



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 1 OCTOBER 2025

Appeal Ref: APP/G5750/C/23/3334056

7 Earlham Grove, Forest Gate, London E7 9AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Miss Khalida Ahmed against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 25 November 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the basement to a self-contained unit of residential accommodation.
 - The requirements of the notice are to:
 1. Cease the use of basement as a self-contained unit of residential accommodation.
 2. Remove from the basement all fixtures and fittings that solely facilitate its use as a self-contained unit of residential accommodation, including the kitchen, all beds, and all internal dividing doorways and internal partitioning.
 3. Remove from the property all but one supply of electricity, gas and water
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is: Five (5) months.
 - The appeal is made on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Formal Decision

1. It is directed that the enforcement notice is varied by:

In paragraph 5, step 2, delete the words "all beds."

2. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. It was determined that a site visit was not necessary. Both main parties were informed of this decision, and no objections were raised regarding the appeal being decided without a site visit.
4. There is a historical permission for the approval of the basement extensions, which is referred to in the submissions by both parties, council reference 23/01434/FUL. The basement extensions were approved to be used as a family cinema room, storage and bathroom. The plans show access to the main property via internal stairs, and there is an entrance into the basement by external side steps between the appeal property and the neighbour. I will hereafter refer to this as the '2023 permission.'
5. The appellant does not claim that the basement extensions are compliant with the 2023 permission, but outlines that the basement is being used as a residential annexe, and not a separate dwelling. In this regard, part of the appellant's case is that the breach as alleged has not occurred as a matter of fact, which is a hidden ground (b) appeal. As such, although the appeal was made on ground (f) only,

the substance of the appeal submissions means I will also have regard to the hidden ground (b) appeal.

6. Reference has been made by the appellant to the use of the basement as a residential annexe being compliant with national and local planning policy on issues such as housing need, noise and disturbance to neighbours, design and living conditions for occupiers. These issues would be material considerations in a ground (a) appeal; however, this has not been pleaded in this case. These matters are, therefore, not before me for consideration when determining the appeal on the hidden ground (b) and ground (f) appeals.

The Appeal on Hidden Ground (b)

7. As indicated above, by suggesting that the basement is used as a residential annexe, and not a separate dwelling, part of the appellant's case is that the breach as alleged has not occurred as a matter of fact. To succeed on this ground, the appellant must demonstrate that on the balance of probability, the matters stated in the Notice have not occurred.
8. 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*¹, 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.
9. The appeal concerns a mid-terrace two-storey dwelling with a basement extension that was granted planning permission as a family living space, storage and an additional shower room via the 2023 permission². The Council's Delegated Report sets out that when conducting a visit to ensure the basement had been carried out in accordance with the 2023 permission, it comprised a kitchen/living area, bathroom, and two bedrooms. There was no internal access between the basement and the upper floors, but access to the basement was still possible via the external staircase to the side. The basement was also being occupied by a separate household.
10. Based on the evidence before me, the accommodation in the basement has the necessary facilities required for day-to-day private domestic existence and thus meets the required test concerning the characteristics of a dwellinghouse. The basement can be accessed by a separate door, without having to enter the original dwelling, is physically separated by a floor internally and was being used by a different household. The layout of the site, the facilities and its use, as set out by the Council in their submissions, indicates that the basement extension forms a separate planning unit to the original dwelling.
11. The appellant has suggested that the basement is not being used as a self-contained unit of residential accommodation, but as a residential annexe for the growing family of the original dwellinghouse. However, the information provided with the appeal is limited on the actual use as a residential annexe, and fails to

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

² Council reference 23/01434/FUL

address the Council's allegation that the basement had been physically separated and was being occupied by another household at the time the Notice was issued. The appellant's submissions largely make the case that the annexe is compliant with relevant local and national planning policies, but as already indicated, this is not relevant to the determination of an appeal on ground (b).

12. When making an appeal on these grounds the onus of proof rests with the appellant. The information in the Statement of Case on its use as a residential annexe is limited, imprecise and ambiguous and fails to discharge the required burden of proof. 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 use was as a residential annexe at the time the enforcement notice was issued.

13. The appeal on hidden ground (b) therefore fails.

The Appeal on Ground (f)

14. An appeal on ground (f) is made on the basis that the requirements of the Notice exceed what is necessary. 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, as the case may be, to remedy any injury to amenity which has been caused by the breach.
15. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach. Having regard to the requirements of the Notice, it is evident that the purpose is to remedy the breach of planning control that has occurred in line with section 173(4)(a) of the 1990 Act.
16. In cases where there is no accompanying ground (a) and the Notice clearly seeks to remedy the breach; I can only consider whether the requirements exceed what is necessary to remedy the breach. In pleading ground (f), the onus is on the appellant to state the precise details of any lesser steps; otherwise, it is not possible to judge whether the Council's requirements are excessive or not. If I were to allow the appeal on ground (f), then I would need to vary the requirements of the Notice in a way that unambiguously sets out what needs to be carried out.
17. The appellant has not articulated what specific requirements are deemed excessive but asserts a desire to utilise the space as a family cinema room, in addition to providing extra sleeping facilities. In my judgment, the Notice does not inhibit the appellant's intention to use the basement as an annexe. The stipulations predominantly target the facilities and fixtures—such as the kitchen and partitioning—that facilitate the operation of the basement as a separate residential unit. Nonetheless, the requirement for the removal of 'all beds' is excessive, particularly given that the basement was approved as a residential extension of the property.
18. To this limited extent, the appeal on ground (f) succeeds. I shall vary the Notice to remove reference to 'all beds' as set out in the Formal Decision.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed on the hidden ground (b). However, for reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f), therefore, succeeds to that extent.

M. P. Howell

INSPECTOR