



Appeal Decision

Site visit made on 7 July 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 August 2025

Appeal Ref: APP/K0235/C/23/3334587

179 Goldington Road, Bedford, MK40 3EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Sharon Healey against an enforcement notice issued by Bedford Borough Council.
- The notice was issued on 7 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection on the land of a separate dwellinghouse, 1.8m high boundary gates to Dean Street and 1.8m high fence and gates which have sub-divided the land.
- The requirements of the notice are to:
 - i) Demolish the building outlined in blue on the attached Plan
 - ii) Demolish the gates and fencing marked in orange on the attached Plan
 - iii) Demolish the boundary gates marked in green on the attached Plan
 - iv) Remove all waste and materials resulting from (i-iii) permanently from the land; and
 - v) Lay turf and sow grass seed on the area outlined in blue resulting from (i) and (iv) on the attached Plan.
- The periods for compliance with the requirements are:
 - i) Twelve months from the date this notice takes effect
 - ii) Twelve months from the date this notice takes effect
 - iii) Twelve months from the date this notice takes effect
 - iv) Thirteen months from the date this notice takes effect
 - v) Eighteen months from the date this notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (d) appeal

1. The onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
2. Planning permission was granted 14 November 2012 for the construction of a single storey annex¹ on land to the rear of 179 Goldington Road. Condition 2 attached to this permission states 'The development hereby permitted shall be used only insofar as it forms an annexe to the dwelling known as 179 Goldington

¹ Council reference 12/01911/FUL

Road, Bedford and shall at no time be occupied as a separate or self-contained dwelling unit'. There is no dispute the appeal building was completed on 1 May 2015 in accordance with the plans subject of the 2012 planning permission, with the exception of a slight change in window detail.

3. Section 171B(1) of the Town and Country Planning Act 1990 (the Act) states that 'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of...ten years with the date on which the operations were substantially completed'. Section 171B(2) of the Town and Country Planning Act 1990 (the Act) states that 'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of...four years beginning with the date of the breach'. The crux of the matter is whether the building was first occupied as an annexe and then experienced a material change of use to a dwelling, and therefore the four-year period of immunity applies, or, whether the building has always been in use as a dwelling, and therefore the 10 year period of immunity applies.
4. Prior to the construction of the appeal building, its occupant, Gloria Cinalli resided in 179 Goldington Road from 2011 onwards. The appellant confirms Gloria Cinalli struggled with mobility issues and the house was no longer suitable for her living requirements. When the appeal building was subsequently completed in 2015, Gloria Cinalli moved out of no.179 and into the building.
5. The appeal building contains all the necessary facilities to provide a self-contained residential unit and there is no dispute it has done so since its completion. Indeed, the appellant confirms Gloria Cinalli has 'continued to live independently in the annexe and her occupation has been continuous since she moved into the annexe in May 2015'. Once the annexe was occupied, no.179 became vacant, with no one residing in it. There is no evidence of the annexe relying on any facilities within no.179. Therefore, given the appeal building became the primary unit of occupation for Gloria Cinalli, with no reliance on no.179 I find that the appeal building was in use as a dwelling, and not an annexe, upon Gloria Cinalli moving into it.
6. Furthermore, whilst the 2012 planning permission was for an annexe, it is clear that despite the appellant's intentions of ensuring it would only be occupied as a annexe to no.179, it was nevertheless constructed for the purpose of Gloria Cinalli occupying it as her sole residence. Moreover, the fence and driveway gates were also erected. These effectively provide the building with its own amenity space, separate to no.179, albeit there is access via a pedestrian gate between the two buildings.
7. Therefore, the building has only ever been in use as a dwelling and thus has not experienced a material change of use from an annexe to a dwelling. Consequently, the breach of planning control does not fall within s171B(2) of the Act. As it falls within s171B(1) of the Act, the 10 year period of immunity is applicable. As there is no dispute the dwelling was constructed within 10 years from the date the notice was issued, it is not immune from enforcement action.

8. It was held in *Murfitt*² that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the ‘ancillary’ or ‘incidental’ works are removed in order that the site is restored to its previous condition and the breach is remedied. The Court of Appeal’s judgment in *Caldwell*³ clarifies the approach to be taken where the Council seeks to take action against a material change of use and, through the requirements, seeks to remove operational development that it alleges to have facilitated the unauthorised use. It was held that the *Murfitt* principle did not apply in circumstances where the operational development is itself the source of or fundamental to the relevant change of use. In particular, the principle does not extend to works that are more than merely ancillary or secondary and are instead fundamental to or causative of the change of use itself. Operational development carried out “in its own right”, or “fundamental to or causative of” the change of use is not “ancillary” to, “secondary” to, “associated with” or “facilitative only of” that change of use, so falls outside the principle in *Murfitt*.
9. The *Caldwell* judgment was made after the appeal was lodged. The parties have been given the opportunity to comment on the judgment and there is no dispute the erection of the building was operational development that was fundamental to or causative of the change of use of the land. Accordingly, the *Murfitt* principle does not apply to the building. As a consequence, the period of immunity for the erection of the building is four years. As it was erected more than four years prior to the notice being issued, it is therefore immune from enforcement action.
10. With regard to the gates and fences, these were erected at the same time as the dwelling to provide security for the occupants of the dwelling. However, unlike the building, these are ancillary works and are not fundamental to or causative of the change of use of the land. Therefore, the 10 year period of immunity is applicable and as a consequence they are not immune from enforcement action.
11. The ground (d) appeal therefore succeeds insofar as the building is immune from enforcement action. However, the ground (d) appeal fails in so far as it relates to the change of use of the land and the erection of the gates and fences.

The ground (a) appeal and the deemed planning application

Main Issues

12. The main issues are:

- the effect of the development on highway safety;
- the effect on the living conditions of the occupants of 179 Goldington Road, with regard to outdoor private amenity space; and
- whether the development provides adequate living conditions for the occupants of the dwelling, with regard to outdoor private amenity space.

Highway safety

13. The appeal site comprises no.179, which is set back slightly from the road with a small yard to the front. To the rear is a garden area that leads to the building that

² *Murfitt v SSE [1980] JPL 598*

³ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council [2024] EWCA Civ 467*

is the subject of the notice. Adjacent to this building is a driveway that is accessed off Dean Street.

14. The ground (a) appeal and the deemed planning application development would result in there being no parking provision for no.179, with the existing driveway off Dean Street being used solely for the appeal building.
15. The stretch of Goldington Road to the front of no.179 is restricted parking. Therefore, residents of no.179 would likely try to park on Dean Street, which has unrestricted on-street parking.
16. At the time of my site visit, which was during the daytime on a weekday, I observed there to be a very high demand for on-street parking along the full length of Dean Street between the junction with Goldington Road and Newham Avenue, with no spaces available nearby. Whilst I acknowledge this was only a snapshot in time, my observations appear to correspond with the Council's contention that there is a high demand.
17. The HMO has not had on-site parking provision for the last eight and a half years. However, it is reasonable to conclude that as a result, it has contributed to the very high demand for on-street parking on Dean Street, which is quite possibly already at a level that could result in inconsiderate parking leading to an unacceptable risk to highway safety. There is no evidence before me of any parking surveys having been carried out to more accurately establish what the demand is.
18. I acknowledge that the site is well connected to public transport, providing access to a range of services, facilities and jobs in the wider area. However, I do not consider this justifies the lack of parking provision. It is likely that at least some of the occupants of the five bedroom HMO would have a car.
19. I therefore find it has not been demonstrated that the development does not have an unacceptable harmful effect on highway safety. As such, it is contrary to Policy 31 of the Bedford Borough Council Local Plan 2030 (the LP), which states that particular attention should be given to parking provision and safety. It would also fail to accord with Bedford Borough Council Houses in Multiple Occupation Supplementary Planning Document (HMO SPD) and the Bedford Borough Council Parking Standards for Sustainable Communities 2014, which seek to ensure development provides suitable parking provision.

Living conditions of the occupants of 179 Goldington Road

20. The HMO SPD states HMOs should have approximately 50sqm of private amenity space. As a result of the subdivision of the site from the erection of the new dwelling, the remaining private amenity space for the HMO at no.179 is approximately 18sqm. This falls far short of the HMO SPD guidance. Such a small area of amenity space is insufficient to provide adequate space for the occupants of the HMO to sit outside, dry clothes and provide outdoor storage, for example for bicycles. The limited space creates an oppressively confined area that would have a detrimental effect on the well-being of the occupants of the HMO. Whilst there have been no concerns raised by the occupants of the HMO, this does not equate with the living conditions being acceptable. I have also considered the effect on future occupants.

21. I acknowledge the HMO was created prior to the introduction of the Article 4 Direction coming into force and therefore it has always had the same amount of private amenity space that it currently has. Nevertheless, that does not mean the amenity space is suitable. Such matters were not a consideration when the HMO was created. However, they are in the determination of the ground (a) appeal and the deemed planning application because the creation of the new dwelling has reduced the amount of private amenity space that would otherwise be part of no.179.
22. I find therefore, the development has an unacceptably harmful effect on the living conditions of the occupants of no.179, with regard to outdoor private amenity space provision. As such, it fails to comply with Policy 30 of the LP, which seeks to ensure development considers quality in terms of private space. It would also fail to accord with the guidance set out in the Bedford Borough Council Residential Extensions, Dwellings and Small Infill Developments Design Guidance 2000 (the DG) and the HMO SPD, which seek to ensure development provides suitable private outdoor amenity space.

Living conditions of the occupants of the dwelling

23. The new dwelling has only a slightly larger area of private outdoor amenity space than the HMO. However, it is only a one bedroom dwelling. Although limited in size, this outdoor space provides enough room for its occupant/s to dry their clothes, sit outside and provide the limited outdoor storage space required for such a small property whilst maintaining a pleasant outdoor living space.
24. I find therefore, the development provides adequate living conditions, with regard to private outdoor amenity space. As such, it complies with Policy 30 of the LP, the DG and the HMO SPD.

Other Matters

25. I have had regard to the rights of Gloria Cinalli under Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998. Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their home. Article 8 affords the right to respect for private and family life. Dismissal of the appeal would interfere with the appellant's rights under both Article 1 of the First Protocol and Article 8. However, these are qualified rights, and any interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality.
26. The consequence of dismissing the appeal would result in Gloria Cinalli no longer being allowed to live in the building. However, the harm I have identified to highway safety and the living conditions of the occupants of no.179 is such that dismissal of the appeal would be a proportionate and necessary response that would not violate the appellant's rights under Article 1 of the First Protocol or Article 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Conclusion on the ground (a) appeal and the deemed planning application

27. Whilst I have found that the development provides adequate living conditions for the occupant of the new dwelling, this is a neutral matter and does not outweigh

the harm I find to highway safety and the living conditions of the occupants of no.179.

28. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed planning application. Therefore, the ground (a) appeal and the deemed planning application fails.

The ground (f) appeal

29. This ground of appeal 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.
30. Under the ground (d) appeal, I have found the building to be immune from enforcement action. Accordingly, I shall correct the requirements of the notice to omit the requirement for the building's demolition. Whilst the use of the building as a dwelling is found to be unlawful, it could nevertheless be used incidental or ancillary to the lawful use of no.179, without the need for planning permission. However, in order to remedy the breach of planning control in respect of the use of the building as a dwelling, it is necessary to remove the kitchen and bathroom facilities (i.e. including all bathroom and shower facilities, all kitchen facilities including the kitchen cupboards, kitchen sink, kitchen worktop surfaces and gas piping and connections installed) to ensure the use ceases.
31. The appellant contends that the planning permission for the annexe included a kitchenette and bathroom on the approved drawings and therefore the removal of these would be excessive. However, the building does not benefit from that planning permission because, as I have established under the ground (d) appeal, it was built as a dwelling, not an annexe. Therefore, the removal of these facilities does not exceed what is necessary to remedy the breach of planning control by ensuring the use of the building as a dwelling ceases.
32. With regard to the gates and fences, these are also unlawful. The requirement to remove them is not considered to be excessive, given their erection falls within the alleged breach of planning control as set out in the notice.
33. I find therefore, the ground (f) appeal succeeds insofar as it relates to the building itself. However, it fails in respect of the remaining matters.

The ground (g) appeal

34. This ground of appeal is that the period for compliance is unreasonably short.
35. The appellant seeks a further 6 months to comply with each of the requirements of the notice. I acknowledge the circumstances of the occupant of the dwelling and the stress the appeal process may have caused her. However, there is no evidence before me why 12 months would not be sufficient time to find alternative accommodation, whereas 18 months would. Therefore, it has not been demonstrated why the periods for compliance in the notice are unreasonably short.

36. The compliance period for the removal of the kitchen and bathroom facilities shall be thirteen months. This will provide one month to carry out the necessary works after the use of the building as a separate self-contained residential unit ceases.
37. Furthermore, as the Council alludes to, they have the power to vary the period of compliance under section 173A (1)(b) of the Town and Country Planning Act 1990.
38. I find therefore, the ground (g) appeal fails.

Formal Decision

39. It is directed that the enforcement notice is varied and corrected by the following:

- The deletion of the requirements under section 5 of the notice and substitute the following:
 - i) Cease the use of the building outlined in blue on the attached plan as a separate self-contained residential unit.
 - ii) Remove from the building outlined in blue on the attached plan all kitchen and bathroom facilities (including all bathroom and shower facilities, all kitchen facilities including the kitchen cupboards, kitchen sink, kitchen worktop surfaces and gas piping and connections installed).
 - iii) Demolish the gates and fencing marked in orange on the attached Plan
 - iv) Demolish the boundary gates marked in green on the attached Plan
 - v) Remove all waste and materials resulting from (ii-iv) permanently from the land; and
 - vi) Lay turf and sow grass seed on the area outlined in blue resulting from (i) and (iv) on the attached Plan.
- The deletion of the times for compliance under section 6 of the notice and substitute the following:
 - i) Twelve months from the date this notice takes effect
 - ii) Thirteen months from the date this notice takes effect
 - iii) Twelve months from the date this notice takes effect
 - iv) Twelve months from the date this notice takes effect
 - v) Thirteen months from the date this notice takes effect
 - vi) Eighteen months from the date this notice takes effect

40. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Walker

INSPECTOR