



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 12 June 2026

Appeal Ref: APP/L5810/C/24/3347022

216 London Road, TWICKENHAM, TW1 1EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Sienna Real Estate Limited against an enforcement notice issued by Richmond Upon Thames London Borough Council.
 - The notice was issued on 15 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years, a material change of use of the building from a single family dwellinghouse into five self-contained flats, facilitated by the erection of a part two-storey part single-storey rear extension: insertion of rooflights and alterations to fenestration arrangement on all elevations.
 - The requirements of the notice are: (i) Permanently cease the use of the property as five flats and return its use to that of a single dwellinghouse. (ii) Remove all kitchen and bathroom facilities which have been installed to facilitate the use of the property as five flats. (iii) Permanently remove from the Land any waste arising from compliance with step i.
 - The period for compliance with the requirements is: six calendar 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).
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - In paragraph 5(i) of the notice the deletion of the words 'five flats and return its use to that of a single dwellinghouse' and their substitution with the word 'flats';
 - In paragraph 5(ii) of the notice after the word 'all' the insertion of the wording 'except one of the'; and
 - the deletion of 'six calendar months' and its substitution with 'Nine (9) months' as the time for compliance
2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Given the matters in dispute and nature of the evidence submitted, it was assessed that the appeal could be determined without a site visit. Neither party objected to this approach and the appeal has been determined on this basis.
4. The appellant's final comments contained reference to case law¹ which had not previously been referred to and the LPA made representations in response. The appellant's final response on the LPA's representations contained reference to a

¹ *FSS v Arun DC & Brown* [2006] EWCA Civ 1172 ('Brown'); *Moore v SSE & New Forest DC* (1999) 77 P.&C.R. 114 ('Moore'); *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 ('Thurrock')

new case law judgment² which was decided after the final comments deadline. In view of the relevance and timing, this late evidence was accepted, with representations made by the LPA and a final response given by the appellant.

The Notice

5. Per s176(1) of the 1990 Act³ I am permitted to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the notice provided that this would not cause injustice to the LPA or the appellant.
6. The first requirement stipulates that use of the property is returned to 'that of a single dwellinghouse'. This part of the requirement will be deleted since it is excessive to require that a lawful use is actively carried out. A corresponding amendment is necessary so that requirement 1 stipulates ceasing use of the property as flats (rather than 'five flats') to prevent use for a different number.
7. The second requirement stipulates removal of all kitchen and bathroom facilities which facilitated the use of the property as flats. This will be amended so that one set of bathroom and kitchen facilities is permitted to remain as this would otherwise be excessive where the lawful use is as a single dwelling. I do not consider that any injustice would result from these changes in the context of the requirements as drafted and bearing in mind the property's lawful use.

The appeal on ground (d)

8. The appeal on ground (d) is that at the time the notice was issued it was too late to take enforcement action.
9. The onus is on the appellant to make their case on the balance of probabilities. The appellant's evidence should not be rejected simply because it is not corroborated; if there is no evidence to contradict or make the appellant's version of events less than probable and their evidence alone is sufficiently precise and unambiguous, the ground (d) appeal should be allowed.
10. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning on the date of the breach where that took place before 25 April 2024.
11. The enforcement notice was dated 15 May 2024 and therefore the material date for the use of the property will be 15 May 2020. In order to determine whether the unauthorised use is immune, it is necessary to consider both when the change of use took place, and whether the use continued throughout the relevant period. In this case, the LPA disputes that the change of use began before the material date.

When the change of use commenced

12. In assessing when the four-year period begins to run, case law indicates that it is necessary to look at the physical state of the premises (when the property was capable of providing viable facilities for living, rather than the date when all the works were completed) as well as actual, intended and attempted use⁴.

² *Jones v Isle of Anglesey CC* [2024] EWHC 2582 (Admin) ('Jones')

³ Town and Country Planning Act 1990

⁴ *Gravesham BC v Secretary of State for the Environment* (1982) 47 P&CR 142; *Impey v Secretary of State for the Environment* (1984) 47 P&CR 157

13. It is possible for the change of use to have commenced prior to actual occupation and the Supreme Court in *Beesley*⁵ emphasised that ‘*Too much stress*’ has ‘*been placed on the need for “actual use”*’, that ‘*it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is*’ and that it is ‘*artificial*’ to say ‘*that its use is anything other than a dwellinghouse, when its owner has just built it to live in and is about to move in within a few days’ time*’. In the *Jones* case⁶, it was held that there was no basis in law for excluding the impact of Covid-19 regulations on the actual use of the building and that Covid-19 restrictions were ‘relevant to consideration of the intended or attempted use’.
14. It is then a matter of fact and degree on the facts of the particular case as to when the change of use began, taking into account the factors detailed above.

Analysis

15. It is agreed between the parties that actual occupation of the flats did not begin until after the relevant date, with the first occupation of the flats being 5 June 2020 (Flat 2), 30 June 2020 (Flat 1), 3 July 2020 (Flat 3), 22 July 2020 (Flat 4) and 1 September 2020 (Flat 5).
16. Turning to the evidence, it appears that the flats were registered for Council tax from 1 March 2020, and one of two statutory declarations (both dated 10 June 2024) from Vinod Kakkar (VK) as representative of the appellant company also indicates that they were marketed from 25 March 2020 with multiple agents (Dexters, Chase Buchannan, Fine and Country and Foxtons). The second VK statutory declaration references Covid-19 lockdowns as causative in the delay from completion of works to the commencement of occupation. The appellant further explains that, due to Covid-19 regulations, it was only from 13 May 2020 that it was lawful for the property to be visited or viewed and that, without viewings, it would be unlikely that tenants would take a lease and move in.
17. The appellant has also provided a statutory declaration from their main contractor which is dated 11 June 2024 which states that they ‘completed the development’ of the appeal property and ‘created 5 flats’ on 1 March 2020 and ‘handed the property to ready for occupation’ from 1 March 2020. One of VK’s statutory declarations also states that the flats ‘have been ready for occupation from 1 March 2020’. On the appellant’s own evidence then, there was a period of some three weeks from the relevant date to the commencement of occupation of the earliest flat to be occupied (Flat 2) on 5 June 2020.
18. In my view, the three week period of vacancy does not necessarily preclude the four year period from beginning to run from the earlier date of completion of the physical works. However, this represents a lengthy period of non-occupation, clearly contrasting with the ‘*few days’ time*’ referenced by way of example in *Beesley*. While the appellant’s sworn evidence is that marketing began from 25 March 2020 with multiple agents, I have no detailed information/evidence setting out what form this took such as to inform my assessment of intended/attempted use. This does not then represent a short period of inactivity that can be disregarded in the circumstances.

⁵ *Welwyn Hatfield Council BC v SSCLG & Beesley* [2011] UKSC 15 (‘Beesley’)

⁶ Which concerned whether commencement of development had occurred in respect of a planning permission previously granted with assessment as to whether a change of use to a visitor centre had begun before the relevant date

19. I acknowledge also the registration for Council tax and that Covid-19 regulations restricted viewing properties/similar activity for purposes of taking a tenancy from around the date of completion of physical works until mid-May 2020. However, it appears that during the three week period from the relevant date to the occupation of Flat 2, viewings and related activities were permitted.
20. While I note the appellant's contention regarding Covid-19 restrictions that tenants would 'not have been likely' to take a lease without being able to view the property, I have no detailed evidence to suggest that this was a particular issue in this case. I am mindful also that if, for example, the rental market was competitive in this location at that time, it might not have been unusual for tenancies to be taken on the basis of online listings without an in person viewing. Given the delays in occupation of the remaining flats once these restrictions were eased, it does not seem likely that the inability to undertake in person viewings was significantly causative of the delay in occupation.
21. Indeed, there is a clear contrast with the *Jones* case where Covid-19 restrictions had the effect of '*restricting the admission of the visiting public to the newly fitted out information centre*' and that '*the existence and effect of those restrictions...alone had prevented...moving from a state of readiness to actual operation of the visitor information centre*'. In the present case, restrictions from March 2020 may potentially have reduced the likelihood of leases being taken at that time but at no stage was there a '*statutory prohibition*' on the '*actual use*' as referenced in the *Jones* judgment.
22. The appellant seeks to rely on the *Brown* case to support the principle that when a 'conversion' took place a significant time before 'use is taken up', time begins to run from the date of the original conversion. However, the appellant has not identified a basis for relying on this judgment to support this contention. In any event, the point in issue in *Brown* was not the question of when the immunity period begins to run, and this case also related to a very different set of factual circumstances.
23. Reference is made to the *Moore* case, which again can be distinguished to some degree on its facts as this related to holiday accommodation. In any event, the comment in that judgment that there is '*no requirement*' that before a building can be described as a 'dwellinghouse' it must be '*occupied as the permanent home of one or more persons*' was in the context of consideration as to whether units of holiday accommodation represented use as dwellinghouses, rather than setting down a principle as to when the immunity period in respect of a change of use begins to run.
24. As such, looking at these matters in the round and even on the basis that the property was capable of providing viable facilities for living before the relevant date, having regard to the evidence related to intended, attempted use and actual use, I find as a matter of fact and degree that the change of use did not commence prior to the relevant date.
25. While not determinative given my analysis above, there is also a lack of precision in the evidence as to the physical state of the premises including as to what the term 'ready' for occupation in the submitted statutory declarations has been taken to mean. While the appellant's representations state that washing, cooking and sleeping facilities were in situ, no schedule of condition or marketing details are submitted which could have provided more precise evidence on this issue. This

can be contrasted again with the *Jones* case where it seems that a detailed report was provided as to the physical state of the premises at the relevant date.

26. There is also potentially ambiguity in terms of dates as between the statutory declarations and the appellant's Planning Contravention Notice (PCN) response⁷ which stated that the property was 'modified to establish 5 x self-contained flats' on 31 May 2019. While this is not necessarily contradictory, no detailed explanation is given for this apparent discrepancy.

Continuity

27. Since I have found that the use did not commence before the relevant date, continuity of use thereafter cannot render the use lawful. However, for completeness, I will cover this issue briefly below.
28. To demonstrate continuity, the use must have continued without significant interruption such that it would have been open to the Council to take enforcement action at any time. There is a difference between an established dwelling where an occupier does not have to be continuously or even regularly present for it to remain in use as a dwelling, and where there is no established use, in which case such use must be affirmatively established. Per the *Thurrock* judgment, short periods of inactivity can be regarded as part of a continuing use.
29. The evidence submitted by the appellant seeking to demonstrate continuity includes: Council tax registration from 1 March 2020; statutory declarations from VK; tenancy agreements for the five flats; copies of various bills for Flats 1, 2 and 3 including Council tax, water bills and utilities bills.
30. The claim in VK's statutory declaration that all five flats were occupied by tenants from 5 June 2020 is contradicted by the appellant's own statement in their PCN response which indicates that only Flat 2 was first occupied from this date, with the other flats occupied from later dates as set out above. VK's statutory declarations also offer no detailed/precise information as to the actual continuity of use of each of the flats or whether there were any void periods. In addition, tenancy agreements submitted do not cover the whole of the relevant period for all of the flats. While it may be that the claim is of periodic tenancies that rolled forwards, the position is not clear and no rental payments have been provided to indicate ongoing periodic tenancies beyond the initial fixed terms.
31. While I am mindful that non-occupation does not equate to non-use, there is no substantive evidence as to what happened during the apparent breaks in occupation, either in terms of periodic tenancies, marketing or as to what an enforcement officer would have seen if visiting the property at these times. Indeed, even if I had found that the use had commenced by the relevant date, similar issues in terms of this lack of substantive evidence during vacancy applies in respect of the three week period up until the start of the first Flat 2 tenancy.
32. Since the LPA assessed that the use did not commence prior to the relevant date, no detailed analysis has been offered regarding flat-specific evidence submitted. However, it is clear that the appellant has not provided billing evidence for all of the flats covering the relevant four year period and neither have any statements been provided from tenants/former tenants corroborating their occupation and outlining

⁷ Dated 9 December 2021

whether there were any significant periods of vacancy. Council tax registration is evidence of an intention for the flats to be occupied as at a specific point in time and is not good evidence of continuous occupation.

33. For the reasons explained above and on the available evidence, I find as a matter of fact and degree that the appellant has not shown on the balance of probabilities that by the time the notice was issued it was too late to take enforcement action. The ground (d) appeal fails.

The appeal on ground (f)

34. This ground of appeal is that the requirements of the notice exceed what is necessary.
35. S.173 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 cessation of the use and removal of facilitating kitchen and bathroom facilities⁸ suggests that its purpose is to remedy the breach.
36. The appellant proposes a lesser step that would require the appellant 'to cease the use of Flat five and return the building back to four flats as consented in 2018'⁹. It is submitted that this would overcome the planning merits concerns raised by the LPA in the stated reasons for issuing the notice. There is no appeal on ground (a) and I therefore cannot take planning merits submissions into consideration.
37. Further, the LPA indicates that the 2018 Permission is no longer extant which would mean that including a requirement enabling a four flat arrangement would have the effect that the four flat development could not be controlled by the various conditions referenced in the 2018 Permission. That said, in view of the previous grant of the 2018 Permission, it is appropriate to consider under ground (g) whether the compliance period allows for adequate time for the appellant to explore an alternative scheme with the LPA.
38. As such, while I recognise that the planning enforcement regime is intended to be remedial, not punitive, there is in my view no obvious alternative which would achieve the purpose of the notice. The ground (f) appeal fails.

The appeal on ground (g)

39. The appeal on ground (g) is that the period for compliance with the notice (six months) falls short of what is reasonable.
40. The appellant contends that due to difficulties related to Assured Shorthold Tenancy Agreements including as to fixed term periods, notice serving, and a potential need to seek possession orders, in a worst case scenario, a period of some two and a half years could be required in order to evict tenants from the appeal building before works could begin per the notice requirements. The appellant requests a compliance period of 2.5 years inclusive of two years to achieve vacant possession and six months to carry out the works.

⁸ With the exception of one set of each, as corrected per my paragraph 7 above

⁹ Per planning permission reference 16/2042/FUL ('2018 Permission')

41. The LPA submits that the 2.5 years period represents an 'extreme worst case scenario' that is 'highly improbable' and contends that two months would be adequate for the appellant to achieve vacant possession, with four months then being available for the works to be carried out. The LPA highlights that if difficulties were faced in achieving vacant possession, the appellant would be able to defend themselves from prosecution by demonstrating that they are taking all the steps they are able to take in order to achieve compliance with the notice.
42. In my view, the 2.5 year period proposed by the appellant would be akin to granting a lengthy temporary permission which would not be appropriate since it would undermine the enforcement action taken. That said, in my view, seeking a contractor to undertake the works stipulated, scheduling these and allowing time for the works to be completed would be likely to take a period of around six months. While measures can be taken to secure and schedule a contractor while tenants are in situ, works could not be carried out until tenants have vacated the flats.
43. As such, it is reasonable in my view to allow a buffer period of an additional three months to allow for these various processes. This additional period would also allow the appellant some time to explore with the LPA the possibility of making an application for an alternative scheme and per s180(1) of the 1990 Act, the notice would cease to have effect insofar as it is inconsistent with any planning permission granted. The ground (g) appeal succeeds to this extent.

Conclusion

44. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

V Bond

INSPECTOR