



Appeal Decision

Site visit made on 31 January 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 26 FEBRUARY 2025

Appeal Ref: APP/L5240/C/23/3325011

Land situated at 1 Barrowsfield, SOUTH CROYDON, Surrey, CR2 0HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Steve Drysdale against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The notice was issued on 26 May 2023.
 - The breach of planning control as alleged in the notice is Unauthorised erection of a raised platform with supporting column and balcony at first floor level to the rear elevation of the house. The unauthorised erection of raised decking and balcony on the roof of the existing ground floor rear and side extension. The unauthorised use of the rear and side ground floor extension roof and raised platform area as a residential amenity space (roof terrace) without planning permission.
 - The requirements of the notice are: 1) Fully remove the unauthorised works including supporting column, raised platform and balcony (hatched area in blue on attached plan) and restore property to its previous condition. Remove the balcony and raised decking from the roof of the remaining rear and side ground floor extension (hatched black on the attached plan). Cease the use of ground floor rear and side extension roof as a roof terrace. The property is outlined in red on the attached plan. To clarify this includes the full removal of the wood and other materials used to create the raised platform and balcony at the side and rear of the property. 2) Any debris from these works in connection with step one must also be fully removed from the site.
 - The period for compliance with the requirements is: three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In paragraph 2 deletion of the wording “,and the relevant area hatched in blue on the plan of the property”;
 - In paragraph 3 the deletion of the words "The unauthorised use of the rear and side ground floor extension roof and raised platform area as a residential amenity space (roof terrace) without planning permission"; and
 - In paragraph 5 the deletion of the words “Cease the use of ground floor rear and side extension roof as a roof terrace”.
2. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

3. The appellant submitted new evidence within their final comments. The Council was given an opportunity for comment but no submissions were made.

The notice

4. The description of the land in paragraph 2 of the notice references the 'relevant area' as being 'hatched in blue' on the notice plan. Per the requirements though, the areas of the property in question are hatched both blue and black on the notice plan. The Council's intention is thus clear from the notice and I shall therefore delete this additional wording from paragraph 2 in the interests of clarity.
5. A further issue with the notice is the nature of the breach as referenced in the allegation, reasons and requirements. The allegation and requirements reference both operational development along with 'unauthorised use' as a 'residential amenity space'. However, the reasons for issuing the notice appear to indicate the breach as for operational development only since a four year immunity period is referenced and this is repeated in the Council's written representations. Indeed, there is no explanation in either the notice or the Council's representations as to why residential amenity use would represent a material change of use bearing in mind that the use of the land is for residential purposes. There is no suggestion either that such use is in breach of a condition, nor that the Council seeks to allege a material change of use facilitated by operational development.
6. I shall therefore correct the notice to remove reference to the 'unauthorised use' from the allegation and requirements. I do not consider that any injustice would arise from this since it appears to align with the Council's intentions in respect of the notice. It would remain open to the Council to take enforcement action in respect of any material change of use/breach of condition if this were expedient.

The appeal on ground (d)

7. This ground of appeal is that at the time the notice was issued it was too late to take enforcement action in respect of the breach as alleged in the notice (as corrected in this case). The onus is on the appellant to make their case on the balance of probability.
8. At the time of my site visit, some of the works related to the unauthorized erection of raised decking and balcony on the roof of the existing ground floor rear and side extension had been removed. The ground (d) appeal is though on the basis of whether, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control attacked by the notice. My assessment is made on that basis on the evidence before me.
9. S171B(1) of the 1990 Act¹ now specifies that, where there has been a breach of planning control consisting of the carrying out of building or other operations, no enforcement action may be taken after the end of the period of 10 years. However, that has only relatively recently been introduced by the Levelling-up and Regeneration Act 2023 and, at the time the notice was issued, the relevant period was four years from the date of substantial completion.
10. The Courts have held that in order to determine whether or not building works have been substantially completed, regard must be had to the totality of operations which were originally contemplated and intended to be carried out. If works stopped short of those contemplated/intended, they would not be substantially completed and the four year immunity period would not have begun to run.

¹ Town and Country Planning Act 1990

11. The notice was issued on 26 May 2023 and the appellant submits that the operational development was substantially completed more than four years before this date. The appellant submitted with final comments a photograph showing the operational development in question which appears to be dated 10 May 2019. The Council has made no comment on this evidence, which is of itself precise and unambiguous, and has no substantive evidence of its own to contradict this. The appellant's photographic evidence also corresponds with comments from an interested party objector which indicates that these works were 'completed' in April/May 2019.
12. The interested party objector goes on to submit that the works were not properly completed in 'building terms' since they apparently did not conform to all relevant approvals including building regulations. However, there is no substantive evidence to suggest that any originally contemplated/intended aspects of the works were not carried out by the date of completion claimed by the appellant; there is no indication that the appellant ever intended to carry out works to building regulations standards/other approvals. As such, the absence of building regulations/other compliance does not mean that the development was not substantially completed in Planning law terms. Whilst I note that additional works were proposed as part of a partially retrospective planning application², it would appear that these were proposed to overcome potential planning objections rather than having been originally contemplated. I find thus as a matter of fact and degree and on the balance of probabilities that the works attacked by the notice were substantially completed more than four years prior to the issue of the notice.
13. I find then on the available evidence that, at the date when the notice was issued, no enforcement action could have been taken in respect of the operational development alleged in the notice. The appeal on ground (d) succeeds.

Other Matters

14. An interested party makes reference to planning conditions imposed in respect of permission granted for the appeal property's single storey side rear and side extension³ preventing the provision of windows in the 'south eastern elevation'. The interested party indicates that this has been breached by the construction of French doors at first floor level⁴. Whilst not determinative since the notice does not attack a breach of condition, on the evidence available, this condition would appear to relate only to the insertion of windows within the single storey extension that is the subject of that application. Another condition of this permission is referenced which stipulates that the single storey extension used materials matching the main house. It appears though that the notice has been directed at a new and separate form of operational development rather than as a breach of condition; it would still be open for the Council to pursue any breach of condition identified where expedient.
15. I have noted submissions from the Council and a neighbouring resident in relation to the effects of the appeal development on the character and appearance of the area and on the living conditions of neighbouring occupiers. Matters of planning merit are not though relevant in relation to my determination of the ground (d) appeal. I acknowledge also the frustrations from a neighbouring resident related to

² Ref 23/00790/HSE

³ Ref: 08/01634/P

⁴ Which are not attacked by the notice

delays in enforcement investigations connected to the COVID-19 pandemic but these do not alter my assessment of the facts in this case.

Conclusion

16. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
17. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on ground (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not need to be considered.

V Bond

INSPECTOR