



Appeal Decisions

Inquiry held on 9 and 17 September 2025

Site visit made on 9 September 2025

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

an Inspector appointed by the Secretary of State

Decision date: 6 November 2025

Appeal A Ref: APP/G5180/C/25/3365175

61 Hearn Road, Orpington BR5 3NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Shimon Wind (Windco Reality Limited) against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 31 March 2025.
 - The breach of planning control as alleged in the notice is the material change of use of a single dwellinghouse (Class C3) to a House of Multiple Occupation (HMO) (Class C4).
 - The requirements of the notice are:
 - a) Cease the use of the premises as an HMO
 - b) Make any and all necessary internal modifications to the premises in order to revert it back to a single dwellinghouse, such as removing additional kitchens installed for HMO use.
 - c) Remove any and all additional doorbells and knockers which were added/installed for the purpose of using the premises as an HMO.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), and (c) 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.
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Appeal B Ref: APP/G5180/C/25/3365177

59 Hearn Road, Orpington BR5 3NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Shimon Wind (Windco Reality Limited) against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 31 March 2025.
 - The breach of planning control as alleged in the notice is the material change of use of a single dwellinghouse (Class C3) to a House of Multiple Occupation (HMO) (Class C4).
 - The requirements of the notice are:
 - a) Cease the use of the premises as an HMO
 - b) Make any and all necessary internal modifications to the premises in order to revert it back to a single dwellinghouse, such as removing additional kitchens installed for HMO use.
 - c) Remove any and all additional doorbells and knockers which were added/installed for the purpose of using the premises as an HMO.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), and (c) 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.
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Decisions

Appeals A and B

1. The appeals are allowed and the enforcement notices are quashed.

Procedural Matters

2. A Case Management Conference (CMC) was held online on 5 August 2025 with representatives of the appellant and the Council. The CMC was held to discuss the arrangements for the Inquiry and not the merits of the appeals.
3. The Inquiry commenced on 9 September 2025 and was programmed to sit for one day. However, an additional sitting day was required to hear closing submissions. This was held virtually on 17 September 2025. All oral witness evidence to the Inquiry was given by sworn affirmation.
4. As set out in the banner header above, this decision letter relates to two appeals made under s174 of the Town and Country Planning Act 1990 (“the 1990 Act”) against enforcement notices issued in relation to two neighbouring terraced residential properties. Both notices are identical in terms of the alleged breach, reasons for issue, and their requirements. Each notice has also been appealed on the same grounds, and the same issues arise in respect of each appeal and each property. Therefore, I have dealt with the appeals together in a single decision letter, for brevity and to avoid duplication. Where necessary, I have differentiated between the evidence given in relation to the two properties.

Appeals A and B on ground (c)

5. An appeal on ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.
6. In an appeal under ground (c), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities. An appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
7. In this case the appellant accepts that the alleged use amounts to development but that the material change of use of both properties from a dwellinghouse (Use Class C3) to a House of Multiple Occupation (HMO) (Use Class C4) enjoyed the benefit of being permitted development as set out in Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”). The appellant submits that the material change of use of the properties took place before the Council’s Article 4 Direction¹ came into effect on 1 September 2022 and, as such, a grant of express planning permission is not required, and the use of both properties is therefore lawful.
8. Both parties have referred to the case of *Impey*² in their submissions, where Donaldson LJ said that “*a change of use to residential development can take place before premises are used in the ordinary and accepted sense of the word. The question arises as to how much earlier (than actual use) there can be a change of use, it may be that the test is whether they are useable, but it is a question of fact and degree*”. He proposed that the physical state of the premises is very important,

¹ This has the effect of removing permitted development rights under Class L of the GPDO to change the use of a property from Use Class C3 (dwellinghouse) to Use Class C4 (HMO)

² *Impey v Secretary of State for the Environment* (1984) 47 P & CR 157

but not decisive, that their actual use, or intended use, or attempted use are important but not decisive, and that these matters have to be looked at in the round.

9. The appellant's company, Windco Reality Ltd, purchased 59 and 61 Hearn's Road in late January and early February 2022 respectively, and there is no dispute that at the point of purchase their lawful use was as C3 dwellinghouses. However, it is clear from the Valuation Report³, which was carried out in advance of the properties being purchased, that it was always the appellant's intention to convert both properties into 5 bed HMOs. Whilst the appellant's intended use is an important factor, as per *Impey*, it is not decisive and must be considered along with the actual use and the physical condition of the premises.
10. In support of the appellant's claim that the material change of use of the properties occurred prior to 1 September 2022, several documents have been provided. These include:
 - Statutory declarations from the appellant Mr Shimon Wind (SW)
 - Statutory declaration from Mr Alter Yehuda Lis (AL), director of Starlis Ltd
 - Statutory declaration from Andrei Bumbu (AB), former tenant at No. 61
 - Signed Assured Tenancy Agreements (ASTs) for No. 59 and No 61 dated 8 and 9 August 2022 respectively.
 - Letter (inc photographs) dated 1 September 2022 from OCK Chartered Surveyors
 - Extract from a bank statement showing transactions on 11 August 2022
11. Regarding the actual use of the properties, the appellant's case is that three tenants moved into No. 59 on 15 August 2022, with three tenants moving into No.61 on 17 August 2022. This position is set out in the statutory declarations of SW, as well as in his sworn oral evidence to the Inquiry. The sworn evidence of SW also set out that each tenant occupied their own room and shared the use of a communal kitchen.
12. The statutory declaration of AB reiterates this version of events, stating that he moved into No. 61 on 17 August 2022 occupying "Room 3", whilst two other tenants moved in on the same date occupying "Room 1" and "Room 4". AB further states that he was not related to either of the other tenants.
13. Further evidence of the occupation of both properties is provided in the form of the ASTs which are signed by the named tenants and dated 8 August 2022 (No. 59) and 9 August 2022 (No. 61). The extract of a bank statement also shows payments of £1,350 (No. 59) and £1,380 (No. 61) being made on 11 August 2022 which corresponds with the monthly rent as set out on the ASTs. In his sworn oral evidence to the Inquiry SW confirmed that these payments were made by the lead tenant in each property and were paid into the business account of Upper Clapton Estates Ltd who managed the properties.

³ Appendix 1 of Mr Wind's Proof of Evidence – Valuation Report by the Bowen Partnership, dated 12 November 2021

14. Taking these statutory declarations together, along with the oral evidence of SW, the bank statement extract, and the ASTs, I consider there is a reasonable degree of consistency and corroboration between them in terms of referencing the appeal addresses, the nature and dates of the shared occupation commencing, and the named occupiers and rents paid.
15. At the outset of the Inquiry, I made all those present aware of the penalties for making false statements under the Perjury Act 1911. There are indeed serious implications for any person who knowingly makes a false statement either in a statutory declaration or when lawfully sworn as a witness in a judicial proceeding, including having to pay significant fines or being sentenced to time in prison. Given the potential sanctions, I attribute significant weight to the sworn evidence.
16. In terms of there being any evidence to contradict the appellant's version of events regarding the actual use of No. 59 and No. 61, or make it less than probable, the Council has very little. The Council query the validity of the ASTs, given that they were in standard form and not for individual rooms in a HMO, and that the effect of the lead tenant was for paying a deposit which was not relevant in this case. I accept that, taken on their own, the ASTs do not demonstrate that the properties were occupied. Nevertheless, I find that overall, the ASTs support the appellant's case.
17. The Council also refer to the bank statement extract and point to it being the only evidence provided of rent being paid, despite the tenants named on the ASTs residing in the properties until December 2022. It is further considered that the concept of one tenant paying the combined rent for all rooms was unusual. When questioned why further bank statements had not been produced, SW explained that his full bank statement had been provided to his planning consultant and that further rental payments were made on 3 October. In terms of the method of payment, even if one tenant paying the combined rent for all three rooms was considered unusual, it does not contradict the appellant's version of events, or in my judgement, make his case regarding the use of the property less than probable.
18. The Council have also referred to a file note from Planning Investigation Officer, Mr Philip Spiteri (PS), who visited No. 59 on 6 September 2022. The purpose of his visit was to check whether a window in the dormer was obscure glazed. The note states "*I understood from the builders on site that the premises would be finished in approximately 3 weeks*". However, it is unclear from the note whether PS entered and viewed any other rooms in the property other than the loft room with dormer window, or the context in which the builders advised that works would be finished in 3 weeks. For example, given the purpose of his visit, I find it highly likely that PS will not have entered Rooms 1, 3, 4 or the communal kitchen during the visit and therefore would not be able to confirm their condition or whether they were occupied and in use at that time. It is also likely that the visit took place during the day when any occupants may have been out at work and the rooms locked.
19. Despite the Council's witness David Bord (DB) confirming that PS still worked for the Council he was not called as a witness to give evidence at the Inquiry. Accordingly, I can only give this evidence limited weight. Additionally, there is no record of the Council ever visiting No. 61 either shortly before or after the relevant date.

20. Interested parties, including Vikki Lowe (VL) the immediate neighbour to No. 61, gave evidence to the Inquiry that suggested that the properties were not occupied as HMOs prior to the 1 September 2022, and were first occupied by families in December 2022. VL though confirmed that she has never been inside the appeal properties during the relevant period. Whilst I do not doubt that her evidence was given in good faith and to the best of her knowledge, I cannot be certain that she is in fact correct. I also acknowledge the Whatsapp message and photograph of No.59 that was taken by a neighbour and submitted at the Inquiry. The photograph was taken from Hearn's Road and is looking through the front door. Whilst I accept that the photograph shows that the hallway not to be finished, it does not demonstrate that other rooms in the property were not finished or occupied.
21. Turning now to the physical state of the properties, following the appellant's purchase of them works soon began on loft conversions and single storey rear extensions. Although the first Building Control Initial Notices (INs) were withdrawn by a previous builder, two further INs in relation to these works were submitted to the Council in February 2022 by AL.
22. Despite this, the statutory declaration by AL only relates to works undertaken at No. 61. It goes on to state that the extensions were carried out first before work commenced on internal renovations to convert the property to a five-bed HMO. AL states that the communal kitchen and HMO rooms were completed by 9 August 2022, and whilst works were still on going at the property three tenants moved into three rooms on 17 August 2022.
23. The appellant does not claim that the works to convert both properties were complete in their entirety before the 1 September 2022. Instead, the appellant's evidence is that three rooms in each property were completed along with communal kitchens so to enable each property to be occupied. As set out in *Gravesham*⁴, I find the relevant test to be whether the accommodation had the "ability to afford those who use it the facilities required for day-to-day private domestic existence".
24. Two versions of a letter dated 1 September 2022 from OCK Chartered Surveyors was provided by the appellant. The first⁵ of these includes eight undated photographs, whereas the second⁶ version includes the same photographs with dates annotated on each. The written content of the letter states that it appears from the photographs that the first and in some cases second fix of electrics and sanitary ware were in place. It was also estimated that around £30,000 of expenditure was left in each property.
25. The photographs in the second version are dated 20 July 2022 and 1 August 2022, and include Room/Bathroom 3 (No. 59), Room/Bathroom 4 (No. 59), and Bathroom Room 4 (No. 61). I find nothing in these photographs to suggest that the remaining works to complete those rooms could not be carried out by mid-August. In my judgement they support the appellant's case that the work was completed by 9 August 2022 with plastering and decoration to follow by the 17 August 2022. When taking this evidence together, I find that there is a reasonable degree of consistency and corroboration between them in terms of the properties being in a

⁴ *Gravesham BC v Secretary of State for the Environment* (1984) 47 P & CR 142

⁵ Appendix 7 of Mr Winds' Proof of Evidence

⁶ Appendix 8 of Mr Winds' Proof of Evidence

condition to provide the facilities required for day-to-day domestic existence for at least three tenants in each property.

26. Whilst it is apparent given the date of the letter that the photographs pre-date 1 September 2022, the Council query the legitimacy of the dates that have been annotated onto them and point to the fact that the originals have not been provided nor their “metadata”. The appellants planning consultant, Alvin Ormonde, confirmed when giving his sworn evidence that he added the dates to the letter and that they were the accurate dates taken from the original photos. I have already set out above the penalties for making false statements and the serious implications for anyone making them. For that reason and given the lack of any evidence to the contrary, I attribute significant weight to this evidence.
27. The Council also point to the Building Control completion certificates not being issued until 25 November 2022 as being evidence to contradict the appellant's version of events. The appellant though is clear that works continued at the property after the tenants moved in, which could reasonably explain the delay. There may also have been gaps between the completion of the work and the Building Control Inspector's visit, and between that visit and the certificates being issued. Electrical Installation Reports from 29 August 2022 have also been provided, and whilst improvements and a further inspection were recommended, it nevertheless indicates the availability of an adequate electrical supply at the property by that date.
28. Although Council Tax information does not include the names of the individual tenants or that the property was banded as a HMO, it is not unusual for HMOs to be banded as a single property or for the landlord or, as would appear to be the case here, a single company to be the registered rate payer. It is also clear from the available documentary evidence that an HMO will require a licence from the Council if it is occupied by five or more persons. It is therefore not surprising that an HMO licence was not sought at a time when it is the appellant's case that the properties were only occupied by three persons.
29. I acknowledge that the appellant has not provided other documents including utility statements, applications for the electoral role, invoices for building works, or gas safety certificates. Nevertheless, the evidence provided is generally consistent with the appellant's claim and, in my view, is with sufficient precision and unambiguity.
30. Bringing all of the above together, whilst I have had regard to the Council's evidence, this is not sufficient to contradict or otherwise make the appellant's version of events less than probable. Although finely balanced, I find that it is more likely than not that a material change of use of both appeal properties to HMOs had occurred prior to the 1 September 2022 and has continued without a subsequent material change of use.
31. I therefore conclude, on the balance of probability, that the use of No.59 and No. 61 as HMOs (Use Class C4), when begun, was permitted development under Schedule 2, Part 3, Class L(b) of the GPDO and did not require the benefit of express planning permission. Accordingly, the matters alleged in the notices do not constitute a breach of planning control and the ground (c) appeals succeed.

Conclusion

32. For the reasons given above, I conclude that the appeals succeed on ground (c). The enforcement notices are therefore quashed. In these circumstances, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Atkinson	Counsel, instructed by Mr Alvin Ormonde
He called:	
Shimon Wind	Appellant
Alvin Ormonde	Planning Consultant, Planning and Project Management Services

FOR THE LOCAL PLANNING AUTHORITY:

Ian Rees Phillips	Counsel, instructed by the Council of the London Borough of Bromley
He called:	
David Bord	Principal Planning Officer, the Council of the London Borough of Bromley

INTERESTED PARTIES:

Vikky Lowe	Neighbour
Cllr Chris Price	Local Ward Councillor

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Statutory Declaration of Andrei Bumbu dated 8 September 2025
2. Photographs of 59 Hearn's Road sent via WhatsApp
3. Closing submissions on behalf of the Council of the London Borough of Bromley
4. Closing submissions on behalf of the appellant