



Appeal Decision

Site visit made on 25 June 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2025

Appeal Ref: APP/A5840/C/23/3327100

Land to the rear of 18 Overhill Road, London SE22 0PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Micheal Leon of Kingley Properties Limited against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 28 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse and the material change of use of the Land to a separate dwellinghouse (within use class C3).
 - The requirements of the notice are to:
 - 5.1. Cease the use of the Land as a separate dwellinghouse;
 - 5.2. Remove from the Land all kitchen and cooking facilities, kitchen worktops and kitchen storage;
 - 5.3. Remove from the Land the fence in the approximate location marked green on the attached plan and outlined green on the attached photo;
 - 5.4. Demolish and remove from the Land the building in the approximate location outlined and hatched blue on the attached plan and outlined blue on the attached photo;
 - 5.5. Safely and securely, disconnect all plumbing and electrical connections to the building; and
 - 5.6. Remove from the Land all materials, rubbish and debris resulting from the carrying out of the above steps.
 - The periods for compliance with the requirements are:
 - Requirements 5.1, 5.2 and 5.3, two weeks.
 - Requirements 5.4, 5.5 and 5.6, six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) 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 and varied by:

- 1) Deleting the words *and the material change of use of the Land to a separate dwellinghouse (within use class C3)* from section three of the enforcement notice (the matters which appear to constitute the breach of planning control).
- 2) The deletion of *10 years* and the substitution with *four (4) years* in paragraph 4.1 of section four of the enforcement notice (reasons for issuing this notice).
- 3) Deleting the word *Land* from requirements 5.1 and 5.2 and substituting it with the following: *building in the approximate location outlined and hatched blue on the attached plan*.
- 4) The addition of the following requirements in section five of the enforcement notice, after requirement 5.6:

OR

5.7 Cease the use of the building in the approximate location outlined and hatched blue on the attached plan as a separate dwellinghouse.

5.8. Remove from the building in the approximate location outlined and hatched blue on the attached plan all kitchen and cooking facilities, kitchen worktops and kitchen storage.

5.9. Remove from the Land the fence in the approximate location marked green on the attached plan and outlined green on the attached photo; AND

5.10 Carry out alterations so that the building outlined and hatched blue on the attached plan complies with the terms of the planning permission 22/AP/1499 dated 23 June 2022 including the conditions subject to which that permission was granted.

5.11 Remove from the Land all materials, rubbish and debris resulting from the carrying out of the above steps.

4) The addition of 5.7, 5.8 and 5.9 after 5.3 in paragraph 6.1 and the addition of 5.10 and 5.11 after 5.6 in paragraph 6.2 of the enforcement notice (time for compliance).

2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

3. Planning permission was conditionally granted on 23 June 2022 for the construction of a garden room, reference 22/AP/1499. In this case the Council alleged operational development, and a material change of use. However, there is no suggestion that the garden building was first erected in accordance with the planning permission and there was a subsequent material change of use to use as a dwellinghouse.
4. It is evident based on the submissions that the Council consider the building was erected as a dwellinghouse. It appears therefore that the development that has taken place is the erection of a dwellinghouse – namely operational development. The allegation can be corrected, and requirements varied, to reflect the development is the erection of a dwellinghouse, without injustice, since it neither enlarges nor reduces the scope of the notice.
5. In section four of the notice, the Council referred to the 10-year time limit. However, at the time the notice was issued, the relevant immunity period in respect of the erection of a dwellinghouse was four years, by virtue of section 171B(1) of the 1990 Act which provides that - where there has been a breach of planning control consisting in the carrying out without planning permission of building operations...."no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed", being the date the dwellinghouse was substantially completed.
6. It is evident that the dwellinghouse was constructed following the grant of planning permission for the garden building, and the development was ongoing and not substantially complete when the Council visited the site as part of their enforcement investigation in around February 2023. Accordingly, since the dwellinghouse was not substantially completed more than four years before the notice was issued, the notice can be corrected without injustice.

The appeal on grounds (b) and (c)

7. The grounds of appeal are (b) that the matter alleged has not occurred and (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof is on the appellant to make out their case to the standard of the balance of probabilities.
8. To succeed on ground (b) the appellant would need to demonstrate that a dwellinghouse had not been erected.
9. There is no definition of the term 'dwellinghouse' in the Act, but it was accepted in *Gravesham BC v SSE & O'Brien [1983] JPL 306* that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
10. The building that has been erected is divided into four spaces, a shower room, an open plan space which includes a small kitchen area and two further rooms, and there is an outside amenity area. It clearly provides all the facilities required for day-to-day private domestic existence.
11. Whilst the building has not yet been occupied, the question is whether the building was capable of being used as a dwellinghouse as a matter of fact and degree, bearing in mind that it is possible to find that a change of use took place before the building was actually occupied. In this case, it is evident that the appellant intended to use the building as a dwellinghouse, evidenced by the marketing, for let, as a two-bedroom flat/apartment.
12. Accordingly, I find as a matter of fact and degree that a dwellinghouse has been erected. The appeal on ground (b) fails.
13. Planning permission reference 22/AP/1499 was for the construction of a garden room, with the floor plans showing an office room with toilet/WC. A dwellinghouse has been erected which is not in accordance with the approved plans, neither physically nor in terms of use.
14. Since the development is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) fails.

The appeal on ground (a) the deemed planning application

15. The main issues are (i) whether the dwellinghouse provides satisfactory living conditions for current and future occupiers with particular regard to size, whether it provides suitable provision for cycle parking and refuse storage, and fire safety (ii) the effect on the living conditions of neighbouring occupiers (iii) affordable housing.

Reasons

Standard of accommodation

16. Policy D6 of the London Plan 2021 relates to housing quality and standards and requires that a two-bedroom, three-person, single storey dwelling provide a minimum gross internal floor area of 61sqm. This is a minimum standard which applicants are encouraged to exceed. This standard is replicated in Policy P15 of The Southwark Plan 2019 – 2036 Adopted February 2022 (Southwark Plan).

17. The dwelling consists of an open plan living area with a very modest kitchen area, a shower room and two modest bedrooms, and a hard landscaped area outside. There appeared to be no dedicated internal or external storage space.
18. The dwelling was advertised for let as a two-bedroom flat and at 35.5sqm the dwelling falls significantly short of the standard. Although as a one-bedroom, one-person dwelling the shortfall would not be great – the standard being 37sqm, the standards are minimum standards to be achieved in order to provide appropriate living conditions for occupiers.
19. Moreover, whilst it may be possible to provide refuse and recycling storage space and secure cycle parking outside, this would reduce the size and quality of the outdoor amenity space.
20. Finally, Policy D12 of The London Plan 2021 states that all development proposals must achieve the highest standards of fire safety. In the absence of details or explanation, the development is contrary to Policy D12 of The London Plan 2021.
21. Overall, the dwelling does not provide adequately sized accommodation for occupiers, resulting in inappropriate residential quality contrary to policies D6 and T5 of The London Plan 2021 and policies P14, P15, P53, P56 and P62 of the Southwark Plan. Together these require a high standard of quality of accommodation which protects amenity, and provides cycle parking and adequate refuse storage, and recycling on site. The development also conflicts with the National Planning Policy Framework (Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.

Living conditions of neighbouring occupiers

22. In the absence of contrary evidence, dwellings in rear gardens are not characteristic of the area. There is an unacceptable risk that the comings and goings and activity associated with the use would cause harm to the living conditions of neighbouring occupiers by way of noise and disturbance, making their gardens less pleasant to use, contrary to the amenity protection aims of Policy 56 of the Southwark Plan and the Framework.

Affordable housing

23. No justification or evidence that the development of one new home could not viably provide an affordable housing contribution has been provided, and the development therefore fails to accord with Policy P1 of the Southwark Plan.

Other Matters

24. The Council referred to policies D3 and D8 of The London Plan 2021 and policies P18 and P13 of the Southwark Plan which are not directly relevant to the detailed considerations in this case.

Overall conclusion on ground (a)

25. For the above reasons, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
27. As the notice requires the use to cease and the building and associated fence to be demolished, its purpose is to remedy the breach of planning control. That purpose could also be achieved by requiring that the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. However, any such permission must be extant.
28. The planning permission for the garden building would have expired on 23 June 2025 unless the development was lawfully begun.
29. It is an established principle that it is possible to commence a development for the purpose of section 56 and thereby meet a deadline forming a condition of the planning permission, and then later to deviate from the permitted works in a manner that later became an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for section 56 purposes. The test is an objective one and the intention of the person carrying out the development is not relevant.
30. Based upon the Council's investigation, and my observations, it seems the external physical differences between the dwelling which has been built and the approved garden building, are that the building is around 20cm wider and 30cm deeper, which the Council considered to be minor changes. I also observed that the roof form and fenestration is not as approved.
31. Whilst the internal layout and use of the building is significantly different to that approved, the approved building would be of a largely similar form, and it appears to me that large parts of the building would be usable in the permitted building.
32. Accordingly, I consider the works amount to a material operation comprised in the development and the permission for the garden building remains extant. As such, it is reasonable to give the appellant the option of ceasing the use, removing all fixtures and fittings that facilitate the use, including the fence, and carrying out modifications so that the building complies with the terms, including conditions of the planning permission, which it seems would include plumbing and electrical connections.
33. The appeal on ground (f) succeeds to this extent.

The appeal on ground (g)

34. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant did not suggest what they consider would be a reasonable period. I acknowledge that the appellant's architect was away when the appeal was made, so was unable to assist and note misgivings about the process of submitting the appeal. However, the explanatory note, setting out the right to appeal and the information sheet provided by the Planning Inspectorate was attached to the enforcement notice as required.

35. The purpose of the time period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be carried out. Given the dwelling was not occupied when I visited and having regard to my findings under ground (f) I consider the periods of two weeks and six months as specified in the notice, proportionate to the breach of planning control that has occurred. The appeal on ground (g) fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR