



Appeal Decision

Site visit made on 10 June 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/G5180/C/24/3339937

55 Edmunds Avenue, Orpington BR5 3LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act).
 - The appeal is made by Mr. Amit Mass against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 30 January 2024.
 - The breach of planning control as alleged in the notice is without the required planning permission, the material change of use of the land from a single dwellinghouse to two flats.
 - The requirements of the notice are to:
 - (a) Cease the use of the land as two flats
 - (b) Restore the land to its condition before the breach of planning control took place
 - The periods for compliance with the requirements are:
 - (a) Within 3 months after this notice takes effect.
 - (b) Within 4 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - At section 4 of the notice, the deletion of the word 'ten' and the substitution of the word 'four' so that the first sentence of the reasons states 'It appears to the Council that the above breach of planning control has occurred within the last four years.'
 - At section 5 of the notice, the deletion of the word 'two' so that requirement (a) says 'Cease the use of the land as flats – within 3 months after this notice takes effect'
2. Subject to the correction above, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The enforcement notice states within the reasons for this notice, that 'It appears to the Council that the above breach of planning control has occurred within the last ten years'. Section 171B of the Act provides that development becomes immune from enforcement action if no action is taken: within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024; within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024; within 10 years for any other breach of planning control.

4. The Council identify the immunity period as 10 years and suggests that the appellant has conflated the four years in relation to an unauthorised change of use to use as a single dwellinghouse. It states that in this case, the single dwellinghouse has changed use without authorisation to use as two flats. However, the word 'building' in section 171B of the Act must be read as defined in section 336(1) of the Act as including any part of a building, and flats are dwellinghouses for the purposes of the Act. The correct immunity period in this case is therefore 4 years.
5. The appellant has advanced their case on the basis that the immunity period is 4 years, and the Council has confirmed it considers the information presented in the appellant's statement of case is not sufficient to demonstrate that the material change of use has occurred within the last 4 years. As such, I consider there would be no injustice were I to correct the notice to refer to 4 years instead of 10.
6. The notice requires the appellant to cease the use of the land as two flats. However, the risk of requiring 'the use of the land as two flats' to cease is that the building will be used as a different number of flats. I shall correct the notice by deleting the word 'two' from the requirement, so that it simply requires the use as flats to cease. Since this would not make the notice more onerous to comply with, I consider such a correction can be made without causing injustice to either party.

Reasons

7. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
8. For the appeal to succeed under ground (d), the appellant would need to show, on the balance of probabilities, that the material change of use occurred on or before 30 January 2020¹ and, if so, that it continued without significant interruption for at least 4 years thereafter. A lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the four year period, to the extent that the Local Planning Authority could have taken enforcement action at any time.
9. The appellant states that the two flats were let in June 2015 to SK Housing Ltd, a company that sublets flats to people on housing benefits. It is not clear when the facilities required for day-to-day living were installed in each of the flats and they became a self-contained unit. The ground floor flat is stated as being let on 19 June 2015 and the first floor flat is stated as being let on 5 June 2015. SK Housing [sic] is stated to be the current tenant.
10. A tenancy agreement between the appellant and SK Housing Ltd, dated 19th June 2015 has been provided for the ground floor flat. The term of the tenancy is identified as '1 Year'. However, towards the end of the agreement, it is signed and dated 19th June 2023. The tenancy agreement for the first floor flat, also between the appellant and SK Housing Ltd, is dated 5th June 2015 with a term of 1 year and, towards the end of the agreement, it is signed and dated 5th June 2023.

¹ Namely 4 years prior to the issue of the enforcement notice.

11. It is not clear why tenancy agreements entered into in 2015 would only be signed in 2023. The Council suggests this is a discrepancy which has aroused suspicion as to the veracity of these documents. In the absence of a plausible explanation, I agree the difference in dates undermines the documents provided. Furthermore, the agreements were each for a term of a year. If I were to accept that the agreements were entered into in 2015 (despite being signed in 2023), they do not show that the agreements were renewed, nor do they show that the premises was occupied: as set out above, SK Housing Ltd sublets the premises. Within the tenancy agreements it is stated that 'The tenant guarantees the agreed rent to the landlord for the duration of the tenancy even if the property remains empty.'
12. The appellant has provided two emails, both from a Gmail account which appears to be from SK Housing Ltd, with a list of names, with 'Move In Date' and 'Move Out Date'. The subject of the first email is detailed as 'Re: Tenants Details GFF 55 Edmunds Avenue BR5 3LE' and the subject of the second email is detailed as 'RE: Tenants Details for FFF 55 Edmunds Avenue BR53LE'. While it appears that the emails were written by the Director of the company, it is not clear how the author of the emails has obtained the information contained therein.
13. Although a company is likely to keep records of its tenants, no contemporaneous documentary evidence showing the names of any of the tenants detailed in the emails has been provided. It seems unlikely a company which is based some distance from the appeal site (West Drayton according to the tenancy agreements provided and Woolhampton according to the emails) would oversee the moving in and moving out of every tenant in its portfolio. As such, I would expect records kept would reflect when written agreements were entered into, or written confirmation was provided that an individual has left. This may not reflect when an individual subletting either of the flats actually moved into or out of the property.
14. Furthermore, the information does not show how these named individuals used the property, or that their actual occupation of the property was continuous. While it appears there are limited periods between each tenant moving out and the next one moving in, even if an individual entered into an agreement to sub-let the property with SK Housing Ltd, this does not show that they actually occupied the property throughout that period. No first hand accounts from occupants of the flats have been provided through the appeal and no contemporaneous documents such as bills, letters or agreements with individuals sub-letting. Indeed, the evidence provided as a whole is so limited and unclear, it does not, in my view, satisfy the onus of proof.
15. Thus, for the reasons given above, I do not find the appellant's evidence sufficiently precise and unambiguous to show that it is more likely than not that the material change of use occurred at least 4 years before the enforcement notice was issued and continued without significant interruption for at least 4 years thereafter. Consequently, the appeal under ground (d) must fail.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

M Savage

INSPECTOR