



Appeal Decision

Site visit made on 18 August 2026

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

an Inspector appointed by the Secretary of State

Decision date: 04 September 2026

Appeal Ref: APP/M1520/C/24/3350293

The Hideaway, 23A Malyon Court Close, Benfleet, Essex SS7 1TX

- 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 Glenn Wilkinson against an enforcement notice issued by Castle Point Borough Council.
- The notice was issued on 16 July 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of an outbuilding on the land for use as independent residential accommodation*.
- The requirements of the notice are:
 - (1) *Cease the use of the building on the land for residential occupation*
 - (2) *Remove the building as indicated with an 'A' on the attached plan from the land including all resultant materials therefrom.*
 - (3) *Reinstate the car parking spaces in accordance with the approved plans and Condition 7 of planning consent 20/0509/FUL*
- The period for compliance with the requirements is *6 months after this notice takes effect*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the 1990 Act (as amended). 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.

Formal Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of requirement (3) in Section 5 of the enforcement notice; and
 - the deletion of six (6) months and its substitution with twelve (12) months as the period for compliance.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

The Enforcement Notice

3. Before considering the grounds of appeal, I have a duty to put the enforcement notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act (as amended) include to correct any defect, error or misdescription in the notice or, under section 176(1)(b), to vary the terms of the notice. In each case, the only test is whether the correction or variation would not cause any injustice to either party.
4. Section 173(1)(b) of the 1990 Act (as amended) states the contents of the enforcement notice should identify which paragraph of section 171A(1), in the opinion of the Council, the breach falls. Section 171A(1)(a) concerns the carrying out of development (operational development or a material change of use) without the requisite planning permission, while section 171A(1)(b) concerns a failure to

comply with a condition or limitation that has been imposed on a planning permission already granted.

5. In this case, there is a reference to section 171A(1)(a) only, with the reasons for issuing the notice relating to the formation of independent living accommodation. This operational development has resulted in the loss of amenity space and also the loss of two car parking spaces. The loss of the car parking spaces is in breach of condition 7 attached to planning permission 20/0509/FUL. The notice is therefore inconsistent with section 173(1)(b).
6. Under section 177(5) of the 1990 Act, where an appeal against a notice is brought on ground (a), the appellant shall be deemed to have made an application for planning permission in respect of the allegation. However, the alleged breach in Section 3 of the notice makes no reference to non-compliance with a condition and therefore the deemed planning application would be for the act of development described, i.e. the erection of an outbuilding on the land for use as independent residential accommodation.
7. It appears to me that the Council is mainly concerned about the operational development, namely the erection of the independent residential accommodation rather than the breach of condition. I therefore propose to correct the notice by deleting the references in the requirements under point (3) of Section 5 of the notice, to the alleged breach of condition 7 of planning permission 20/0509/FUL.
8. I have no reason to conclude that correcting the requirements, specifically point (3) in Section 5 of the notice, would cause injustice to either party, as the enforcement notice would be made more precise but no more onerous in substance for the appellant to comply with.

Preliminary Matters

9. A revised National Planning Policy Framework (the Framework) was published by the Government on 17 August 2026. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the new Framework policies where necessary in this appeal.
10. Since the enforcement notice has been served, the appellant has made minor internal alterations to the outbuilding. At the time of my visit, the unit comprised little more than ancillary storage associated with the main property. A bed had been removed, along with the cooker and hob. Nevertheless, the kitchenette, including a fridge, freezer, washing machine, sink, high specification worktop, and cabinets remain, as does the shower, basin, and w/c. As such, I have based my decision on the development that existed at the time the enforcement notice was served.

Appeal on ground (b)

11. An appeal on this ground is that the matters alleged in the enforcement notice, have not occurred. To succeed on this ground, the appellant must demonstrate that, on the balance of probability, the matters stated in the notice have not occurred as a matter of fact.

12. The appellant does not dispute that the outbuilding has been erected at the site, however they are claiming that the unit has not been used for independent residential accommodation. Moreover, the appellant claims that the unit has been used as an office and music room incidental to the primary residential accommodation at the main property. Nevertheless, the appellant has confirmed that a bed was provided in the outbuilding, however this was for an elderly relative when visiting. 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.
13. 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.
14. The outbuilding contains all the characteristics and facilities associated with independent residential accommodation. *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. At the time the enforcement notice was served, the facilities available within the outbuilding are inconsistent with incidental use for office and recreation, moreover, providing a private domestic existence that would meet the Gravesham test, as a dwellinghouse. Consequently, it is necessary to consider the planning unit and whether an additional planning unit has been created by the outbuilding.
15. From the evidence before me, there is a functional linkage between the host property at 23A Malyon Court Close (The Hideaway) and the outbuilding. Both units share a garden area, and the properties are under the same ownership. However, they are physically separate and distinct, with a wall delineating the properties. I have been presented with no information in respect to whether utilities such as electricity, gas and water are shared or are separate. Furthermore, whilst both units have a shared gate, they can be independently accessed. Whilst minor facilities could be shared, based on the information before me I would conclude a new planning unit has been created.
16. The appellant alleges that the outbuilding would benefit as "permitted development" (PD) as contained under Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, they have not submitted a ground (c) appeal in that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. Nevertheless, I have found above that the outbuilding would not represent a building that was incidental to the enjoyment of the dwellinghouse, given that it was constructed for use as independent residential accommodation in its own right. Consequently, it is not considered as PD.

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

17. Overall, on the balance of probability the matters alleged in the notice, namely the *“erection of an outbuilding on the land for use as independent residential accommodation”* 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 (a), the deemed planning application

Main issues

18. A ground (a) appeal is that planning permission should be granted for the matters alleged in the enforcement notice, in whole or in part. Consequently, the deemed planning application is for the erection of an outbuilding on the land for use as independent residential accommodation at The Hideaway, 23A Malyon Court Close, Benfleet, Essex SS7 1TX.
19. Therefore, the main issues in this appeal are the effect of the development on:
- The living conditions of existing residents; and
 - Parking standards.

Reasons

Living conditions of existing residents

20. RDG6 of the Castle Point Borough Council – Residential Design Guidance Supplementary Planning Document (SPD) adopted January 2013 states that amenity space should cater for all the outdoor needs of all occupiers. It must be a useable shape, provide safe and provide convenient access for all. RDG6 further requires all residential development involving individual dwellings to be provided with at least 15m² of amenity space per habitable room. Where three or less habitable rooms are provided the minimum amenity space should be 50m².
21. As part of the approved scheme³ the amenity space provided by the host property was 93m² which exceeded the requirement under RDG6 of the SPD. The provision of the outbuilding for use as an independent residential accommodation would be required to provide amenity space of 50m² at the very minimum. Furthermore, the provision of the outbuilding would also impinge on the existing 93m² provided for the host property. Whilst the modest outbuilding may be occupied by a single person or childless or older couples, who may not wish to have a large garden, the proposal is still required to provide a good standard of accommodation for all potential future occupiers.
22. The external amenity space for both properties would amount to the modest area at the front of the host building only, interspersed between the access route and car parking spaces. This area of amenity space is significantly less than the SPD requirements and provides limited space for tables and chairs and other domestic paraphernalia. Consequently, it is considered that the amenity space would not meet with the requirements of RDG6 of the SPD and would provide poor living conditions. This would also conflict with policy DP3(2) of the Framework which also seeks to create well-designed places.

³ Castle Point Borough Council Planning Ref: 20/0509/FUL

Parking standards

23. Similarly, the location of the outbuilding would occupy the space designated for car parking as part of the approved scheme. The approved scheme required the provision of two off-street parking spaces and was subject to a condition to secure these. The Essex County Council Parking Standards, adopted September 2009, requires 2+ bedroom properties to provide 2 car parking spaces as a minimum standard, with a 1 bedroom property required to provide a minimum of 1 space per dwelling. Thus, three off-street spaces are required at the site.
24. I would acknowledge from the information supplied by the appellant, in the form of the existing site plan⁴ and vehicle tracked plan⁵ and following my site visit that two off-street parking spaces could be accommodated at the site. However, I have been presented with little information in respect to the provision of the additionally required car parking space, to provide three spaces. Nor whether the cars using these spaces could access or exit the site in forward gear.
25. Given there is little evidence before me to clarify that there is availability of sufficient car parking spaces, the scheme would be contrary to policy T8 of the Castle Point Borough Council Local Plan, adopted November 1998. This requires development to meet with car parking standards as set out by Essex County Council Parking Standards, which amongst other things, seeks to promote sustainable transport choices, and ultimately reduce the need to travel.

Fallback

26. The appellant refers to a potential fallback position, specifically that an outbuilding could be constructed as PD within the relevant section of the GPDO. The parties dispute that the current outbuilding sits forward of a wall forming the principal elevation of the original dwellinghouse. It is therefore imperative to first establish which elevation would constitute the 'principal elevation' of the 'original dwellinghouse.'
27. The "Permitted development rights for householders" - Technical Guidance (TG) dated September 2019 assists in the interpretation of these terms. The TG highlights that usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. The TG further indicates where the principal elevation comprises more than one wall facing in the same direction, all such walls will form part of the principal elevation and the line for determining what constitutes 'extends beyond a wall' will follow these walls.
28. It is acknowledged that the host property is 'L-shaped' and thus contains a front door that is set back from the protruding wing. Whilst the provision of a front door would be considered the principal elevation, so would the wing. From the information before me the outbuilding has been set back from the protruding wing, which in accordance with the TG would be considered PD. As such I accept that a fallback position is available and a material consideration in the assessment of the proposal.
29. However, for significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or less harmful than the appeal scheme. I have not been presented with a

⁴ Drawing number 23.7912/E101

⁵ Drawing number 23.7912/E102

Lawful Development Certificate (LDC) or alike for an alternative proposal. Any scheme would need to be set back from the principal elevation and would need to be significantly smaller, to retain suitable amenity space and to provide the requisite car parking spaces. Furthermore, it would need to provide facilities that were incidental to the enjoyment of the dwellinghouse. Given I have not been presented with this information, I give this fallback position only limited weight.

Conclusion on ground (a), the deemed planning application

30. The lack of clarity on the effects of the proposal on parking impacts, coupled with the harm resulting to the living conditions of existing residents in respect to lack of amenity space, weigh against the proposal. Consequently, the proposed development conflicts with the development plan when taken as a whole, and the Framework, and there are no material considerations, either individually or in combination, which outweighs the identified harm and associated development plan conflict.
31. For these reasons I conclude that the ground (a) appeal should be dismissed.

Appeal on ground (f)

32. An appeal on ground (f) is whether the requirement is excessive to achieve the purpose of the notice. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.
33. The requirements of the corrected notice are clear, to remove the unauthorised development and restore the appeal site to its state prior to the breach taking place. Consequently, I am satisfied, that the purpose of the corrected notice is to remedy the breach of planning control as set out under section 173(4)(a) of the 1990 Act (as amended).
34. The appellant contends that the enforcement notice could be varied to remove a section of the outbuilding, but could still retain the building for incidental purposes associated with the enjoyment of the main property, which could be considered as PD. Pursuant to section 176 of 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.
35. The enforcement notice is made under section 171A(1)(a) in respect to the operational development for the erection of an outbuilding on the land for use as independent residential accommodation. The erection of the outbuilding and the use for self-contained living accommodation has been undertaken as one distinct operation. Thus, taken as a whole the works do not benefit from planning permission. This draws parallels with caselaw⁶ which established if a development exceeds PD limits, the whole development is unauthorised.
36. I acknowledge that alterations to the outbuilding could make it smaller and would provide an alternative scheme with less cost and disruption to the appellant than

⁶ *Garland v MHLG* [1968] 20 P&CR 93

the requirements stated in the notice. However, this would not achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred, as the outbuilding would remain at the site. Therefore, it is not open to me to vary the notice in accordance with section 176(1)(b), since injustice would likely be caused to the Council were I to do so.

37. 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.
38. Consequently, the ground (f) appeal also fails.

Appeal on ground (g)

39. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act (as amended) falls short of what should reasonably be allowed.
40. The appellant highlights that the six month period is too short to undertake the necessary works as stated in the enforcement notice. The appellant also highlights that they are frequently out of the country on business, and they request a further six months (twelve in total) to source reputable contractors to carry out the works and remedy the breach. The Council has conceded that twelve months would be a reasonable timeframe.
41. I would concur with the parties that an increase of six months to twelve for compliance, would give ample time for the appellant to make the arrangements and carry out the remedial works. Furthermore, the twelve month timeframe would strike an appropriate balance between the remedial rather than punitive requirements of the enforcement notice whilst also maintaining public confidence in the planning system. I will therefore vary the enforcement notice accordingly.
42. To that extent, the appeal succeeds on ground (g).

Overall Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed, and the enforcement notice is upheld with a correction and a variation.

Robert Naylor

INSPECTOR