



Appeal Decision

Site visit made on 6 September 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMi fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2025

Appeal Ref: APP/A1530/C/22/3313096

Land at the back of 233 Greenstead Road, Colchester CO1 2SL

- 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 “1990 Act”).
- The appeal is made by Ms Ola Kupoluyi against an enforcement notice issued by the Colchester Borough Council.
- The enforcement notice was issued on 14 November 2022.
The breach of planning control as alleged is the siting of a shipping container converted for use as residential accommodation. For the avoidance of doubt this is the converted shipping container in the photograph attached to the issued enforcement notice).
- The requirements of the enforcement notice are to: 1) Cease the use of the converted shipping container as residential accommodation. (2) Remove the converted shipping container from the land, and (3) Leave the land in a clean and tidy condition.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (a), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld after correction, and planning permission is refused in the terms set out in the Formal Decision.

Ground (d)

1. The onus of proof is upon the appellant. 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 the evidence alone is, on the balance of probability, sufficiently precise and unambiguous. The claim is that the alleged development is immune from enforcement action due to the passage of time.
2. As the alleged breach occurred prior to 25 April 2024, the previous immunity periods of 4 or 10 years apply. However, the allegation relates to the siting of a shipping container converted for use as residential accommodation, and not to the use of no. 233 as self-contained flats. Clearly, the planning unit is the physically and functionally separate shipping container, which is positioned at the rear of no. 233 and is separately accessed, and contains the necessary wherewithal for day-to-day domestic existence.
3. The subject container is a sizeable structure and cannot be simply moved around without aid of plant and machinery. It is physically attached to the ground by reason of its own weight. Indeed, there is nothing before me to suggest the container has been moved around the site since it has been positioned in place. The appellant’s own evidence is that the container was acquired through an auction website, which states delivery would need to be arranged by lorry with a crane. The container’s size, physical attachment and permanence are characteristic of a building, and its erection

comprised a building operation requiring express planning permission.

4. Section 171B(2) of the 1990 Act applies to the change of use of a building to a single dwelling. However, if a building is erected unlawfully and used as a dwellinghouse from the outset, meaning that no change of use occurs as such, the time limit for action against the use is then 10 years. The building itself may still become immune¹.
5. The alleged breach is clear in that it alleges the siting of a shipping container converted for use as residential accommodation. It does not allege a material change in the use of the land. The requirements reflect the allegation. However, having regard to the Courts judgments following the Supreme Court's ruling in *Welwyn Hatfield*, the Council should have cited the 10-year immunity period. The relevant date is therefore 14 November 2012.
6. This finding is highly problematic for the appellant. The challenge is purely based on the 4-year immunity period. All the evidence presented, including sworn testimony and response to the Planning Contravention Notice which, incidentally, is an important document, affirms and confirms that the shipping container, which is said to have replaced a detached garage to the rear of the building, was placed on the land in September 2017 and it has been used for residential purposes from that date onwards.
7. I find that neither the appellant nor the Council suffers any injustice if I were to correct the issued notice's immunity period by substituting "four years" to "ten years," because the appellant's own evidence demonstrates that the breach occurred within the previous 10-years. This correction reflects the correct immunity period based on the material facts of this case and relevant case law. I am satisfied, based on the evidence before me, that the notice can be corrected without causing injustice to any party.
8. Even if an alternative view is to prevail and the 4-year period applies, I am not content that the appellant's evidence clearly and unambiguously shows when the shipping container provided viable facilities for day-to-day living. For example, while sales particulars have been provided, the exact date of purchase and then delivery by specialist transport is unclear. The appellant maintains utilities are connected from the main house, yet there is no evidence to show when the physically linked to provide drainage, electric or water.
9. Evidence about the occupation and use of the shipping container is imprecise. Tenancy agreements do not necessarily demonstrate occupation and use. Nonetheless, the claim is that the structure has been used by a previous occupier of a flat purchased by the appellant, but there is no evidence of self-contained use. The submitted bills do not specifically relate to the residential use of the container. Rental payments covering the period 2019 onwards do not specifically show the rent is paid in connection with the use of the shipping container.
10. Drawing all the above threads together, I find that the available evidence does not sufficiently, precisely and unambiguously show, on the balance of probabilities, the siting of a shipping container converted for use as residential accommodation occurred on or before the relevant date, as corrected, and that it continued thereafter for a period of 10 years without significant interruption. Even if the 4-year time limit was held to apply, the quantum of evidence presented does not clearly show the breach is immune from enforcement action. Ground (d) must fail.

¹ Applied: *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15: [2011] JPL 1183.

Ground (a)

11. The Council has adopted a scattergun approach to the reasons for issuing the notice. The extensive quotations from local plan policy indicates to me that the Council is concerned about effect of the development on: (1) the character and appearance of the locality (2) the living conditions of existing and future occupiers, (3) flood and contaminated land risks, and (4) habitats.

Character and appearance

12. No. 233 sits amongst a local listed block of buildings and the surrounding area is residential in character. The reasons for issuing do not allege harm to this heritage asset. The appellant's argument is that there is no one-size-fits-all in terms of building and design standards. The "tiny home" design concept is increasingly popular as evidenced by the fact that the cabin (identified as 233D) has not been empty for a single day since it has been rented out. It is also designed to a high aesthetic standard being clad in timber boards. However, the siting of a shipping container for residential accommodation is, evidently, out of keeping with the layout and location of dwellings in the locality. It is also seen as a kind of back-land development that appears out of sync with the host property and urban grain and fails to positively respond to the wider setting. There is therefore conflict with Policies DM15 and SP7 of the Local Plan 2 (2022).

Accommodation

13. It is apparent to me that, since the taking of enforcement action and subsequent appeal, things have moved on the ground. The Council's concerns about adequate daylight and ventilation seems to have been addressed. The appellant states that the unit includes a window to the rear in the kitchen area, two large adjustable louvered vents and trickle vents. However, in my assessment, the size and layout of the container afford existing and future occupiers insufficient outlook and daylight.
14. The appellant argues that the accommodation has been occupied and used for a long time and the site's location means it is within reasonable walking distance to local facilities, and there would be adequate space for cycle storage. Be that as it may, it does not necessarily follow that the standard of accommodation is acceptable in planning terms. I consider that the available accommodation is unsuitable for residential use given the lack of internal floor space: circulation space is very limited. In addition, there is inadequate private amenity space given the use of the rear garden as shared space. The development fails to comply with Local Plan 2 Policy DM12.

Flood risk and contamination

15. The development fails to accord with Local Plan 2 Policy ENV5, which relates to pollution and contaminated land. Firstly, this is because the dwelling sits in Flood Zone 3 yet there has been no assessment of the potential effect from flooding.
16. Flood risk is a combination of the probability and the potential consequences of flooding, yet the evidence presented does not clearly demonstrate the effect of the development on or from flooding. The National Planning Policy Framework (NPPF) sets out strict tests to protect people and property from flooding. Where these tests are not met, new development should not be allowed. Given the absence of any assessment, it is difficult to determine whether the vulnerable development would be acceptable in this zone and there is no evidence of a sequential or exceptional test.

17. Secondly, development proposals on contaminated land, or where there is reason to suspect contamination, must include an assessment of the extent of contamination and any possible risks. The onus is on the applicant to demonstrate that there is no likely risk to health or the environment due to contamination. Again, there is lack of assessment in this regard despite the location of the site close to an industrial estate. It is difficult to assess whether the development is acceptable in this location and if mitigation is required.

Habitats

18. In a similar vein, Local Plan 1 Policy SP2 and Policy ENV1 to Section 2 relate to development proposals and the Essex Coast Recreational disturbance avoidance and mitigation strategy. Failure to mitigate any potential impact of recreational disturbance arising from the use of the shipping container as residential accommodation conflicts with the main aims and objectives of these local planning policies. In addition, the lack of evidence on the potential effects arising from residential use makes it highly difficult to consider any avoidance or mitigation measures to be implemented. It is therefore unclear if the development does not or would not result in adverse effects on the integrity of any Special Area of Conservation, Special Protection Area or Ramsar site.

Conclusion on the main issue

19. The development has a materially harmful effect on the character and appearance of the locality, the living conditions of existing and future occupiers, and, potentially, on flooding risk and contaminated land and habitats. Accordingly, the scheme conflicts with local planning policies referred to above, and NPPF, which seeks sustainable development and healthy living environments.

Ground (f)

20. The appellant says the requirement to remove the building entirely is excessive. There has always been an outbuilding structure on the site for over the years, but the evidence is the garage was demolished only to be replaced by the converted shipping container and its use as a dwelling. Nothing short of its removal achieves the purpose behind the notice, which is to remedy the breach of planning controls.
21. The appellant maintains that something short of removal would remedy the breach, because alterations could be made to the container, so it forms an outbuilding. However, the evidence shows that the building was not erected for incidental or ancillary purposes. To my mind, it was constructed as a self-contained residential unit of accommodation forming a separate planning unit, for use independently. The possibility of replacing the structure following permitted development rights does not provide justification for its retention via the under-enforcement route.
22. In any event, significant building work would be required to remove the available facilities for separate cooking, washing and sleeping. There is no alternative wording advanced which would achieve that aim. In my judgment, such a step would introduce significant degree of imprecision in the scope of the notice.
23. I therefore conclude that nothing short of full compliance would remedy the breach and the requirements are proportionate and not excessive. Ground (f) fails.

Ground (g)

24. The appellant says that the period of compliance is too short: a reasonable period being 12 months, which affords the occupier additional time to find alternative accommodation. I am also cognisant of health and animal welfare needs. However, the steps required by the notice are not too onerous given the nature of the building work required. There is nothing before me to indicate removal of the shipping container cannot be reasonably arranged within the period of compliance. A six-month period should also afford the appellant sufficient time to give the occupier termination notices to vacate the container without causing hardship.
25. Given the reasons for issuing the notice, the breach of planning control should not be allowed to continue more than necessary. I do not consider six months is too short and it is a reasonable period of compliance. Ground (g) fails.

Overall conclusions - the notice and grounds of appeal

26. On the particular facts and circumstances presented, the notice is corrected to reflect the nature of the allegation and ground (d) fails. The steps required are not excessive and the period of compliance is reasonable and so grounds (f) and (g) also fail. On ground (a), having regard to the notice as corrected, the development plan as a whole and other relevant considerations, planning permission should not be granted.

Formal Decision

27. It is directed that the enforcement notice be corrected in section 4, reasons for issuing the notice, by the deletion of the text “four years” and substitution therefor by the following text: ten years.
28. Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld as corrected. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

A U Ghafoor

INSPECTOR