



Appeal Decision

Hearing held on 16 June 2026

Site visit made on 16 June 2026

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 23 July 2026

Appeal Ref: **APP/A5270/C/26/3377789**

44 Hill Rise, Greenford UB6 8PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by J & J Transport Limited against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 19 December 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission: The removal of the front bay windows and erection of a two storey front extension and porch; the erection of a part single storey, part two storey rear/side (wrap around) extension; alteration of roof from hip to gable end; rear roof extension and the material change of use of the resulting property to 8 self-contained flats.
 - The requirements of the notice are:
 - A. Cease the use of the premises as 8 self-contained flats.
 - B. Remove the kitchens from each flat.
 - C. Remove the bathrooms from each flat.
 - D. Remove all forms of sub-division which have facilitated the use of the premises as 8 self-contained flats.
 - E. Demolish the part single storey, part two storey rear/side (wrap around) extension; the rear roof extensions and hip to gable extension. Then restore the roof of the property to its previous hip design.
 - F. Demolish the two storey front extension and porch and rebuild the front bay window at first and second floor to match the proportions, design and materials that existed prior to the unauthorised works.
 - G. Remove all resulting debris, materials and rubbish from the land.
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 (as amended) ("the Act"). 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 in part and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, as amended, for part of the development, namely the removal of the front bay windows and erection of a two storey front extension and porch; the erection of a part single storey, part two storey rear/side (wrap around) extension; alteration of roof from hip to gable end; rear roof extension on land at 44 Hill Rise, Greenford UB6 8PB, referred to in the notice.
2. It is directed that the steps required to comply with the enforcement notice are varied by the deletion of the number "8" from requirements A and D.
3. Otherwise, and subject to the variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application

deemed to have been made under section 177(5) of the Act for the material change of use of the property to 8 self-contained flats.

Matters concerning the Notice

4. At the Hearing, the Council proposed that the notice be amended to remove “8” in relation to the number of flats. The appellant considered that there would be injustice as this would stop consideration as to whether a smaller number of flats may well be acceptable. As the Council is clearly not under enforcing and the appellant has not been deprived of any rights of appeal, I do not consider such an amendment would cause any injustice to either party¹.

Ground (b)

5. An appeal on Ground (b) is concerned solely with whether the matters alleged in the enforcement notice have occurred as a matter of fact. The burden of proof is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice said to constitute the breach of planning control have not in fact occurred.
6. The appellant does not dispute that the extensions, roof alterations and associated building works described in the notice have been carried out. Nor is there any dispute that the property has been subdivided and occupied as 8 self-contained residential units.
7. The appellant's principal argument is that planning permission ref. 215758FUL, granted on 10 February 2022, (hereafter referred to as the “2022 permission”) authorised the operational development and was lawfully implemented in May 2023 through excavation works undertaken to commence development. It is argued that the permission therefore remains extant, capable of completion, and authorises the development which is the subject of the notice. The appellant submits that any differences between the approved and completed schemes are not material and, at most, amount to a failure to comply with any condition or limitation subject to which planning permission has been granted (section 171A(1)(b) of the Act) rather than development carried out without planning permission (section 171A(1)(a)).
8. While foundation works are capable, in principle, of constituting a material operation for the purposes of section 56 of the Act, it is equally clear from the authorities that the operation relied upon must be objectively referable to the development authorised by the permission when assessed as a whole. The courts have consistently recognised that relatively modest works may be sufficient to commence development, provided those works genuinely form part of the development permitted. The relevant principles are reflected in *Commercial Land Limited and another v SSTLGR and another* [2002] EWHC 1264 (Admin), *Atwill, R (On the Application Of) v New Forest National Park Authority* [2023] EWHC 625 (Admin), *Hillside Parks Limited v Snowdonia National Park Authority* [2022] UKSC 30, and *Thayer v SSE* 1991 WL 838530; [1992] JPL 264 which have been brought to my attention by both parties.
9. In this case, although the initial excavation works may broadly have reflected the approved footprint, the subsequent development departed materially from the

¹ Section 176(1) of the Act

permitted scheme. The side extension was constructed significantly wider and deeper at first-floor level than approved, the hipped roof was replaced with a gable form creating additional internal floor area, and front extensions and a porch were constructed, all of which were not authorised by the 2022 permission. The Council also refer to differences relating to the scale, massing, design and overall configuration of the completed building. It is apparent by referring to the drawings and observing the building from the ground that these are not minor refinements or de minimis departures. Rather, they are fundamentally different, altering the scale, form and appearance of the approved development, increasing its bulk and its enclosed footprint, giving rise to planning consequences that were not assessed through the grant of the 2022 permission.

10. Further to the operational development, a material change of use of the property also occurred changing its use from a two-storey single dwellinghouse to 8 self-contained flats over three floors. There is no dispute that the works were carried out as a single composite scheme with the extensions, roof alterations and internal layout functionally and purposively linked to the new use.
11. For the purposes of section 55(1) of the Act, the making of a material change of use constitutes development and section 55(3) specifies that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. A planning permission for operational development does not, without more, authorise a separate material change of use. Furthermore, the appellant's reliance on the absence of a condition on the 2022 permission restricting the future use of the building does not assist their case. The creation and occupation of 8 self-contained flats is development requiring planning permission in its own right and no planning permission has been granted for that use.
12. Drawing these matters together, and applying the principles in established case law, the works relied upon cannot secure commencement of a permission where the development pursued and ultimately delivered is materially different in both form and purpose, as is the case here. It falls outside the scope of that permission. I also note that, given the scale of the as-built extensions and the extensive internal subdivision of the property, it would not now be possible to complete the development authorised by the 2022 permission without substantial demolition and reconfiguration. This further reinforces my conclusion that the approved scheme was neither lawfully carried forward nor capable of being regarded as the development that was permitted.
13. The matters are therefore development without planning permission, and the notice correctly refers to section 171A(1)(a) of the Act rather than a breach of condition as advanced by the appellant. I find that, as a matter of fact, the breach of planning control as alleged in the notice has occurred.
14. For these reasons, the appeal on Ground (b) fails.

Ground (c)

15. For an appeal to succeed on ground (c), the burden of proof is upon the appellant to demonstrate, on the balance of probabilities, that matters stated in the notice do not constitute a breach of planning control.

16. The appellant argues that the development described as part single storey, part two storey rear/side (wrap around) extension; alteration of roof from hip to gable end; rear roof extension and installation of three roof lights to front roof slope, matches the description of development in the 2022 permission and was said to be carried out pursuant to that planning permission. Consequently, they argue that the development was not carried out without planning permission and therefore does not constitute a breach of planning control.
17. I have already considered this argument under ground (b) which I considered the more appropriate ground of appeal. In light of my findings on ground (b), the presented evidence does not support the premise that the operational development and material change of use is not a breach of planning control.
18. Accordingly, the appeal on ground (c) must fail.

Ground (a) and the Deemed Planning Application

Main Issues

19. The main issues are: i.) the effect of the operational development on the character and appearance of the host dwelling, the semi-detached pair, and the surrounding area; and ii.) the effect of the material change of use to eight self-contained flats on the living conditions of occupiers, with particular regard to internal space standards, outlook and amenity provision.

Reasons

Character and appearance

20. The appeal relates to 44 Hill Rise, Greenford, a semi-detached dwelling situated within an established suburban residential area. The property has been subject to extensions and alterations and is currently arranged and occupied as eight self-contained residential units. The appeal property has a public transport accessibility level (PTAL) of 3, indicating medium accessibility and is within walking distance of Greenford Railway Station.
21. The operational development comprises rear/side extensions, roof alterations including a hip-to-gable conversion and dormer extension. Front rooflights have been installed and there is an extension to the front incorporating a porch and replacing the original front bay windows.
22. The appellant places significant reliance on the 2022 permission in terms of what had previously been approved by the Council. While I have found elsewhere that the development as built differs materially from that permission and cannot properly be regarded as its implementation, the approved scheme nevertheless remains a material planning consideration. It demonstrates that the Council previously accepted the principle of substantial enlargement of the property.
23. The adjoining property has itself been extensively enlarged, in a similar manner, and is occupied as flats. While the existence of development at No. 42 does not automatically justify the development before me, it forms part of the established character of the area and provides an important element of the site context, particularly as it forms one half of the semi-detached pair.

24. I acknowledge that the as-built development is larger than that previously approved. The widened first-floor side extension, altered roof form and additional front extension increase the overall bulk and massing of the building. They also, to a degree, reduce the symmetry that would have existed between the two halves of the semi-detached pair had the approved scheme been implemented.
25. Notwithstanding this, I acknowledge that the extensions reduce the disparity between Nos. 42 and 44. Prior to the development, No. 44 would have appeared noticeably subordinate to its heavily extended neighbour. The development has created a more balanced relationship between the pair and a more coherent appearance in wider views. While the front extension alters the original design which remains in the adjoining property, its overall visual harm in this context is limited.
26. Hill Rise and the immediate surroundings are not characterised by architectural uniformity. From what I observed and from the presented evidence, the streets contain a variety of extensions, roof alterations, enlarged dwellings and altered semi-detached and terraced properties. Hip-to-gable roofs, side extensions and non-matching pairs of houses are established features of the streetscape. In this context, the appeal property does not appear isolated, incongruous or visually jarring. While the development has altered the appearance of the pair, I find that it has reduced the visual disparity with No. 42 and does not appear materially harmful in the context of the street scene. If the building reverted to its pre-development form, as required by the notice, it would once again result in a pair of wholly mis-matched properties.
27. Taking all matters into account, I conclude that although the development is substantial, it respects the varied character of the area and is not unacceptably harmful to the character or appearance of the host dwelling, the semi-detached pair, or the wider street scene. In this regard, there is compliance with London Plan Policy D3 and Ealing Development Management DPD Policy 7.4 and 7B which require development to respond positively to its site and surroundings, respecting local character, building form, scale, appearance and proportions. This is broadly reinforced in emerging Draft Ealing Local Plan Policy DAA which both parties considered should be given substantial weight considering its advanced stage.

Living conditions of occupiers

28. Each of the 8 units has its own kitchen facilities and a shower room. A communal laundry space is provided for all occupiers. The appellant accepts that the units do not comply with the minimum internal space standards set out in London Plan Policy D6. The parties disagree as to the significance of that deficiency and whether the accommodation nevertheless provides an acceptable standard of affordable living. There are letters from some of the tenants who support the provision of such accommodation due to its affordability. The gross internal floor area of the flats ranges from 26sqm to 34sqm.
29. In addition to the limited internal floorspace, the units generally provide constrained living environments with restricted storage, mostly single aspect and limited outlook. While I accept that each unit benefits from natural light and basic residential facilities, the overall standard of accommodation falls materially below that expected by adopted planning policy.

30. I have considered the appellant's submission that the accommodation is intended primarily for single occupants and provides relatively affordable housing in a sustainable and accessible location. I also recognise the importance of increasing housing supply and making efficient use of existing buildings.
31. Nevertheless, the evidence demonstrates that all eight flats fall significantly below the minimum internal space standards in table 3.1 of London Plan Policy D6 which states that one bedroom accommodation for one person should provide 39 (37) sqm of internal floor space and 50sqm for two people. This is not a marginal departure from policy but a significant shortfall affecting every unit within the development. The flats therefore fail to provide satisfactory living conditions for occupiers and future occupiers, contrary to policy 3.5 of the Ealing Development Management DPD and Policy D6 of the London Plan.
32. Externally, there is an area to the front of the property that provides off road parking. To the rear of the property there is a modest sized area of hard standing with no boundary dividing it from No. 42. A brick outbuilding, which was empty when I visited, is offered for additional storage for the occupiers of the flats. There is access from the side road which enables vehicle parking. The appellant states that this offers approximately 124.7sqm of outdoor space.
33. The Ealing Planning New Garden Space Supplementary Planning Document concerns the qualitative aspects of outdoor amenity space provision. Table 7D.2 typically requires an area equating to 15sqm private garden space to be provided for each new flat. This includes the baseline requirement of 5sqm private outdoor space provision for one to two person dwellings derived from the SPG.
34. While the size of the area may well provide space in terms of the ground area required by the policy, this space must be fit for purpose, genuinely private, screened from roads and not permanently overshadowed. The rear area functions primarily as parking and does not provide meaningful communal amenity space. There is little to suggest that the area offers an opportunity for the occupiers of the flats to undertake activities that might typically be associated with a private outdoor amenity space, including leisure activities, cultivating plants and drying washing. Thus, the area currently falls short of providing suitable outdoor space for the occupiers of the eight flats.
35. The appellant places great weight on policy support for smaller forms of accommodation and the need for lower-cost housing options. While these are material considerations, they do not displace the requirement to provide a reasonable standard of accommodation for future residents. The minimum standards embodied in London Plan Policy D6 are intended to secure acceptable living conditions and I attach substantial weight to them in this case.
36. To conclude on this matter, I find that the material change of use results in unacceptable living conditions for occupiers by reason of the substantial deficiency in internal floorspace, inadequate storage provision, restricted outlook and poor internal and external amenity arrangements. Accordingly, there is conflict with the broader policy objectives of securing high-quality living environments contained within London Plan Policy D3 and D6, Ealing Development Management DPD Policies 3.5, 7B and 7D, emerging Draft Ealing Local Plan Policy DAA and the Garden Space SPD.

Alternative Schemes

37. As part of their appeal submissions, the appellant advanced alternative schemes. Firstly, they considered that the notice could be varied to allow completion of the development authorised by the 2022 permission. This would require the permission to be extant, which I have found it not to be. Nonetheless, I have found the operational development to be acceptable in planning terms and thus permission will be granted for that part of the breach. The first option therefore requires no further consideration.
38. Secondly, revised plans have been provided which show how a form of shared residential accommodation with communal kitchen and living facilities could be configured with seven bedrooms. Thirdly, it was suggested that the property could be reconfigured to provide three self-contained flats, one on each floor.
39. The appellant argues that the alternatives would comprise part of the matters alleged in the notice and that section 177(1)(a) of the Act therefore permits the grant of planning permission for a smaller number of flats.
40. The power under section 177(1)(a) is confined to granting planning permission in respect of the matters stated in the notice, whether in relation to the whole or part of those matters. The question is therefore whether the alternative schemes advanced by the appellant comprise part of the matters alleged or whether they amount to different development altogether.
41. The plans for the second option do not depict the use alleged in the notice. Rather, they show the removal of individual kitchen facilities and the creation of a communal kitchen, dining and living accommodation serving seven individual bedrooms. The plans show a form of shared residential accommodation which is more akin to a large (sui generis) HMO. Such use of a property would likely be materially different from the use of the property as eight self-contained flats as alleged in the notice and that which forms part of the deemed planning application.
42. Regarding the third option, no plans have been provided, but the appellant suggested that a planning permission could be conditioned so that within six months of the date of the appeal decision the building is converted into three self-contained flats with no more than one flat on each floor to comply with the minimum space standards.
43. I have had regard to the authorities cited by the appellant, including *Tapecrown Limited v The First Secretary of State and another* [2006] EWCA Civ 1744, *Ahmed v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 566 and *Bhandal v Secretary of State for Housing, Communities & Local Government and another* [2020] EWHC 2724 (Admin). Those cases establish that an Inspector may consider alternative or modified schemes under the combined operation of grounds (a) and (f), and that a proposal which involves additional works does not necessarily place it outside the scope of an enforcement appeal.
44. In the circumstances of this case and the presented alternatives, both options would result in a form of development that would involve different unit sizes, different living arrangements, different occupancy patterns and a different planning assessment from that which arises from the eight self-contained flats. The

proposed alternatives amount to fundamentally different development and in my opinion do not comprise the whole or part of the matters alleged in the notice.

45. It is settled caselaw that an Inspector cannot use a ground (a) appeal to grant permission for an alternative scheme that is materially different from the development alleged in the notice. While a three-flat scheme may be a potential alternative, such a scheme would require reconfiguration of the internal accommodation that may well introduce new planning considerations relating to the nature of accommodation, living conditions and intensity of occupation. Those considerations have not been assessed as part of the appeal before me. Furthermore, a proposal involving a reduced number of units may properly be regarded as a different development rather than part of the development alleged in an enforcement notice. The assessment is not a purely numerical exercise. What matters is the nature of the development and whether the alternative proposal remains within the ambit of the matters alleged.

Conclusion on ground (a)

46. I have had regard to all the presented evidence including caselaw provided by both parties and, for the reasons given above, I conclude that the operational development is acceptable in planning terms and planning permission should be granted for those works. However, I find that the material change of use of the property to eight self-contained flats results in unacceptable living conditions for occupiers and conflicts with adopted development plan policies as detailed. Accordingly, in the absence of material considerations that outweigh the development plan conflict, I cannot grant planning permission for the material change of use.

Ground (f)

47. An appeal on this ground is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity resulting from the breach.
48. The appellant considers the requirements of the notice are excessive because alternative schemes that have been advanced would retain elements of the unauthorised development while undertaking modifications said to overcome the planning objections. The appellant argues that the notice should therefore be varied to require implementation of one of those alternative schemes rather than complete compliance with the notice.
49. I have considered those alternative schemes in the context of the deemed planning application arising under ground (a). In doing so, I have had regard to the principles established in caselaw presented as part of the appeal submissions. Those authorities establish that an Inspector should consider obvious alternative solutions that emerge from the evidence and which may overcome the planning objections with less cost and disruption than the steps required by the notice. They also confirm that, where appropriate, planning permission may be granted for a modified form of development and the notice varied accordingly.
50. In the present case, the revised proposals represent materially different forms of development from that alleged in the notice. Consistent with the distinction recognised in established caselaw between development that is part of the matters alleged and development that is different in kind, I am not persuaded that either

proposal provides a proper basis for varying the notice. Since none of the proposed alternatives would be acceptable, the steps required by the notice remain the minimum necessary to remedy the identified breach of planning control.

51. I have also considered whether any limited variation to the notice would be appropriate. Having regard to the nature of the breach alleged and to my findings on the planning merits under ground (a), I am not persuaded that the requirements, such as the removal of all sub-divisions, bathrooms and kitchens which facilitate the use as eight self-contained flats exceed what is necessary to remedy the breach of planning control.
52. For these reasons, I conclude that the appeal on ground (f) fails.

Ground (g)

53. The appellant considers that the compliance period is unreasonably short, given the need to regain possession from tenants, the scale and complexity of demolition and reinstatement work, and the time required for technical design, procurement and construction. The notice requires compliance within six months. The appellant seeks an extended period of 12 months.
54. The requirements are limited to ceasing the use and the removal of each kitchen and bathroom and internal sub-divisions which have facilitated the unauthorised use. While occupiers would need to be relocated and alterations undertaken, I have not been presented with substantive evidence demonstrating that these steps could not reasonably be completed within the given timeframe. Furthermore, and bearing in mind the discretion given to the Council to extend any period for compliance by section 173A of the Act, 6 months should be sufficient for the appellant to make a planning application for an alternative scheme.
55. The appeal on ground (g) therefore fails.

Conditions

56. No conditions regarding the operational development were advanced by the parties purely with regard to the operational development and as the development is complete, no conditions are considered necessary.

Conclusion

57. For the reasons given, the appeal should succeed in part only, and I will grant planning permission for the removal of the front bay windows and erection of a two storey front extension and porch; the erection of a part single storey, part two storey rear/side (wrap around) extension; alteration of roof from hip to gable end; and rear roof extension works to the side. I will uphold the notice and refuse to grant planning permission for the material change of use of the property to 8 self-contained flats.
58. Section 180(1) of the 1990 Act provides that the requirements of the upheld notice will cease to have effect so far as inconsistent where a planning permission is subsequently granted for the same development or part of it. As the decision is split, I will leave the requirements as they are and allow the planning permission to override the notice where there is inconsistency.

S A Hanson INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Michael Krantz	Solicitor and Partner, Gunner Cook
Martin Gaine	Planning Consultant, Just Planning
Jon McDaid	Director, J & J Transport Limited

FOR THE LPA

Roderick Morton	Solicitor, Ivy Legal instructed by Alex O'Neil, Planning Enforcement Manager
Neil Whittaker	Planning Associate, Ivy Legal

Documents submitted during the Hearing

Five year housing land supply position statement & housing trajectory November 2023

Five year housing land supply position statement & housing trajectory March 2026

Appellant's synopsis of the case law referred to in their appeal submissions

Duguid v SSETR Court of Appeal judgment