



Appeal Decision

Site visit made on 19 May 2026

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal Ref: APP/P3610/C/25/3361942

The land known as 11 Woodlands Road, Epsom, Surrey, KT18 7HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Oakton Developments Ltd against an enforcement notice issued by Epsom and Ewell Borough Council.
 - The notice was issued on 11 February 2025.
 - The breach of planning control as alleged in the notice is Without planning permission, the change of use of the approved outbuilding to use as a single dwelling house.
 - The requirements of the notice are: 1) Remove the kitchen and bathroom from the outbuilding, remove the fencing separating the Land from the primary dwelling house and remove all resulting materials from the Land; and 2) Cease the use of the outbuilding as a self-contained dwelling and revert the use to its original use as an outbuilding ancillary to the existing dwelling at 11 Woodlands Road, Epsom KT18 7HW, as approved under planning permission 16/01256/FUL.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
Deleting the address on the Notice and replacing it with 'Land adjoining 11 Woodlands Road, Epsom, Surrey, KT18 7HW'; and
the substitution of the plan annexed to this decision, showing the land outlined and hatched in black, for the plan attached to the enforcement notice
Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

Procedural Matters

2. Inspectors have the power, under s176 of the Act, to correct or vary any defect in a Notice where that correction or variation would not cause injustice to any party involved in an appeal. The second requirement of the Notice requires the cessation of the alleged use and the reversion of the building to a use that is ancillary to the dwelling at 11 Woodlands Road ('No 11'). It is quite correct for the Notice to require the cessation of the use; however, a Notice should not direct the landowner in how to use the land thereafter. The breach of planning control would be remedied simply by applying the first part of the second requirement. However, as I am allowing the appeal and quashing the Notice, there is no need to correct it in this regard.
3. I will, however, correct the Notice by changing the address of the site to "Land adjoining 11 Woodlands Road, Epsom, Surrey, KT18 7HW", as this better reflects the land that is the subject of the Notice. I also correct it by attaching a plan that reflects the planning unit. I consulted the parties on the replacement plan and the

Appellant answered and, correctly, suggested that I make a slight alteration to the plan I put out for comments. The Council did not comment.

The Appeal Site

4. Woodlands Road lies at the edge of a residential development between Epsom and Ashted in the Green Belt ('GB'). However, as this appeal relates to matters of lawfulness, the effects of the development on the GB are not material to my findings.
5. The land outlined in red on the plan attached to the Notice includes a semi-detached dwelling (No 11). To its rear, the red line encloses a fairly long, narrow area of land. Part way down this land, the garden to No 11 is terminated by an unbroken wooden fence in the order of 2m high running north to south. On the other side of the fence, though still within the red line, is a single storey building, with small areas of land to its east and west; this is the dwelling that is the subject of the Notice. This dwelling has an independent access from Woodlands Road.

Grounds (b) and (c)

6. An appeal made under Ground (b) is that the breach of planning control alleged in the Notice has not occurred. An appeal made under Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. These are legal ground of appeal where the onus lies with the Appellant to make its case on the balance of probability. Given that the arguments made by the Appellant in both grounds are similar, it makes sense to deal with the two together.
7. The Appellant asserts that the plan attached to the Notice is incorrect, as it does not show the correct planning unit. This, it says, should enclose just the land to the west of the fence running north to south at the end of the garden to No 11. There has, it says, been no breach of planning control at No 11.
8. The plan attached to the Notice should identify the planning unit in which the outbuilding lies. Established case law in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, sets out that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Thus, an assessment of physical and functional separation is key.
9. Amongst other things, the judgement in *Burdle* identified three broad categories of planning unit: a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary to the primary use; a single planning unit where the unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; or where the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In this scenario, each area ought to be considered as a separate planning unit.
10. Evidence in the form of Land Registry documents shows that, on 27 April 2018, part of the land on the plan attached to the Notice was sold off. Essentially, this meant that the house at No 11, its front garden and a section of its rear garden were sold separate to the land with the outbuilding. The dividing line between the

two ownerships was the fence running north to south, leaving the outbuilding and its associated areas of land in separate ownership.

11. Amongst the evidence that the Appellant has submitted that is relevant to its Ground (b) case are two statutory declarations. The first was by a Mr Bailey who says he was as site manager for Oakton Developments between 2015 and 2020. The second was by a Mr Mayes, who was employed by that company as a Building Manager from 2013 to 2023. Given the penalties for making incorrect claims in a SD, this is evidence to which I give significant weight.
12. During the periods referred to in the SDs, Oakton Developments was involved in the refurbishment of the dwelling at No 11 and the development of a small housing scheme on nearby land. Both SDs say that the garden building was completed in the Autumn of 2017, and was fitted out and used for purposes associated with those developments. They also say that the fence between the outbuilding and No 11 was erected in or before April 2018, when No 11 was sold.
13. The Appellant's case is that, from the time of the erection of the fence and sale of No 11, the land shown on the plan attached to the Notice was actually two separate planning units. As the breach had not occurred across the whole of the land, the plan was inaccurate and the Appellant's initial position was that the Notice should be quashed.
14. The evidence clearly shows that, on the balance of probability, from the time of the sale of No 11 there were two distinct planning units, as per the third of the scenarios in *Burdle*.
15. In its Statement of Case, the Council said that were I to find with the Appellant on this matter, the plan could be corrected without prejudice. In its Final Comments, the Appellant agreed with this. My finding that there are two separate planning units means that there is a need for the plan to be corrected. I further find that my doing so would not cause prejudice and, therefore, I shall correct the plan but not quash the Notice.
16. The material change of use that was alleged in the Notice did occur on the land I identify in my corrected plan. No evidence has been submitted to show that this did not constitute a breach of planning control and, therefore, the Ground (b) case fails.
17. The Appellant's Ground (c) case is also based on the incorrect plan. No case has been made to show that what has occurred is not a breach of planning control. The onus lies with an Appellant to make their case in these legal grounds and as they have not the Ground (c) case fails.
18. Summing up the Grounds (b) and (c) cases, the matters alleged in the Notice have occurred and they do constitute a breach of planning control. However, the plan attached to the Notice requires correction, which I can do without prejudice. To this limited extent, the Grounds (b) and (c) appeals succeed.

Ground (d)

19. An appeal made under Ground (d) is that, at the date the EN was issued, no enforcement action could be taken in respect of the breach of planning control alleged in the Notice. Time limits for taking enforcement action are set out in s171B of the Act.

20. Part of the Appellant's case is that the Notice is incorrect, as it sets out a 10-year, rather than 4-year, limit for taking enforcement action. Its case, here, is that at the date on which the Notice was issued the time limit for issuing a Notice against an alleged material change of use of a property to a single dwellinghouse was 4 years.
21. There is no statutory definition of a dwellinghouse. However, it has been established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. There is no dispute between the parties that what has been created is a dwellinghouse that accords with this definition, and I, too, find this to be the case.
22. For its part, the Council says that the building was not built in accordance with the approved plans. There was, it says, a condition attached to the permission for its erection that required this was done in accordance with the terms of Drawing No WR/1206/02A. Thus, it is argued, the time limit for taking enforcement action is 10 years.
23. In the light of these arguments, the terms of the Notice need to be assessed.
24. In its section 1, the Council states that the Notice was issued in the light of an alleged breach of planning control under s171A(1)(a) of the Act, which relates to the "carrying out development without the required planning permission". On the other hand, s171A(1)(b) of the Act, which is not mentioned, refers to "failing to comply with any condition or limitation subject to which planning permission" as a separate form of a breach of planning control. Therefore, the Notice makes no reference to that part of s171 relating to a breach of condition.
25. Section 3 of the Notice sets out the Reasons for its issue. If the Notice was issued in respect of a breach of condition, one would expect reference to be made to this here. This is not the case. Save for the reference to ten years, the 3 reasons for issuing the Notice refer to the effects on the development on the character and appearance of the area and the creation of substandard accommodation.
26. Therefore, there is nothing in the Notice to explicitly tell recipients that it was issued in respect of a breach of condition. This may or may not have been the Council's intention but, as a matter of fact and degree, I find that a reasonable reading of the Notice is that it attacks a material change of use of the property to a single dwellinghouse. That is how I read it and, unsurprisingly to my mind, so does the Appellant. However, I find that there is no need to quash the Notice, as suggested by the Appellant. As the matter has been raised in submissions, and the parties have had a chance to comment on it, I can use the 4-year time limit without prejudice to the parties.
27. Given the date of issue, 4 years continuous use of the property as a single dwellinghouse has to be demonstrated to have commenced by 11 February 2021 and, if this occurred, that it was not lost thereafter.
28. Planning permission was granted by the Council for the erection of a 'New Outbuilding' on 29 December 2016, through its decision on application reference 16/01256/FUL.
29. The evidence shows that the building was completed sometime in 2017. Various times of the year are given for this, for example the Appellant's Statement of Case

(‘SoC’) says Autumn 2017 whilst the SD for Mr Bailey says Autumn 2017. However, this is not critical to the Ground (d) case. The building was initially used as a site office and store in connection with the building works that Oakton Developments were undertaking, which I refer to above. There were occasional overnight stays in the building at this time; though no case is made to suggest it was in use as a single dwellinghouse then.

30. Mr Bailey says that the building was “refurbished to provide a residential unit in 2020/21” and a Mr Kuna, an employee of Oakton Developments and known to him, lived there from February 2021. Taken alone, as his employment with the company finished in 2020 and he does not clearly explain how he would have known this, I would have given this evidence little weight, notwithstanding that it is in a SD. However, Mr Mayes, who worked for Oakton Developments until 2023, says the same in his SD. Therefore, I give this evidence significant weight. Mr Mayes says that Mr Kuna lived there until at least June 2023, when he went to Poland for medical treatment.
31. Again, if taken alone, the evidence in the form of receipts for white goods, plumbing equipment, and bathroom and kitchen furniture is of limited weight. However, when taken together with the other evidence, including photographs of the kitchen and bedroom – dated 6 January 2021 and 5 March 2021, respectively – they provide contextual support for the evidence in the SDs.
32. An Assured Shorthold Tenancy Agreement between a Mr Kuna and the landlords, Stanislaw and Ruth Koper dated 1 February and covering a 12-month period has been submitted. The Kopers are both directors of Oakton Developments. They have submitted evidence in the form of signed Statements of Truth (‘SoT’); these do not attract the same weight as the SDs but carry substantial weight, nonetheless.
33. Both the Appellant’s SoC and the Kopers’ SoT set out that Mr Kuna lived in the property until June 2023. The SoC sets out that from the end of his AST, this was on the basis of “a periodic tenancy” and that payments were a mix of bank transfer and occasional cash payments. I was provided with copies of bank statements that show, amongst other transactions, fairly regular payments of £450 from a ‘Kuna ST’ between April 2021 and June 2023. This is the same amount as the rent shown on the initial AST. On the balance of probability, I find that Mr Kuna lived in the property in the manner claimed.
34. The Kopers say that they could not be sure whether Mr Kuna would return to the property, given his illness. His belongings remained within it, they say, until August 2023 when it became apparent he would not return. R and G Andrade signed an AST for the property in September, though this set out that their occupation would not commence until 9 October 2023. This ties in with the answer in the application form for the Appellant’s application for the ‘Change of use of the existing outbuilding for use as a holiday let’¹, which said the property was vacant on 29 September 2023. In this respect, vacant can be read as not being occupied. In the same form, in answer to a question asking for information about the previous use of the site, reference was made, amongst other things, to a “range of residential uses”. The evidence before me shows conclusively that this answer did not mean that the building was in a mixed use during the 4-year period.

¹ Council Reference – 23/01184/FUL

35. I note that the answer given to the same question in the application form for an 'Extension to existing outbuilding and its conversion into a single dwelling', dated 18 October 2023², again said that the building was 'vacant'. This was incorrect as the Andrades had by then moved in, albeit only for a matter of days. The agent for both applications, who was not based locally, may have been unaware of the change of circumstances. In any event, however, they made the same reference to the previous residential use of the property in the second application form. I do not find this to be an attempt to conceal the use of the property.
36. I have not been given any further details in respect of the processing of the application, so cannot be sure whether it was visited by Officers at that time. Given that the application was materially different from that which preceded it, including the erection of an extension, it is reasonable to assume that it should have been visited. This would have provided a further opportunity within the 4-year period to act against the breach of planning control.
37. The Council, which has no evidence of its own on the matter, sets out that this 3-month break was significant and breaks the continuous nature of the use.
38. The question to be addressed at this point is whether there was any time during that period when the LPA could not have taken enforcement action against the use of the building as a dwellinghouse. This is a matter to be assessed on a fact and degree basis.
39. The evidence in the Kopers' SoT that, as it was unclear whether he would return, Mr Kuna's belongings stayed in the dwelling. By August of 2023, it had become apparent that he would not and interest was shown in letting the dwelling from R and G Andrade.
40. There is no specific date given for the Kopers' decision that Mr Kuna would not return and that his belongings would be removed. However, it is reasonable to assume they were there for at least a few weeks, so the 3 month period referred to by the Council would on the balance of probability be more like 2 months.
41. Although unoccupied, the period when Mr Kuna was away seeking medical treatment, but might return, did not, to my mind, mean that the use ceased. Had the Council visited the property at this time, as part of an enforcement investigation, his belongings would still have been there, and the use would have been readily apparent.
42. Even had it visited after those belongings had been removed, it would have found a property that was clearly separate from No 11 with an independent access from Woodlands Road. Inside the building it would have found: a fitted kitchen; a fitted bathroom; French doors of a domestic appearance, in what was a bedroom when I visited, that led to the rear garden space; laminate flooring, doors and finishes of an overtly residential nature. The standard and nature of the finishes I refer to is shown in the photograph from 2021. Even if the bed that is in that photograph had been removed following the removal of Mr Kuna's belongings, the nature of the property would have firmly pointed to a residential use.
43. I find that if the Council had inspected the property in the period between Mr Kuna's leaving and the point that the Andrades moved in, it would have found

² Council Reference - 23/01251/FUL

sufficient evidence to take enforcement action, as defined in s171A. From 29 September 2023, towards the end of the 3-month period referred to by the Council, there was also the evidence from the application for the change of use to a holiday let, which acknowledged a residential use of the building.

44. I note that an Inspector, in an appeal from Southall, Middlesex³ found that 4 years continuous use of an outbuilding had not been proven. However, each decision has to be made on its individual merits. In that case, the Inspector said that the Council involved did actually inspect the premises and found that there was “no washroom/WC and no kitchen facilities”, and that it was being used only for sleeping, with the occupants having access to shared bathroom and kitchen facilities in” [the main house]. That is markedly different from the case before me and demonstrates why each decision has to be made on their individual merits.
45. The Council does not challenge the Appellant’s evidence that the Andrades lived in the building until early Autumn 2024, when they were replaced by C and K Ximenes on 20 September 2024. They continued to live there until the time that the Kopers made their SoT in March 2025. I take this to be the case.
46. It is suggested by the Council that, as planning permission was granted for a scheme that showed the outbuilding to be used as a hobby room and garden room, there was “a level of concealment when originally applying” given the use it was then put to. No further evidence to support this contention has been submitted. Despite this claim, I note from the Council’s submissions that, as a result of its investigations, it had “identified that the outbuilding was being used as a site office” in 2018. On the basis of the evidence before me, I conclude that there was no positive deception that might have affected the Council’s ability to take enforcement action at any time during the 4-year period.
47. Overall, on Ground (d), I find that the evidence put forward by the Appellant is, on the balance of probability, sufficiently precise and unambiguous to make the case for the 4-year continuous use of the property as a separate dwellinghouse by the date that the Notice was issued. Therefore, for the above reasons, the Ground (d) case succeeds.

Grounds (f) and (g)

48. Given the success on Ground (d), there is no need to assess the Appellant’s cases under Grounds (f) and (g).

Conclusion

49. Although the appeals made under grounds (b) and ground (c) fail, I conclude that the appeal should succeed on ground (d). On the date that the notice was issued, no enforcement action could be taken, on the balance of probabilities, in respect of any breach of planning control which may be constituted by the alleged material change of use. The enforcement notice will be quashed.

R Curnow

INSPECTOR

³ PINS Reference APP/A5270/C/21/3279388



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 30 July 2026

by Roy Curnow MA, BSC(Hons) CMS MRTPI

Land adjoining 11 Woodlands Road, Epsom, Surrey, KT18 7HW

Reference: APP/P3610/C/25/3361942

Not to Scale

