



Appeal Decision

by **Grahame J Kean BA (Hons) Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 November 2025

Appeal Ref: APP/Z2260/C/24/3353204

6 St. Mildreds Walk, Westgate-on-Sea CT8 8FZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Sarah Wiltshire against an enforcement notice issued by Thanet District Council.
 - The notice was issued on 18 September 2024.
 - The breach of planning control as alleged in the notice is: without planning permission, the retrospective change of use from Storage (Use Class B8) to 1No 1-bed dwelling.
 - The requirements of the notice are to:
 - Cease the unauthorised use of the building as a dwelling and revert to store room (use class B8) by the removal of the shower in the ground floor and the removal of the white goods in the kitchen in the first floor.
 - The period for compliance with the requirements is: 6 months from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice shall be corrected by replacing the allegation of breach of planning control and the requirements respectively with the following wording:
 - "...without planning permission the material change of use of the land from storage use to residential use by its conversion to use as 1No 1-bed dwelling"
 - "Cease the unauthorised residential use of the land, remove from the land the white goods in the kitchen on the first floor and the shower on the ground floor of the building, and restore the land to its condition before the breach occurred."
2. Subject to the corrections and variations the appeal is dismissed and the enforcement notice is upheld.

The notice

3. The Council has not drafted this notice with a great deal of care. It needs to be corrected to place it in good order. In the allegation, the word "retrospective" is unnecessary. Further, the target of the notice is clearly a material change in the use of the land as it is the "land" which is identified in the notice as that to which it relates. By s336(1) of the 1990 Act "land" includes a building, meaning that for the purposes of the Act, a building is part of the land itself.
4. The building takes up almost all the "land" but clearly not all of it, having regard to the plan attached to the notice and images supplied. Therefore, the notice needs to be corrected so that the requirements align with the alleged breach. No injustice would be caused by this use of power of correction of the notice in s176(a).

5. Finally, although there is no appeal on ground (f) that the requirements of the notice are excessive, the Council should be aware that the recipient cannot be compelled to carry on the previous use, ie “*revert to store room*”. There is no scope to require reversion to the lawful use. However, it would be appropriate to require the unauthorised use to cease and the land restored to its condition before the breach occurred. The evidence shows that it is reasonable to infer that the installation of the shower and white goods were part and parcel of the unauthorised material change of use, therefore they are legitimately required to be removed from the land, and do not need to be specified in the allegation.
6. The Council should note that if the notice is not amended thus, leaving the shower unit and white goods out in the open on the small space in front of the building which is part of the “land”, might have been argued to comply with this part of the requirements. Clearly the target of enforcement action is to remove these items from the land altogether. Indeed the Council would have had concerns if an appeal on ground (a) had been made, that refuse bins would be left at the front of the site. Accordingly, I will exercise powers of variation in s176(b) to amend the notice.

Ground (d)

7. The appeal under ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The relevant period to consider is a period of ten years or more of continuous use for residential purposes, prior to the issue of the enforcement notice. The standard of proof is on the balance of probability.
8. The unauthorised development which is the subject of the enforcement notice was also the subject of an application for planning permission made by the appellant in January 2023, when it is common ground the property was let as a flat for residential use. However, that application was refused on its planning merits by the Council on 11 October 2023 for various reasons, including that the dwelling had an unacceptable standard of residential accommodation for occupants due to its size and layout, contrary to development plan policies.
9. In fact, from the Council’s delegated report, it is clear that the building, previously known as The Store, has a shape and floor area which in the officer’s opinion gave such limited space for occupants to move around in, that the dwelling was not considered fit to provide an acceptable standard of accommodation. The property was nevertheless let residentially on a commercial basis and it is surprising how the local estate agents Miles and Barr were able to paint the attributes of this “unique property” in such glowing terms¹.
10. It appears that the owner was given a period of time to cease the use to allow the occupiers to find alternative accommodation. However, the tenant remained in situ, enforcement action was initiated and the notice issued.
11. A previous application for a lawful development certificate, ref CD/TH/22/1565 was refused because the owner could not substantiate a claim that the building had been used residentially for a sufficient period to establish the lawfulness of the use. Indeed, it would appear that until relatively recently the store had been let to commercial tenants for various commercial purposes.

¹ Evidence supplied by interested person.

12. The case for the appellant is simply that this is an existing development that has been in use for “*many years*”, the residents have continuously paid Council tax, and the waste produced is managed and disposed of in accordance with regulations which is a “*longstanding practice*”. The other submissions made by the appellant are not relevant because they attempt to re-argue the reasons for refusing the planning application, whereas no appeal is made on ground (a).
13. The appellant has given scant information which is insufficient as evidence, to demonstrate on the balance of probability that the residential use commenced more than ten years prior to 18 September 2024. The statement submitted with the planning application ref F/TH/23/0090, said that the change of use was complete in 2008. However, no evidence was provided to the Council to confirm this, no lawful development certificate was granted, and no other evidence is produced to me. It is telling that the Council's records show that the property was not registered for Council tax until 1 May 2022, around the time an interested person, whose representations are not disputed, observed that the property was being converted internally to a flat, and marketed as such by the letting agents.
14. I find that the appellant on the balance of probability has failed to demonstrate that the breach of planning control has been continuous for ten years or more prior to the issue of the enforcement notice. Therefore, the appeal on this ground fails.

Other matter

15. No appeal was made on ground (g) that the time for compliance with the notice was too short. However, the appellant advances some considerations related to the tenants as follows. The appellant has issued a notice seeking possession of the property. The tenants are registered with a housing association, but no suitable alternative accommodation has been found. The tenants work within walking distance from the appeal building and do not drive, they were offered a place in Ramsgate over 5 miles away which it is assumed, they turned down. They have health problems and need a ground floor place. The appeal building is affordable for them and they refuse to move until suitable alternative arrangements are found.
16. Despite the foregoing, in my view the period for compliance of 6 months is a reasonable period within which to comply with the notice, especially since possession proceedings are understood to be under way. I have every sympathy with the occupiers who may well have been led to believe that there was no issue with the lawfulness of their occupation. It is important however that the residential use of substandard accommodation contrary to planning policy, ceases as soon as practicable.
17. I will not therefore exercise my powers to vary the notice by extending the period for compliance.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and varied.

Grahame J Kean

INSPECTOR