



Appeal Decision

Site visit made on 12 May 2025

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 27th May 2025

Appeal Ref: APP/G5750/C/23/3330912

32 Ash Road Stratford London E15 1HL

- 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 “1990 Act”).
- The appeal is made by Mr Hafizur Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 5 September 2023.
- The breach of planning control as alleged is the material change of use to four self-contained flats.
- The requirements of the enforcement notice are to 1) cease the use of the property as self-contained flats, 2) remove all but one kitchen, 3) remove all but one supply of electricity, gas and water, and 4) remove from the site all debris arising from compliance with the above steps.
- The period for compliance with the requirements is 5 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the 1990 Act.
- Ground (a) was initially pleaded but withdrawn. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. It is directed that the enforcement notice be varied by the deletion of the text “five” in section 6, the period of compliance, and the substitution therefor with the text “seven”. Subject to this variation, the enforcement notice is upheld.

Preliminary matters

2. The appellant raises concerns about the requirements of the issued notice. The argument is that the steps required are vague beyond correction. While I will consider whether the requirements are excessive in ground (f), the notice specifies what the recipient needs to do and cannot be under no illusion as to its purpose.
3. The appellant draws attention to appeal decision where the Inspector quashed an enforcement notice on the basis that the requirements were too vague (appeal ref APP/Y5420/C/20/3258728). However, the requirements in that enforcement notice were too imprecise because step 3) stated “Remove any partitions facilitating the use of the property as a HMO” [my emphasis]. I am not surprised at the appointed Inspector’s decision given the use of the word “any”. There is no such requirement in this case, and I do not agree with the submission that this notice is a nullity or is flawed.

Ground (d)

4. The onus of proof is upon the appellant. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant’s version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant’s evidence alone is, on the balance of probability, sufficiently precise and unambiguous. Effectively, the claim is that the alleged development is immune from

enforcement action, due to the passage of time because each flat came into existence in June 2019, which is before the relevant date 5 September 2019, and that each flat has been continuously used as a dwellinghouse thereafter without significant interruption.

5. Both appeal parties seem to place too much emphasis on actual use. The appellant claims each flat was occupied and used from June 2019 and submits tenancy agreements whereas the Council argues officers could not verify any residential use of the flats. For the following reasons, I find that the approach adopted by the appeal parties is flawed.
6. The first question is this: does the evidence precisely and unambiguously show that the building operations involved in the conversion of no. 32 into 4 self-contained flats was substantially completed on or before the relevant date? The appellant needs to show, on the balance of probabilities, each flat was capable of providing separate facilities for cooking, sleeping and washing on or before the relevant date.
7. I am afraid the quantum of the appellant's evidence fails to show the nature of the work involved in the conversion of no. 32 into 4 flats with sufficient degree of precision. I consider that the physical conversion of this modest terraced property probably involved significant building operations and included alterations to an existing rear extension and garden.
8. The rear addition included a stepped infill extension. It has been altered to form one single-storey rear extension. The garden has also been landscaped with patio paving. The scale of the internal and external works required some kind of knowledge and pre-planning. The work is usually done by someone who trades as a builder.
9. Although a snapshot in time, the Council point to Google Earth aerial photography. For example, the 19 July 2013 image shows no. 32 with a rear single-storey extension including an infill element and a landscaped garden. That layout is shown in the image dated 29 June 2019. However, the image dated 6 March 2020 shows the infill part of the rear extension had by that time been altered and in-filled to make one large extension. In addition, the grassed garden appears to have been used for storing and preparing building materials, which, given the terraced nature of the property, makes sense. By 30 March 2021, virtually all the rear garden is paved and building material or waste had been cleared. The 5 May 2022 image also shows the appeal property in its current form.
10. Clearly, the Google images only show the exterior: there is no evidence showing the interior physical work. The electrical certificates are insufficient to show the extent and type of conversion work: they only demonstrate compliance with current electrical regulations. There is no plausible explanation as to the sequence and timings of the physical work involved in the conversion nor details showing who did the work, when and how. Invoices for the work or material purchased could have been submitted for consideration, which would have assisted in drawing comparisons. It is therefore difficult to draw any firm conclusions about the nature and scale of the work involved.
11. Taken in the round, in my mind there is significant doubt as to the veracity of the appellant's claim, due to the gaps in the documentary evidence. I find that the quantum of evidence presented does not clearly, unambiguously or precisely show, on the balance of probabilities, that the conversion operations were substantially

completed on or before the relevant date. I cannot draw any firm conclusion that each flat was capable of providing the necessary facilities for day-to-day domestic existence on or before the relevant date. That is the end of the matter, but I have also reviewed the evidence about occupation and use of each flat.

12. The appellant claims that all four self-contained flats came into existence in June 2019, and since then have been continuously occupied. The assertion is that the alleged use is outside of the operative period, and they all benefit from immunity. For the following reasons, I disagree.
13. The critical question is whether the use was continuous throughout the relevant period, not whether the building was continuously fitted out or intended for residential use. Tenancy agreements have been provided, and they cover the relevant period, but these do not necessarily demonstrate use.
14. Additionally, general information like television licensing correspondence or energy performance certificates, is also insufficient to demonstrate continuous use of each flat. Passport details have been submitted with each tenancy agreement but there is nothing showing how each separate planning unit was used. Again, written evidence from each occupier could have assisted in determining the nature and scale of the residential use.
15. There is also some confusion as to the continued use of Flat 2 and communal areas throughout the relevant period. The former is located to the rear of the ground floor and the latter comprises shared hall and stairs. The appellant states Flat 2 was vacant from December 2019 through to February 2020 as renovation works were being carried out to this apartment as well as decorative works to communal parts of the building. The period of this work roughly coincides with the pandemic, and visits made by Council officers in December 2019 and January 2020, but say they had difficulty in accessing the property. Be that as it may, there is nothing before me to show why Flat 2 and communal areas, including the hallway, required significant renovations when the claim is that use as four self-contained flats began some 6 months earlier.
16. Apart from general statements there is no detailed evidence showing the nature of the refurbishment work. The absence of firm evidence or plausible explanation casts doubt over the property's continuous use as four flats without significant interruption.
17. Even if an alternative view prevails and the appellant's evidence demonstrates that each flat was capable of meeting the definition of a dwellinghouse for planning purposes, I find that the evidence presented does not sufficiently show continuous use without significant interruption. Ground (d) must fail.

Ground (f)

18. The notice clearly seeks to remedy the breach of planning controls, but the appellant regards the requirements to be unreasonable. Step 1) requires the cessation of the use as self-contained flats and is clear given that the property has been subdivided into four self-contained flats. Contrary to the appellant's argument, the risk of requiring "use as four flats" to cease is that the building could, potentially, be used for 2, 3 or even 6 flats.

19. Step 2) and 3) simply require the removal of facilitating development, because each flat would require its own independent cooking facility and utilities. Normally, a single dwellinghouse has one kitchen and there is no evidence before me to indicate additional kitchens were installed for some lawful purpose. The appellant is best placed to know which kitchens need to be removed to comply with the notice.
20. As an alternative step, the appellant argues that the requirements should be varied to allow retention of small kitchenettes which could, potentially, be utilised in connection with an alternative use like a home in multiple occupation. Whilst the latter is a matter for the appeal parties to consider, such under-enforcement would not remedy the breach and achieve the purpose behind the notice.
21. Drawing all the above points together, the steps required by the notice are, in my assessment, the minimum necessary to achieve the purpose behind the notice and fall within its scope. They are not onerous or excessive, and ground (f) fails.

Ground (g)

22. The evidence presented does not indicate to me that a 12-month period of compliance is required to serve notices on the tenants and carry out the building work. Tenancy agreements usually allow reasonable period to terminate the contract. Indeed, copies of agreements submitted in support of ground (d) have two months' notice periods. On the other hand, 5 months also feels too short given the nature and scale of the building work required to remedy the breach and allowing tenants sufficient time to find alternative accommodation. In my view, 7 months from the date of my decision is reasonable and ground (g) succeeds to this limited extent.

Overall conclusions

23. I conclude that the appeal against the enforcement notice fails on ground (c) and (d) but succeeds on ground (g) as the period of compliance should be 7 months. I have therefore varied the notice. Subject to this variation, the enforcement notice is upheld.

A U Ghafoor

INSPECTOR