



Appeal Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 24 MARCH 2026

Appeal Ref: APP/H5960/C/24/3341914

23-25 Montserrat Road, LONDON, SW15 2LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Starpeak Properties Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 28 February 2024.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 2017/4203 granted on 13 December 2017.
 - The development to which the permission relates is: Erection of rear/side boundary wall with wooden trellis up to 2m high and erection of replacement single-storey outbuilding at the end of the rear garden.
 - The condition in question is no 3 which states that: The shed shall be used only for purposes ancillary to the enjoyment of the flats within the main building, and it shall not be used as an independent use such as use as a separate residential unit or for the purposes of running a business.
 - The notice alleges that the condition has not been complied with in that: the single-storey outbuilding/shed is being used as a separate unit of self-contained residential accommodation.
 - The requirements of the notice are: 1. Cease the use of the single-storey outbuilding / shed as a separate unit of self-contained residential accommodation; 2. Remove from the single-storey outbuilding / shed all fittings and fixtures which are required for or associated with the unauthorised residential use; and 3. Remove from the Property all debris arising from compliance with step 1 and 2 above.
 - The period for compliance with the requirements: Four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant originally sought to make an appeal on ground (a) but this fell away since the relevant fee was not paid. In view of the nature of the grounds of appeal and evidence submitted, it was assessed that a site visit was not required. No objections were raised to this approach and the appeal has been determined on this basis.
3. The appellant did not submit a statement in accordance with the appeal timetable and made reference in final comments to a 'technical error'. New evidence was referenced in final comments and submissions were sought from the main parties as to whether this should be accepted. The late evidence was accepted and an opportunity was given to the LPA for comment, with a final comment given to the appellant.

The appeal on ground (d)

4. This ground of appeal is that at the time the notice was issued it was too late to take enforcement action. Planning merits are not relevant and the onus is firmly on the appellant to make their case on the balance of probability. If the LPA has no evidence of its own to contradict the appellant's version of events, there is no good reason to refuse the ground (d) appeal provided that the appellant's evidence is sufficiently precise and unambiguous.
5. The allegation in the notice is a breach of condition 3 outlined in my banner heading above in that the single-storey outbuilding/shed is being used as a separate unit of self-contained residential accommodation.
6. As in force at the date of the notice, s171B of the 1990 Act¹ stated time limits for taking enforcement action as: (1) for operational development, four years beginning with the date of substantial completion; (2) for a change of use of any building to use as a single dwelling house, four years starting with the date of the breach; (3) for any other breach, a ten year time limit is applicable beginning with the date of the breach (including a breach of condition).
7. The LPA accepts that where a breach of condition relates to change of use of a building to use as a single dwelling house, a four year time limit is applicable. However, the LPA contends that the outbuilding was constructed as a separate dwelling from the outset and that consequently there has been no *change of use* to a single dwelling house, and thus a ten year time limit is applicable. There is no suggestion that use has been ongoing for ten years (and indeed the appellant accepts that the planning permission was granted in 2017 meaning that ten years' breach of condition cannot have accrued).
8. The position set out in the appellant's final comments given in the form of a statutory declaration indicates that the outbuilding was constructed in 'early 2019' and was used for storage for a 'couple of months in 2019'. It is stated that a 'shower and kitchenette' were installed in August 2019 with the building being let in September 2019. The appellant's position is that a change of use has occurred and a four year time limit for enforcement action is applicable. I will proceed to review the appellant's evidence in relation to the claimed four years' use.

Appellant's evidence

9. The appellant seeks to demonstrate on the balance of probability that a breach of condition 3 has occurred (by reason of the use of the building as a single dwelling) for a continuous period of four years or more prior to the issue of the notice. The relevant date is therefore on or before 28 February 2020.
10. To be immune from enforcement action, the use of a building as a dwellinghouse must be 'affirmatively established' over the four year period and it must be assessed whether there was any time during the relevant period (beyond de minimis breaks) when the LPA could not have taken enforcement action against the use as it was not actually occupied or used as a dwelling, even if it was available for such use.

¹ Town and Country Planning Act 1990

11. The appellant makes reference to case law², seeking to rely on principles related to the abandonment of an established use. However, there is a difference between the case of an established dwellinghouse, when an occupier does not have to be continuously or even regularly present for the use to remain as a dwellinghouse, and where there is no established use, in which case there is a requirement for use to be affirmatively established as outlined above³.
12. Turning then to the appellant's evidence, the appellant has submitted copies of tenancy agreements along with bank statements related to proof of rental income for the period 1 September 2019 to 30 August 2025. An email is also submitted from the first tenant who took occupation in 2019 confirming their occupation per the tenancy agreement submitted. The appellant also contends that representations from neighbours in relation to the appeal 'clearly' state that 'the residential use has been ongoing for over 4 years'.
13. As regards the appellant's evidence, the statutory declaration from the appellant in their final comments indicates that there was a notable break in occupation from 22 November 2020 to 31 January 2021. I note that the building remained configured as a dwelling and so available for occupation during this time. However, in my view, this period represents a significant period of vacancy during which the LPA would not have been able to take enforcement action and cannot be discounted as an ordinary void period in the residential letting process.
14. The appellant indicates that numerous other appeal decisions have recognised that 'short void periods' between tenants 'do not of themselves demonstrate abandonment or cessation of a residential use'. I am not presented with any appeal decisions in evidence and these cases are in any event very fact specific.
15. Further, the tenancy agreements and rental income documentation provided represent evidence only of legal agreements to let a property along with compliance with the rental payment obligations in those agreements. While I have an email from a single tenant over the claimed period, I have no statutory declarations from any other tenants providing detail in relation to their occupation such as to confirm that this was actually continuous throughout the period of their tenancy, or indeed any other substantive supporting evidence.
16. Indeed, the LPA indicates that the appeal building was not registered for Council tax until September 2024, albeit that evidence has not been submitted to support this. Comments from neighbouring residents related to the outbuilding being used as a dwelling also do not offer any detailed evidence that the occupation was sufficiently continuous such as to acquire immunity.
17. I find as a matter of fact and degree on the available evidence that the appellant has not demonstrated on the balance of probability continuous use of the outbuilding as a single dwelling in breach of condition 3 for a period of four years or more. The appeal on ground (d) fails.

The appeal on ground (f)

18. This ground of appeal is that the requirements of the notice exceed what is necessary.

² *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; *Impey v SSE & Lake District SPB* [1984] P&CR 157

³ See paragraph 58 *Bansal v Secretary of State for Housing, Communities and Local Government & Anor* [2021] EWHC 1604 (Admin).

19. S173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires the use in breach of condition 3 to cease and fixtures and fittings associated with that use to be removed suggests that its purpose is to remedy the breach.
20. The appellant proposes that the requirements are varied so that the fixtures and fittings associated with the residential use are allowed to remain on the basis that 'the permitted use as a caretakers hut'⁴ permits this and to 'just restrict its rental to residential tenants'. On the available evidence, the fixtures and fittings were installed in connection with the residential use of the outbuilding; it is not excessive to require their removal in order to restore the land to its previous condition. Leaving these in situ would also invite further breaches of planning control. It is not clear what the appellant means by the comment that the building be restricted to rental by residential tenants but plainly per the requirements, the building can remain in place for its permitted use.
21. The appeal on ground (f) fails for the reasons given.

The appeal on ground (g)

22. The appeal on ground (g) is that the period for compliance with the notice (four months) falls short of what is reasonable.
23. The appeal form indicates that eviction of the tenants of the outbuilding will require 'at least 9 months'. As at the date of the appellant's final comments (18 September 2024), it is stated that the then current tenants were occupying pursuant to a 12 month tenancy agreement and so could not be evicted before August 2025.
24. The appellant has indicated that a different tenant has been in occupation since July 2025 on a twelve month tenancy. However, I have no tenancy agreement in support of this so cannot therefore assess the provisions related to termination. The appellant has not therefore demonstrated on the available evidence that the four month compliance period falls short of what is reasonable. The ground (g) appeal fails.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

V Bond

INSPECTOR

⁴ In connection with the flatted development at 23-25 Montserrat Road