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## Appeal Decision

Site visit made on 30 September 2025

**by M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21<sup>st</sup> October 2025

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**Appeal Ref: APP/P4605/C/24/3343004**

**Land to the rear of 16-26 Springcroft Road, Birmingham, B11 3EL and 11-23**

**Lyncroft Road, B11 3EJ [“the Premises”]**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Mohammed Khan against an enforcement notice issued by Birmingham City Council.
  - The notice was issued on 28 March 2024.
  - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of the outbuilding on the Premises as flats in the approximate position marked in green on the attached plan.
  - The requirements of the notice are to:
    - i) cease the unauthorised use of the outbuilding on the Premises as flats; and
    - ii) remove any fixtures and fittings associated with the unauthorised use.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the ground set out in section 174(2)(f) 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 deleting the words in section 3 of the notice and replacing them with “Without planning permission, the material change of use of the outbuilding on the Premises to flats in the approximate position marked in green on the attached plan”; and
  - varied by deleting the words in step ii) in section 5 of the notice (What you are required to do) and replacing them with “ii) remove all fixtures and fittings that facilitate the unauthorised use as flats including, but not limited to, the kitchen units, cooking facilities, shower rooms and toilets”.
2. Subject to this correction and variation, the enforcement notice is upheld.

### Preliminary Matters

3. The notice alleges the unauthorised use of the outbuilding as flats. The allegation should therefore have stated “material change of use”, as this is the act of development as defined by statute. I can make this minor correction without causing injustice to the parties.
4. It is important to note that the appeal has been brought on ground (f) only. As such the planning merits of the development do not fall to be considered.

## Appeal on ground (f)

5. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
6. When an appeal is made on ground (f), it is necessary to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are either (a) the remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
7. Planning permission was granted in January 2019 under application 2018/07962/PA for the retention of and remedial works to the appeal building to provide 12 storage units. These were to be used for purposes incidental to the enjoyment of the adjoining dwellings on Springcroft Road and Lyncroft Road, as set out in condition 2 of the 2019 planning permission.
8. At the site visit I was able to see that 12 self-contained flats have been created in the building, each comprising an open plan living area, kitchen and bedroom with a separate en-suite. The fixtures and fittings installed include kitchen units and associated equipment and toilets/shower rooms. The flats are accessed independently of the adjoining dwellings on Springcroft Road and Lyncroft Road via a driveway and gated pedestrian accesses. Boundary fences have been erected between each of the units and between the units and the adjoining dwellings.
9. The requirements of the notice are to i) cease the unauthorised use as flats, and ii) remove any fixtures and fittings associated with the use. Therefore, the purpose of the notice is to remedy the breach.
10. The cessation of the unauthorised use, as set out in step i), is clearly necessary to remedy the breach. The dispute relates to step ii), which the appellant considers imprecise and exceeds what is necessary to remedy the breach.
11. The appellant contends that it would be appropriate to specify removal of the cooking related elements, as this according to the *Gravesham*<sup>1</sup> test would ensure compliance with step i) because the units could not then function as flats; but that otherwise the lawful residential incidental use would involve the retention of most of the fixtures and fittings, including the toilets/shower rooms.
12. I do not associate the fixtures and fittings comprising kitchen units, cooking facilities and shower rooms/toilets with the permitted storage use. They were not indicated on the plans for the 2019 planning permission, and there is no evidence before me to indicate that they existed prior to the breach. Instead, I consider that they are part and parcel of the use as flats and have facilitated this unauthorised use. It is well established in case law that a notice can require the removal of works integral to, and solely for, the purpose of facilitating an unauthorised use, even if such works do not constitute development requiring planning permission.
13. Certain fixtures and fittings could be installed in the future as part of the lawful incidental use of the building. However, if the existing fixtures and fittings were

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<sup>1</sup> *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

allowed to remain they would make it more difficult to prevent the resumption of the unauthorised use as flats. Therefore, the removal of the fixtures and fittings that facilitate the breach is consistent with remedying the breach and is not excessive.

14. That said, the requirements of the notice could be made clearer at step ii). In this case, it is appropriate to specify the removal of the fixtures and fittings that have facilitated the unauthorised use including, but not limited to, the kitchen units, cooking facilities and shower rooms and toilets.
15. The requirements of the notice will therefore be varied in the interests of precision and clarity. I am satisfied that this variation will not cause injustice, as the notice will be made more precise for the Council's purposes but no more onerous from the appellant's perspective.

### **Conclusion**

16. I conclude that the appeal should succeed to a limited degree on ground (f), and I shall correct and vary the enforcement notice prior to upholding it.

*M Ollerenshaw*

INSPECTOR