Planning Inspectorate

Appeal Decision

Inquiry held on 14 July 2026

Site visit made on 14 July 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2026

Appeal Ref: APP/A5270/C/26/3378189
Land at 25 Scorton Avenue, Perivale UB6 8LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Cyryl Motyka against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 30 January 2026.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land to the rear of the premises to separate residential use.
- The requirements of the notice are to:
  A. Cease the use of the land for separate residential use;
  B. Remove from the outbuilding currently on the land the kitchen and all associated drainage connections which facilitate the use of the land for separate residential use;
  C. Remove from the outbuilding currently on the land the bathroom and all associated drainage connections which facilitate the use of the land for separate residential use;
  D. Remove from the land all resulting materials, debris and rubbish.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeal is proceeding on the ground[s] set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is allowed and the enforcement notice is corrected and quashed.

Preliminary Matters

1. All factual evidence given at the inquiry was given under oath. A round table discussion was also held where submissions were made and technical, rather than factual questions were asked and answered by the parties.

The Notice

2. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. I have drawn to the parties' attention the powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act). These include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.

3. The description of the land to which the notice relates is defined in part 2, and includes the 'Premises known as 25 Scorton Avenue, Perivale, UB6 8LA as shown edged bold black' on the plan attached to the notice. The description also includes 'and the approximate position of the unauthorised development marked with an 'X'

on the attached plan'. The parties agree that the 'X' identifies the existing building to the rear (west) of the plot, which includes a slight overhang to its front, hence the reason for the 'X' extending slightly over the building's annotation on the plan.

4. Part 2 of the notice identifies two parcels of land. I acknowledge that one parcel is within the other. Nevertheless, this results in a degree of ambiguity in the notice. In addition to this, I consider there to be some imprecision in the notice regarding the location of the breach described in part 3. It refers to a 'material change of use of the land to the rear of the premises', without any reference to the extent of land affected by the breach.

5. The parties agree that the land affected by the notice is the whole of the No 25 plot, but that the breach of planning control is located on the part of the appeal site occupied by the existing building to the rear. The notice could, therefore, be corrected to specify both more precisely, moving the reference to the 'X' annotation from part 2 and including it in part 3. Mindful of the agreement between the parties regarding what the notice alleges, I am satisfied that no injustice would be caused in making such a correction.

Ground (b)

6. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. What is alleged is a material change of use to a separate residential use. The statement of common ground confirms that there is no dispute that this material change of use has occurred and that what has resulted from this is the creation of a new planning unit on the appeal site[1]. What is between the parties is whether the notice accurately describes the matter that is the subject of the material change of use; i.e. whether a material change of use of land or a material change of use of a building has occurred. This disputed point is material to the parties' respective cases on the ground (d) appeal. This is because section 171B (2)[2] of the 1990 Act imposes a different time limit for the change of use of any building to use as a single dwelling house (4 years), compared with the time limit of 10 years imposed by section 171B(3) relevant to any other breach of planning control.

7. Whilst the appellant suggests that the breach of planning control alleged in the notice is 'a completely different allegation' to the breach that he says has occurred, I cannot agree. Section 336 of the 1990 Act informs that "land" means 'any corporeal hereditament, including a building'. This means that, for the purposes of section 336, the building on the land that is the subject of part 3 of the notice (once corrected as I intend) forms part of the statutory concept of the land that is the subject of the material change of use. For this reason, despite the Council's acknowledgement that the separate residential use takes place within the building on the land, it must also be the case that the separate residential use takes place on the land.

8. The appellant says that 'the land underneath the outbuilding was already in a residential use (as part of No.25's Planning unit)'. I do not disagree with this. However, what is alleged is a change to a **separate** residential use. The residential

[1] In accordance with *Wakelin v SSE and another* (1983) 46 P&CR 214.
[2] Having regard to section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

use of the land is now separate to the residential use taking place on the remainder of No.25. This has brought about a change to the character of the land (which includes the building) that is a material change. I cannot, therefore, find that a material change of use of the land has not occurred.

9. For the reasons given above, I find no fault in the description of the matter that is the subject of the material change of use. I find as such, having regard to the caselaw that has been drawn to my attention, including *Miller-Mead v MHLG* [1963] 2 WLR 225. Accordingly, I conclude the matter alleged in the enforcement notice has occurred and that the appeal on ground (b) should fail.

10. In concluding as I have, I cannot agree that this means that the immunity period specified in part 4 of the notice should be corrected. My findings above do not have any implications for the appellant's case on ground (d), and the matter of the appropriate immunity period is considered under ground (d) below.

Ground (d)

11. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of the breach of planning control that may be constituted by the matters stated in the notice.

12. The main considerations under the ground (d) appeal are:

- Whether the time limit specified in section 171B(2) of the 1990 Act, or that specified in section 171B(3) applies; and
- Whether or not the separate residential use has continued substantially uninterrupted for the relevant period beginning with the date on which the material change of use to the separate residential use took place.

13. The test of the evidence is on the balance of probability, and the burden of proof is on the appellant. I have had regard to the advice at paragraph 006 of the Planning Practice Guidance on Lawful development certificates in my determination of this ground (d) appeal.

Section 171B(2) or 171B(3)

14. It is the appellant's case that the breach of planning control falls within section 171B(2). As such, it is suggested that the existing building on site was substantially completed and first used for storage; that works were then carried out to the building in order to facilitate a material change in its use for separate residential accommodation.

15. The appellant says that he instructed a builder to construct the building in May 2016 and that the building was completed in November 2016. He says that the building was then used for storage. Works to the building were carried out between June and August 2017, including the installation of a kitchen, bathroom, drainage, partitions and insulation. The appellant then says that the use of the building for a separate residential use commenced in August 2017.

16. At the inquiry the appellant explained his reasons for constructing the building with the intention of it being used for storage purposes. It may be unusual for such a building to be constructed to serve a house in multiple occupation (a HMO). However, the appellant occupied the appeal property himself between 2015 and

2018. I do not consider the desire for a storage building to be irrational in these circumstances. The appellant also explained that he wished to add value to the property by erecting the building; that he had previously built a similar outbuilding at the other property he owns.

17. Both the appellant and the builder, Marcin Wolak, described at the inquiry the building as initially constructed. Although the windows, doors, and external finish were as they appear today, they said that the building was constructed without insulation. Internally, they described bare blockwork walls, a solid floor and no internal partition walls. When asked, Mr Wolak said that the building had not be constructed with any water or waste pipes beneath the floor. In the photograph provided at the appellant's appendix A1, dated June 2016, I can see what appears to be the corner of the building where the w.c. and shower room is now located. I can see no water or drainage fittings in this location.

18. The appellant is an electrician, and he confirmed that he completed the electrics for the building. The appellant's evidence suggests that the electrics as originally fitted are not consistent with the current residential use and were fitted with the intention of the use of the building for storage. He said that the building was originally fitted with only four sockets at a high level, which he indicated is appropriate for a storage use. The appellant points to the first fit electrical wiring I can see against the back wall of the building in the above mentioned appendix A1 photograph and in other of the appellant's photographs from June 2016. The length of wiring visible is consistent with the subsequent fitting of a high level socket. Furthermore, I can see that the wiring in the appendix A1 photograph is in the location of the current w.c. and shower room, where the appellant says that there are no electrics at present.

19. The appellant and some of his witnesses describe how they say the building was originally used. The appellant says that he was living at the appeal site at this time and used the building to store such items as garden chairs, household furniture, a barbecue, seasonal clothes and shoes in sealed bags, and 'DIY materials'.

20. Paulina Dobrowolska, a previous tenant of the main property, describes using the building to store travel suitcases, storage boxes and a bicycle. She describes the other items she observed in the building, such as a barbeque, lawn mower, garden items and storage shelving, as well as tool boxes and a concrete mixer. All of this is consistent with the appellant's evidence.

21. A neighbour, Andreas Szabados, also describes entering the building 'on several occasions' between November 2016 and June 2017 to borrow items stored in the building. His recollections of what he saw in the building are consistent with what both the appellant and Paulina Dobrowolska describe.

22. Mr Wolak says that he completed his work on the whole property and left by January 2017. He then says he returned to the property to 'discuss the possibility of converting the outbuilding'. He says that he viewed inside the building at this time and observed such items as suitcases, storage boxes, a bicycle, a lawnmower, all of which is consistent with what the appellant and other witnesses describe.

23. I acknowledge that Andreas Szabados and Paulina Dobrowolska did not give evidence at the inquiry. Nevertheless, I am mindful of the weight that should be attributed to their evidence, it having been provided in the form of a statutory

declaration that carries with it certain sanctions should it contain false or misleading evidence. Furthermore, aside from the suggestion that storage was ad hoc and temporary, the Council does not provide evidence to contradict how the appellant and his witnesses say that the building was used during the period from November 2016 to around June 2017.

24. Both the appellant and Mr Wolak describe in their written and oral evidence the works that were subsequently carried out to the building. Their written evidence suggest the works commenced in June 2017, however at the inquiry Mr Wolak suggested the first fix for water pipes may have been undertaken in May 2017.

25. The works they describe includes the fitting of insulation to the walls and the ceiling of the building. This process is captured in the photograph dated 23 June 2017 at appendix C2, which is attached to Mr Szabados' statutory declaration where he says that he assisted with the works 'to convert the outbuilding into a studio flat' as a labourer. In this photograph I can also see a television box, which suggests that the building was still used for some storage purposes whilst the works described were being undertaken.

26. At the inquiry both the appellant and Mr Wolak said that the building had only initially been supplied with electricity; it had no water supply or waste plumbing. They both describe fitting the building with these plumbing connections during the conversion works. At the inquiry the appellant recalled having to dig into the floor of the building to fit the water and waste connections. He also described having to move the electricity socket from the part of the building now occupied by the w.c. and shower room, as well as moving the position of the existing sockets and fitting additional sockets. I observed the location of some of these sockets at the site visit at skirting board level.

27. Both the appellant and Mr Wolak said that the conversion works were finished with the fitting of the kitchen in August 2017. The appellant has provided documentary evidence[3] to show the dates in August 2017 when bathroom and kitchen fittings for the building were purchased. None of this is disputed by the Council. The appellant says that the building was then first occupied as separate residential accommodation from that time onwards.

28. The Council suggest that the above version of events is contradicted by the appellant's own submissions with the application for a lawful development certificate (LDC), Council reference 254466CPE. The appellant was represented by an agent in this application and says that the application and submissions were prepared by the agent. In the application form, where it asks for the description of the existing use or development for which the LDC is sought, the form is completed to say, 'the construction and use of a garden annexe as a self-contained unit of living accommodation (C3 dwellinghouse)'.

29. In addition to this, the Planning Statement, dated 19 November 2025, that accompanied the LDC application states that the 'C3 residential annexe' was constructed in 2016. There is no reference in this, or any of the statutory declarations submitted with the application, to the construction or use of the building for storage.

[3] The appellant's appendix D.

30. The Council sought clarification on this matter from the appellant's agent in email correspondence, dated 21 January 2026, in which the appellant himself was copied in (the Council's appendix 8). The agent was asked to clarify whether the application form was correct, that the building 'was completed and immediately occupied', and if so, the approximate date the building was completed. The agent responded by saying that 'the building was completed in August 2017' and then that it was 'occupied by the first tenants 14/08/2017'. The Council sought further clarification on 22 January 2026, and the agent agreed with the Council's proposition that 'works to erect the outbuilding commenced 2016' and that the works progressed and the 'outbuilding was later completed in August 2017' in accordance with the plans submitted with the application. The plans show a layout of the building consistent with what I observed at the site visit.

31. The Council has referred to the provisions of section 194 of the 1990 Act regarding offences in relation to LDC applications, and that the agent was appointed by the appellant to submit the LDC application on his behalf. The appellant acknowledges this, but explained at the inquiry that he had little contact with his agent during the above email exchange. He said that his understanding at the time was that all that was required was evidence of 4 years continuous use of the building for a separate residential use. The appellant also points to his email to the Council on 9 February 2026, in which he says that he wishes to 'clarify and update our response we made on the timescales on the facts relating to your emails and questions about completion and occupation of the garden outbuilding'. This email then sets out a version of events that is entirely consistent with what is now claimed by the appellant in this appeal.

32. When asked at the inquiry about his reasons for sending this email, the appellant said that he sent it, having had the opportunity to review the email exchange and having realised that there was some confusion about what had happened. It is also pertinent to note that the appellant's email was sent after having received the enforcement notice a week or so before. I have no doubt that this would have focused his mind on the matters in hand, which would have been the undetermined LDC application. The appellant said that he did not know that the LDC application was to be determined the day he sent his email (the LDC decision notice is also dated 9 February 2026). The Council confirmed that it had received the email from the appellant before the decision on the LDC application was issued.

33. On its face, the LDC application as made, considered together with the agent's email exchange with the Council, contradict what the appellant now claims. As the agent was acting for the appellant in the LDC application, it is unusual for the agent to set out a version of events that was to be later contradicted by the appellant himself. Nevertheless, I attach weight to the circumstances set out by the appellant at the inquiry (evidence given under oath), regarding the lack of contact with his agent during the time of the January 2026 email exchange. In this email exchange, I can see that the agent suggested to the Council that he would clarify matters with the appellant. There is, however, little evidence to indicate that he did so before providing his response of 21 and 27 January 2026.

34. The appellant's subsequent 9 February email might be regarded as that clarification. I would add that the timing of this email is of some significance, given that it was sent to the Council during the determination of the application and, therefore, prior to the appellant having knowledge of the reasons for the refusal of the LDC application.

35. For the above reasons, whilst I do not dispute that the LDC application casts some doubt on the appellant's case in this appeal, it is not sufficient to render the appellant's version of events less than probable.

36. In finding as I have above, I have had regard to other discrepancies in the appellant's evidence suggested by the Council and the Council's suggestion that the appellant is not a credible witness. I consider some of these matters later in this decision. Other of the matters raised I consider to be minor or of little consequence to the pertinent issues in this case. These matters are not of sufficient weight, even when considered together with the evidence relating to the LDC application, to alter my findings above.

37. I now turn to consider whether, even on the appellant's own account of events, what has nevertheless occurred is the erection of a dwelling. It is evident that there would have been little difference in the external appearance of the building when used for either storage (as suggested by the appellant) or as separate residential accommodation. The appellant does not describe making any external alterations to the building when he says the conversion works were undertaken. There is no suggestion that in November 2016, the external appearance of the building was not as I observed it on the site visit. The photograph dated 29 November 2016 at the Council's Appendix 7 is evidence of this.

38. Whilst I acknowledge that the design and external appearance of the building is consistent with a building used for separate residential accommodation, it is also, in my judgement, consistent with that of a domestic storage building. I do not consider it unusual for a domestic storage building to have a design that is more substantial than, say, a domestic shed; or for it to have been fitted with UPVC windows and a solid door. Such a design and features are commonplace in a domestic garage, for example, where it would be reasonable for there to be natural light and a secure means of entry. Whilst I note what the Council suggests with regard to the chosen location of the entry door or the size and location of windows, this does little to persuade me that the design and features of the building are an indication of an intended purpose for residential accommodation from the outset.

39. The evidence indicates that there would have been a substantial difference in the internal condition of the building between its use for storage and its subsequent residential accommodation use. The suggestion from the Council is that the internal condition of the building between November 2016 and May/June 2017 was consistent with a dwelling that was under construction, where the materials used to construct the dwelling were stored within it and any other type of storage was simply 'ad hoc' or of no consequence. Having regard to the appellant's evidence, I cannot agree with this position.

40. I found the appellant's evidence regarding his rationale and intention to erect the building for storage purposes to be persuasive. The location and number of electric sockets demonstrate this. That the building was erected without any water or waste connections also corroborates what the appellant claims with regard to what was erected in November 2016. Whilst the description of the internal condition of the building when used for storage is of a bare and empty room, this is consistent with what I would expect in a domestic storage building. All of this points to a finding that what is more likely than not to have existed at this time would have

been, as a matter of fact and degree, a fully detailed building of a certain character[4]. The character being of a domestic storage building.

41. The evidence of the builder, Mr Wolak, is of the completion of the building in November 2016 and him subsequently leaving the site altogether, to then be recalled to the building to carry out the works of conversion. This is not consistent with the Council's suggestion of an ongoing construction of a dwellinghouse. Neither is the evidence of certain aspects of the building having to effectively be undone in order to provide services to facilitate the use of the building as separate residential accommodation. All of this adds to my conclusion that what was erected and substantially completed by November 2016 was, on the balance of probabilities, a domestic storage building that was used for this intended purpose until at least May 2017. During this time this building would have remained in the same planning unit as the remainder of the appeal property. I say this having particular regard to the evidence of its use for storage by residents of the main property on the site, including the appellant.

42. In reaching this conclusion, I am mindful of the judgment in *Lawson Builders Ltd and others v SSCLG and Wakefield MDC* [2013] EWHC 3368 (Admin), which confirms that where a building is erected and first occupied for the purpose for which it was constructed, no material change of use of the building arises upon that first occupation. However, for the reasons given, I do not find that the building in the case before me was erected as a self-contained dwellinghouse or first used as such.

43. Having regard to the evidence before me, including that of the conversion works carried out to the building between May and August 2017, and the subsequent (undisputed) use of the building as residential accommodation separate to the remainder of the appeal site, I find it more likely than not that a material change of use of an existing building took place in August 2017, which resulted in the creation of a new planning unit at this time on the appeal site. Accordingly, this case is distinguishable from *Lawson Builders*, as the residential occupation of the building in August 2017, or there abouts, was not the first occupation of a building already constructed as a dwelling, but rather the consequence of a preceding conversion from a storage use to a use as separate residential accommodation.

44. For the above reasons, I conclude that the time limits set out in section 171B(2) of the 1990 Act apply to the breach of planning control that has occurred in this case. The appellant must, therefore, demonstrate that the use has continued substantially uninterrupted for a period of 4 years or more beginning with the date on which the material change of use took place.

Continuity of the use

45. There is agreement between the parties that the earliest date at which the separate residential use commenced was August 2017. This is, therefore, the date of the breach for the purposes of section 171B(2).

46. The appellant says that the building was first occupied as a separate residence by Mateusz Orlicki and Marta Rolak from August 2017 to 7 February 2021 and then by Mr and Mrs Mazurek from 7 February 2021 to present. There are some flaws in the documentary evidence that supports the appellant's claim. For example, the

[4] Having regard to *Sage v SSETR & Maidstone BC* [2003] UKHL 22.

photographs dated 31 August 2017 (the appellant's appendix D) show accommodation that is not entirely consistent with accommodation that is occupied and in use. The bed shown in one of the photographs is unmade and the room lacks the personal effects I would expect to see.

47. Whilst I am not persuaded by the appellant's suggestion that the occupants placed the bedding in the cupboard at this time, the accommodation shown is clearly ready to be occupied. Even if Mateusz Orlicki and Marta Rolak had not commenced their occupation of the building when these photographs were taken, I have no reason to doubt that it would have commenced shortly after, particularly as they had signed a tenancy agreement commencing on 14 August 2017 and had, therefore, committed to pay the agreed rent from that date onwards. Although I note that Magdalena Skorupa gives the August 2017 date in her statutory declaration, at the inquiry she said that Mateusz Orlicki and Marta Rolak occupied the main property at No 25 for two or three weeks before moving into the building. This might explain the lack of evidence of occupation in the building on the date the photographs were taken. Notwithstanding this, the Council say that, based on the testimony of Magdalena Skorupa, it accepts that tenants Mateusz Orlicki and Marta Rolak occupied the property from 14 August 2017 to 7 February 2021.

48. There is also a discrepancy in the documentary evidence to support the commencement of Mr and Mrs Mazurek's occupation of the outbuilding. To my mind, it is apparent that a mistake has occurred when the bundle of tenancy agreements at the appellant's appendix H were scanned. The first agreement in the bundle is dated 7 February 2021 but is signed by all parties on 7 February 2022, whereas the second agreement is dated 7 February 2022 but signed by the parties on 2 February 2021. Whilst the Council point to this discrepancy and that the appellant was out of the country on the date of the first agreement, the Council say that, following their appearance at the inquiry, it accepts that it is more likely than not that Mr and Mrs Mazurek have occupied the property since 7 February 2021.

49. There is nothing to indicate that Mateusz Orlicki and Marta Rolak's occupation of the building, or that of Mr and Mrs Mazurek, was not continuous. Indeed, when asked at the inquiry, Mr Mazurek confirmed that he and his wife were only absent from the property during holidays when on leave from work. Any such short absences are not sufficient to interrupt the continuity of their occupation from February 2021 to present.

50. The enforcement notice was issued on 30 January 2026. Having regard to the evidence before me, I find it more likely than not that the separate residential use has continued substantially uninterrupted for a period of 4 years beginning with the date on which the material change of use to the separate residential use took place. For this reason, the ground (d) appeal must succeed.

Conclusion

51. On the balance of probabilities, the appeal on ground (d) should succeed in respect of the matters stated in the enforcement notice as constituting the breach of planning control.

52. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (f) and (g) do not need to be considered.

Formal Decision

53. It is directed that the enforcement notice is corrected by:

- The deletion of the words "and the approximate position of the unauthorised development marked with an ‘X’ on the attached plan"; and
- The deletion of the words "the land to the rear of the premises to" and their substitution with the words "the land occupied by the building shown in the approximate location marked with an ‘X’ on the attached plan to a".

54. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ahsan Ghafoor	Go4 Consulting Limited
Cyryl Motyka	Appellant
Marcin Wolak	Witness for the appellant
Kamila Mazurek	Witness for the appellant
Patryk Mazurek	Witness for the appellant
Magdalena Skorupa	Witness for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Roderick Morton	Ivy Legal

INQUIRY DOCUMENTS

ID1 Undated photographs, some already before me of the building in question.