Why did they not forbid her   מפני מה לא אסרוה –

Overview
The גמרא asks why did they not forbid בת שבע to דוד. Our תוספות cites פירש"י, rejects it and offers his interpretation.

פירש הקונטרס[1] והלא אותו מעשה בעדים הוה[2] -
רש"י explained the reason the חכמים should have forbidden her to דוד **is since there were witnesses to that episode.**

תוספות rejects פירש"י:

ואין נראה דנהי דידוע לרבים הוה שהביאה לביתו -
And this is not the view of תוספות, **for granted that it was publicly known that** דוד **brought** בת שבע **to his house -**
מכל מקום לא ראו כמכחול בשפופרת[3] שבפני בני אדם לא שמש[4] –
Nevertheless no one saw כמכחול בשפופרת,[5] **since he was not** משמש **in the presence of people,** so why should she be אסורה עליו.

תוספות offers his interpretation of the question מפנ"מ לא אסרוה:

ונראה לרבינו יצחק לפרש ואם תאמר דפתח פתוח כשני עדים דמי[6] אמאי לא אסרוה לדוד[7] -
And the ר"י prefers to explain it thus; **so if you maintain that** the claim of **פתח פתוח** (by the husband) **is comparable to** the testimony **of two witnesses** (regarding זנות) as the גמרא just stated, so **why did they not prohibit her to** דוד -
דדוד היה יודע בודאי שנבעלה ואף על פי שעשה תשובה מכל מקום עיכבה[8] -

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[1] בד"ה מפני.

[2] People knew that דוד brought בת שבע to his house (and was secluded with her).

[3] מכחול is a dye applicator. It is first inserted into a tube (שפופרת) which contains dye, and then applied to the eyes. This is the common euphemism for the act of ביאה.

[4] It is forbidden to have תשמיש in the presence of anyone else. See נדה יז,א.

[5] It seems that תוספות maintains that the עדי זנות are required to see כמכחול בשפופרת in order that their testimony be accepted. Others maintain (see מכות ז,א) that it is not necessary that the עדים actually see כמכחול בשפופרת, but it is sufficient if they see them כדרך המנאפים (in a compromising situation). In any event the עדים saw neither since he was not משמש בפני בנ"א.

[6] If however we would maintain like the סברת המקשן that since אין דבר שבערוה פחות מב' that since, then even if he sees his wife מזנה she is not אסורה to him (see previous תוס' ד"ה ומי footnote # 6), there would be no question on דוד, since there were no עדים.

[7] The סנהדרין should have told דוד that if/since you are aware that you were בועל her while she was an אשת איש, so you know that she is forbidden to you, and you need to separate yourself from her. The word אסרוה is not that literal according to ר"י as it is according to פרש"י.

[8] תוספות is explaining that we cannot say that just as initially דוד did an איסור (with בת שבע), so later too he continued

For דוד certainly knew that she was **נבעלה** (by דוד), and we see **that even though** דוד did **תשובה, nevertheless he retained her** by him -

ואם היתה אסורה לו לא היה אותו צדיק לוקחה לו לאשה:
And if she was forbidden to him, that צדיק would not have taken her as his wife.

Summary
According to רש"י the בי"ד should have prohibited דוד to be with בת שבע, since there were עדים that they were together. According to תוספות, the בי"ד should have told דוד, since you know that she is אסורה to you, there is a need for you to separate.

Thinking it over
The rule is if one is בועל an אשת איש ברצון she is אסורה both to her husband (the בעל) and to the בועל. The rule is כשם שאסורה לבעל כך אסורה לבועל. If however she was נבעלה באונס she is מותרת לבעל and therefore also מותרת לבועל. Here בת שבע may not have been אסורה לבעל (אוריה her husband) since he does not know that she was נבעלה ברצון and even if דוד (or בת שבע) would have told them he need not accept their testimony, especially since אין אדם משים עצמו רשע. In our case therefore if she is not אסורה לבעל she is not אסורה לבועל (to דוד), so what is the גמרא's question according to תוספות?![9]

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living with her באיסור. Therefore תוספות says that דוד did תשובה, so how come he continued to live with her if she is אסורה to him

[9] See רש"ש and סוכ"ד אות עו.