



Appeal Decision

Site visit made on 29 September 2026

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 15th October 2026

Appeal Ref: APP/D1590/C/24/3349739

Rear of 12 Pavilion Drive, Leigh-on-Sea, Essex SS9 3JR shown edged in bold black on the location plan attached to the notice at Annex B

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Darren Hawkins against an enforcement notice issued by Southend-On-Sea City Council on 16 July 2024.
 - The breach of planning control as alleged in the notice is: Material change of use from ancillary outbuilding to a self-contained dwellinghouse (Use Class C3).
 - The requirements of the notice are to:
 - a. Cease the use of the ground floor part of the building as a self-contained dwelling (Use Class C3); and
 - b. Remove from the building all residential fixtures and fittings which facilitate the use including but not limited to:
 - i. Shower/bath tab and/or any other item which can be used for washing (showering or bathing); and
 - ii. Oven and/or hob and/or any other item which can be used for cooking; and
 - iii. Fridge and/or freezer or other items which allows the storage of food; and
 - iv. Clothes washing and/or drying equipment; and
 - v. Beds and/or sofa/beds and/or other items which can be used for sleeping.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Ground (d)

2. For success on this ground, the appellant must demonstrate on the balance of probabilities that enforcement action was not possible on the date the notice was issued.
3. Section 171B(2) of the Act provides that, in relation to the breach of planning control in this appeal, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. Since the notice was issued on 16 July 2024, the relevant date for immunity is 16 July 2020.
4. The appeal building appears to date from at least 2017. It is uncontroversial that it contains all the facilities required for day-to-day private domestic existence. The Council's appeal position is that the building was in an ancillary relationship with 12 Pavilion Drive (No 12) up until Mr Stuart Waller took up residence under an assured shorthold tenancy agreement (AST). It says that the tenancy started on 22 November 2020, though it has not produced any such AST in evidence.

5. Conversely, the appellant has submitted a strong suite of evidence that Mr Waller's tenancy of the self-contained residential unit in fact commenced the year before – on 22 November 2019. The AST has been provided showing commencement on that date, as have 4 corroboratory statutory declarations from witnesses (solemnly made as statements of truth before a solicitor) including one from Mr Waller himself. This evidence seems robust and clear¹.
6. The Council has said that the appellant has previously provided inaccurate information (seemingly in relation to earlier applications for Lawful Development Certificates, 'LDCs'). However, the documents to which the Council refer have not been submitted for me to consider. Neither do they form part of the evidence adduced now by the appellant in demonstrating his case. Nevertheless, I accept the explanation given in the appellant's statutory declaration as to why earlier information was inaccurate (and which sets out his personal circumstances when the earlier information was provided).
7. While the Council's statement points to part of the appellant's evidence which suggests that Mr Waller's liability for Council Tax ran from 22 November 2020², Appendix B of the same statement is an Officer Report on LDC application 24/00112/CLE which states that Council Tax records show that Mr Waller was an occupant from November 2019. The AST and statutory declarations evidence Mr Waller's occupation from the same date. I place significant weight on the declarations which are detailed and consistent on the point that, during Mr Waller's occupation (notwithstanding a period in which the home was shared with Connor Hawkins), the building was in use as a self-contained dwelling independent of (and not ancillary to) the use of No 12. ASTs from the tenants following Mr Waller's tenancy also evidence the same ongoing use.
8. Accordingly, I find that sufficiently precise and unambiguous evidence has been submitted overall to demonstrate the appellant's case to the required standard of proof. Given this finding, I do not find it necessary for the appellant to have included any more evidence such as further utility bills.
9. For the above reasons, since the breach of planning control commenced in November 2019, it was too late for the Council to take action when the notice was issued on 16 July 2024. Ground (d) succeeds.

Conclusion

10. Due to success on ground (d), the appeal is allowed and the enforcement notice is quashed.
11. In these circumstances, it is not necessary to consider grounds (f) and (g).

Andrew Walker

INSPECTOR

¹ It is unnecessary for it to be tested under oath by cross-examination at an Inquiry, as suggested by the Council.

² Undated screenshot of a communication from a Council Revenues Officer.