



Appeal Decision

Site visit made on 22 September 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP
an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal Ref: APP/M1520/C/23/3327958

Land at 15 Rivenhall, Thundersley, Benfleet, Essex SS6 7TT shown edged red on the plan attached to the notice

- 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 Ms Rachel Kirby against an enforcement notice issued by Castle Point Borough Council.
 - The enforcement notice was issued on 13 July 2023.
 - The breach of planning control as alleged in the notice is without permission, a material change of use of the land to a garden and erection of outbuilding incidental to the enjoyment of a dwellinghouse in the Green Belt.
 - The requirements of the notice (and compliance periods) are:
 - (1) Cease using the land for residential purposes (1 month).
 - (2) Remove the fence facilitating the unauthorised use of the land as shown edged green on the attached plan (3 months).
 - (3) Remove the outbuilding indicated in its approximate position with an 'X' on the attached plan (3 months).
 - (4) Return the land to its former condition prior to the erection of the fence, outbuilding and extension of the residential garden (6 months).
 - (5) Remove all materials arising from the dismantling of the fence, outbuilding and from the return of the land to its former condition as required in action (4) from the land edged red on the plan (6 months).
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (b)

2. For success on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice said to constitute a breach of planning control have not - in fact - occurred.
3. There is no dispute that the land is in use as a garden and that an outbuilding (shed/summerhouse) has been erected upon it incidental to the enjoyment of the dwellinghouse at 15 Rivenhall. It appears from the appellant's Planning Contravention Notice (PCN) response that the appeal site has been used this particular way since 2021 when a wooden fence was erected to contain the previously unmaintained land to the rear, and the outbuilding built upon it. Accordingly, I find that the matters stated in the notice have factually occurred. Ground (b) does not succeed. Rather, in essence, the thrust of the appellant's case is that there has been no breach of planning control caused by a material change of use of the land without permission. That is a ground (c) matter.

Ground (c)

4. For success on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice do not constitute a breach of planning control.
5. While the burden of proof on this legal ground sits firmly with the appellant, the argument is rather tentatively set out in the appellant's submissions with very limited supporting evidence¹:

*"It is the appellant's case that the planning permission which gave rise to the dwelling and others in the Rivenhall development **may** have included the land in question as the natural boundary for the development was a ditch and fence line which still exists in part. The fact that the original developer chose to install a rear fence along a different line set back from the natural boundary for convenience does not confirm the line of the original planning application red line boundary which determined the extent of the residential use of the land."*
[my emphasis]

6. While I agree with the appellant that what is key is whether or not a previous planning permission has given consent for the appeal site to be developed as it currently is, it is of no relevance what might be considered by anyone to be a 'natural boundary'. The position in law is what is determinative. For that, we must look at the actual planning permission.
7. It seems from the parties' submissions that the relevant planning permission is CPT/213/94. I have received clear and precise evidence from the Council that an officer has taken measurements on site² and compared them with the scaled site plan³ which was incorporated into the permission. The outcome of that process, which I have no good reason to doubt (particularly since the appellant has not provided her own measurements), is that the new fence has been erected some 3.5m beyond the consented rear boundary of the residential plot when assessed against the approved plan. I therefore find, as a matter of fact and degree and on the balance of probabilities, that the appellant has not demonstrated that the appeal site has lawful use as a garden or that the outbuilding upon that non-garden land has been lawfully erected⁴. Consequently, they are breaches of planning control and ground (c) fails.

Conclusion

8. For the reasons given above, I consider that the appeal should not succeed. I uphold the enforcement notice.

Andrew Walker

INSPECTOR

¹ While the appellant's case is supported by a neighbour's account of conversations said to have taken place with the construction company and contractors when the original rear fence line of the properties was created, it is only what was actually consented under the relevant planning permission which is pertinent.

² On 23 February 2023.

³ Proposed Layout (Job No 1812, Drg No 5) *Residential Development, Former BSC Factory, Kingsley Lane, Rayleigh, Essex*. This plan is consistent with Site Location Plan (Job No 1812, Drg No 4) submitted by the appellant.

⁴ While there are permitted development rights for the erection of a building incidental to the enjoyment of a dwellinghouse (Article 3(1) and Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015), these only apply when the building is within the curtilage of the dwellinghouse and, in the context of my findings, that has not been demonstrated on the balance of probabilities.