Planning Inspectorate

# Appeal Decision


**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**



**Decision date: 9 JULY 2025**


**Appeal Ref: APP/N5660/X/23/3325192**
**371 Norwood Road, Lambeth, LONDON, SE27 9BQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr G Rasool against the decision of the Council of the London Borough of Lambeth.
- The application ref 22/00954/LDCE, dated 9 March 2022, was refused by notice dated 31 March 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is described as ‘continued use as 4 flats’.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Due to the nature of this case and the supporting evidence and representations made, it was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no objections were received.

3. The appellant submitted new evidence with the appeal which was not before the Council when making its decision. Given that s195(2) of the Town and Country Planning Act 1990 (‘1990 Act’) refers to whether or not the Council’s refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

## Main Issue

4. The main issue is whether the Council’s decision to refuse to grant a certificate of lawful use or development (‘LDC’) was well-founded. This will turn upon whether the existing use described in application documents was lawful as at the date of the LDC application, and the onus is on the appellant to make their case on the balance of probability. Planning merits are not relevant to the determination.

## Reasons

*Legal tests*

5. Section 191(2) of the 1990 Act states that uses are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice

then in force. The point in contention is whether no enforcement action could be taken against the existing use as at the date of the LDC application.

6. The time limits for taking enforcement action are set out in s171B(2) of the 1990 Act[1]. Where there has been a breach involving the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after a period of four years beginning with the date of the breach. The term 'building' in this context includes any part of a building and so this time limit applies to the use of parts of the appeal building as flats.

7. To succeed on this ground, the appellant must demonstrate on the balance of probability that the change of use occurred on or before 9 March 2018 and continued without significant interruption for at least four years after the date of the change. If the Council has no evidence of its own to contradict or otherwise make the appellant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous.

*Assessment*

8. The appeal building is a former storage building which sits to the rear of the property fronting 371 Norwood Road which apparently is in commercial use, with residential accommodation above. Per plans submitted with the LDC application, the appeal building has been divided into four studio flats over four levels with Flat 1 at lower ground floor level, Flat 2 on the ground floor, Flat 3 at first floor and Flat 4 at second floor level.

9. The appellant's evidence essentially comprises copies of tenancy agreements, bank statements, Council tax records, statutory declarations related to the occupancy of Flats 3 and 4, and a 2018 valuation report.

10. Tenancy agreements submitted appearing to relate to Flats 1 to 4 cover tenancies with start dates from February 2007 to December 2018. As the Council outlines, the tenancy agreements provided do not alone on their face cover a continuous four year period. I accept that the absence of a new tenancy agreement could indicate a tenant remaining in situ. It is equally though possible that a tenant vacated the property; the comment in the appellant's Appeal Statement that tenants remained in situ does not offer substantive evidence of this.

11. The tenancy agreements themselves also contain various ambiguities. For example, a tenancy agreement dated 8 February 2007 does not detail which flat this relates to, with the property being let stated only as '371 Norwood Road'. A tenancy agreement dated 12 December 2012 relating to 'Flat 1' states this as being a ground floor property whereas the appellant's plans indicate that this is a lower ground floor/basement flat. Numerous tenancy agreements submitted do not specify whether they relate to flats within the appeal building to the rear of the site, or in the building fronting the road and some are undated, so it is unclear these completed.

12. Bank statements are submitted for two months being August 2016 and December 2019. As the Council outlines, based upon the tenancy agreements and submissions made, in August 2016, Maria Ermelinda Abreu de Adrade was

[1] Amendments to these provisions apply in certain cases from 25 April 2024 per the Levelling-up and Regeneration Act 2023 but are not applicable in this appeal

occupying 'Flat 1 Gr. Floor' with a rent of £600 per month and Rodrigo Vergara Gonzalez was living in Flat 4 paying rent of £800 per month. The bank statement from this time shows payments in the sum of £800 but these do not correspond to the name of the Flat 4 tenant. A deposit is made in the sum of £600 but there is nothing to indicate that this relates to payment made by the Flat 1 tenant.

13. Similarly, in December 2019, based upon the appellant's tenancy agreements, at this time Joao Paolo Aveiro Vasconcelos was living in Flat 1 paying rent of £800pcm, Silvia Maria Dos Santos Coutinho was living in Flat 3 paying £900pcm and Diana Maria Tabares Ramirez and Edinson Cardna Villada were living in Flat 4 paying £850 per month in rent.

14. The December 2019 statement references payments with references 'L Devia Ramirez 415 Flat 1' in the sums of £800 and £900. It is possible that this relates to the then Flat 4 occupant as the name partly corresponds. However, since both payments refer to a property number of 415 and an incorrect Flat number (and given that a payment on the August 2016 statement also makes reference to a property numbered 415), it is probable that it is a coincidence that the tenant name happens to (partly) match that of a Flat 4 occupant.

15. There is also a payment for £900 referenced as 'Mrs Silvia MDS COU Silvia Coutinho'. This appears likely to be a rental payment from the then occupant of Flat 3 in view of the name stated and matching rent amount. There is a payment of £850 made but the name does not correspond with the Flat 4 occupants.

16. Council tax records indicate residential Band B banding of from 1 June 2004 of properties detailed as: 'Flat 1 Lwr Gnd Flr 371, Norwood Road'; 'Flat 2 Gnd Flr r/o 371, Norwood Road'; 'Flat 3 1st r/o 371, Norwood Road'; 'Flat 4 1st Flr front 371, Norwood Road'. Records for 'Flat 5 Pt 1st & 2nd Flr 371 Norwood Road' also show Band C rating from 28 April 2014.

17. Further details related to payment of Council tax include:

a) 'Flat 1 Lwr Gnd Flr 371, Norwood Road': for billing periods over April 2016 to November 2020, payments made from April 2016 to May 2021;

b) 'Flat 3 1st r/o 371, Norwood Road': for billing periods over April 2014 to March 2022, payments made from April 2016 to November 2021;

c) 'Flat 4 1st Flr front 371, Norwood Road': for billing periods over April 2014 to March 2022, payments made from April 2016 to January 2022;

d) 'Flat 2 Ground Floor, Rear of shop at, 371 Norwood Road': Council Tax Credit notice dated 23 December 2021; and

e) 2019 annual bills for 'Flat 1 Basement, rear of shop at, 371 Norwood Road'; Flat 2 Ground Floor, rear of shop at 371 Norwood Road'; 'Flat 3 First Floor, rear of shop at, 371 Norwood Road; Flat 4, second floor, rear of shop at, 371 Norwood Road'.

18. Annual bills only indicate prospective payments over a one-year period. Actual Council tax payments recorded show monthly payment for the most part. However, there are payments missing for a number of months, which are not explained. Further, as the Council points out, it is possible that Council tax was paid without the flats being occupied.

19. A statutory declaration made by Diana Maria Tamares Ramirez (DMTR) of 'Studio Flat 4, 371 Norwood Road' dated 7 July 2022 states that she is a tenant of this property and has 'lived at the property for 4 years'. The Council considers this statutory declaration ambiguous as it doesn't clearly identify whether the flat in question is in the rear appeal building or in the building fronting the street and no plan is attached to the statutory declaration to confirm the position.

20. I acknowledge that the 2018 Valuation Report indicates that the flats within the frontage building were not studio flats. However, Council tax records appeared to reference both 'Flat 4 1st flr front 371 Norwood Road' and also 'Flat 4, Second floor, rear of shop at, 371 Norwood Road'. As such, and given the lack of a plan attached to the statutory declaration, in my view, it remains ambiguous on this.

21. Further ambiguity lies in the period of occupation stated in the statutory declaration. The document is dated 7 July 2022 and it is stated that at that time DMTR had lived there for four years, which would mean she was in occupation from July 2018. This contrasts with DMTR's tenancy agreement which indicates a term starting on 28 December 2018. The lack of detail within the statutory declaration means that there is no explanation for this discrepancy and indeed, nor is there any detail as to whether or not the occupation was continuous (as opposed to this being DMTR's address over the stated period but without continuous actual occupation).

22. A statutory declaration made by Joao Batista de Figueiredo Guimaraes ('JBdFG') of 'Flat 3, 371 Norwood Road' dated 22 July 2022 states that JBdFG is the occupant of Flat 3 and has lived there since 5 October 2013. The Council comments that this does not specify whether the flat referred to is in the appeal building at the rear of the site or the frontage property. I appreciate that Council tax records do not refer to Flat 3 as being in the front building. However, bearing in mind that a submitted tenancy agreement dated 5 October 2016 for 'Flat 3, 371 Norwood Road' indicates Silvia Maria Dos Santos Coutinho as being the tenant of this flat in 2016 (which correlates with the payment in the 2019 bank statement), I consider that there is ambiguity in this regard. As per the Flat 4 statutory declaration, this also contains no detail of the occupation to confirm actual occupation without significant periods of vacancy.

23. As to the 2018 Valuation Report then, this references Flats 1 to 4 as having been occupied as at the date of inspection and photographs appear also to evidence this to some degree. However, this offers evidence only of a snapshot in time and so is due very little weight to point towards probable occupation over a four year period.

24. Drawing all of these matters together, tenancy agreements submitted have numerous gaps of often years between them and while it may be the case that this was because tenants remained in situ, it could equally be that there were gaps between tenancies and/or periods of vacancy even where a tenant did have a lease in place. Council tax records show gaps of months between payments made without explanation for this and the property description for Flat 4 is ambiguous by its reference to the 'front' property. In addition, it is possible that payments were made without a tenant being in situ. Bank statements submitted show only a rental payment for one month that cross references to the name of the tenant occupying Flat 3 in 2019.

25. Statutory declarations submitted are ambiguous both in failing to clearly specify the flat being referred to (i.e. whether this relates to the appeal building or the building

fronting the road), they also lack detail in terms of the nature of the occupation such as to confirm whether actual occupation was continuous. Further, both statutory declarations indicate inconsistency with dates of tenancy agreements submitted as detailed above. The 2018 Valuation Report is only evidence of occupation at a particular point in time and so does very little to indicate continuous use.

**Conclusion**

26. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for 'continued use as 4 flats' is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

*V Bond*

INSPECTOR