



Appeal Decision

Site visit made on 22 April 2026

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2026

Appeal Ref: APP/V1505/C/23/3330668

Broom Cottage, Broomhills Chase, Little Burstead, BILLERICAY, Essex, CM12 9TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Melissa Morgan against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 5 September 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the building to a dwelling on the land.
 - The requirements of the notice are: (i) Cease the use of the Building (as approximately shown edged and hatched black on the attached notice plan) as a dwelling on the Land; (ii) Demolish the Building (as approximately shown outlined and hatched black on the attached notice plan) and permanently remove all resultant construction materials and debris from the Land; (iii) Remove the raised decking (as approximately shown in blue on the attached notice plan) and permanently remove all resultant construction materials and debris from the Land; and (iv) Return the land to its former natural topography by levelling and reseeding to grass.
 - The period for compliance with the requirements is 24 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) of the Town and Country Planning Act 1990 (as amended). 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. The appeal is allowed and the enforcement notice is quashed.

Ground (b)

2. The appeal concerns a building claimed to have been erected as permitted development relying on Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Development permitted by Class E includes the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The dwellinghouse on the land was granted planning permission for its demolition and replacement in August 2023, a previous application also seeking retention of the appeal building as an annex having been refused in November 2022. The former chalet-bungalow on the site has now been demolished and the appeal building is now arranged as a 3-bedroom building with kitchen, bathroom and other facilities typical of a dwellinghouse. The enforcement notice was issued while the chalet-bungalow was still standing. The appeal building is currently being used as a dwelling, albeit temporarily while the approved replacement dwelling is being built. That said, the lawful planning status of the use requires consideration of the wider circumstances. The mere use of a building as a dwelling, in its ordinary sense, is not necessarily a breach of planning control.

3. An appeal on ground (b) is that the matter alleged to be a breach of planning control has not occurred, as a matter of fact. As I have noted above, the building is being used as a dwelling, in simple terms. What the appellant is arguing is that there has not been the creation of a new planning unit comprising a separate single dwellinghouse within the residential planning unit that had been associated with the chalet-bungalow. It is clear from the Council's submissions that the notice seeks to enforce against the use of the building as a separate single dwellinghouse to the chalet-bungalow now being redeveloped.
4. The building is said to have been erected as games room/summerhouse/storage, incidental to the host dwelling. There is conflicting evidence on when it was completed and how it was used upon completion. The appellant claims that it was used for storage purposes before being converted to an annex, being ready for occupation by the end of 2020. However, the Council claims that it was not substantially complete until some time in 2020. Windows were apparently still being fitted in September 2019, and it was considered to be still under construction when officers visited in January 2020. In May 2020 it was being fitted out electrically, and according to the owner it was converted to, and came into use for residential occupation as the primary residential accommodation on the site in July 2020, the chalet-bungalow having apparently become unfit for residential use due to serious disrepair. Since the notice was issued the chalet-bungalow has been demolished and a concrete slab has been built as the initial stages of constructing the approved replacement dwelling.
5. The appellant's case is predicated on the building being a Class E building and therefore being lawful as operational development. This has never been established. The appellant has apparently been assured by the Council at various times that there was no breach of planning control, either during the construction of the building or when it was being actually lived in. However, the Council also concurred with a neighbour's comments to the effect that the building had never been used as a gym, and stated in its final comments that it was of the view that after completion the building was immediately converted and used as a dwelling. If that was so, then the building would not be permitted development' as a matter of fact.
6. A building can be erected in reliance on Class E and later be used for a different purpose, including for primary residential accommodation, but what matters for GDPO purposes is what it was actually required for in the first place, which must be a purpose incidental to the enjoyment of the dwellinghouse as such, and whether, upon substantial completion, it was actually used for an incidental purpose. Whether there is a genuine requirement for a particular building can be a matter of dispute, but key factors in divining whether a building was erected for an incidental purpose will be the use to which it is actually put upon completion, and whether that use was in fact sustained for a reasonable period in the circumstances. There is conflicting evidence on these points, but in the context of an appeal on ground (b), if the building had been used for its present purposes upon substantial completion then the allegation would be incorrect since there would not have been a change of use of the building, rather the building would have been erected without planning permission. The alleged change of use would not have occurred, and the appeal on ground (b) would succeed.
7. If the appellant is correct that the building was erected and being used for purposes incidental to the use of the chalet-bungalow as a dwellinghouse for a

reasonable period before it was converted to primary residential accommodation, then a simple reading of the allegation would mean that the matter alleged had occurred, by reference to my view above that the use that is being made of the building is use as a dwelling, though the appellant describes the use as use as a residential annex rather than as a dwelling. The argument ultimately is that the use does not amount to a material change of use in planning terms, which is really a ground (c) argument, because the building was not in use as a completely separate dwelling when the notice was issued, rather its use was ancillary to the use of the chalet-bungalow as a dwellinghouse.

8. Case law referred to by the appellant supports this argument. The case of *Uttlesford*¹ found that a change of use of a garage to self-contained living accommodation did not amount to a material change of use of the land or building because it had not resulted in a separate planning unit. As a matter of fact and degree, I consider that the use of the appeal building in this case is not a use as a separate dwelling. As it stands the use is a temporary one while the main dwellinghouse is being re-developed, and it has not had the effect of forming a separate planning unit, which would have been a material change of use requiring planning permission. The land has been in residential use in any case, but there have been no changes in terms of access, enclosure, utilities, or address, and the occupants of the appeal building are engaged in the redevelopment of the primary or host dwellinghouse on the land, so that the land as a whole is being occupied by a single family unit for residential purposes, as it was when the notice was issued and the host building was still standing.
9. Although it may seem odd given that the chalet-bungalow was stated to have been uninhabitable at that time, in planning terms I consider that when the notice was issued the appeal building was in a use that was ancillary to the use of the chalet-bungalow as a dwellinghouse. I find accordingly that notwithstanding that the building is being used as a self-contained residence, there has not been a material change of use of the building. The argument on materiality would have been more appropriately made on ground (c), but I shall in any case allow the appeal on this ground and I shall quash the notice on the basis that there has not been a “material change of use of the building to a dwelling on the land”. That would also have been the case if, as the Council now say, the building was used for primary residential accommodation in the first place.
10. The appeals on grounds (a) and (f) do not therefore fall to be considered.

Paul Dignan

INSPECTOR

¹ Uttlesford District Council v SSE & White [1991] QBD CO/2114/90