



Appeal Decision

No site visit made

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2026

Appeal Ref: APP/J1915/C/24/3345777

The Bungalow, Edgewood Farm, Broxbourne Common, Broxbourne, Hertfordshire EN10 7QS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”).
- The appeal is made by Mrs Elizabeth Donoghue against an enforcement notice (“EN”) issued by East Hertfordshire District Council.
- The EN was issued on 9 May 2024.
- The breach of planning control as alleged in the EN is: Failure to comply with condition imposed on a planning permission ref 3/11/1170/FP granted on 12 October 2011.
- The development to which the permission relates is: Replacement dwelling house with basement.
- The condition in question is no 6 which states: Within 3 months of first occupation of the new dwelling hereby approved, the existing dwelling shall be demolished and all rubble and debris removed from the site. The land shall be re-landscaped in accordance with details pursuant to Conditions 4 and 5 of this permission.
- The EN alleges that the condition has not been complied with in that: The new dwelling has been occupied since 22/08/2016. The existing (original) dwelling has yet to be demolished as at the date of the notice and is currently occupied.
- The requirements of the EN are to: Demolish the property known as The Bungalow, Edgewood Farm, Broxbourne Common, Broxbourne, Herts, EN10 7QS and remove all materials arising from the demolition from the land.
- The period for compliance with the requirement is: 12 months from the date on which this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) of the 1990 Act.

Decision

1. The appeal is dismissed and the EN is upheld.

Application for costs

2. An application for costs has been made by Mrs Elizabeth Donoghue against East Hertfordshire District Council. This application is subject to a separate decision.

Matter Concerning the Notice

3. Section 4 of the EN (*“the reasons for issuing the EN”*) does not detail the relevant policy within the Council’s development plan that the allegation conflicts with. However, it does identify the allegation’s harm and that it consists of inappropriate development in the Green Belt. Consequently, it is clear why the EN was issued. Therefore, I am satisfied that the appellant had sufficient information to appeal.

Preliminary Matters

4. The appellant and the Council refer to a Breach of Condition Notice (“BCN”) under section 187A of the 1990 Act that was issued on 27 April 2018. I therefore requested a copy be submitted by the Council, which was duly provided.

5. The appellant refers to the BCN having been incorrectly served on the wrong landowners and its subsequent withdrawal by the Council. However, this has no bearing on the appeal before me.
6. Neither the appellant nor the Council considered a site visit would be necessary. Given the grounds of appeal pleaded, I agreed. I therefore informed the main appeal parties that a site visit would not be undertaken.

Appeal on Ground (e)

7. An appeal under ground (e) is made on the basis that copies of the EN were not served as required. S172(2) of the 1990 Act requires a copy of an EN to be served (a) on the owner and 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.
8. The appellant asserts that they live at neither of the two addresses to which the Council served the EN. While they concede that they own Edgewood Farm, they have never lived at the property. The appellant recently made a planning application to the Council which included their address, but the Council did not serve notice on this property. A copy of the EN was handed to a gardener at Edgewood Farm. However, the appellant asserts that the Council should not assume that the gardener would pass the documents to the owner or others with an interest in the land. It should also not be assumed that the appellant visits the appeal site on a regular basis, or they would collect any mail.
9. The Council state the EN was sent to an address at Cricklewood Broadway as this was the landowner's address stated on Land Registry records for the land the subject of the EN. The Council concede that it was returned as undeliverable. However, the EN was also served on the current occupier of, and "*the owner/occupier*" of, the appeal property. Furthermore, at the request of the planning agent acting on behalf of the appellant for a recent planning application, the Council informed them (albeit afterwards) that an EN had been served.
10. Section 176(5) of the 1990 Act provides that where a person required to be served with a copy of the EN was not served, I may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. In this case, the appellant was made aware of the EN by their planning agent and subsequently appealed against it. Therefore, even if there was a failure to serve the EN upon the appellant, they have not been substantially prejudiced.
11. Accordingly, the appeal on ground (e) fails.

Appeal on Ground (d)

12. An appeal under ground (d) is that at the time the EN was issued, it was too late to take enforcement action against the breach of planning control. The relevant test is the balance of probability, and the burden of proof is on the appellant.
13. The appellant asserts that it was too late for the Council to take enforcement action against the breach of planning control as the EN was issued more than 4 years after the issuing of a BCN against the same condition. The appellant has not indicated which section of the 1990 Act supports their assertion. However, it is assumed they are referring to the "*second bite*" provisions within section 171B(4)(b) of the 1990 Act.

14. Section 171B(4) states that *"the preceding subsections do not prevent... (b) taking further enforcement action in respect of any breach... 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"* (my emphasis added). The inclusion of these words shows that s171B(4) does not alter or supersede the time periods set out in s171B(1)-(3). Consequently, it is irrelevant that the EN was issued more than four years after the BCN was issued. The EN cannot be considered as *"second bite"* enforcement action, and it does not mean that the time limit set out in s171B(3) has ceased to apply.
15. The appellant asserts that the breach of planning control is operational development involving the construction of the new dwelling, and accordingly, the relevant timeframe for taking enforcement action is 4 years.
16. Section 1 of the EN clearly states that the EN was issued by the Council because it appears to them that there has been a breach of planning control within paragraph (b) of section 171A(1) of the 1990 Act: the failure to comply with any condition or limitation subject to which planning permission has been granted. Furthermore, section 3 of the EN clearly details the relevant condition and planning reference number that constitutes the breach of planning control. I am therefore satisfied that the EN is attacking a breach of condition.
17. Condition 6 of planning permission 3/11/1170/FP required the existing (original) dwelling to be demolished, and all rubble and debris removed from the site within 3 months of the first occupation of the approved new dwelling. Both main appeal parties agree that the new dwelling was first occupied on 22 August 2016, and I have nothing before me to disagree. Consequently, to comply with Condition 6, the existing (original) dwelling was required to be demolished and all rubble and debris removed from the land no later than 22 November 2016.
18. At the time the EN was issued on 9 May 2024, the existing (original) dwelling was still in place and occupied. I am therefore satisfied that the Council's enforcement action against the failure to comply with Condition 6 under s171A(1)(b) was the correct procedure, and the breach does not amount to operational development.
19. Time limits for taking enforcement action are detailed within section 171B of the 1990 Act. Operational development is covered by s171B(1) and the change of use of a building to a single dwellinghouse is covered by s171B(2). Any other breach of planning control is covered by s171B(3) - no enforcement action may be taken after the end of a period of 10 years beginning with the date of the breach.
20. As previously stated, the allegation does not comprise operational development, and the evidence before me suggests that the existing (original) dwelling has always been a dwellinghouse. Consequently, the allegation comprises *"any other breach of planning control"* and therefore, the relevant time limit for taking enforcement action is 10 years, not 4 years as stated by the appellant.
21. To succeed under ground (d), the EN would have had to be issued after 22 November 2026 (10 years after the failure to comply with Condition 6). The EN was issued on 9 May 2024. Therefore, on the date the EN was issued, it was not too late to take enforcement action against the breach of condition.
22. The appeal on ground (d) therefore fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN.

A Berry

INSPECTOR