



Appeal Decisions

Site visit made on 22 September 2026

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th October 2026

Appeal A Ref: APP/M5450/C/25/3362349

Appeal B Ref: APP/M5450/C/25/3362350

Land at 223 Burnt Oak Broadway, Edgware, HA8 5EG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Tushar Unalkat (Appeal A) and Mr Jay Unalkat (Appeal B) against an enforcement notice issued by the Council of the London Borough of Harrow.
- The notice was issued on 11 February 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a single-family dwellinghouse to three residential units including the construction of an outbuilding used to accommodate the third residential unit ('Unauthorised Development').
- The requirements of the notice are to:
 1. Cease the use of the Land as flats.
 2. Remove all kitchens except (1) one located on the ground floor level of the main house.
 3. Remove all bathrooms except (2) two from the Land.
 4. Remove all internal partitions from the main dwellinghouse that facilitates the Unauthorised Development.
 5. Demolish the outbuilding located at the extreme rear of the Land.
 6. Remove from the Land all materials and debris resulting from compliance with the above requirements of the notice.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeals are allowed and the enforcement notice is quashed.

Applications for costs

1. Applications for costs were made by Mr Tushar Unalkat and Mr Jay Unalkat against the Council of the London Borough of Harrow, and by the Council of the London Borough of Harrow against Mr Tushar Unalkat and Mr Jay Unalkat. These applications are the subject of a separate Decision.

Preliminary Matters

2. The appellants' initial grounds of appeal did not refer to a ground (d) appeal: that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. Although they have subsequently referred to a ground (d) appeal, the appellants' arguments on this ground appear more relevant to ground (b), which is that the matters stated in the notice have not occurred. I shall therefore deal with those arguments under the ground (b) appeals.
3. I note that the appellants have referred to the timing and proportionality of the notice and the Council's handling of the case, including a lack of engagement and inconsistency in the advice provided, together with the effect that this has had on

their health and wellbeing. However, these are matters for the Council and do not render the notice invalid.

The appeals on ground (e)

4. An appeal on ground (e) is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). In a ground (e) appeal the burden of proof is firmly on the appellant and the test is the balance of probability.
5. Section 172(2) of the 1990 Act requires the notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in that land, being an interest which, in the opinion of the local planning authority, is materially affected by the notice. It is therefore for the local planning authority to decide who is materially affected, but they risk an appeal on ground (e) if they exercise their discretion wrongly.
6. The appellants contend that one of the property co-owners, Mr Jay Unalkat, was not informed of the notice. However, the notice itself and the Certificate of Service indicate that the notice was served on both Mr Tushar Unalkat and Mr Jay Unalkat, together with the occupiers of the three alleged flats. The Council served the notice on all parties it believed to have a material interest in the land, based on information from Land Registry records and its own property databases. The Council states that the notice was served on Mr Tushar Unalkat, and a copy was handed to him addressed to Mr Jay Unalkat, which he accepted. The evidence provided by the Council demonstrates that it took reasonable steps to ascertain those with an interest in the land and served the notice accordingly.
7. The appellants have referred to typographical errors and omissions in the Certificate of Service and the covering letter that accompanied the notice, and to the inclusion of other individuals in the Certificate of Service, who the appellants say are either non-existent or not owners/occupiers of the property. I also note their point that the covering letter incorrectly refers to 221 Burnt Oak Broadway, the adjoining property, which is not affected by the notice. I am satisfied that these errors do not affect the validity of the notice itself.
8. Even if the notice had not been correctly served, section 176 (5) of the 1990 Act provides for disregarding a failure of service where persons do not suffer substantial prejudice as a result. Since both Mr Jay Unalkat and Mr Tushar Unalkat have lodged an appeal against the notice, they have not been substantially prejudiced by any failure of service. There is no suggestion that any other person may have been prejudiced.
9. The appeals on ground (e) therefore fail.

The appeals on ground (b)

10. An appeal on ground (b) is made on the basis that the matters stated in the notice have not occurred. The burden of proof is on the appellants, and the relevant test is the balance of probabilities. The onus is therefore on the appellants to demonstrate that a material change of use from a single dwellinghouse to three residential units did not occur, the relevant date being the date of issue of the notice, 11 February 2025.

11. The appeal site is a two storey terraced property located on the south western side of Burnt Oak Broadway. There is no dispute between the parties that the lawful use of the property is as a single dwellinghouse.
12. The Council says that at the time of its enforcement site visit the property had been laid out as a one bedroom flat on the ground floor of the main dwelling and a two bedroom flat on the first floor, together with a third unit located within the rear outbuilding which the Council says was unoccupied. The outbuilding was granted planning permission in May 2024 under application ref. PL/0408/24. The approved plans indicate that it was to be a garden shed. Condition 6 of the permission specifies that it is to be used for purposes ancillary to the main dwelling and not used, let or sublet as a separate self-contained unit. Details of a subsequent planning application¹ for alterations to the outbuilding have been provided by the appellants, but that is not before me for consideration.
13. In summary, the requirements of the notice are to cease the use as flats, remove kitchens, bathrooms and internal partitions that facilitated the use, demolish the outbuilding and remove all resulting materials and debris from the Land. However, the appellants have set out that, by the time of the notice, there was no breach as the property had always been used as one house and the outbuilding as ancillary accommodation, and the additional kitchens and bathrooms referred to in the requirements of the notice had already been removed. On 30 April 2025, the Council issued a Certificate of Compliance which confirms that, with the exception of step 5 (to demolish the outbuilding), the requirements of the notice have been complied with. In relation to step 5, the Council states that it is not expedient to pursue action in respect of the demolition of the outbuilding.
14. Based on the evidence before me and my observations during the site visit, it appears that, with the exception of step 5, the requirements of the notice have been complied with. Nevertheless, the appeals on ground (b) cannot succeed simply on the basis that the alleged activities have ceased and the facilities removed. This is because section 174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice.
15. The *Impey* case², as confirmed in the *Welwyn-Hatfield* case³, held that a material change of use may take place when physical works are carried out for the proposed use in advance of the activity which constitutes the proposed use occurring. "The physical state of these premises is very important, but it is not decisive. Actual or intended or attempted use is important but not decisive." Therefore, a change of use could take place as a result of the physical works, but as confirmed in *Welwyn-Hatfield* it is necessary "to look at the matter in the round and to ask what use the building has or of what use it is". It is a matter of fact and degree as to when the change of use occurs.
16. The dispute is over whether the material change of use to three dwellinghouses occurred. The judgment of *Gravesham*⁴ established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the

¹ Council Ref. PL/0150/25

² *Impey v SSE and Lake District SPB* [1984] 47 P & CR 157.

³ *Welwyn Hatfield BC v SSCLG and Beesley* [2011] UKSC 15.

⁴ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

facilities required for day-to-day private domestic existence. This is a question of fact and both actual use and the physical characteristics needs to be considered.

17. At the time of the Council's inspection of the property on 8 January 2025 the ground and first floor levels of the main building and the outbuilding had their own kitchens and toilet/shower rooms, as indicated by the photographs provided. The outbuilding could also be accessed independently of the main building via a new door onto the rear alleyway. The kitchen, toilet/shower room and rear entrance door had not been shown on the approved plan for the outbuilding⁵. In addition, internal doors had been installed at the bottom of the staircase in the main building, such that the ground and first floor flats had their own entrances from the hallway. Planning permission was granted under PL/1827/24 for the conversion of the main building to two flats, but the internal layout did not align with the approved plans at the time of the Council's inspection. The appellants say that these were preparatory works pursuant to the planning permission. In any event, given the wording of the allegation, the appeals are concerned with whether development without the required planning permission has occurred, rather than a failure to comply with conditions of a planning permission.
18. At the Council's inspection on 8 January 2025, the evidence indicates that the units contained some of the facilities required for day-to-day private existence behind their own entrance. However, according to the appellants, the kitchen and toilet/shower room facilities had been removed by 21 January 2025. The Council has not disputed this. At the time of my site visit, the outbuilding was used for domestic storage, and I could see that the kitchen and toilet/shower rooms had been removed and the rear door had been blocked up. The separate entrance door to the first floor accommodation in the main building and the separate kitchen facilities had also been removed. Therefore, by the time of the notice and my subsequent site visit, it seems that none of the units, with the exception of the ground floor unit, contained the facilities required for day-to-day living, and the property could not have been described as three residential units.
19. Whilst the presence of separate kitchen and toilet/shower facilities indicates that parts of the property were capable of supporting independent day-to-day living, such facilities do not, by themselves, demonstrate that a material change of use to separate dwellings had occurred. The actual use of the accommodation must also be considered.
20. The appellants acknowledge that there were tenants in the ground floor accommodation which would suggest that the ground floor was used as a flat. However, the appellants also say that the outbuilding was never occupied and the first floor was never rented out as a separate unit. The Council does not appear to dispute this. The Council's photographs indicate that the outbuilding did not contain a bed or furniture, and both the outbuilding and the first floor accommodation appeared to lack belongings. The appellants say that the kitchen appliances in the outbuilding remained unused, with packaging still attached, and this is supported by the Council's photographs which indicate that the kitchen facilities in the outbuilding and the first floor accommodation were unused. The photographs do not indicate any active use of either the outbuilding or the first floor accommodation.

⁵ Drawing Ref. 221-223BOB-02-001-A

21. Whilst council tax bills for the premises have been provided, these do not, on their own, demonstrate actual occupation. There is no evidence before me in the form of tenancy agreements, rent payment records, separate utilities or any independent residential activity associated with the outbuilding and first floor accommodation.
22. The appellants' own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the appellants' version of events less than probable, there is no good reason to find against them. The Council has provided no substantive evidence to demonstrate actual use of the outbuilding or the first floor of the main building as separate units of accommodation. Whilst it is likely that the units did at one time contain some of the facilities necessary to enable them to be used as separate dwellings, it is likely that the facilities had been removed by the date of the notice, and there is no substantive evidence before me to demonstrate any actual use as self-contained dwellings separate from the remainder of the appeal property. It is more likely that the appeal site was still used as a single dwelling. An outbuilding has been constructed but, on the basis of the evidence before me, its use is ancillary to the main dwelling, and such use had been permitted under application PL/0408/24.
23. As a matter of fact and degree and on the balance of probabilities, I find that the alleged material change of use to three residential units including the construction of an outbuilding used to accommodate the third residential unit, has not occurred. Accordingly, the appeals on ground (b) succeed.

Conclusion

24. For the reasons given above, I conclude that the appeals should succeed on ground (b), and the enforcement notice will be quashed. In these circumstances, the appeals on grounds (c), (f) and (g) do not fall to be considered.

Formal Decision

25. The appeals are allowed, and the enforcement notice is quashed.

M Ollerenshaw

INSPECTOR