



Appeal Decision

Virtual Inquiry held on 26 March 2025 and 3rd April 2025

Site visit made on 4 April 2025

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Appeal Ref: APP/T5150/C/24/3355374

23 Rose Glen, London, NW9 0JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Soheila Bahador against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 10 October 2024.
 - The breach of planning control as alleged in the notice is 'without planning permission, the material change of use of the outbuilding in the far end of the rear garden to a separate residential accommodation ("the unauthorised change of use")'.
 - The requirements of the notice are to:
 1. Cease the use of the outbuilding in the far end of the rear garden as separate residential accommodation.
 2. Remove all fixtures and fittings associated with the unauthorised change of use, including the kitchen and the bathroom, from the outbuilding in the far end of the rear garden.
 3. Remove all associated waste, debris and materials, arising from compliance with the above STEPS, from the premises.
 - The period for compliance with the requirements is: six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Act. 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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Decision

1. It is directed that the enforcement notice is corrected by:
 - At Schedule 2 of the notice, deletion of the words 'a separate residential accommodation' and their replacement with the words 'a separate dwelling' so that the alleged breach of planning control reads 'without planning permission, the material change of use of the outbuilding in the far end of the rear garden to use as a separate dwelling'.
 - At Schedule 4 of the notice, from STEP 1, deletion of the words 'separate residential accommodation' and their replacement with the words 'a separate dwelling' so that STEP 1 reads 'cease the use of the outbuilding in the far end of the rear garden as a separate dwelling'.
2. It is directed that the enforcement notice is varied by:
 - At Schedule 4 of the notice, deletion of 'STEP 2 Remove all fixtures and fittings associated with the unauthorised change of use, including the kitchen and the bathroom, from the outbuilding in the far end of the rear garden' and the deletion of 'STEP 3 Remove all associated waste, debris, and materials arising from compliance with the above STEPS, from the

premises', so that Schedule 4 reads 'STEP 1 Cease the use of the outbuilding in the far end of the rear garden as a separate dwelling'.

3. Subject to the corrections and variations above, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Applications for costs

4. An application for costs was made by the appellant against the Council of the London Borough of Brent. This application is the subject of a separate decision.

Preliminary Matters

5. A Statement of Common Ground (SOCG) was prepared by the parties. The SOCG was signed by the Council. Whilst it was initially stated to be an agreed document by the parties, an issue arose with regards to the Council's suggested revised wording of the allegation. The amendment was not agreed by the appellant and the SOCG has not been signed by the appellant. I have therefore treated the SOCG as being agreed only by the Council, since it has signed its agreement to the content.
6. The Government announced on the 16 December 2025 a revised National Planning Policy Framework Consultation, and accompanying Written Ministerial Statement. Whilst the consultation and draft National Planning Policy Framework are material considerations, the proposed reforms are draft and therefore may be subject to change before the final document is published. I therefore afford it limited weight in my consideration of the appeal before me.

Matters concerning the notice

7. The allegation in the notice concerns the material change of use of the outbuilding to a 'separate residential accommodation'. The Council have suggested an amendment to the allegation so that it would read 'without planning permission, the material change of use of the outbuilding in the far end of the rear garden to a separate dwelling ("the unauthorised change of use")'. Whilst the appellant resists any change to the wording of the allegation, the appellant's case is made on the basis that the outbuilding has been used as a self-contained dwelling for more than four years.
8. Ancillary use of the outbuilding as part and parcel of the residential use of the main dwelling does not constitute an act of development where it does not comprise a material change of use of the main dwelling. From the four corners of the notice, it is clear that the notice is attacking use of the outbuilding as a separate dwelling. At Schedule 3, for example, the reason for issuing the notice refers to the provision of a dwelling and cites conflict with minimum space standards as a reason for issuing the notice. An alteration to the wording of the notice, to refer to 'use as a separate dwelling' and a corresponding correction to the requirements of the notice is also required. This would provide additional certainty without altering the scope of the notice or making the requirements more onerous. As such, I consider such corrections can be made without causing injustice to either the appellant or the Council.

The appeal on ground (d)

9. An appeal on ground (d) is made on the basis that at the on the date the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Section 171B(2) of the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
10. As established in *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin) once a change of use has taken place in breach of planning control, it needs to continue substantially uninterrupted before it accrues immunity from enforcement action and thereby lawfulness. A lawful use must be ‘affirmatively established’. A use can only become lawful if it continues throughout the four¹ year period, to the extent that the Local Planning Authority could have taken enforcement action at any time. Although *Welwyn Hatfield BC v SCLG & Beesley* [2011] UKSC 15; [2011] JPL 1183 has been cited, it was concerned with an initial change of use, rather than an interruption to continuous use, the Council does not allege positive deception in the planning process in this instance.
11. To succeed on ground (d), the appellant will therefore need to demonstrate that, a material change of use of the outbuilding to use as a separate self-contained dwelling began more than four years before the date of the notice and continued without significant interruption for at least four years thereafter (the “Relevant Period”), so as to be immune from enforcement. As confirmed in *R (Ocado Retail Limited) v Islington LBC* [2021] EWHC 1509 (Admin), a lawful planning right which has accrued is not lost merely because subsequently it was not exercised for a period of time.
12. In an appeal on legal grounds such as this, the burden of proof lies with the appellant (*Nelsovil v MHLG* [1962] 1 WLR 404). The standard of proof is to make out their case on the balance of probabilities. As held in *Gabbitts v SSE and Newham LBC* [1985] JPL 630, an appellant’s evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
13. The outbuilding, which the appellant refers to as the “Garden Flat” in their written and oral evidence is a single storey detached building that is positioned at the end of the rear garden to 23 Rose Glen, a two-storey semi-detached property (the “main dwelling”).
14. At the visit, I observed the interior of the outbuilding contained a shower room, a separate bedroom and a combined kitchen and living room. The kitchen area comprised a fully fitted kitchen with a hob, extractor hood, oven, sink with drainer, washing machine, fridge and freezer. The shower room contained a shower, toilet and sink. An externally accessed storage room containing the boiler was attached to the front of the outbuilding. This layout accords with the submitted plan dated May 2024.

¹ The relevant immunity period

15. The outbuilding is accessed from the highway via a gate positioned to the side of the main dwelling which provides independent access into the rear garden without the need to go inside the main dwelling. The rear garden is undivided. It contains an area of maintained lawn and two areas of patio. The first patio abuts the rear of the main dwelling and the second is constructed to the front of the outbuilding. An externally mounted lockable postbox is affixed to the front of the main dwelling. Refuse bins are positioned to the side of the main dwelling.
16. There is no definition of the term ‘*dwellinghouse*’ within the Act, however, caselaw has established that the distinctive characteristics of a dwellinghouse are its ability to afford those who use it the facilities required for day-to-day private domestic existence². It is the appellant’s case that the Garden Flat has been in use as a self-contained dwelling for more than four years.
17. In their statutory declaration, the appellant explains that the Garden Flat was let out prior to their purchase of the property. the appellant goes on to say that the Garden Flat was refurbished in 2017 and their parents lived there until July 2018. Photographs from December 2016 show the Garden Flat prior to the refurbishment, as it was when their parents occupied the flat. The kitchen and bathroom fittings are stated to have been installed during the appellant’s parents’ period of occupation of the Garden Flat and therefore the outbuilding contained all the facilities required for day-to-day private domestic existence since before it was used as a self-contained dwelling.
18. Given that the enforcement notice was issued on the 10 October 2024, in order to succeed under ground (d), the appellant must prove, on the balance of probability, that the use of the outbuilding changed to use as a separate dwelling on or before 10 October 2020 and that this use has continued without significant interruption for at least four years thereafter. As determined in *R (Ocado Retail Limited) v Islington LBC [2021] EWHC 1509* a four year period can be any period, not the immediate period when the enforcement notice has been issued. Once a right has accrued upon the expiry of a time limit in section 171B, it is not lost if the right has not been exercised for a period of time, provided there has been no abandonment or new use introduced.
19. In *Uttlesford DC v SSE & White [1992] JPL 171* it was held that the residential use of an outbuilding may be regarded as part and parcel of the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained. It is necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.
20. My attention has been drawn to the appeal of *Bains*³ which concerned an enforcement notice issued against the use of an outbuilding as a separate unit of residential accommodation and *Yousaf*⁴, where it was found the occupants relied on facilities in the main house during the relevant period. As found by the Inspectors in those cases, periods of use of the building as part and parcel of the dwellinghouse would interrupt the continuity of use as a single dwellinghouse.

² *Gravesham BC v SSE & O’Brien [1983] JPL 306*

³ Appeal Reference: [APP/F5540/C/08/2079168 – 36 Haslemere Avenue](#)

⁴ Appeal Reference: [APP/A5270/C/21/3279388 – 139 West End Road](#)

21. A letter from the appellant's mother states that, along with their spouse, they occupied the garden flat together from August 2011 until June 2018. The appellant has indicated on the application form that use of the building as separate residential accommodation began on the 1 September 2011. However, the appellant's written and oral evidence of the way in which the appellant's parents occupied the building is very limited. During the Inquiry, the appellant did not seek to advance their case on the basis of their parent's occupation of the outbuilding. In a letter to the Council, dated 11 November 2011, the appellant states they have visitors staying with them and that *'they were using the outhouse for day time and would sleep and eat in the main building starting late afternoon'* which points to the use of the outbuilding, at that time, as being part and parcel of the use of the main dwellinghouse.
22. The Council has also provided a note dated 23 February 2017 within which the officer is stated to have spoken with the owner, who advised that the building had only been used by family on a temporary basis - i.e. not full-time occupation. The Council's evidence contradicts the appellant's suggestion that their parent's use of the building was as a separate dwelling, or that it was continuous.
23. The appellant's statutory declaration sets out the history of occupation of the outbuilding as a separate dwelling. The appellant states that the outbuilding was first let as an independent dwelling from 3 July 2018 until 2 July 2021 (the First Tenants). Thereafter, it was occupied by the appellant's daughter between July 2021 and December 2021. Following this, the outbuilding was let to the Second Tenants from December 2021. No statement from any former tenant has been provided as part of the appeal, nor did any former tenant attend the inquiry to give evidence.
24. At the inquiry and whilst under affirmation, the appellant gave their evidence to the best of their ability. However, the appellant described their memory as 'not good' and they agreed that the account they had provided in writing and given at the time of events would be more accurate than their recollection at the inquiry.
25. The appellant set out the extent of any interaction between the outbuilding and the main dwelling. In describing the tenants' use of the outbuilding as being entirely independent of the main house, the various tenants had no access to the main dwelling at any time and they each lived separate lives. Post for the various tenants was delivered to an external post box mounted on the front of the main dwelling and which was shared with the occupants of the main dwelling with both dwellings having a key to be able to unlock the postbox.
26. A number of Assured Tenancy Agreements (TA) have been provided. The TAs are produced in full and each set out, among other things, who was entitled to occupy the outbuilding, the term of their rental, the amount of rent and deposit which was due and the date upon which rent should be paid. Although the submitted TAs are signed in writing by the appellant as the landlord, the submitted TAs have not been signed by any of the named tenants.
27. In response to questioning about how the TAs would be signed and exchanged, the appellant explained that an electronic copy would be emailed to the tenant for their approval. The appellant would print duplicate copies and sign each copy. One copy would be given to the tenant, and the other copy would be retained by the appellant. The appellant confirmed that they did not oblige the various tenants to

sign their retained copy of the TA. As justification for this, the appellant explained the tenant would require a copy of the TA, in order that they would be clear about the dates they were permitted to occupy the building. However, this fails to properly explain why a tenant's signature was not sought, nor does it adequately clarify why a tenant-signed copy of the TA was not retained by the appellant given the legal nature of the document and the requirement for the tenants to confirm their agreement to the contractual terms it contained therein. In this regard I find the appellant's explanation to be unconvincing.

28. There is an overlap in the rental periods of the Second and Third Tenants. Under the terms of the 8 December 2022 TA, the Second Tenants were entitled to occupy the outbuilding until 9 Dec 2023. Whereas the Third Tenant's period of occupation is shown to have commenced from 2 October 2023. Whilst the appellant's written evidence was silent on this point, at the inquiry the appellant explained the reason for the overlap and stated that the Second Tenants left prior to the end of their fixed term, which I consider is not an unusual occurrence.
29. The appellant has submitted a number of banking documents, some of which include details of the appellant's bank and account details and others which do not and are screenshots taken from an electronic device. They purport to show that payments of rent were made to appellant by the various tenants over the Relevant Period. Whilst some include the reference of 'rent' others do not, albeit the details of the payee broadly corresponds with the name of at least one of the named individuals on the various TAs during their relevant period of rental.
30. There are some discrepancies between the amounts shown to have been paid and the amounts required by the TA. In particular, the submitted record shows that the Second Tenants continued to make payments of £1200 until the 6 February 2023 despite the TA (8 December 2022) stating that rent of £1350 per month was due from 8 December 2022. Notwithstanding some discrepancy between the amounts which should have been paid and the actual amounts which was subsequently paid, the banking records show that payments were received by the appellant and it is their evidence that these amounts were for rental of the outbuilding as a self-contained dwelling.
31. The banking document purports to show payments received from the Third Tenant, however these show no further payments were received by the appellant beyond the 2 April 2024 and a lengthy gap exists before the notice was issued on 10 October 2024. The appellant's account explained that the Third Tenant remained in occupation of the Garden Flat as at the date of the inquiry.
32. Whilst the Council has referred to there being no separate utility bills nor liability for council tax for the outbuilding, the TAs of the First and Second Tenants set out that 'bills are included' and the TA of the Third Tenant states 'rent £1500 per month (including *council tax, wi-fi, water rate, electricity top...*'. Although no separate utility bills or council tax records have been provided in support of the appeal, this is unsurprising given that those items are stated to be inclusive within the rent. In any event, the payment of council tax and separate utility supply are not determinative of the outbuilding being occupied as a self-contained dwelling.
33. The Council has provided an email from the appellant dated 28 February 2024. In response to the Council's request for information regarding the use of the outbuilding and the period of time it had been used as living accommodation, the

appellant responded on the same date to say *'since we have bought the property the layout and the usage was the same....as an annex or as a grandmother place or a family flat it has been used since 2011...my family my parents, daughter, son, brother within these periods were keep living with me and we use it as living accommodation...'* However, this explanation is inconsistent with the appellant's claim that the outbuilding has been occupied by unrelated individuals as a self-contained unit of accommodation under separate TAs for a considerable number of years and was, at the date of writing the email, still being occupied independently of the main dwelling by the Third Tenant.

The First Tenants

34. The appellant's statutory declaration describes the outbuilding being rented out to a couple from the 3 July 2018 to 2 July 2021 and the couple having 'lived there for 3 years'. The submitted TAs show that the First Tenants were entitled to occupy '23, Rose Glen, London, NW9 0JR (a Garden Flat with garden)' from 3 July 2018 until 1 July 2021. The submitted banking documents show that the appellant received payments from one of the First Tenants however, their final rental payments of £460 (x3) was on the 5 March 2020 which is a considerable period of time of some 17 months before the First Tenants vacated the outbuilding on the 1 July 2021.
35. The appellant's statutory declaration and other written evidence does not provide any clarification, save that the written evidence pointed to the First Tenants losing their employment due to the Coronavirus pandemic and the appellant providing notice to the First Tenants in June 2021. At the inquiry, the appellant explained that the First Tenants continued to occupy the outbuilding without paying any rent after their final payment in March 2020. The appellant's poor health and a lengthy hospital admission which coincided with that same period of time meant that the appellant did not pursue the First Tenants for non-payment of rent. There is no dispute from the Council regarding the appellant's personal circumstances. Reference was also made to the Government's measures which were brought in March 2020 during the Covid-19 pandemic and which made it difficult to evict tenants during that period.
36. There existed a lengthy period during which no rental payments were made by the First Tenants. The appellant asserts that the First Tenants continued to occupy the outbuilding until 2 July 2021 without making any further rental payments after rent in March 2020. The appellant's statutory declaration refers to the tenants being given notice to vacate the property in June 2021 and in oral evidence the appellant explained that once the Government had relaxed Covid-19 restrictions she asked the tenant to pay the money that was owed or to leave.
37. The appellant went on to explain the tenant damaged the property and left the building in the middle of the night. Whilst it is the appellant's evidence that the First Tenants remained in occupation of the outbuilding from March 2020 there is no other evidence that substantiates this matter and whilst the appellant's evidence should not be rejected simply because it is not corroborated, I note that the statutory declaration of the appellant and her oral evidence confirmed that she was in hospital for much of 2020, returning home infrequently and for short periods of time, such that there would have been long periods when she was not present to see how the tenants were using the outbuilding.

38. In explaining the lengthy gap in rental payments, the appellant pointed to the desire to prioritise her health over the pursuance of non-payment of rent and the temporary protection from eviction for tenants during the period of the Covid-19 pandemic. However, on the appellant's account their personal circumstances were improving by February 2021 and given that the rental arrears of the First Tenants would have existed for nearly a year by that point, I consider it unlikely that the appellant would have taken no action against the First Tenants.
39. On the basis of the evidence, I consider that the appellant's evidence is not sufficiently precise or unambiguous to demonstrate the building was occupied as self-contained accommodation by the First Tenants from 3 July 2018 to 2 July 2021.

The Second Tenants

40. The TAs for the second Tenants, dated 8 December 2022 and 10 December 2021, describe the 'premises' as '*23 Rose Glen, NW9 0JR*'. This differs from the description of the premises given in the TAs of the First Tenants which were described as '*23 Rose Glen, London, NW9 0JR (Garden Flat with garden)*' and the description of the property in the TA of the Third Tenant which cites a '*One bedroom Garden Flat, 23 Rose Glen ...*'
41. Clause 9, referring to notices, of the 8 December 2022 and 10 December 2021 TAs refers '*A Double bedroom, Shower, kitchen (flat with the garden)*'. However, in my view reference to a 'flat with the garden' is not an accurate description of a flat within the garden.
42. Within the First Schedule to the 8 December 2022 and 10 December 2021 TAs, it refers to '*A room with shared kitchen and shared bathroom*'. Within the 'regulations and requirements' of the Third Schedule, clause 9 requires '*cleaning the stairs up to downstairs once a week*' and clause 10 requires '*not leaving the rubbish in the kitchen for long to get smell*'. The inclusion of terms relating to stairs is contradictory with the rental property being a single storey building. Terms relating to nuisance from kitchen waste is in my view unnecessary where the property is a self-contained unit separate to the main dwelling. Such a term would be more readily utilised with a shared use of premises or where a property has been subdivided.
43. The appellant suggested that any inconsistencies were as a result of using 'proforma' TAs and that any terms which were not relevant to a tenant would be capable of being ignored. However, in my experience, a number of the clauses set out in the Third Schedule do not utilise standard wording. Clauses 9 and 10 are not standard clauses which are commonly found within TAs and they use bespoke wording which is, more likely than not, to have been tailored by the appellant. Similar worded requirements are not included within the earlier TAs of the First Tenants, nor the later TA of the Third Tenant.
44. Other clauses within the Third Schedule such as '*11. Leaving the main bin outside of the property once a week for collection of the council*'; '*12. Leave the recycle bins in separate based on the law in this borough*'; '*14. Leave the heating off when not at home not to spend the un needed heat*' appear to be tailored and point to the appellant adapting the TAs prior to the outbuilding being let.

45. Clause 15 of the Third Schedule cites '*Responsible for any damage of the washing machine as it is working perfect and can be insured with no hassle like the other tenants did it for £8:50 per month*', however, there is no similar clause within the TAs of the First Tenant and as such it is not clear to what previous situation the clause is referring to, and whether this clause points to a different premises than the outbuilding.
46. Clause 4(6) of the TA sets out the tenant's obligations with regards to not causing nuisance to other occupiers, which is at odds with the outbuilding being a self-contained property. Although the appellant suggests that the tenants requested the inclusion of terms regarding shared facilities, I find it odd, given the limited size of the outbuilding and the presence of a sole bedroom, those individuals renting the property are likely to have been co-habiting and thus such terms are unnecessary.
47. Overall, I find the clauses within the tenancy agreement for the Second Tenant, as outlined above to be ambiguous and contradictory and I find that the written evidence points towards the tenant occupying some other part of the property.

Rightmove Listing

48. The Council's submitted Rightmove document shows that 23 Rose Glen was previously listed on the property website in May 2017. The listing describes the property as a 'flat' and includes a number of photographs. The appellant accepts the listing refers to part of the main dwelling and includes the kitchen at first floor level, a shower room and their own bedroom. Whilst the appellant states they have never rented out their own bedroom within the main dwelling, they could not recollect the listing nor give a realistic explanation for it being produced. The appellant suggests the passage of time and their diagnosis may account for this.
49. I note the listing was produced in 2017, prior to the Relevant Period, and a considerable period of time has elapsed since that date. However, in order to list a property on Rightmove there would have been a process of preparing the property for a visit by an estate agent and subsequently approving the photographs and written particulars. I find the appellant's response to the creation of the listing to be unconvincing. This, together with some of the clauses referred to above, points towards a tenant occupying part of the main house rather than a self-contained unit of accommodation.

Daughter's occupation of the outbuilding

50. The appellant's daughter made a statutory declaration and gave evidence under affirmation at the inquiry. This set out that their occupation of the outbuilding from the 1 July 2021 to the 9 December 2021. The key issue in this instance is whether the daughter's occupation of the outbuilding was as an independent residential use or whether their occupation was as part and parcel of the use of the main dwelling and therefore interrupted the continuous use of the outbuilding as a self-contained dwelling.
51. The parties to the appeal have each drawn a number of previous appeal decisions to my attention. The appeal of *Baker*⁵ considered whether there was a functional link between the main dwelling and an outbuilding, such that there had been no material change of use and therefore no creation of a separate planning unit. The

⁵ Appeal References [APP/G5180/C/19/3231907](#) & [APP/G5180/C/19/3231908](#)

outbuilding was occupied by the appellant's daughter and her family. In that case, the Inspector found that the level of accommodation went beyond that which could be described as giving a level of independence but where the occupants share most of their living activity in the main dwelling. The circumstances of the case were differentiated from *Uttlesford* because of the size of the outbuilding, its occupation by a small family and, because of the way it was laid out, equipped and used. In that case, it was found that the relationship was one of convenience, but there was no functional dependence, such as that in *Uttlesford*, where the occupant of the annexe relied on the primary accommodation provided in the main house.

52. The appeal of *Masterson*⁶, concerned an application made under section 192(1)(b) of the Act for the conversion of an ancillary outbuilding to residential annex. In that case, the Inspector found the property as a whole would share domestic tasks including cooking, cleaning, putting out waste collections and maintaining the garden. There was a lack of any physical sub-division of the garden, driveway or parking areas, no separate address and utilities would be billed as a single property.
53. In an enforcement notice appeal⁷ which alleged the erection of a self-contained residential unit (amongst other things) and an application for the erection of a 1 bed self-contained annex above existing store rooms, the Inspector found that the accommodation was ancillary to the main dwelling where the building was occupied by a family member. Similarly, in the *Craven*⁸ appeal, the Inspector found there would be a '*family and functional link*' and therefore there would be no material change of use. The appellants were a close-knit family unit that supported and relied on one another in a range of ways including, among other things, emotional care and support, domestic support and general care regarding health and well-being.
54. An appeal⁹ concerned with the proposed conversion of part of an existing detached garage to create annexed accommodation was found by the Inspector that the garage should be considered an annexe.
55. A number of other appeal decisions have been drawn to my attention whereby the determination by the Inspector was that a separate planning unit was formed. In the *Graham*¹⁰ appeal concerning an application for a lawful development certificate under section 191(1)(a) of the Act the Inspector found that a family member residing in an annexe used it as a separate dwelling and, in a further appeal¹¹ involving an enforcement notice issued against the material change of use of an annex [sic] as a separate residential dwelling, the breach was found to have occurred and to have constituted development for the purposes of the Act. The appellant has also referred me to APP/Z0116/X/20/3260369.
56. Having regard to *Uttlesford*, the other referenced authorities and appeal decisions, the key point common to all is that whether the use of an outbuilding or annexe is separate to the use of the main dwelling is a matter of fact and degree.

⁶ Appeal Reference: APP/R5510/X/18/3206551 – The Barns

⁷ Appeal Reference: APP/C3105/C/16/3157378 & APP/C3105/C/16/3157380 – Withycombe Barn

⁸ Appeal Reference: APP/T3725/X/21/3266375 – 12 Warmington Grove

⁹ Appeal Reference: APP/W0340/W/22/3291473 – Mudhall Cottage

¹⁰ Appeal Reference: APP/W0340/X/22/3308949 – The Annexe at Pinnacle House

¹¹ Appeal Reference: APP/P1615/C/23/3328609 – Harts Farm

57. Prior to the daughter's period of occupancy of the outbuilding commencing, the daughter was residing in Manchester and, following a shock diagnosis during Covid, moved to be close to her mother. The appellant's daughter had recently become engaged and therefore had '*her own life*' elsewhere which she put '*on hold*' so that she was available to her mother during a difficult period. The appellant's daughter described cooking meals for her mother which she left at the back door to reduce the risk of infection. She washed the appellant's clothing, carried out her shopping, took her to hospital appointments and provided moral support. Once the appellant's daughter was happy that the appellant was in a position whereby she no longer needed such support, she moved out of the outbuilding.
58. The appellant's daughter describes 'living entirely separately' from the main dwelling, cooking and eating meals on her own within the outbuilding, washing her clothing using the washing machine contained within the outbuilding. However, although her mother's health and covid rules meant the appellant's daughter had to limit contact with her mother and as a consequence she may not have used the main dwelling to any significant extent, it appears from the evidence that there was very much a functional link between the occupant of the outbuilding and the main dwelling during the daughter's period of occupying the outbuilding.
59. The appellant's daughter was given the use of her mother's car, having been temporarily added on to the appellant's policy of motor insurance, which enabled her to carry out various tasks of shopping and hospital trips and, notwithstanding some similarities with the *Baker* case, the important distinction in this instance is that the appellant's daughter had moved into the outbuilding precisely because she wanted to provide care and support to her mother during a difficult period.
60. In a letter, dated 12 April 2024, it confirms that the appellant needs full time support and that their daughter has given up work to provide this and has been living in the mother's house. At the inquiry, the appellant explained that their daughter was '*like my carer, taking me to hospital every day...I was definitely in need of someone close by*'. An email from the appellant to the Council dated 11 January 2024¹² explained the health and mobility difficulties she had experienced for nearly three years, including that she was not able to go up and downstairs, was unable to cook and thus reheated food that is brought to her. Submitted photographs showing a small 'kitchenette' at first floor level which included, among other things, an electric hob and a fridge, is stated to have been used by the appellant to reheat food.
61. Whilst the appellant's daughter points to having paid rent for the period that they occupied the outbuilding, the payment of rent in itself is not conclusive of the outbuilding having been used as a self-contained unit of accommodation. Similarly, the absence of a tenancy agreement in the circumstances of a close family member being the occupier is not, in my view, an unusual arrangement nor is it conclusive of the outbuilding being part and parcel of the use of the main dwelling.
62. On the basis of the evidence before me I consider that considerable reliance was placed upon the daughter to undertake for the appellant daily tasks such as shopping, cooking and transporting her to and from hospital visits. While there remained a separate side gate and postbox to the main house, as a matter of fact

¹² Appendix 13

and degree, the extent of interdependence with the outbuilding and the functional relationship with the daughter living there leads me to conclude on the balance of probability, that the appellant and daughter functioned for this period of time as a single household and that use of the outbuilding can reasonably be regarded as having been part and parcel of the use of the main dwellinghouse and thus within the same planning unit. The implication of this is that the appellant's daughters' period of occupation between the 1 July 2021 to the 9 December 2021 amounts to an interruption in the continuity of the outbuilding being used as a self-contained flat.

Conclusion on ground (d)

63. Drawing all these matters together, I find the appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the outbuilding was occupied as a self-contained unit of accommodation for a continuous period of four years and therefore the appeal under ground (d) must fail.

Ground (a)

64. An appeal brought under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice, as corrected, as constituting the breach of planning control. Section 177(1)(a) of the Act provides that I may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
65. The appellant advances their case under ground (a) on the basis that planning permission should be granted for use of the outbuilding as ancillary accommodation to the main dwellinghouse. However, planning permission may only be granted for the matters or any part of the matters stated in the notice, as corrected and varied. It was established in *Richmond upon Thames LBC v SSE* (1972) 224 E.G. 1555 that an enforcement notice cannot be corrected so that planning permission is granted for some alternative form of development that differs from the alleged breach. I am therefore required to consider the grant of planning permission for a separate dwelling and shall consider the appeal under ground (a) on this basis.

Main Issues

66. The main issues of the ground (a) appeal are:-
- i) whether the appeal building provides satisfactory living conditions for its occupants, having regard to the provision of internal floorspace, external amenity space, provision of personal bin and cycle storage, and access arrangements; and
 - ii) the effect of the material change of use to a separate dwelling on the living conditions of neighbouring occupiers by virtue of noise, disturbance, on-street parking; and
 - iii) the effect of the material change of use to a separate dwelling on the character and appearance of the area.

Reasons

Living conditions

67. The outbuilding measures in the region of 24 square metres (sqm) and comprises an open plan kitchen and living area, with a separate bedroom containing a double bed and a shower room. It could therefore be occupied by two people. As a matter of fact, the appellant's evidence confirms the outbuilding as having been occupied by two adults, albeit it is currently occupied by a single person.
68. Policy BH12 of the Brent Local Plan 2019-2041 (adopted 2022)(the BLP) sets out that planning permission will only be granted for outbuildings that will not be residential accommodation or do not support the increased occupation of a dwelling. The supporting text to the policy explains that the Council considers such development is unlikely to provide a satisfactory residential environment for its occupants.
69. BLP Policy DMP1 requires development to provide a high level of internal amenity and Policy D6 of the London Plan (2021)(the LP) sets out that housing development should be of a high quality design and provide adequately sized rooms. LP Policy D6 at table 3.1 sets out the minimum gross internal floor area of 37 sqm for a one bedroom, one person, single storey dwelling with shower room (rather than bathroom) and 50 sqm for a one bedroom, two person, single storey dwelling.
70. The appellant states that the outbuilding is accommodation which would be ancillary to the use of the main dwellinghouse and thus it should not be assessed against LP Policy D6 and the requirement to provide a minimum gross internal floor area. However, the notice attacks a separate residential dwelling and it would therefore fall to be considered against LP Policy D6.
71. At a size of some 24 sqm, the outbuilding falls significantly short of the 50 square metres minimum gross internal floor area required for a two person single storey dwelling with shower room required by the LP. Similarly, it also falls well below the 37 sqm gross internal floor area required for a one person single storey dwelling with shower room. The extent of internal floorspace specified by Policy D6 is considered to be the minimum size necessary to afford occupants an acceptable standard of living.
72. The submitted photographs and my observations at the visit demonstrates that the existence of furniture and other domestic paraphernalia has the effect of limiting circulation space and as a result the outbuilding is likely to feel constrained and an unduly cramped space which is harmful to the living conditions of its occupants. The modest size of the accommodation is unduly harmful and significantly compromises the living conditions of occupiers in this regard.
73. With regards to private outdoor amenity space, while not all occupants may desire amenity space that requires maintenance, Policy DMP1 of the BLP requires development to provide, among other things, a high level of external amenity. Policy D6 of the LP advises that, where there are no higher local standards, a minimum of 5sqm of private outdoor amenity space should be provided for 1-2 person dwellings. BLP Policy BH13 of sets out that all new dwellings are required to have external private amenity space of sufficient size and type to satisfy residents' needs, in this instance, 20sqm.

74. Although an area of patio and maintained lawn is positioned to the front of the outbuilding, these are contiguous with garden area serving the host dwelling. There is no division of the outdoor amenity space and thus no area which is solely for the use of the occupants of the outbuilding. As a shared communal area of outdoor amenity space it therefore cannot be regarded as 'private' external amenity space. It fails to adhere to the requirements of BLP Policy BH13 and LP Policy D6. A shared use of the external space compromises its ability to provide a high level of external amenity as set out in BLP Policy DMP1.
75. The provision of a boundary to divide the rear garden in order to provide an area of outdoor space to which occupants of the outbuilding would have sole use could be secured by an appropriately worded condition. However, the evidence before me fails to demonstrate whether the rear garden is sufficiently large to ensure private outdoor amenity space of adequate size is capable of being set aside to serve both the main dwelling and the outbuilding in accordance with the minimum size requirements required by BLP Policy BH13. In addition, the presence of nearby dwellings together with upper floor windows within those properties looking towards the outbuilding is likely to result in any private outdoor amenity space of the outbuilding being overlooked and as such would be likely to deter occupants from using the space to relax and sit outside.
76. LP Policy D6 states that housing should be designed with adequate and easily accessible storage space that supports the separate collection of certain wastes. Whilst an area of the rear garden could be used for the storage of bins and a cycle store, this is likely to further compromise the extent and useability of external private amenity space available to serve the outbuilding and main dwelling.
77. BLP Policy DMP1 requires new development to be satisfactory in terms of means of access for all. The supporting text to this policy sets out that, from an equalities perspective, development should be as accessible and navigable as possible to individuals whatever their characteristics. Since the outbuilding is located at the far end of the rear garden to the main dwelling and is accessed via a narrow walkway to the side of the main dwelling, which contains a number of waste receptacles, and through a side gate into the rear garden, the access arrangements cannot be regarded as adequate for all individuals other than an able-bodied individual and would be difficult to navigate by occupants who had mobility or visual difficulties.
78. Overall, given the modest size of the outbuilding, inadequate waste, cycle and personal storage, limited provision of useable outdoor amenity space and inadequate access, I find that the outbuilding fails to provide satisfactory living conditions for its occupants, contrary to Policies DMP1, BH12 and BH13 of the BLP and LP Policy D6, the requirements of which are set out above. It is also contrary to the aims of the National Planning Policy Framework (2024)(the Framework) insofar as it seeks a high standard of amenity for existing and future users.

Living conditions of neighbouring occupiers

79. The outbuilding is positioned within the rear garden of the main dwelling with the access route being taken along a pathway to the side of the main dwelling via a gate into the rear garden. The pathway is limited in width, and it sits to the side of a similar path serving the rear garden of the neighbouring property at 25 Rose

Glen (No. 25). No physical boundary exists between the side paths of No.25 and the main dwelling with the overall gap between the two properties being limited.

80. Since occupants of the outbuilding will need to use the side path and gate to access the outbuilding at the far end of the rear garden, occupants and visitors to the flat are likely to generate noise and disturbance as a result of their activities along the side path and in opening and closing the gate to the rear garden. Given the close proximity of No. 25, the adjacent neighbour is likely to be subjected to noise and disturbance as a result of increased comings and goings to and from the site. This detrimental effect is likely to materially compromise the living conditions of neighbouring occupiers.
81. I have had regard to a number of complaints that have been received by the Council from neighbouring occupiers, some of which detail issues including, among other things, noise nuisance as a result of the gate slamming. Whilst a number of these complaints are of some age and pre-date the appellant's period of ownership of the main dwelling, they point towards the use of the outbuilding causing harm to the living conditions of neighbouring occupiers.
82. The Council also cites concerns from additional demand for on-street parking. The main dwelling includes limited space to the front of the property for the off-street parking of vehicles and thus any occupant of the outbuilding owning their own motor vehicle is likely to require space within the highway to park.
83. Although Rose Glen was lightly parked at the time of my visit, and there were a number of spaces free for others to use, I accept that what I saw was only a snapshot in time. My visit was at a time of the day when many individuals are likely to be away from their homes and have driven to their place of employment. A number of neighbouring occupiers have referred to instances of inconsiderate parking which is more likely to occur when there is greater demand for parking space. As such, I find that use of the outbuilding as a separate dwelling is likely to lead to additional demand for on-street parking which would have a harmful and adverse impact on neighbour occupiers.
84. Overall, I conclude that the living conditions of neighbouring occupiers would be unduly compromised as a result of increased comings and goings to the outbuilding and additional demand for on-street parking. There would be conflict with BLP Policy DMP1 insofar as development is required to demonstrate it would not unacceptably increase exposure to noise and general disturbance and Policy BT2 of the BLP and Policies T6 and T6.1 of the LP insofar as these policies seek to ensure that additional parking provision does not have negative impacts on existing parking.

Character

85. The appeal site is located within Rose Glen, which is predominantly characterised by semi-detached properties fronting the highway with modest sized frontages comprising a mix of gardens and/or hardstanding. The appeal property is positioned within the rear garden to 23 Rose Glen, which is located partway along Rose Glen, and it is served by a narrow path positioned to the side of the main dwelling. Access to the outbuilding is through the rear garden, via a gate from the side path. Use of the outbuilding for residential use, which is separate to that of the main dwelling, is at odds with the established pattern of development along Rose Glen, which is harmful to the character of the area, contrary to BLP Policy DMP1

which requires development to be of a location and layout that complements the locality.

Conclusion on ground (a)

86. I have found that the material change of use of the outbuilding to a separate dwelling fails to provide satisfactory living conditions for occupants of the outbuilding, materially compromises the living conditions of neighbouring occupiers and it has an unduly harmful effect on the character of the area. The appeal scheme is therefore contrary to the policies cited above. A material change of use of the outbuilding to a separate dwelling conflicts with the development plan as a whole and there are no material considerations of sufficient weight to indicate the decision should be made otherwise.
87. For these reasons, I conclude that the appeal on ground (a) should fail and that planning permission should be refused on the application deemed to have been made under section 177(5) of the Act.

Ground (f)

88. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice 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.
89. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission..., or by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
90. In *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin) an enforcement notice alleged a material change of use and required that certain works were removed. It was held that those works must have been integral to, or part and parcel of, the making of the material change of use and that an enforcement notice could not require the removal of works that were undertaken for a different and lawful use and which could be utilised in that other lawful use if the unauthorised use ceased.
91. The SOCG sets out, and the Council has confirmed its agreement to the fact that the fixtures and fittings, including the kitchen and bathroom, were installed within the outbuilding in 2017 to facilitate its lawful use as ancillary accommodation by the appellant's parents. While the appellant has not agreed the SOCG, the Council concedes that 'Steps 2 and 3 of Schedule 4 should be deleted'. I see no reason to take a different view and I shall vary the notice by deleting, in their entirety, steps 2 and 3 from Schedule 4 of the notice. To this limited extent there is success under ground (f).
92. The appellant also argues that step 1, which requires the cessation of the use of the outbuilding in the far end of the rear garden as a separate dwelling, is excessive and inappropriate as it will embargo use of the outbuilding as a family annexe. However, the allegation is of a material change of use to a separate dwelling. Section 57(4) of the Act provides that, where an enforcement notice has

been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. The ancillary use of the outbuilding as part and parcel of the use of the main dwelling is not precluded, as per the reasons set out in *Uttlesford*. Cessation of the use of the outbuilding as a separate dwelling is the only step that could achieve the purpose of the notice.

93. I therefore conclude that the appeal on ground (f) succeeds in part insofar as steps 2 and 3 of Schedule 4 are excessive and I shall vary the notice by deleting, in their entirety, steps 2 and 3 from Schedule 4 of the notice. For the avoidance of doubt, I find that Step 1 of the enforcement notice does not exceed what is necessary to remedy the breach of planning control that has occurred and so the appeal on ground (f) fails in this respect.

Ground (g)

94. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The Council has given six months to comply with the requirement. Given the corrected and varied wording of the requirements, there is no longer any need to carry out any works to restore the outbuilding by removing fixtures and fittings, nor remove waste associated with such action, and therefore, in order to comply with the notice, it is solely the unauthorised use that must cease.
95. The appellant states that this period is too short as there is currently a tenant residing within the property who would need to be given notice and then sufficient time should be allowed for the tenant to find alternative accommodation. The appellant has pointed to section 21 notices under the Housing Act 1988 being banned by the government in order to give a tenant greater protection from eviction during the Covid-19 pandemic. An alternative time period for compliance of 12 months has been requested by the appellant.
96. However, the 'eviction ban' was brought to an end by the Government in May 2021 and therefore any greater protection afforded to tenants has now ceased. The appellant confirmed that the Third Tenant continues to occupy the outbuilding and that their term of occupation was due to end in October 2025. That term has now passed. Whether the appellant has issued a further TA or not, there is legislation in place which would enable the appellant to evict a tenant should the notice be upheld. I consider there is likely to be sufficient time in order to serve the tenant with a notice and for the tenant to find alternative accommodation.
97. Given the harms I have identified above, I consider the period for compliance specified in the notice is reasonable and proportionate. For the reasons given above, the appeal under ground (g) fails.

Conclusion

98. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall correct and vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

E Brownless – INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kate Olley	Counsel, FTB Chambers
Soheila Bahador	Appellant
Ghazal Darvishi	Daughter of the appellant
Nicholas Kingsley-Smith	KSLAW LLP

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks	Enforcement Services Ltd - Instructed by Tim Rolt (Planning Enforcement Manager) of the Council of the London Borough of Brent
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DOCUMENTS

Opening Statements for the appellant and the Council

Closing statements for the appellant and Council

Costs application

Rightmove Listing dated May 2017