



Appeal Decisions

Inquiry held on 28 October & 3 November 2025

Site visit made on 27 October 2025

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 25th November 2025

Appeal A Ref: APP/W1905/C/25/3368366

38 Abbey Road, Waltham Cross, Hertfordshire EN8 7LQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The appeal is made by Mrs Munus Dokgoz against an enforcement notice (EN) issued by Broxbourne Borough Council.
 - The EN was issued on 24 June 2025.
 - The breach of planning control as alleged in the EN is: Without planning permission, the provision of a separate dwelling in the detached garage.
 - The requirements of the EN are:
 - i. Cease the use of the garage for the provision of residential accommodation
 - ii. Remove the first floor of the garage and reinstate the roof in accordance with planning permission 7/392/1979 (drawing attached)
 - iii. Reinstate the vehicle access door on the rear elevation in accordance with planning permission 7/392/1979 (drawing attached)
 - iv. Remove the kitchen from the ground floor of the garage.
 - The period for compliance with the requirements is: 9 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e) and (f) of the 1990 Act.
-

Appeal B Ref: APP/W1905/C/25/3368212

38 Abbey Road, Waltham Cross, Hertfordshire EN8 7LQ

- The appeal is made under section 174 of the 1990 Act.
 - The appeal is made by Mrs Munus Dokgoz against an EN issued by Broxbourne Borough Council.
 - The EN was issued on 24 June 2025.
 - The breach of planning control as alleged in the EN is: Without planning permission, the conversion of the single dwelling into two flats.
 - The requirements of the EN are:
 - i. Cease the use of the dwelling for the provision of two flats
 - ii. Remove from the first floor the kitchen
 - iii. Remove the internal door separating the first floor from the ground floor.
 - The period for compliance with the requirements is: 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:

- the deletion of the words *'the provision of a separate dwelling in the detached garage'* and their substitution with the words *'the material change of use of the detached garage to a single dwellinghouse'* in the description of the alleged breach; and

- the deletion of the words '*for the provision of residential accommodation*' and their substitution with '*as a separate dwellinghouse*' in requirement i; and
- the deletion of requirement iii; and

varied by:

- the deletion of requirement ii; and
- the deletion of requirement iv.

Subject to the correction and variations, the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice is corrected by:

- the deletion of the words '*conversion of the single dwelling into two flats*' and their substitution with the words '*the material change of use of the dwelling to two flats*' in the description of the alleged breach; and
- the deletion of the words '*for the provision of two flats*' and their substitution with '*as flats*' in requirement i.

Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters and Background

3. The Inquiry commenced on 28 October 2025 and was programmed to sit for one day. However, an additional sitting day was required to hear all the evidence, and this was held virtually on 3 November 2025. At the request of the main parties, I undertook an accompanied site visit on the 27 October 2025. All oral evidence relating to the grounds of appeal, heard at the Inquiry, was given by sworn affirmation.
4. Third party oral evidence heard at the Inquiry and the appellant's written and oral evidence refer to the planning merits of the developments. However, there are no ground (a) appeals and no deemed planning applications. My decisions rest on the facts of the cases, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence for it to be accepted. 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 appellant's evidence alone is sufficiently precise and unambiguous.
5. 38 Abbey Road (No 38) consists of a 2-storey end of terrace property that prior to the alleged breach was in use as a dwelling. Within the rear garden of No 38 there is a detached building that was originally constructed as a garage. There are 2 ENs one relates to the use of the detached garage (Appeal A) and the other the use of the dwelling (Appeal B).
6. The appellant has questioned the expediency of the Council's decision to take enforcement action taking into account paragraph 60 of the National Planning Policy Framework (the Framework), the Council's Planning Enforcement Policy

and Procedures, similar developments at 42 and 60 Abbey Road and her right to apply for a Lawful Development Certificate. However, I have no jurisdiction to determine whether section 172(1)(b) of the 1990 Act was complied with when the Council issued the ENs and therefore it is not a matter for consideration through these appeals.

7. There is no dispute that the drawing associated with the 1979 planning permission¹ (the 1979 permission) cited within the requirements of the EN (Appeal A) was attached to that EN when it was issued. The appellant confirmed in writing that she did not want to appeal on ground (c) with respect to the detached garage (Appeal A). Both parties also agree that the allegations should not refer to 'short-term' or Airbnb letting.

The Notices

8. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.

Appeal A

9. Section 55 of the 1990 Act states, amongst other things, that "development," means the making of any material change in the use of any building. To ensure that the description of the alleged breach reflects that section of the 1990 Act I consider that the wording '*the provision of a separate dwelling in the detached garage*' within the description of the alleged breach should be substituted with '*the material change of use of the detached garage to a single dwellinghouse*'. Additionally, the Council requested, at the Inquiry, that the wording of requirement i be corrected by deleting the wording '*for the provision of residential accommodation*' and replacing it with '*as a separate dwellinghouse*' to provide clarity. The appellant states that these corrections would cause injustice to her, but it is unclear what that injustice would entail.
10. It is apparent from the evidence, including the oral evidence heard at the Inquiry, that both parties understand what is alleged by the description of the alleged breach as corrected. Moreover, the title of the EN contains the wording 'MATERIAL CHANGE OF USE'. As such, the substance of the alleged breach would not be altered. Therefore, I am satisfied that I can carry out these corrections without injustice to the parties.
11. During the Inquiry the Council conceded that the vehicle access door cited within requirement iii has not been removed from the garage therefore this requirement is not necessary. As such, I intend to delete requirement iii and I am satisfied that no injustice would be caused to the parties.

Appeal B

12. For the reasons given above regarding section 55 of the 1990 Act I intend to delete the wording '*conversion of the single dwelling into two flats*' and substitute it with '*the material change of use of the dwelling to two flats*'. For clarity and to ensure there is precision I also intend to delete the wording '*for the provision of two flats*' within requirement i and substitute it with '*as flats*'. For the same reasons

¹ Ref No: 7/392/1979

as Appeal A the substance of this alleged breach would also not be altered. Therefore, I am satisfied that I can carry out these corrections without injustice to the parties.

The ground (e) appeal – Appeal A

13. The ground of appeal is that copies of the EN were not served as required by sections 172(2) and 172(3) of the 1990 Act. The appellant's criticism is that the Planning Contravention Notice (PCN) was wrongly dated when it was issued and that a copy of one of the ENs was not uploaded onto the Council's website until late August 2025. The Council does not dispute those facts.
14. While the powers are discretionary, Councils are advised to issue a PCN under section 171C of the 1990 Act prior to the service of an EN, to discover who the relevant owners, occupiers and persons with an interest (and entitlement to appeal) are. However, there are no requirements relating to the issuing of a PCN under section 172 of the 1990 Act. Moreover, section 329 of the 1990 Act specifies what constitutes the service of notices as required by section 172 of the 1990 Act. There is no reference to uploading copies of an EN onto a Council's website within section 329 of the 1990 Act.
15. As such, there is no evidence before me to indicate that copies of the EN were not served as required by sections 172(2) and 172(3) of the 1990 Act. The appeal on ground (e) fails.

The ground (d) appeal – Appeal A

16. This ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The relevant time limit within which enforcement action must be taken in respect of the breach of planning control is set out in section 171B (2) of the 1990 Act. This means that, taking into account the transitional arrangements², the relevant time limit is 10 years for a material change of use to a single dwellinghouse where the change of use took place on or **after** 25 April 2024 or 4 years for a material change of use to a single dwellinghouse where the change of use took place **before** 25 April 2024 (my emphasis).
17. The appellant's case is that the physical works to the detached garage to enable it to be occupied by her daughter (Miss Abdullah) took place at the end of 2017 and that her daughter continuously occupied that building until she moved out in 2023. Her evidence also states that between her daughter moving out and January 2025 the building was used by her family including her daughter for occasional stays and activities. There is no dispute that since January 2025 the building has been utilised by guests who rent the accommodation within the building through the Airbnb platform.
18. A pitched roof was constructed on the detached garage at some time near the end of 2017. The space enclosed by that roof was plastered, insulated and a small shower room installed. Moreover, kitchen units and a hob and extract fan were also installed on the ground floor. At the Inquiry I heard how and the reasons why Miss Abdullah moved into the detached garage in 2018. Whilst the kitchen

² The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

facilities within the detached garage are rudimentary, given that there is no oven or washing machine, there are appliances for cooking food and making drinks. Moreover, the ground floor serves as a space for a living/dining/kitchen and the first floor as a bedroom and shower room. In my judgement, physically the building affords the facilities required for day-to-day private domestic existence.

19. The garage is sited adjacent to an access track at the bottom of the rear garden of No 38. That rear garden is relatively small and there is a lockable gate that provides access into it from a path that lies between No 38 and 36 Abbey Road (No 36). As such, with a key there is a separate access route to the garage without going through the ground floor of No 38. Whilst the gate has been recently replaced the appellant stated in her oral evidence that the previous gate was also lockable. The utilities to the garage are shared with No 38 and there is no boundary treatment separating the garage from No 38.
20. Given all those factors it is the manner of occupation and the character of the use of the detached garage that is significant in determining when the material change of use to a single dwellinghouse took place. During Miss Abdullah's occupation and use of the detached garage, between 2018 and 2023, there is no dispute that No 38 was in use by the appellant as a dwellinghouse. Due to issues with her health Miss Abdullah received assistance when required from the appellant and her family. Moreover, she also used the oven and washing machine in the main house when she needed them. I acknowledge that she aimed to live as independently as she could and used the launderette at times.
21. Nevertheless, even when her partner moved in with her, she confirmed that her living arrangements did not change and that he became part of the family. She explained that they would have family nights where meals and activities would either be undertaken in the main house or the detached garage. Miss Abdullah's oral evidence with regards to her use of the garage in connection with her profession as a dancer/choreographer/photographer is reasonable and credible. That use was on the balance of probability incidental to her residential occupation.
22. Considering all the above it is more likely than not that from 2018 until 2023 the detached garage was occupied for purposes integral to the residential use of No 38. That occupation was by people that can be regarded as forming a single household with the occupants of No 38. Additionally, the use of the garage from 2023 to January 2025 was on the balance of probability also ancillary to the residential use of No 38. As such, there was no material change of use of the detached garage to a single dwellinghouse before 25 April 2024.
23. There is no ground (b) or ground (c) appeal before me in respect of this EN. Nevertheless, given the written and oral evidence before me it is more likely than not that when the detached garage started to be used by paying guests in January 2025 a material change of use of that building to a single dwellinghouse occurred. Therefore, the relevant time limit is 10 years and the material change of use of the detached garage to a single dwellinghouse is not immune from enforcement action through the passage of time. The appeal on ground (d) therefore fails. As stated previously the appellant's case is also that the physical works to the detached garage were carried out in 2017 and are immune from enforcement action. I have dealt with this matter in the ground (f) appeal below.

The ground (f) appeal – Appeal A

24. An appeal on ground (f) is made on the basis that the steps required by the EN to be taken, or the activities required by the EN 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.
25. The EN (as corrected and varied) does not specify which of the two purposes it seeks to achieve. Nonetheless, in requiring the cessation of the use and removal of all the operational development that the Council states is associated with that use it is evident that the Council seeks to remedy the breach.
26. An EN directed at an unauthorised material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place, by the removal of associated works as well as the cessation of the use itself. This is provided that the works concerned are integral to or part and parcel of the unauthorised use. Caselaw³ has found that applies even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement.
27. It does not apply to works previously undertaken for some other, lawful use of the land in question, and capable of being employed for that or some other lawful use once the unlawful use has ceased. In every case in which it may potentially apply, therefore, it will generate questions of fact and degree.
28. There is no dispute that the works to erect the pitched roof, the first floor and install a shower room and kitchen were carried out in 2017. Based on my observations and the evidence before me I have no reason to disagree. Additionally, based on my findings above the unauthorised material change of use attacked by the EN began in January 2025. The works cited within requirements ii and iv were undertaken to facilitate a use ancillary to the residential use of No 38. The Council considers that that use was in breach of condition 2 of the 1979 permission and therefore was not a lawful use.
29. Condition 2 states *‘That the garage shall be used for the housing of non-commercial vehicles only’* and the reason for that condition is *‘to preserve the amenities of the neighbourhood’*. The Council considers that this condition removes the statutory right at section 55(2)(d) of the 1990 Act and that the use of the word *‘only’* makes it clear that this right is removed. However, in my judgement, when read with the reason for the condition, a reasonable reader would consider that the condition restricts the type of vehicles to be housed in the garage i.e. non-commercial vehicles only. In my experience this type of condition was/is imposed to ensure that a garage was/is not used for the housing of commercial vehicles such as taxis which may give rise to implications that would not *‘preserve the amenities of the neighbourhood’*. Whereas it is unclear how the use of the garage for a purpose incidental to the enjoyment of the dwellinghouse may give rise to such implications. As such, if read in a common-sense way it is not reasonable to consider that the condition restricts the use of the garage by removing the right at section 55(2)(d) of the 1990 Act.

³ SSLUHC v Caldwell & Timberstore [2024] EWCA Civ 467 & Murfitt v SSE (1980) 40 P. & C.R. 254

30. Therefore, it is more likely than not, that the use of the garage as part and parcel of the residential use of No 38 was lawful. As a matter of fact and degree, the works that were carried out in 2017 were carried out as part of that lawful use and they are capable of being employed in that use once the unlawful use has ceased. Moreover, the works were substantially completed prior to the 25 April 2024, and more than 4 years had elapsed prior to the issuing of the EN. Therefore, the works are immune from enforcement action through the passage of time.
31. Requirements ii and iv are excessive for the above reasons and they are to be deleted from the EN.

Conclusion – Appeal A

32. For the reasons given above, I conclude that the grounds (d) and (e) appeals should not succeed and requirements ii and iv of the EN are excessive to remedy the breach of planning control. The appeal on ground (f) succeeds to that extent. I shall correct and vary the enforcement notice prior to upholding it.

The ground (b) and (c) appeals – Appeal B

33. To succeed on ground (b), the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellant to show on the balance of probability that the matters alleged, to have occurred, in the EN (as corrected) do not constitute a breach of planning control.
34. The allegation is that the use of the 2-storey dwelling has been changed to 2 flats. There is no definition of what constitutes a ‘flat’ in the 1990 Act but within the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) a flat is defined as *‘a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally’*.
35. A breach of planning control comprises the carrying out of development without the requisite planning permission. As stated above “development” is defined by section 55 of the 1990 Act to include the making of a *‘material change of use’* of land or buildings. Sections 55(3)(a) and (b) of the 1990 Act specifically define two circumstances where a material change of use is involved (section 55(3)(b) is not relevant to this appeal). Section 55(3)(a) states that *‘the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used’*. It is important to note that integral to that definition is the concept of *‘use’*.
36. Other than for the exceptions set out at section 55(3) a *‘material change of use’* is not defined in any statute or statutory instrument, it is a question of fact and degree in each individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of the activity from what has taken place previously. Any off-site impacts of any new activity may also be relevant material considerations in making such a judgment, for example the effects on the residential amenity of neighbours, but they are not determinative by themselves and should not be considered in isolation.

37. The appellant's case is that the use of the dwelling remains as one single dwellinghouse as the utilities, Wi-Fi and heating are controlled by her. She states that there is no separate postal address for upstairs and it is not let as a separate independent dwelling. Nevertheless, the accommodation on the first floor includes a living/dining room, bedroom, kitchen with oven, hob and extract fan and a bathroom which has a washer/dryer in it. The ground floor is also set up with a bedroom, living/dining room, kitchen and bathroom. The accommodation provided, on each of those floors, has all the facilities required for day-to-day private domestic existence. The appellant explained that there are 2 washer/dryers within No 38 as she did not want to wash/dry the guests bed linen/towels in her washer/dryer on the ground floor. Moreover, the guests who stay longer may wish to use a washer/dryer.
38. The kitchen on the first floor was fitted utilising units/appliances from a pre-existing kitchen on the ground floor. That ground floor kitchen was removed and a new one fitted within the early part of 2025. At a similar time, works were carried out to install doors in the hallway at ground floor level. The appellant's written evidence states that none of the doors to rooms within the property have locks on. Yet in her oral evidence she stated that she has keys for both doors in the hallway. Additionally, she explained that there was an external lock box at No 38 that allowed her children and guests to access No 38 when she was not at the property. She also confirmed that keys to the external front door and the door at the bottom of the stairs would be left within the lock box.
39. The door at the bottom of the stairs can be locked with a key or latch so the first-floor accommodation can be physically separated from the ground floor. Furthermore, since April 2025 the first-floor accommodation has been used by guests who have paid to stay in it. Those guests have no control over the heating and Wi-Fi provision. Nonetheless, their day-to-day private domestic existence is physically and functionally separate from the appellant and her family who reside on the ground floor. I was told that many of those guests stay alone and they work in the local area. One such guest had booked the first floor for one whole month. The first-floor accommodation is thereby self-contained and separated from the rest of the property internally by locking the hallway doors.
40. I acknowledge that when paying guests are not using the first-floor accommodation the appellant's family will utilise it for occasional stays. Yet it appears that it is more likely than not that the principal use of the first-floor accommodation since April 2025 has been by the paying guests. Those guests form a separate single household and use the first floor as a dwelling. Therefore, since April 2025 on the balance of probability it is more likely than not that as a matter of fact that the use of the dwelling has been changed to 2 flats.
41. Considering all of the above, that evidence alone strongly suggests that since April 2025 there has been a significant difference in the character of the activity and how the dwelling has been used from what has taken place previously. I also heard at the Inquiry from an occupier of a neighbouring property that far more comings and goings to the property had been witnessed since the beginning of 2025. I accept that some of those comings and goings would have been in connection with the use of the detached garage. I also acknowledge that there appears to have been a dispute relating to the parking of vehicles between the appellant and the neighbours. Yet, on the balance of probability its use as 2 flats has more than likely resulted in a degree of visible change in the character of the

use of the dwelling. In my judgement, a material change of use of the dwelling to 2 flats (separate dwellinghouses) has occurred.

42. Taking account of all the above factors, I find that the use of the dwelling as 2 flats has occurred as a matter of fact. Moreover, I conclude that there has been a material change of use from a dwelling to 2 flats i.e. the use as two or more separate dwellinghouses of a building previously used as a single dwellinghouse within section 55(3)(a) of the 1990 Act. That material change of use constitutes a breach of planning control. The appeals on grounds (b) and (c) therefore fail.

Conclusion – Appeal B

43. For the reasons given above, I conclude that the appeals on grounds (b) and (c) should not succeed. I shall uphold the enforcement notice with corrections.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Munus Dokgoz	the Appellant
Miss Duran Abdullah	the Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Ms Chatura Saravanan	Counsel
Ms Laura White	Senior Planning Enforcement Officer

INTERESTED PARTIES:

Ms Elena Picone	Neighbour
-----------------	-----------

DOCUMENTS – Submitted during the Inquiry

The Council's Planning Enforcement Policy and Procedures