



Appeal Decisions

Site visit made on 24 November 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 January 2026

Appeal A Ref: APP/T3725/C/24/3355325

11 Hatton Terrace, Birmingham Road, Hatton, Warwick CV35 7JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Nigel Hughes against an enforcement notice issued by Warwick District Council.
- The notice was issued on 23 October 2024.
- The breach of planning control as alleged in the notice is without planning permission, unauthorised change of use of the garage to an independent dwelling (C3).
- The requirements of the notice are to:
 - [I] Cease using the building (edged in blue on the plan) as an independent dwelling
 - [II] Remove permanently kitchen units and utilities
 - [III] Remove from the Land all resulting waste and materials
 - [IV] Reinstate the the building to a domestic garage.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of decision: The appeal is allowed and, subject to correction, the notice is quashed.

Appeal B Ref: APP/T3725/X/24/3353066

11A Hatton Terrace, Birmingham Road, Hatton, Warwickshire CV35 7JS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nigel Hughes against the decision of Warwick District Council.
- The application ref W/24/0831, dated 20 June 2024, was refused by notice dated 13 September 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is the change of use of a building to use as a single dwellinghouse known as 11a Hatton Terrace.

Summary of decision: The appeal is allowed.

Preliminary Matters

1. I acknowledge the request by interested parties for the appeal to be determined via the Hearing procedure. However, the evidence before me and the legal authorities relevant are not so complex that it necessitates the need for a Hearing. In accordance with the Procedural Guide – Planning Appeals England, I consider the most appropriate appeal procedure for determining the appeal is via written representations.

The Enforcement Notice

2. The enforcement notice (the notice) alleges the unauthorised change of use of the garage to an independent dwelling (C3).

3. Paragraph 1 of the notice states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the Act as including 'the making of any material change in the use of any building or other land'.
4. Whilst the notice refers to the use of a building (the garage) it does not allege that a *material* change in the use of the building has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of s55(1) of the Act.
5. Section 57 of the Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
6. However, having regard to the appellant's case, they have clearly understood the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.

Appeal A – the ground (e) appeal

7. The ground (e) appeal is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Act.
8. Section 172(2) of the Act states 'A copy of an enforcement notice shall be served a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.'
9. A copy of the notice was not served on David James Hall, who was the occupant of 11a at the time the notice was issued. As an occupant of the dwelling, he clearly had an interest in the land. Therefore, the notice was not served in accordance with s172(2).
10. Section 172(3) of the Act states 'The service of the notice shall take place- (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.'
11. The notice was served on the 23 October 2024 and the date of effect is the 19 November 2024. This amounts to 27 days. Therefore, the notice was not served in accordance with s172(3).
12. Notwithstanding the above, section 176(5) of the Act states that 'Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.'

13. The appellant confirms they have had sufficient time to lodge the appeal, despite only having 27 days to do so, as opposed to 28. They also confirm that David James Hall has/will be informed of the notice and that the appeal has been lodged.
14. I find therefore, whilst the notice was not served in accordance with s172 of the Act, no interested party has been substantially prejudiced. As such, the ground (e) appeal fails.

Appeal A – the ground (d) appeal; and, Appeal B

15. An appeal under ground (d) is made on the basis 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.
16. An application under section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
17. The relevant test of the evidence is ‘on the balance of probability’ (ie that it is more probable than not). 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 their evidence alone is sufficiently precise and unambiguous.
18. In respect of Appeal A, the relevant period for immunity from enforcement action is at least four years prior to the date the notice was issued. In respect of Appeal B, the relevant period for immunity from enforcement action is at least four years prior to the date the LDC application was made.
19. The appellant contends that the conversion of the garage into a dwellinghouse commenced between 2012 and 2013 and its use as the appellant’s second home commenced in September 2013.
20. The appellant relies on *Gravesham BC v SSE and O’Brien* [1983] JPL 306, where it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals.
21. However, in *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin), Lang J found that *Gravesham* was not an enforcement case and so the court was concerned with a different issue, namely, the definition of a dwelling house for the purposes of the General Development Order. It was not relevant in *Gravesham* to distinguish between an established residential use, which could only come to an end by operation of law, and an unauthorised residential use for which immunity from enforcement could only be obtained by proving continuous residential use throughout the relevant period.
22. The appellant raises the principle of abandonment. However, abandonment is a principle that is applicable to existing lawful uses not unauthorised uses.

23. The Court of Appeal judgement of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; [2002] JPL 1278 found that a use could only become lawful if it continued throughout the relevant immunity period, to the extent that the Council could have taken enforcement action at any time. If the use ceased during that period, as a matter of fact and degree, the time could not count towards immunity. This is a different position to where there is an existing lawful residential use and the dwelling could be unoccupied for lengthy periods without losing its lawful residential use. This was reaffirmed in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886 where it was found that the correct approach is to ask whether there was any period during the four years when the building was not physically occupied, although available for such, and the Council could not have taken enforcement action against the use.
24. Therefore, the crux of the matter is whether enforcement action could have been successfully taken against the use during any point in the period of time the appellant contends the building was in use as a dwelling.
25. The building is set in its own parcel of land, clearly distinctive and physically separated from 11 Hatton Terrace by a service lane. It has a small driveway to the front and an outdoor amenity space to the rear. Inside it is fully fitted with all the necessary facilities for day-to-day living.
26. The appellant's statutory declaration confirms that the building was used as their second home between September 2013 and October 2017. Due to their main residence being in Staines and having work commitments in the area, the appellant would stay in the building every month, sometimes a week at a time. The appellant would leave items such as clothes, towels, bedding, a set of golf clubs and basic foodstuffs in the building when they were not staying in it.
27. The statutory declaration of Francis Wilson confirms the garage was converted in 2012 as they assisted in purchasing items for the conversion work. Francis Wilson occupied 11 Hatton Terrace between January 2012 and June 2015. They corroborate the appellant stayed in the building for a full week each month for work. They also confirm that the appellant began staying in the building before 21 October 2013, recalling the appellant noticing their property, No 11, having been burgled as passing by, which took place on 21 October 2013. They go on to state that the building was in regular use during their tenancy of No 11.
28. The statutory declaration of Philp Buckingham confirms they helped with the conversion of the garage between 2012 and 2013 and recalls the first night the appellant and their partner stayed in the appeal building as they all went for a meal together. They would regularly travel with the appellant to work together and socialise when the appellant was staying in the appeal property. They also corroborate the appellant would stay in the building through the week and their partner would join him for the weekend as they often socialised together, sometimes at the appeal property.
29. The statutory declaration of Fatima Barbosa confirms they have known the appellant since 2010 and have been a couple since then. They corroborate the building was converted by 2013, recalling having to clean the property after the building work and then going out for a meal with friends on their first night there to celebrate. They also corroborate the appellant staying in the property for a week a

month and the routine they established travelling to the property to meet the appellant.

30. I note the statutory declarations made by Michael Scheuermann and Alison Scheuermann. The time period for when the conversion works took place in 2012 corroborates the appellant's declaration. Whilst I acknowledge that they park next to the appeal building and never noticed the appellant was there, they were also not aware that a kitchen and bathroom had been fitted as part of the conversion works until a tenant of No 11 had informed them in 2016. Given the distance of the row of terraced dwellings from the appeal building, it is not unreasonable to conclude that the regular residential occupation of the building could go unnoticed by the occupants of these dwellings. There is nothing in these statutory declarations that directly contradicts the statutory declarations submitted in support of the appeal.
31. Based on the statements made in the statutory declarations and the fact they corroborate the appellant's position, on the balance of probabilities, the building was in residential occupation for approximately one week a month. Given the frequency and regularity of the appellant's residential occupation of the building; that the building remained fully furnished with personal and domestic items during the periods when the appellant was not staying in it; that the building was fully fitted for day-to-day living; and, the building is set within its own parcel of land with its own amenity space, distinctly separate from No 11, I find that there has been a significant change in the nature of the use of the building from a garage to a dwelling. The evidence before me indicates that, on the balance of probabilities, this material change of use took place in September 2013 and continued without any significant interruption until at least October 2017. The Council could have successfully taken enforcement action against the use of the appeal property as a dwelling at any point during this period of time. The use therefore became immune from enforcement action in October 2017. There is no evidence before me that the use of the building as a dwelling has since been abandoned.
32. I acknowledge that the building shares utility connections with No 11. However, I do not find that this, by itself, is a determinative factor that results in the material change of use having not occurred.
33. I find therefore, the evidence before me is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the material change of use of the appeal building to a dwelling occurred for a period of more than four years prior to the date of the notice being issued and the date the LDC application was made and has been used as such continuously without significant interruption. The use is therefore lawful.

Other Matters

34. It is alleged that the retention of the roller shutter is tantamount to deliberate concealment of the breach of planning control. However, the building is in plain sight from the adjacent lane and there are features of the building that indicate it could be in use as a dwelling, including a satellite dish, chimney and rooflights. There are also windows in the side elevation of the building which would not be covered by the roller shutter.

35. There is no evidence that the Council investigated the breach of planning control and during the investigation the appellant deliberately misinformed them that the building was not being used as a dwelling.
36. The failure of the appellant to pay council tax is similarly not deliberately concealing the breach. I note the appellant's business relates to property and therefore there is a possibility that they have some knowledge of planning matters. However, even if they were aware that planning permission was required for the use of the building as a dwelling, the fact that such an application was not made is not positive deception.
37. Having regard to *Welwyn Hatfield v SSCLG and Beesley* [2011] UKSC15 I do not find that there has been any deliberate concealment of the breach of planning control. The appellant appears to have done nothing more than keep a low profile.
38. Concerning the appellant's original intentions for the building, this is of little relevance as the evidence before me indicates the building was used as a dwelling between 2013 and 2017, regardless of the initial intentions.
39. I have also had regard to the statutory declaration of Emma McNab. However, their recollection of events post-date the period when the appellant used the building as a second home between 2013 and 2017.
40. In respect of the statutory declaration of Kate Slade, despite the sales particulars of 11 Hatton Terrace including the appeal property as an annexe, that does not define the lawful use of the building. Moreover, to the planning merits of the development have had no bearing on my consideration of whether the material change use of the building to a dwelling is lawful.

Conclusion

41. From the evidence before me, I conclude that the ground (d) appeal on Appeal A succeeds. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (g) and (f) do not need to be considered.
42. I also conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the existing property as a single dwellinghouse was not well-founded and that Appeal B should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

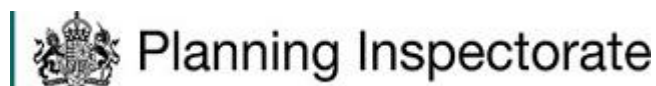
Formal Decision - Appeal A

43. It is directed that the enforcement notice is corrected by:
 - The insertion of the word 'material' immediately before the word 'change' under section 3 of the notice;
44. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Formal Decision - Appeal B

45. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

A Walker INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 June 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities, the material change of use of the building to use as a single dwellinghouse known as 11a Hatton Terrace took place in excess of four years prior to the date of the certificate of lawful use or development application. The use then continued up to the date of the certificate of lawful use or development application.

Signed

A Walker

Inspector

Date: 5 January 2026

Reference: APP/T3725/X/24/3353066

First Schedule

The material change of use of the building to use as a single dwellinghouse known as 11a Hatton Terrace

Second Schedule

Land at 11A Hatton Terrace, Hatton, CV35 7JS

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in this decision dated: 5 January 2026

By A Walker MPlan MRTPI

Land at: 11A Hatton Terrace, Hatton, CV35 7JS Reference: APP/T3725/

X/24/3353066

Scale: Not to Scale

