



Appeal Decision

by **Grahame Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 August 2025

Appeal Ref: APP/P5870/C/22/3307199

Land known as 12 Lind Road, (and the loft area of 10 Lind Road), Sutton, SM1 4PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by KPD Realty against an enforcement notice issued by the Council of the London Borough of Sutton.
- The notice was issued on 16 August 2022.
- The breach of planning control as alleged in the notice is: without planning permission, erection of a two storey side extension with basement and the material change of use of the land to (4) self-contained units (flats) on the land, resulting in seven (7) self-contained units (flats) within the property known as 12 Lind Road, outlined in (RED) on the attached enforcement notice site plan and in the loft area of the property known as 10 Lind Road outlined in GREEN on the attached enforcement notice site plan.
- The requirements of the notice are:
 - (i) Cease the use of the land outlined in (RED and GREEN) as seven self-contained units (flats)

(ii) Alter land as outlined in (RED and GREEN) on the attached enforcement site plan to the lawful use it was prior to the breach of planning control, the land known as 10 Lind Road to be returned to a single family dwelling house and the land known as 12 Lind Road to be returned to three (3) flats in accord with the approved plans for the application DM2018/01616, works to include permanently removing all additional kitchens/cooking facilities/lockable doors and internal partitions that facilitated the unauthorised change of use and subdivision of the two (2) storey addition approved under (DM2018/01616). Resulting in no more than three (3) self-contained dwellings (flats) on the land.

Or;

(iii) Demolish the two (2) storey side extension as built and restore the land known as 10 Lind Road to be returned to a single family dwelling-house and the land known as 12 Lind Road to the state it was prior to the breach of planning control as shown on 'Existing Plan Drawing No.10 as stated in the DM2018/01616 application existing plan documents 'Drawing No. 10' Resulting in no more than three (3) self-contained dwellings (flats) on the land.

(iv) Remove from the land any and all building materials and rubble arising from compliance with steps (i), (ii) and/or (iii) above.

- The period for compliance with the requirements is: six months after the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f), and (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.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. An application for an award of costs was made by KPD Realty against the London Borough of Sutton. This application is the subject of a separate decision.

Preliminary Matter

3. In light of developments since the enforcement notice was issued, I have not found it necessary to conduct a site inspection in order to determine the appeal.

Ground (e)

4. The appeal on this ground is that the enforcement notice was not properly served on everyone with an interest in the land. However, no details have been provided that persuade me there was a failure to serve the notice correctly and the Council has duly submitted the certificate of service. It is clear to me that proper service was effected on the appellant who was able to make this appeal without being caused any injustice. The appeal on this ground fails.

Ground (b)

5. The notice was issued on 16 August 2022 at which time the evidence shows that it was more likely than not that the matters alleged in the notice to have taken place, were factually correct. The appeal on this ground therefore fails.

Ground (c)

6. An appeal on this ground is that the matters alleged to have occurred (if they occurred) do not constitute a breach of planning control. Clearly the matters alleged will not constitute such a breach if planning permission is already granted.
7. The burden of proof in a ground (c) appeal falls to the appellant and the test of the evidence is on the balance of probability.
8. S174(2)(c) is worded in the present tense: ‘...do not constitute a breach...’ An appellant may rely on matters occurring since the date of issue of the notice to show that, at the time of this decision, what was alleged does not amount to a breach of planning control. In such cases the development must be that alleged when the notice was issued.
9. The reasons for issuing the notice are instructive, namely that the unauthorised flats in situ had inadequate internal floor areas, failed to meet minimum space standards contrary to the London Plan, the Sutton Local Plan and the National Planning Policy Framework, and had inadequate usable amenity space for current and future occupiers, again contrary to development plan policy standards.
10. However, on 1 October 2024 the Council granted planning permission Ref DM2024/00225 for “Retention of four self contained residential units and alterations to the front and rear fenestrations” in respect of 10-12 Lind Road.
11. The officer’s report that led to this permission being granted contained several consultee responses, but the space reserved therein for any response by “Planning Enforcement” is conspicuously empty. In fact, the report does not discuss the enforcement action taken by the Council at all. It refers to a previously refused planning application and contrasts that with the existing development.
12. Certain failures to meet minimum standards of space are recognised but the report concludes:

“given that all other concerns have now been addressed by this proposal, and the fact that the units are currently occupied, it is considered that the failure to meet

the minimum floor to ceiling heights can, in this case, be accepted. Although the Council would like to make it clear that this would not have been the case if these units were proposed rather than already in existence.”

13. In any case the upshot is that planning permission has been granted for what was alleged in the notice.
14. Accordingly, the appeal on ground (c) succeeds.

Other matters

15. The appellant is aggrieved that the notice was not withdrawn once planning permission was granted as described above. However, that is a matter for consideration in the costs application.
16. Conditions have been attached to the permission which are questioned by the appellant. The conditions do not alter the nature of the permission to anything different from a permission that now approves the development in situ. The appellant may appeal against the conditions just as the Council may take enforcement action as appropriate if they are not complied with. However, for the avoidance of doubt, had I reached consideration of an appeal on ground (a), I would have regarded the attachment of those conditions as appropriate and in the interests of the proper planning of the area, in the event of permission being granted, for the very reasons given by the Council on the face of the permission.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
18. In these circumstances, the appeal on grounds (a) (d) (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) does not fall to be considered.

Grahame Kean

INSPECTOR