



Appeal Decision

Site visit made on 22 December 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 March 2026

Appeal Ref: APP/A1530/C/25/3364430

Lexden Lodge Kindergarten, 26 Lexden Road, Colchester CO3 3QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Masoud Samarbakhsh against an enforcement notice issued by Colchester City Council.
- The notice was issued on 19 March 2025.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the installation of UPVC windows and doors in a Conservation Area. ('The Activity')
- The requirements of the notice are to:
 - (i) Permanently remove the UPVC windows and doors from all elevations of the property known as Lexden Lodge Kindergarten, 26 Lexden Road, Colchester, CO3 3QD.
 - (ii) Install replica painted timber windows and doors to match those removed. (for the avoidance of doubt these are the windows and doors that were removed in the photographs attached to this notice)
 - (iii) Leave the land in a clean and tidy condition.
- The period for compliance with the requirements is: Six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected by:
 - At section 5 of the notice, the deletion of requirement (iii) in its entirety, which for the avoidance of doubt says '(iii) Leave the land in a clean and tidy condition.'
 - At section 6 of the notice, the deletion of 'Six (6) calendar' and the insertion of '12', so that the time for compliance is '12 months from the date this notice takes effect'.
2. Subject to the correction and variation above, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. Section 173(10) of the Town and Country Planning Act 1990 ('the Act') provides that an enforcement notice must specify such matters as may be prescribed in regulations. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (ENAR) states that an enforcement notice shall specify the reasons why the local planning authority consider it expedient to issue the notice.
4. The notice states: "*It appears to the Council that the above breach has occurred within the last size years. The breach occurred in 2019, and the Council took enforcement action by issuing an enforcement notice on 11 August 2022. That notice was subsequently found to be a nullity; by virtue of section 171B(4)(b) of the*

Town and Country Planning Act 1990, the passage of time does not prevent this further enforcement action. Accordingly, the breach remains liable to enforcement, and this notice is issued to remedy the unauthorised Activity set out above." This, however, does not explain why the Council considered it expedient to take enforcement action.

5. While the previous enforcement notice set out why the Council considered it expedient to take enforcement action, these reasons have not been included within the four corners of the enforcement notice which is the subject of this appeal. It is a prerequisite to taking enforcement action that it should appear expedient to the Council to do so. Complete omission of reasons from the notice constitutes a failure to comply with the requirements of the Act and the ENAR.
6. However, multiple notices have previously been issued in respect of the same breach. The appellant is under no uncertainty as to why the Council decided it was expedient to take enforcement action, nor has the appellant suggested that this notice is invalid or a nullity as a consequence of any omissions in the reasons. The appellant has not submitted an appeal under ground (a) and has previously made an appeal under section 78 for the windows, which was dismissed (notwithstanding the appellant's concern that the Inspector in that case did not consider whether the works constitute development, which I shall come on to).
7. Whether a defect in the enforcement notice renders it null is a matter of judgement. Were I to hold that this notice is a nullity, the likely consequence is that the Council would re-issue the notice, with the reasons as set out in the previous notice. The appellant's grounds of appeal would likely be the same, as they were in the previous appeal (with the exception of ground (d), which has now been lodged because that notice was held to be a nullity).
8. The notice complies with section 173(1), (3) and (4) and informs the recipient, with reasonable certainty, what the breach of planning control is and (notwithstanding my concerns regarding requirement (iii) below) what must be done to remedy it. Taking an overly technical or formulative approach in this case is therefore likely to make no difference to the outcome but would result in further delay and uncertainty for all concerned. In light of the above, in my judgement, the enforcement notice is not null.
9. Requirement (iii) requires the appellant to 'leave the land in a clean and tidy condition'. However, this is subjective, and so the appellant is unlikely to be clear what they are required to do to comply with the notice in this regard. An enforcement notice should be sufficiently clear so that the recipient knows what they have done wrong and what they must do to remedy it. In the interests of clarity, I shall delete requirement (iii). Since this would not make the notice more onerous to comply with, I am satisfied that such a correction would not cause injustice to either party.
10. In light of the above, subject to the above correction, in my judgement the notice is not invalid or null.

Ground (c)

11. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that the replacement of the

windows and doors is not development requiring planning permission and as such, there has not been a breach of planning control.

12. Section 55 (2) of the Act excludes certain operations or uses of land from development, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. For works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.
13. I have been provided with a copy of an Article 4 Direction, which restricts development within the curtilage of a dwellinghouse and "sundry minor operations", including the erection or construction of gates, fences, walls or other means of enclosure and the painting of the exterior of any building. Although there is an Article 4 Direction in place, it only removes specified permitted development rights, which do not include the installation of windows in a non-residential property. Indeed, the Council states that it is not relying on the Article 4 Direction.
14. However, the appeal site is located within a conservation area and so it seems unlikely that the property would be able to install windows under permitted development rights. The appellant does not suggest that the works would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO). Rather the appellant's case is made on the basis that the works do not constitute development for the purposes of the Act.
15. Section 55 of the Act sets out the meaning of 'development' as the 'carrying out of building, engineering, mining or other operations in, on, or under land.....'. Section 336 of the Act defines "building" as 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. While the same openings may have been utilised and the apertures may not have been altered, the windows and doors clearly form part of the building.
16. At section 55 (1A) it is indicated that 'building operations', amongst other things, involve '(d) Other operations normally undertaken by a person carrying on business as a builder'. The appellant suggests that the works were not undertaken by a builder, but by a glazing installer. However, section 55(1A) does not mean that development can only constitute works which are carried out by a builder. If what has been done has resulted in the erection of a building (which includes part of a building by virtue of section 336), the erection of it is likely to have amounted to a building or other operation.
17. Section 55 (2) of the Act excludes certain operations or uses of land from development, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. For works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.
18. Lexden Lodge occupies a prominent position on the corner of Lexden Road and The Avenue. UPVC windows have been installed on the ground, first and second

floors of the building and are visible from a number of vantage points on Lexden Road and The Avenue. UPVC doors have also been installed on the elevations facing both Lexden Road and The Avenue and are also visible from a number of vantage points on Lexden Road and The Avenue.

19. I have been provided with photographs of the building prior to the installation of the UPVC windows and doors. Although the design of the windows varied, the glazing bars used generally appear narrower, giving a delicate appearance. I have limited evidence regarding doors at the property, however, from the photographs attached to the enforcement notice, it seems likely that these would also have had a more delicate appearance, with larger panes and slimmer rails.
20. While the windows and doors which have been replaced may not have been original, the UPVC windows and doors appear bulky, with generally smaller panes, giving a modern appearance which contrasts with the delicate architectural features of the building. The windows and doors are visible from a number of vantage points along Lexden Road and The Avenue and, in my judgement, are material to the appearance of the building as a whole.
21. Thus, as a matter of fact and degree, I find that the works materially affect the external appearance of the building and are therefore development for the purposes of the Act. Since planning permission has not been granted for these works, the appeal under ground (c) must fail.

Ground (d)

22. 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 the matters stated in the notice. The main thrust of the appellant's case under ground (d) is that the notice which was a nullity did not stop the immunity clock and the period that has passed since the alleged breach of control occurred is 6 years, so the notice was issued out of time.
23. Section 171B sets out time limits for the purposes of taking enforcement action. Section 171B(1) provides that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years, in the case of a breach of planning control in England, beginning with the date on which the operations were substantially completed, where substantial completion took place before 25 April 2024.
24. Section 171B(4) sets out that the preceding subsections do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or **purported** to take enforcement action in respect of that breach. I shall refer to this as 'the second bite provisions'.
25. Appeal reference APP/A1530/C/22/3306598 was issued on 17 January 2025 and concerned an enforcement notice alleging 'without the benefit of planning permission, the installation of UPVC windows and doors in a Conservation Area.' The notice was issued on 11 August 2022. The Inspector in that case, found the notice to be a nullity. The appellant argues that the second bite provisions do not

apply because the first notice was a nullity and so it does not amount to enforcement action.

26. The Council has provided me with a legal opinion, which refers to the case of *R (oao Lambrou) v SSCLG* [2013] EWHC 325 (Admin); [2014] JPL 538, and quotes passages 40-41 *"Plainly something which is purported enforcement action may not be actual or valid enforcement action but which has the purpose of being such or is ostensibly such. Indeed, it may even carry with it the suggestion that it may be false or invalid, as in the phrase "she purported to be someone she was not" or "the document purported to be a will" (but was not). Such a broad interpretation accords, in my judgement, with the plain intention of Parliament which was to avoid the loss of enforcement ability by an authority acting in the public interest through a lapse of time when it had plainly purported to act but it had failed to achieve what it set out to do."*
27. Had Parliament intended a narrow interpretation, as suggested by the appellant, it need not have used the term 'purported' at all. Furthermore, taking the approach suggested by the appellant would unnecessarily restrict the purpose of section 171B(4), which is to stop the clock where a local planning authority has issued a faulty enforcement notice, or needs to issue another in order to protect their position. In my view, therefore, the fact that the 2022 notice was found to be a nullity does not mean that the second bite provisions do not apply.
28. While the Inspector in respect of APP/A1530/C/22/3306598 may have given the Council more than one chance to withdraw the notice, this is likely, in my view, to have been to try and limit the time and effort required by everyone concerned in proceeding with the appeal, rather than an attempt to preserve any second bite provisions. Either way, the Inspector does not mention the second bite provisions at all but has (rightly, in my view) focussed on whether the notice was null or not.
29. The Council served a further enforcement notice on 21 January 2025, which the Council withdrew one day before the notice took effect. Nevertheless, the enforcement notice which is the subject of this appeal was issued on 19 March 2025, which is within 4 years of the date the local planning authority purported to take enforcement action in respect of that breach. Consequently, in my judgement, at the date the enforcement notice was issued, the development was not immune from enforcement action by virtue of the passage of time and so the appeal under ground (d) must fail.

Ground (g)

30. An appeal under ground (g) is made on the basis that any period specified in the notice falls short of what should reasonably be allowed. The appellant suggests that more time is needed because the windows are not a standard size and so are likely to require bespoke windows and suggests that a period of 12 months would be more appropriate.
31. Given the size of the property, the number of windows and doors that require replacement, and the likely need to source bespoke windows, I agree that 12 months would be reasonable and proportionate. Significantly, the Council has agreed that it agrees to extend the period to 12 months. Thus, the appeal under ground (g) succeeds and I shall vary the notice accordingly.

Conclusion

32. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR