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## Appeal Decisions

Site visit made on 4 May 2023

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 June 2023**

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### **Appeal A Ref: APP/B5480/C/22/3293603**

#### **Land at Cranham Golf Course Club House, Cranham Golf Course, St Marys Lane, Upminster RM14 3NU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Cranham Golf Course Ltd against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 21 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first floor loft space to three self-contained units of residential accommodation.
- The requirements of the notice are:
  1. Cease the use of the first floor loft space as three self-contained units of residential accommodation, within the area marked with a black line on the attached plan LBH 1; and
  2. Remove all the kitchens and cooking facilities and all bathrooms and bathroom facilities from the first floor loft space, within the area marked with a black line on the attached plan LBH 1; and
  3. Remove all partitions, non-load bearing walls and doors from the first floor loft space within the area marked with a black line on the attached plan LBH 1; and
  4. Remove all electricity metres/fuse boxes from the first floor loft space except for one which serves the whole area marked with a black line on the attached plan LBH 1; and
  5. Remove all windows, patio doors and Juliet balconies, roof lights and lantern roof light from the first floor walls and roof elevations of the original extension to the clubhouse, marked with black crosses on plan LBH 2. The resulting openings shall be bricked up, clad in timber or tiled in materials to match, in colour, texture, size and design that of the host building; and
  6. All materials, wiring, plaster board, framing, doors, windows, roof lights, lantern roof light, kitchens, bathrooms and debris associated with steps 1,2,3,4 & 5 above, shall be totally removed from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed, the enforcement notice is varied and upheld.**

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### **Appeal B Ref: APP/B5480/W/22/3296385**

#### **Cranham Golf Course, St Marys Lane, Upminster RM14 3NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Cranham Golf Course Ltd against the Council of the London Borough of Havering.
- The application Ref P0047.22, is dated 13 January 2022.

- The development proposed is described as retention of 3 No flats at first floor level above clubhouse restaurant.

**Summary of Decision: The appeal is allowed, and planning permission is granted in the terms set out in the formal decision.**

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### **Appeal A on ground (c)**

1. The issue is whether the material change of use of the first floor loft space to three self-contained units of residential accommodation is a breach of planning control.
2. The appellant does not dispute that there has been a breach of planning control in relation to the use of the first floor as three self-contained flats. However, it is his view that planning permission has been granted for the majority of the external alterations to the building and thus the notice should not require those external alterations to be removed. However, the enforcement notice does not allege any operational development without planning permission. The appellant's concern is therefore a matter for consideration under the ground (f) appeal, that the requirements of the notice exceed what is necessary to remedy the breach of planning control.
3. The breach of planning control alleged in the notice is a material change of use to three self-contained units of residential accommodation. A material change of use has occurred and there is no record of a specific permission being granted for that change of use within the first floor of the premises. The appeal on ground (c) fails.

### **Appeal A on ground (f)**

4. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
5. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
6. The appellant maintains that Requirements 3, 5 and 6 are excessive to achieve the purpose of the notice.

### *Requirement 3*

7. The requirement is to remove all partitions, non-load bearing walls and doors from the first floor loft space within the area marked with a black line on the attached plan LBH 1. The appellant argues that it is excessive to require all the partitions and non-load bearing walls to be removed, as the first floor space could be reused and the partitions could be reinstated as part of the building's lawful use. However, the appellant has provided a plan which identifies the partitions which subdivide each flat's living room, bedroom and bathroom space. It is his case that it is only necessary to remove those identified partitions to remedy the breach<sup>1</sup>.

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<sup>1</sup> Appendix 9, Appellant's Statement of Case.

8. Section 173 (5) of the 1990 Act gives the power to require the alteration of buildings for the purpose of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use. It seems to me that only the partitions identified in the plan attached at Appendix 9, and which subdivide the living rooms, bathrooms and bedrooms have clearly been installed to facilitate the material change of use. There is no evidence that the remaining walls are not load bearing, nor that they were constructed for any purpose other than for a purpose ancillary to the lawful use of the building. I shall therefore vary requirement 3 of the Notice to require the removal of the partitions shown in red on the plan in Appendix 9 which I shall attach to the notice.

#### *Requirement 5*

9. The requirement is to remove all windows, patio doors and Juliet balconies, roof lights and lantern roof light from the first floor walls and roof elevations of the original extension to the Clubhouse, marked with black crosses on plan LBH 2. The resulting openings are then required to be bricked up, clad in timber or tiled in materials to match, in colour, texture, size and design that of the host building.
10. The breach of planning control alleged in the notice is a material change of use. It does not allege operational development and there is no substantive evidence that the windows, patio doors, etc were not constructed for a different purpose. Indeed, I note that the planning permission granted in 2017<sup>2</sup> for the change of use of extended Golf Club House to a mixed use of Golf Clubhouse, restaurant and function rooms including adaptation of extension, included the new openings and roof lights within the first floor on the approved plans.
11. The requirement to remove these openings expands the terms of the alleged breach and exceeds what is necessary to remedy the breach. The breach can be remedied by the cessation of the unauthorised use and removal only of the works that facilitated that use. I shall therefore delete requirement 5 from the notice as it is excessive.

#### *Requirement 6*

12. The requirement is for all materials, wiring, plaster board, framing, doors, windows, roof lights, lantern roof light, kitchens, bathrooms and debris associated with steps 1,2,3,4 & 5 of the requirements to be totally removed from the site. To the extent that I have found the requirements set out in Steps 3 and 5 to be excessive, I shall vary requirement 6 to take account of those findings.

#### *Conclusion on ground (f)*

13. For the reasons given above, I conclude that requirement 5 of the notice is excessive to remedy the breach of planning control, and that this is also the case with parts of requirements 3 and 6. To that extent the appeal on ground (f) succeeds.

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<sup>2</sup> Local Planning Authority Ref: P0079.17

## **Overall Conclusion on Appeal A**

14. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

## **Appeal B**

### **Application for costs**

15. An application for costs was made by Cranham Golf Course Ltd against the London Borough of Havering. This application is the subject of a separate Decision.

### **Procedural Matter**

16. The appeal in this case is in relation to the failure of the Council to determine an application for full planning permission for 3 No flats at first floor level above clubhouse restaurant at Cranham Golf Course. The Council subsequently issued a decision to refuse the application for planning permission for reasons relating to concerns about the living conditions of existing and future occupiers, having regard to internal space, outlook and noise and disturbance. In addition, the Council do not consider the flats to be in an accessible location. I have determined the appeal on that basis.

### **Main Issues**

17. The main issues in this case are:

- Whether the development provides for acceptable living conditions for existing and future occupiers; and
- Whether the development is in an accessible location.

### **Reasons**

#### *Background and Planning History*

18. The appeal premises comprise part of the first floor of Cranham Pay and Play Golf Course Clubhouse. The clubhouse, which is situated within the Green Belt, incorporates a shop, café, toilet facilities and a separate self-contained restaurant/function room. Works to complete an extension to the clubhouse in 2017/18 included the provision of three flats within the roof space. However, those flats are unauthorised and the subject of an enforcement notice (Appeal A). Appeal B is in relation to a retrospective application for planning permission to retain the flats. As part of that application alterations to the internal layout of the flats are proposed to provide two one bedroom, two person units (Flats 2 & 3) and a one bedroom, one person unit (Flat 1), and which also includes a new roof light over the living area.<sup>3</sup>

#### *Living conditions*

19. Policy 7 of the London Borough of Havering's Local Plan, adopted 2021 (HLP), seeks to ensure that new residential development is of a high-quality design and provides an attractive, safe and accessible living environment for existing and future residents. Regard should be had to privacy and outlook, daylight

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<sup>3</sup> Drawing No: C/SM21/004 Rev B.

- and sunlight, noise and vibration, amongst other criteria. New dwellings should meet the Nationally Described Space Standards<sup>4</sup> (NDSS) and the London Plan requirement for floor to ceiling heights, as well as providing multi-function amenity space.
20. The Council's Statement of Case does not appear to dispute that the proposed layout and size of the units as set out in the submitted Design and Access Statement would meet the Minimum Gross Internal Floor Area requirements (NDSS). Although concern is raised regarding the accuracy of the appellant's drawing which was prepared to show the existing ceiling heights, there is no evidence from the Council to support that concern. It was evident from my site visit that existing ceiling heights clearly meet the requirements set out in the NDSS. Furthermore, although Flat 2 is single aspect, the living/kitchen area is south facing and served by a large, glazed opening with a Juliet Balcony and a roof lantern. It thus has a good outlook with plenty of natural light. Similarly, where rooflights serve the bedrooms, they are at a low height and occupiers of the rooms have a clear outlook from them. Furthermore, in support of the appellant's application, a Daylight and Sunlight Report<sup>5</sup> has been prepared which confirms that with the provision of the additional rooflight proposed to the living area of Flat 1, the design and layout of the residential units are such that future occupiers have adequate levels of natural light. From observations on my site visit, I would concur with the conclusions of the report. The living accommodation was not cramped, the rooms were naturally well lit and in general have a good aspect and outlook.
21. The flats do not have any dedicated private amenity space. However, the Council accept that given their position on a Golf Course, where there is an abundance of open space and recreation opportunities on their doorstep, dedicated amenity space is not essential. I noted on my site visit that the appeal site provides plenty of opportunity for outdoor sitting and access to open space for occupiers of the flats.
22. The Council is also concerned that occupiers of the flats may suffer from noise and disturbance associated with the adjoining Clubhouse which includes an independently run restaurant/function room. Given the position of the flats, located away from the facility's main car park and entrance, the Council now accept that it is unlikely that there would be disturbance from comings and goings associated with the Golf Course or Clubhouse. That conclusion is supported by a noise survey undertaken on behalf of the appellant<sup>6</sup>. However, the Council remain concerned that occupiers of the flats could be disturbed by noise from the use of the function room, which is directly beneath them, and note that noise from a function was audible in Flat 1 when the noise survey on behalf of the appellant was carried out.
23. From the evidence before me the flats have been occupied since early 2018. The function room/restaurant use has similarly been in operation since that time, with hours of opening restricted to 0800 to 2200 hours Monday through to Thursday and on Sundays, and 0800 to 2300 hours on Fridays and Saturdays. Whilst I accept that during a "function" (in that case, a Hen Night), noise from the function room was audible within Flat 1, I have not been provided with any substantive evidence that the occupiers of the flats have

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<sup>4</sup> Technical Housing Standards – Nationally Described Space Standard. DCLG 2015.

<sup>5</sup> Daylight and Sunlight Report, Cranham Golf Course, dated 22 March 2022, prepared by Right of Light Consulting.

<sup>6</sup> Technical Note, prepared by WBM Acoustic Consultants, dated 9 March 2022.

suffered from noise and disturbance, nor indeed that the use of the restaurant/function room has a harmful effect on their living conditions. Furthermore, I note that the Building Control Completion Certificate for the Clubhouse Extension/Flats included details of approved sound insulation within the ceiling between the Clubhouse and Flat 1.

24. Having regard to the location of the Clubhouse in an area of countryside, the facilities/services provided by its function room/restaurant, and in the absence of any substantive evidence that would demonstrate otherwise, I do not consider that the use of the Clubhouse has a demonstrable harmful effect on the living conditions of the occupiers of the adjoining flats by reason of noise and disturbance.
25. I conclude that the development provides for acceptable living conditions for existing and future occupiers. I find no conflict with the development plan, including Policy H7 of HLP, and the London Plan the aims of which are set out above. I also find no conflict with Policy 34 of HLP which supports development that does not unduly impact upon amenity by reason of, amongst other things, noise. Nor is there conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for all existing and future users.

#### *Accessible location*

26. Section 9 of the Framework advises that in assessing applications for development it should be ensured that, amongst other criteria, appropriate opportunities to promote sustainable transport modes can be, or have been, taken up, given the type of development and its location. In accordance with that aim, Policy 23 of the HLP advises that the Council will support and encourage developments in Havering in locations that are most accessible by a range of transport options.
27. The appeal site is situated within the countryside and Green Belt and just over 2km from Upminster Town Centre and train station. Whilst the site has a Public Transport Accessibility Level of 1B, and thus its connectivity by public transport is rated low, the site is not isolated nor inaccessible to public transport routes or shops and services.
28. It is an approximately 30 minute walk to Upminster Train/Tube Station, where there is a regular service to Central London and Southend. There is a pavement along the length of the route and street lighting. In addition, there is a bus stop within a couple of minutes walk from the site where buses connect to Upminster Station and local schools. Furthermore, whilst bus services might not be that regular, there are opportunities to walk and cycle to a range of shops, facilities and services which are within 2km of the appeal site<sup>7</sup>.
29. I appreciate that the Council do not need to release land within the Green Belt for new housing. However, in this case the proposal relates to the conversion/re-use of an existing building which itself has sustainable benefits. In addition, there are opportunities to promote sustainable transport modes, and the appellant has suggested that a condition be imposed to secure a scheme for the provision of measures to encourage the use of sustainable

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<sup>7</sup> Appendix 3, Appellant's Statement of Case

modes of travel by the occupiers of the flats, including on-site secure cycle storage.

30. For the reasons given above, I conclude that subject to a condition to promote sustainable transport modes, the development would be accessible to sustainable transport options. There would be no conflict with the Framework or Policy 23 of the HLP, the aims of which are set out above.

#### *Other Matters*

31. I appreciate that the Council has some concerns in relation to fire risk and means of escape. However, this matter is addressed under Building Regulations and is not a matter for my consideration in this appeal.

#### **Conclusion**

32. For the reasons given above and taking into account all other matters raised, I conclude that Appeal B should be allowed and planning permission granted subject to conditions set out in the formal decision.
33. I have imposed condition 1 to ensure that the works are carried out in accordance with the approved plans to provide certainty. The purpose of condition 2 is to require the appellant to comply with a strict timetable for dealing with promoting sustainable travel opportunities which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The conditions therefore provide for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the conditions, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, the use would have to cease.
34. I have not imposed a condition requiring a scheme for mitigating measures with respect to fire safety, as this matter is controlled by Building Regulations.

#### **Decisions**

##### **Appeal A**

35. It is directed that the enforcement notice be varied by:
- deleting all the wording in requirement 3 of paragraph 5 and substitution with "Remove all partitions from the first floor shown in red on the plan attached as Appendix 9 to the notice.";
  - deleting the plan labelled LBH 2 attached to the enforcement notice and substitution with the plan annexed to this decision (Appendix 9).
  - deleting all the wording in requirement 5 of paragraph 5.

- deleting all the wording in requirement 6 of paragraph 5 and substitution with "All materials, wiring, plasterboard, framing, doors, kitchens, bathrooms, and debris associated with steps 1, 2, 3 and 4 above, shall be totally removed from the site."
36. Subject to these variations Appeal A is dismissed and the enforcement notice is upheld.

### **Appeal B**

37. The appeal is allowed and planning permission is granted for the development carried out, namely 3 No flats at first floor level above Clubhouse restaurant at Cranham Golf Course, St Marys Lane, Upminster RM14 3NU, subject to the conditions below:

1. Within three months of the date of this decision, the layout of the three flats, including the new rooflight shall be altered and constructed in full accordance with the details shown on approved Drawing No: C/SM/21/004 Rev B, dated 29 September 2021. The layout thereafter shall be retained to provide a one bedroom, one person unit (Flat 1); and two, two person, one bedroom units (Flat 2 and Flat 3).
2. The use hereby permitted shall cease within 3 months of the date of failure to meet any one of the requirements set out in a) to d) below:
  - (a) Within 2 months of the date of this approval, a scheme for the provision of measures to encourage the use of sustainable modes of travel by the occupiers of the flats shall have been submitted to and approved in writing by the local planning authority. The scheme shall include: details of bus services including timetables, location of bus stops and walking or cycling times to the stops; details of underground and overground train services, including destinations and frequencies, and connections to the services by sustainable modes; details of services and facilities within a 2km walking distance from the site; details of secure cycle storage to be provided at the golf club for the use of occupiers of the flats; and the means by which the above will be communicated to the occupiers of the flats.

The approved scheme shall be fully implemented and made available for use within one month of the agreement of details and shall thereafter be retained for use at all times.
  - (b) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - (c) If an appeal is made, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - (d) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*Elizabeth Pleasant*

INSPECTOR





## Plan

This is the plan referred to in my decision dated: 1 June 2023

by E Pleasant DipTP MRTPI

Land at: Cranham Golf Course Club House, Cranham Golf Course, St Marys Lane, Uppingham RM14 3NU.

Reference: APP/B5480/C/22/3293603

Scale: Not to Scale

### APPENDIX 9: PARTITIONS FOR REMOVAL SHOWN IN RED

