

# Appeal Decision Report

**Ward:** Redlands

**Appeal Nos.:** APPEE0345/C/20/3262510, 3262511, 3262512

**Site:** 34 Eldon Terrace, Reading

**Planning refs:** 041115, 160720, 171772 (APP/E0345/W/18/3208163), 200688

**Proposal:** Unauthorised change of use of basement to two flats

**Decision level:** Delegated

**Method:** Informal hearing (virtual) held on 29 June 2021

**Decision:** All three appeals dismissed and the Notices upheld, subject to the corrections and variations described.

**Date Determined:** 26 July 2021

**Inspector:** Simon Hand MA

## **SUMMARY OF DECISION:**

Appeal A: Enforcement Notice corrected, so it relates to the failure to supply the landscaping scheme which was required by Condition 11 of planning permission 04/00344/FUL, new ref. 041115), ie. it becomes a Breach of Condition Notice rather than an Enforcement Notice. Further, five requirements of the Notice were deleted and two were varied.

Appeal B: This Enforcement Notice largely related to the internal changes which had unlawfully been carried out and contained a long list of requirements. The Notice was varied, deleting various requirements and altering others.

Appeal C: This is a Breach of Condition Notice related to an original condition on the 2004 planning permission which required the basement to remain as ancillary storage. The wording of this Notice was altered slightly by the Inspector so that it aligned with the full wording of the original planning condition, otherwise the Notice was upheld.

## **Head of Planning, Development & Regulatory Services Comment**

Planning permission was granted in 2004 for various conversions/buildings on the land at 34 Eldon Terrace/79 London Road, for residential use. The basement to this building was permitted to be ancillary domestic storage for the flats, as was shown on the approved plans and set within a controlling condition. Approval in 2016 included an acceptable external landscaping layout. The allegation was that the basement had been converted, without planning permission into 2x one-bedroom flats. These suffer from poor natural light and outlook. The external landscaping provided is poor quality. There had previously been applications for planning permission refused (refs. 171772 and 200688) and an appeal dismissed (ref. APP/E0345/W/18/3208163). Given the complicated planning history, officers considered that three separate Enforcement Notices should be issued against the works/use. Subsequently, three separate appeals against these Notices were lodged.

These Notices were complicated to draft and whilst the Inspector disagreed on the precise wording of them and detailed requirements, he agreed that the development was harmful in planning terms and that each of the Notices was substantively correct and clear in what they were attempting to achieve and did not agree with the Appellant's claims that the Notices were imprecise or requirements unnecessary. In correcting/varying the Notices, he upheld all three.

Regarding Notice A, the Inspector considered that it should refer to a breach of condition(s) and some of the requirements of the Notice were judged to be excessive. Officers are somewhat disappointed that the wording of the Notice, as now revised, allows the retention of the large rear lightwell/sunken patio areas and the patio access doors at basement level, as this has failed to provide the rear amenity area for the

development. However, the external amenity area will still be vastly improved by the removal of the tarmac area and laying of paving, provision of landscaping and provision of improved cycle and bin stores, which will preserve and enhance views into this part of the Eldon Square Conservation Area.

Regarding Notice B, whilst the Inspector agreed with the Council generally as to the need for multiple areas of reversion to be undertaken, he found that some of the requirements were either excessive or imprecise and he deleted or amended them as he saw fit, but he described this simply as a ‘tidying up of the notice’.

Regarding Notice C, the Inspector was satisfied that the condition for the basement to be in ancillary (residential) use was ongoing/restrictive - ie. it continues to apply - and that by changing the use of the basement area to flats, there was a clear breach of planning control.

The Inspector also agreed with the Local Planning Authority’s reasoning for the time period for compliance of ten months for all three Notices not being extended. The ten month period will now start from the date of the appeal decision above and compliance will therefore be required by 26 May 2022. Officers are mindful that the dismissal of these appeals will mean serious implications for many parties involved in this development and in particular, the occupants of the basement flats themselves. In one instance, the occupant is also believed to be the flat owner. Officers have written to all affected parties to advise that they should seek their own legal and/or housing advice. But the Inspector was satisfied, hearing the evidence from both sides, that the ten month period is a reasonable time to find somewhere else to live, if only to rent in the short term.

The overall conclusion on the planning merits was that the Inspector was unconvinced by the Appellant’s arguments that the flats met the BRE guidance for adequate light levels and this was the over-riding consideration in the dismissal of these appeals. In summary, officers are very satisfied with the outcome on these appeals, which upholds the Local Plan’s policies for retaining adequate light and outlook within (basement) dwellings and in particular Policy CC8 (Safeguarding Amenity).

**Site Plan:**

