



Appeal Decision

Site visit made on 20 July 2026

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 August 2026

Appeal Ref: APP/N5090/C/25/3361156

24 Courthouse Road, London N12 7PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Vishal Navinchandra Pal against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 30 January 2025.
- The breach of planning control as alleged in the notice is *without planning permission, the making of a material change of use of the outbuilding in the rear garden to use as a self-contained dwellinghouse*.
- The requirements of the notice are:
 - 1 Cease the use of the outbuilding as self-contained dwellinghouse.
 - 2 Permanently remove any kitchen unit, sink, cooker and food preparation area from the outbuilding.
- The period for compliance with the requirements are *6 months after this notice effect*.
- The appeal is proceeding on the ground set out in section 174(2)(b) and (f) of the 1990 (as amended).

Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal on ground (b)

2. An appeal on this ground is that the matters alleged in the enforcement notice, have not occurred. To succeed on this ground, the appellants must demonstrate that, on the balance of probability, the matters stated in the notice have not occurred as a matter of fact.
3. The appellant seeks to demonstrate that the change of use of the outbuilding, at the rear of the main property, to a self-contained dwellinghouse has not occurred. The appellant contends when he purchased the property, in December 2024, the outbuilding had been erected and contained a newly refurbished kitchen area and shower room with a separate room to the main living area. However, the outbuilding was vacant, and the appellant alleges that it has never been used as a self-contained dwellinghouse.
4. The appellant has submitted two Statutory Declarations (SD) which also state that the outbuilding has not been used as a self-contained dwellinghouse. The SDs from the appellant and his wife, indicate that since purchasing the property the outbuilding has been used exclusively for storage associated with the main house. Nevertheless, the appellant has indicated that he would like to retain the outbuilding as is, for his children's independence as they grow up.
5. From the information submitted and following my site visit, it does appear that the outbuilding has been vacant and used for storage purposes since the appellant purchased the property. The question therefore is whether the outbuilding was

capable of being used as a dwellinghouse, as a matter of fact and degree, given case law¹. *Beesley* found actual use was not a legally necessary pre-requisite to a material change of use, given that it is possible to find that a change of use can take place before a building is actually used.

6. In *Beesley*, Lord Mance held that ‘too much stress... [has] been placed on the need for “actual use” ...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.’ It is incorrect to regard the commencement of residential use as automatically giving rise to the change of use or, conversely, to conclude that there had not been a change of use because the building was not actively occupied as a dwellinghouse. Actual, attempted or intended use remain the key factors.
7. *Gravesham*² is the lead case on defining a “dwelling.” The Gravesham case found the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it, the facilities required for a day to day private domestic existence.
8. From the evidence before me, the outbuilding has all the facilities required for day to day living, thus capable of being occupied as a self-contained dwelling. The sales³ particulars submitted with the appeal highlight that the outbuilding has been developed for independent accommodation. The details clearly show a “self-contained summer house” with shower and washing facilities, a kitchen/reception room with cooker, sink and hob along with a separate room capable of accommodating a bed. Thus, in this respect the outbuilding would meet the Gravesham test, as a dwellinghouse.
9. Furthermore, whilst located at the rear of the garden at the main property, there is a gate allowing pedestrian access to the outbuilding separately from the main property. This would lend further credence to its use as a separate independent dwelling.
10. Overall, on the balance of probability the matters alleged in the notice, namely “a material change of use of the outbuilding in the rear garden to use as a self-contained dwellinghouse” has occurred as a matter of fact. Therefore, I must conclude on the evidence before me that the breach has occurred and so the appeal under ground (b) must fail.

Appeal on ground (f)

11. This ground is that the requirements of the enforcement notice exceed what are necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. Having regard to the requirements, it is clear that the purpose of this notice is to remedy the breach of planning control, i.e. the cessation of the use as a self-contained dwellinghouse. However, the appellant considers lesser steps could be taken which would still remedy the breach of planning control.
12. The appellant contends that the enforcement notice could be varied to delete the second requirement to remove the kitchen unit, sink, cooker and food preparation area from the outbuilding. The appellant contends this would retain the building for incidental purposes associated with the main property. Pursuant to section 176 of

¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

³ Exhibits 1, 2 and 3 of the Appellants Statement of Case

the 1990 Act (as amended), I have the power to vary the terms of the enforcement notice provided I am satisfied there will be no injustice to either party.

13. The enforcement notice is made under section 171A(1)(a) in respect to the material change of use of the outbuilding to self-contained living accommodation. Whilst the deletion of the second requirement would be at less cost and disruption to the appellant, this would not achieve the purpose of the notice. The cessation of its use as self-contained living accommodation would necessitate the removal of the kitchen facilities at the very least, to remedy the breach of planning control that has occurred. Therefore, in this particular case it is not open to me to vary the notice in accordance with section 176(1)(b), since injustice could be caused to the Council were I to do so.
14. Overall, the steps set out in the enforcement notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the land to its condition prior to the breach taking place.
15. Consequently, the ground (f) appeal also fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Robert Naylor

INSPECTOR