Planning Inspectorate

Appeal Decisions

Site visit made on 27 October 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2026

Appeal A Ref: APP/G5180/C/25/3360315 and Appeal B Ref: APP/G5180/C/25/3360316 Garage at the rear of 5 Leaves Green Crescent, Keston, BR2 6DN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Callum Harwood and Appeal B is made by Mrs Joanne Harwood, against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 14 January 2025.
- The breach of planning control as alleged in the notice is: Without the required planning permission, the material change of use of the land from a use incidental to the enjoyment of the dwellinghouse at 5 Leaves Green Crescent to a separate dwellinghouse.
- The requirements of the notice are to:
  (a) Cease the use of the land as a separate dwellinghouse
  (b) Remove the toilet, shower and hand basin from the building
  (c) Remove all kitchen equipment and the cooker, oven and cooker hood from the building
- The period for compliance with the requirements are:
  For requirement (a): Within 6 months after this notice takes effect
  For requirement (b): Within 7 months after this notice takes effect
  For requirement (c): Within 7 months after this notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision Appeals A and B: The enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Background and Procedural Matters

1. The appellants state that the address on the notice should be land at the back of 4 Leaves Green Crescent. The site forms part of a larger parcel of land spanning the rear of numbers 3 to 8 Leaves Green Crescent but the land shown edged red on the plan attached to the notice only includes the former garage building, the parking and turning space directly in front of it and the vehicular access drive to it from Ashmore Lane. I understand that the land has been under the same ownership as 5 Leaves Green Crescent (the appellants home address) since August 2019, and there appears to be no physical sub-division between the site and that dwelling. There is also a No.5 on the rear access gate leading to the building in question. Therefore, whilst I note that the land was previously granted planning permission for use as residential garden, presumably in connection with No.4, and that the address on the title deeds reflect that, I am satisfied that the notice and plan adequately describe the land in question.

2. An unaccompanied site visit was undertaken, and I was able to view the building in question from the adjacent public byway. An internal inspection of the building was unnecessary as this would not tell me when any material change of use (mcu) to a dwellinghouse occurred or whether there had been any interruption of that use since.

3. The appellants have not appealed on grounds b or c, that the breach of planning control alleged has not occurred, or that what is alleged is not a breach of planning control. As such, I have dealt with the appeal on the basis that the building was in use as a dwellinghouse when the notice was issued.

4. I acknowledge the representations submitted by a neighbour. However, as there is no appeal on ground (a) before me (that planning permission should be granted for the matters stated in the notice) I am unable to consider any planning merits. Any breach of covenants in the title deeds is a separate legal matter falling outside of the planning remit.

The appeals on ground (d)

5. The appeals on ground (d) are made on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Where there has been a breach of planning control consisting of the change of use of any building to a use as a single dwellinghouse, no enforcement action may be taken under Section 171B(2)(a) of the Town and Country Planning Act 1990 (as amended) after the end of the period of four years beginning on the date of the breach, where that breach took place before 25 April 2024.

6. Therefore, to succeed on this legal ground, it would be necessary for the appellants to show that the mcu of the building to a dwellinghouse had continued, without interruption, for a period of four years, before the date on which the notice was issued. The test in this regard is the balance of probabilities, and the burden of proof is on the appellants.

7. It is common ground between the main parties that having regard to Gravesham[1], the building contains all of the necessary facilities to function as a dwelling, namely cooking, washing, toilet and living. Based upon the evidence before me, I have no reason to reach a different view on this matter. However, just because the building is characterised as a dwellinghouse in terms of its facilities, that does not automatically mean that it has been continually used as such.

8. The main issue in dispute is when the alleged breach of planning control occurred and whether it was continuous. The Council states that the use of the building as a dwellinghouse commenced after 15th January 2021, whereas the appellants state that it commenced upon the completion of the garage conversion in 2004.

9. The appellants statement, which is supported by dated photographs, text messages and receipts from the previous owner, advises that the conversion of the garage in 2004 included the installation of new windows and doors, a shower room, and connecting mains water supply and sewerage disposal facilities to the building. Dated photographs also show the installation of a new electric cable in 2018 to facilitate a separate power supply, albeit I have not been provided with any separate electric bills for the appeal building. Nor is there any evidence of any kitchen facilities being present in the building under its previous ownership, or of any residents occupying the premises on a permanent basis, independently of the main house.

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

10. Under its previous ownership, the building was used for computer gaming weekends, and by the previous owner's son during his university breaks, as well as by other guests. Use during university breaks would not constitute a continuous use and I have no details of other guests that stayed, or of the nature and duration of such stays. It therefore seems more likely than not, on the balance of probabilities, that the previous owner used the building as a residential annex for family and friends, for purposes ancillary to No.4, in accordance with the conditions of his planning permission.

11. The Statutory Declaration made by Mr Harwood's father confirms that he and his wife have a permanent home address elsewhere. It is estimated that since August 2019, they have stayed in the property around 20 times per year for varying durations. This would not amount to a continuous and uninterrupted use. Even if each of those 20 stays were a week long, that would be less than half of each year. Mr Harwood's parents have keys to the property and come and go as they wish, helping to maintain the building and its grounds, as well as visiting for family matters and their own enjoyment. They have purchased items to use within the building and the garden, to reduce their reliance upon the need to utilise the main dwelling for taking meals and undertaking laundry. They have also spent their own time and money on improvements and the general upkeep of the site.

12. Although I have been provided with a receipt for a Hoover integrated washing machine, this indicates that the machine was delivered to 5 Leaves Green Crescent in April 2020, to replace a previous machine that was removed. There is no Hoover integrated washing machine shown in the photographs dated August 2021 and the kitchen photographs sent to me on 5th November 2026, show a freestanding Hotpoint washing machine. In any event, the presence of a washing machine does not evidence the continuous use of the building as a dwellinghouse throughout the relevant period. Furthermore, it is clearly stated that Mr Harwood and his wife have a permanent home elsewhere and therefore they do not permanently reside in the appeal building but are frequent visitors. As such, this evidence points towards the building being used as an annex.

13. The Statutory Declaration made by Mr Harwood's brother-in-law confirms that since August 2019, he has used the property on many occasions as he has no UK property himself and usually resides with his parents. The property has everything he needs, provides him with space from his parents and vice versa. He does not pay to use the property where he spends endless hours with family and extended family members. This does not imply a permanent residency and the fact that both Mr Harwood's parents and brother-in-law come and go indicates that the accommodation is frequently available rather than permanently occupied.

14. Dated photographs following the appellants purchase of the land demonstrate that the building has been subject to some renovations and used for residential purposes. They do not demonstrate continuous use as a dwellinghouse occupied independently from the main family house.

15. The building was occupied by a Ukrainian refugee, who I shall refer to as Ms H, for a period of time during 2022/23. I have not been provided with the precise dates or duration of this arrangement. I understand that the appellants would have received monthly thank you payments from the Government for providing this accommodation and that Ms H was not a family member or relative. I am advised that the Council inspected the premises before approving the arrangements,

presumably for safety reasons. I am not in receipt of any inspection details stating whether the accommodation being provided was considered to be a dwellinghouse or residential annex.

16. The Council refer to a telephone interview with Ms H, and an interpreter, in which it is alleged that she confirmed that when staying at the site she had everything she needed including cooking facilities and had no need to use the main house. Whilst the information the Council claims to have received supports both parties' arguments that the building was being used as an independent dwelling at that time, the appellants strongly refute the details of the call. A subsequent written statement from Ms H states during her time living at the site, she had full access to the main house, held her own keys, regularly used shared facilities including the kitchen and that she participated in meals and celebrations with the family who she knew prior to the war.

17. I have not been provided with any documentary evidence of any occupiers paying any rent to stay in the building, of any tenancy agreements, or of any separate council tax or utility bills being paid. I am also advised that the solar panels on the roof of the building in question supply electricity to both the appeal building and the main house, and that there is no separate or dedicated power provision (contrary to the suggestion a separate power supply was installed in 2018), suggesting a single planning unit with shared facilities.

18. The evidence before me demonstrates the use of the building as habitable accommodation by various friends and family of the past and current owners on an intermittent basis, and by Ms H for approximately one year. It confirms the shared use of facilities, including the garden, solar panels, access through the original garden of No.5 and shared meals in the house. It does not demonstrate permanent continuous occupation as a separate dwelling, or as a main place of residence. The application for a separate postal address in December 2024, which was refused, does not indicate a separate dwelling has existed for 4 years.

19. Even if the use of the building by Ms H resulted in a separate residential planning unit being created, as suggested by the allegation set out in the notice, there is no evidence before me that this occurred for a continuous period of four years or more, before the date on which the notice was issued. Although a copy of the notice was served on Ms H the appellants state that she was no longer living in the building at that time.

20. Both parties refer to evidence previously submitted in relation to a Planning Contravention Notice (PCN) but neither have provided me with copies of this. The appellants final comments state that their 2023 PCN response was based on their understanding at the time, that the use of the building was ancillary as it was within the curtilage of the main dwelling, shared services with the main house, and was occupied by friends and family members with whom they had occasional social interaction. However, after undertaking further research of case law and decisions and considering the physical and functional capabilities of the building, the appellants reached the conclusion that the building had been a dwelling since being converted from a garage to habitable space. The evidence before me leads me to the conclusion that the PCN response more accurately reflected the situation.

21. It seems to me, on the balance of probabilities, that the building was used as an annex by family and friends until Ms H, a non-family member with no other UK address, began to reside in it for a more substantial period of time and with perhaps a greater degree of independence from the main dwelling. This change occurred in the 4 years before the notice was issued and was only for a year or thereabouts.

22. I therefore conclude that the use of the building as a separate dwellinghouse has not been continuous and without interruption for the 4 year period necessary to become immune from enforcement action. Consequently, the appeals on ground (d) fail.

The appeals on ground (f)

23. The appeals on ground (f) are made on the basis that the requirements of the notice exceed what is necessary to either (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach.

24. In this case the purpose of the notice is to remedy the breach of planning control, namely the use of the building as a separate dwellinghouse. The notice does not require the building to return to a garage or store, as suggested by the appellants. It can continue to be used for residential purposes provided it is ancillary to the dwelling it is used in connection with. Whilst the planning condition links the use of the building to No.4, it would be open to the appellants to seek to vary this condition should they wish to regularise this.

25. The appeals on ground (f) refer to the Council's reasons for issuing the notice and in turn the planning merits of the allegation. However, in the absence of an appeal on ground (a) I am unable to consider the planning merits, planning policies or any potential fallback position.

26. The garden land and garage building have been used for residential purposes ancillary to the dwellings at 4 or 5 Leaves Green Crescent for a considerable period of time. The Council refer to case law[2] in which it was held that a notice may require the removal of works that were undertaken to enable the unauthorised use. The toilet, shower and hand basin have evidently been present more than twenty years and it seems to me that these were installed to facilitate the use of the building as an ancillary annex rather than to facilitate a mcu to a separate dwellinghouse.

27. The kitchen is very small and contains limited facilities. It is unclear when this was introduced but having regard to the frequent use of the building by friends and family guests over the years, it is more likely than not that it has had facilities for making drinks and snacks for a considerable period of time.

28. I have seen no evidence of the cooker, oven and cooker hood referred to in the notice, which the appellants state have never existed. Whilst it is accepted that a plug in worktop hob has previously and could again easily be added, along with other facilities, the removal of the existing kitchen facilities, namely sink, kettle, toaster, microwave, air fryer, fridge freezer and washing machine, go beyond what is necessary to cease the use of the building as an independent dwellinghouse. As planning permission would not be required to return these items to the building,

[2] *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784,

their removal is unreasonable and the items listed that do not exist cannot be removed.

29. All that is required to remedy the breach of planning control is step (a) cease the use of the building as a separate dwellinghouse. I therefore conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the requirements of the notice and the appeals on ground (f) succeed to this extent only.

Conclusion

30. For the reasons given above, I conclude that the appeals should be dismissed. I shall uphold the enforcement notice subject to variations.

Formal Decisions

31. It is directed that the enforcement notice is varied by deleting requirements (b) and (c) from paragraph 5 of the notice, and by deleting the respective periods for compliance with these at paragraph 6 of the notice.

32. Subject to these variations, the appeals are dismissed, and the enforcement notice is upheld.

R Bartlett

INSPECTOR