



Appeal Decisions

Site visit made on 29 April 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Appeal A Ref: APP/W1905/C/23/3318493

Appeal B Ref: APP/W1905/C/23/3318494

Appeal C Ref: APP/W1905/C/23/3318495

Appeal D Ref: APP/W1905/C/23/3318496

41 Cameron Drive, Waltham Cross, Hertfordshire, EN8 8BP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mr Shola Omatsola Antony Edegbele (Appeal A), Ms Boyowa Edegbele (Appeal B), Mr Ukuoyinden Tony Edegbele (Appeal C), and Ms Natalie Edegbele (Appeal D) against an enforcement notice issued by Broxbourne Borough Council.
 - The notice was issued on 13 February 2023.
 - The breach of planning control as alleged in the notice is the subdivision of the property to form two separate residential units, consists of one ground floor flat and one first floor flat.
 - The requirements of the notice are to:
 - (i) Permanently cease the use of the property as two independent dwellings.
 - (ii) Return the property to use as a single dwelling house by removing the internal wall to the current kitchen for the separate dwelling along with e.g. second oven, hob, sink etc.
 - (iii) Remove any resultant debris from the land.
 - The period for compliance with the requirements is: Four months
 - The appeals are proceeding on the grounds set out in section 174(2)(b), and (f) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - At section 3 the deletion of the alleged breach of planning control in its entirety and replacement with “The material change of use of a single dwellinghouse to two dwellinghouses”.
 - In section 5 the deletion of requirement i) and replacement with “i) Cease the use of the property as two dwellinghouses”.
2. Subject to the above corrections, the appeals are dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Shola Omatsola Edegbele against Broxbourne Borough Council. This application is the subject of a separate decision.

The Notice

4. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers

available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.

5. The notice alleges the subdivision of the property, which is not an act of development. Section 55(3)(a) of the Act sets out the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.
6. It is clear from the evidence that the Council's concerns relate to the use of the building as two separate dwellinghouses and the appellant's case is advanced on this basis. I can therefore correct the allegation so that it refers to a material change of use, as defined by section 55(3)(a), without causing injustice to either party. The requirements shall also be corrected so that it refers to the cessation of the unauthorised use and therefore flows neatly from the allegation.

Ground (b)

7. An appeal on ground (b) is that the matters stated in the notice have not occurred, as a matter of fact. The burden of proof is on the appellants and the relevant test of the evidence is on the balance of probabilities.
8. Enforcement notices may not be issued until sometime after a breach has been detected. In the meantime, appellants may make changes on site. Section 174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach *had* occurred by the date of the issue of the notice. If the allegation had taken place on site, an appeal on ground (b) cannot succeed simply on the basis that the structures were removed, or the use had ceased. The question therefore is whether the alleged breach had occurred by the date the notice was issued, and not whether it was in existence on the date the notice was issued.
9. The appellants accept that the premises has previously been used as two separate dwellings, initially in 2017 before the use ceased in early 2018. The parties have referred to a Certificate of Completion of Work, issued by the Council's Building Control team in February 2018 for "*Remedial work to remove sub division of dwelling into two flats*", as evidence that the use of the premises as two dwellinghouses had ceased at that time.
10. The Council then assert that a material change of use of the premises to two dwellinghouses had occurred again by 2022. The Council refer to site visits carried out in October 2022, which resulted in an application for a Lawful Development Certificate (LDC) under section 191 of the 1990 Act being submitted. The LDC application dated 28 November 2022 sought to confirm whether the existing use of the property, described on the application form as the "*Division of the house into two planning units. Ground floor flat and a ground floor/1st floor flat*", was lawful.
11. The appellants have referred to an email from the Council's Principal Compliance Officer which refers to an "annexe use" rather than the creation of two separate planning units. The Council allege that this was clearly a "typing error" as it is not consistent with the entirety of the email. Whether the reference to an "annexe use" was a typing error or not, the third paragraph in the email clearly states that following an investigation the Council had identified what it considered to be a breach of planning control, which had resulted in the submission of the LDC application.

12. Nevertheless, the appellants own evidence indicates that the alleged breach of planning control was occurring in 2022. The statutory declaration of Mr Omatsola Antony Edegbele (Appeal A) sets out that *“for a period, bedrooms in the house had been rented out to lodgers”* and that the *“single family home use resumed/began, upon completion of the renovation I carried out in December 2022”*. This is further supported by the appellants ground of appeal document which states that the use of the property as two units had ceased in 2022, and an email dated 24 September 2024 from the appellants agent which stated that *“the internal wall that had been erected to create the internal annexe, the subject of the appeal, will be demolished shortly”*.
13. The appellants primary argument is that at the date the enforcement notice was issued the property was in use as a single dwellinghouse. I find no reason to dispute that position, and the property appeared to be in use as a single dwelling at the time of my site visit. Any internal wall which may have previously physically split the building in two had also been removed by the time of my visit.
14. However, as set out above the question is not whether the breach was in existence on the date the notice was issued, but whether it had occurred by the date the notice was issued. From the available evidence, I find it highly probable that the alleged breach of planning control occurred for a period in 2017 before ceasing, and then again in 2022. The enforcement notice was served some four months after the Council’s site visits in October 2022, and whilst it is perfectly plausible that the use of the property as two dwellings may have ceased by that point, it does not alter the fact that the alleged breach of planning control *had* occurred.
15. As such, on the balance of probability, I find that the material change of use of the property from a single dwellinghouse to two dwellinghouses had occurred by the date the notice was issued. The appeals on ground (b) therefore fail.

Ground (f)

16. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) of the Act provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity.
17. In this case, its purpose is to remedy the breach by discontinuing the use of the land and for facilitating works to be removed. For the appeals on ground (f) to succeed, the appellants must propose alternative lesser steps which would remedy the breach.
18. Whilst requirement i) simply requires the use of the property as two dwellinghouses to cease, the appellants contend that the other requirements are excessive as they do not facilitate any breach of planning control or amount to development. Requirement ii) requires the property to be returned to use as a single dwelling by removing the internal wall to the current kitchen for the separate dwelling along with e.g. second oven, hob, sink etc.
19. In particular, the appellants contend that there is nothing to prevent a householder having more than one kitchen or bathroom. I accept that it is not uncommon for there to be more than one bathroom within the confines of a house, although

having two main kitchens is more unusual. In any event, on the evidence before me, the installation of an internal wall and provision of a second kitchen (e.g. oven, hob, sink etc) facilitated the material change of use to two dwellinghouses.

20. Given that the internal wall and cooking facilities on the ground floor facilitated the breach, it is proper that these, along with any resultant materials are removed so that the land is restored to its former condition. Accordingly, the requirements of the notice do not exceed what is necessary and for the above reasons, the appeals on ground (f) fail.

Conclusion

21. For the reasons given above I conclude that the appeals fail. I have therefore upheld the enforcement notice as corrected.

David Jones

INSPECTOR