requirements of the Notice.
32. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Formal Decision

33. It is directed that the enforcement notice is corrected and varied by:

In paragraph 3, the wording of the allegation shall be deleted in its entirety and substituted with the words, 'without planning permission, the material change of use of the land from a single dwelling house (C3) to two separate dwelling houses, and the erection of a two storey extension, a single storey extension with a rear flat roof dormer and the installation of a canopy roof over the front entrance door.'

In paragraph 5, step (ii), delete the wording of the requirement in its entirety and substitute it with the words 'Restore the Land and building to its condition before the breach took place, as shown on the attached drawings referenced 'S1772-A-01/1' and 'S1772-A-01/2, by demolishing the two storey extension, the single storey extension with rear flat roof dormer and removing the canopy roof over the front entrance door, '

In paragraph 6, specifying the time for compliance, delete the words in their entirety and substitute with the words 'Step (i)- 8 months from the date the Notice takes effect and Steps (ii) and (iii)- 11 months from the date the Notice takes effect.'

34. Subject to the correction and variations, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR