



Appeal Decision

Site visit made on 21 May 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/A5270/C/24/3337985

4 Elgar Avenue, Ealing W5 3JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Dhanesh Ladva against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 3 January 2024.
 - The breach of planning control as alleged in the notice is the material change of use of the rear outbuilding and single storey side extension to the main dwelling to use as 3 separate self-contained dwellings.
 - The requirements of the notice are to:
 - A. Cease the use of the rear outbuilding and single storey side extension to the main dwelling as 3 separate self-contained dwellings;
 - B. Remove the kitchens from each of units including all cooking equipment, cupboards, sinks and surfaces;
 - C. Remove the bathrooms from each of the units; and
 - D. Remove all resulting debris, rubbish and materials from the site.
 - The period for compliance with the requirements is three months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The appeal succeeds in part but is otherwise dismissed, the notice is varied and upheld in the terms set out in the formal decision.

Preliminary Matters

1. The appeal site is occupied by a detached two storey building, with a single storey extension to the side (north facing) elevation of the building and a single storey extension to the rear facing elevation. There is also a 'U' shaped single storey outbuilding to the rear of the main two storey building. Whilst the enforcement notice subject of this appeal relates to the whole of the property at 4 Elgar Avenue, the allegation of a material change of use relates only to the rear outbuilding and to the single storey side addition.

Ground (d)

2. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters.
3. In order to succeed on this ground, the appellant must show that on the balance of probability the use of the outbuilding and single storey side extension as three separate self-contained dwellings has continued substantially uninterrupted for a period of four years beginning with the date of the breach. As an alternative to this, the appellant has also made a case within his ground (f) appeal, that the evidence submitted is sufficient to demonstrate that the use of the garden flat

alone was lawful at the time the enforcement notice was issued. I have, therefore, considered this alternative in my determination of this ground (d) appeal.

4. The test of the evidence is the balance of probability and the burden of proof is on the appellant. The appellant has referred to section 191 of The Town and Country Planning Act 1990 as amended (the 1990 Act), which relates to certificates of lawfulness for existing uses or development (LDC). Although this appeal does not relate to an LDC application, section 191(1) of the 1990 Act is relevant to establishing whether or not enforcement action could be taken in respect of a breach of planning control specified in an enforcement notice. Also of relevance is the guidance on the determination of LDC applications. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant'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 to justify the grant of a certificate on the balance of probability.
5. The appellant says that he purchased the appeal property from Dr Meer at the beginning of 2023 at which time he says that the outbuilding and side extension had already been used as three separate self-contained flats. This is consistent with the sales particulars provided by the Council which refer to 3 studio flats in the rear garden. The particulars show that the property was listed in July 2022. The Council say that the three units in question were empty at the time of the listing and the subsequent sale. This appears accurate, noting that the photographs in the sale particulars show rooms that were not occupied. Also, the evidence provided by the appellant indicates that the units were not let between the early part of 2022 and December 2023. The periods specified in the last tenancy agreements for each unit (pre-sale of the property) end in February and March 2022, whereas following the purchase of the property by the appellant, he says that the flats were refurbished and not let until December 2023.
6. In light of the above, the evidence indicates that there is a substantial period of some 21 months between the last use of each unit during Dr Meer's ownership of the appeal site and the first use of the units during the appellant's ownership. Whilst there may be evidence of the use of the units prior to and then after this period, a break in the use of some 21 months is, in my judgement, a substantial interruption to the use. I can, therefore, agree with the Council that enforcement action could not have been taken against the use during this period.
7. However, it does not necessarily follow that the above is fatal to the appellant's case. If it can be demonstrated that the use of the units was, on the balance of probability, lawful within the meaning of section 191(2) of the 1990 Act prior to the period specified above, this substantial break in the use might not mean that the lawfulness of the use would have been lost. There is a difference between an established dwellinghouse, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse, and where there is no established use. Accordingly, I consider whether it has been demonstrated that the use of the outbuilding and single storey side extension as three separate self-contained dwellings had continued substantially uninterrupted for a period of four years prior to early 2022.

8. I start with the date at which the appellant says the breach commenced. Whilst I note the appellant's suggestion that this was in 2013 or 2014, I do not understand that he has any personal knowledge of the site prior to his ownership of it. Nevertheless, the 2013 date corresponds with the date referred to in the letter from the letting agents, Haart (the appellant's document 9). However, this letter relates only to the property described as the 'Ground Floor Flat, 4 Elgar Avenue'. Also, the 2013/2014 date is not consistent with the earlier date given in the statement from the former owner, Dr Meer. The bulk of the evidence provided in corroboration of the appellant's case (primarily tenancy documents and payment details) relates to the period from around 2015 onwards.
9. Notwithstanding the above, where there has been a material change of use of a building to a single dwellinghouse, any four year period after the date of the breach can be relied upon in order to demonstrate the continuity and, therefore, the lawfulness of the use.
10. The appellant says that the letting of the flats has been managed through the same letting agent since 2013/2014. Tenancy documents have been provided for three units from 2015 through to February and March 2022. I note that the bundles of tenancy documents use the same addresses for the properties to which they relate as that used for the units I observed on site. However, there is little in the evidence to demonstrate what facilities might have been comprised in each of the properties these tenancy documents relate to. Indeed, I understand that the units I observed on site have been subject to internal works after the appellant took ownership.
11. The letting agency might well have been best placed to describe what was comprised in the units the appellant says have been let by them since 2013. However, the letting agency's letter (the appellant's document 9) refers only to a 'ground floor flat'. Also, it does not describe what this property comprises; it simply states that the agency has been letting that property between August 2013 and February 2022.
12. Notwithstanding this, the letter's reference to a 'flat' gives some indication of what might have been comprised in the unit it relates to, but the letter refers to a single flat, rather than three that are the subject of this appeal. The sales particulars refer to '3 studio flats' in the rear garden, but this is dated from July 2022.
13. The gas certificates provided by British Gas at the appellant's document 14 provide some assistance. Whilst I have not been advised of what is meant by the 'CHB' reference in the certificates, there is three references to a 'HOB' having been checked in the certificates dated 2018, 2019 and 2020. However, the first certificate, dated December 2017, refers only to an 'outhouse' or 'outbuilding' rather than any description that might fit with the three separate units I observed on site and refers to only a single hob. Also, only two hobs were checked in the 2021 certificate. Furthermore, whether the appliances referred to in every certificate includes on each occasion those within the garden flat, as opposed to any other part of the appeal site, is not clear.
14. Having regard to the above, the evidence is not sufficiently precise and unambiguous in demonstrating what facilities might have been comprised within the buildings in question since the appellant says they were let in 2013/2014.

15. Turning to the tenancy documents themselves, there are some unexplained inconsistencies in these. For example, there is a substantial overlap in the periods of the tenancy agreements signed for the conservatory flat by Mrs Anjeza Murati and Mr Fatjon Gjonaj; Mr Gosala Kulupana and Mrs Chathurika Lakmini Samaradiwakara; and Miss Radina Todorova. It is not clear who is said to have occupied and used this unit during the time the periods overlap. Furthermore, whilst the appellant says that Mr Varughese Sam left this unit before the expiry of the period of his tenancy, he was the subsequent tenant of the unit, along with Ancy Achenkunju.
16. In addition to the above, a number of the tenancy documents are not signed by the landlord or by the tenant and cannot, therefore, be regarded as tenancy agreements. Those that are not signed by the tenant provide little assistance in demonstrating that the person suggested as being a tenant at that time was, indeed, an occupier of the unit in question. These include the tenancy documents for the conservatory flat for the period of July 2016 to June 2017; the ground floor flat during the period May 2015 to May 2016; and the garden flat for the period between February 2016 and February 2017.
17. There are also some gaps between some of the tenancy periods specified in the appellant's list. I do not consider shorter gaps of a week or so to be detrimental to the appellant's case as such gaps are common when there is a change of occupier. However, there are some longer gaps.
18. For the conservatory flat, there is a substantial gap between the tenancy document relating to the July 2016 to July 2017 period and the period of the next tenancy. Whilst the appellant explains that the tenant stayed in the unit beyond the term of the tenancy, the appellant has not provided a signed tenancy agreement for that tenant. Also, the tenancy document for the garden flat relating to the period between February 2016 and February 2017 is not signed and there is no tenancy agreement for this unit for the following period between February 2017 and February 2018. Furthermore, there is no explanation for this.
19. Notwithstanding the above, the tenancy documents alone are not sufficient to demonstrate the continuity of a use. A signed tenancy agreement demonstrates a right of a tenant to occupy the unit to which they relate, but not necessarily that those rights were exercised.
20. A debits and credits table has been provided which refers to each of the units (the appellant's document 8). This shows debits and credits each month for around two years for the property described as the conservatory flat, around a year and a half for that described as the ground floor flat and around 4 years for that described as the garden flat. In the case of the ground floor flat, the period given does not relate to the period referred to in the unsigned tenancy document. Notwithstanding this, for the conservatory flat and the garden flat, I note that this shows monthly credits during the period of the unsigned or absent tenancy documents relating to these units. Indeed, for the garden flat it shows monthly credits for a 4 year period.
21. Nevertheless, the appellant provides little explanation as to how this debits and credits table has been created. In this regard I share the Council's concerns. The appellant says that these are extracts 'from the payment records of the company'. If by this he means the letting agency, they are not referred to in the letter from

Haart. Nevertheless, I cannot agree that these be given no weight in this case. This is evidence that supports the appellant's claims, however the lack of any explanation of their purpose or means of creation limits the weight I can attribute to them. Indeed, document 8 is not a record one might expect from a bank or building society showing the receipt of payments to the letting agency's account.

22. The appellant has provided a letter from the former owner of the property dated April 2023. Dr Meer refers to the three units in question and states that these have been 'rented out continuously for over 12 years'. I also note that Dr Meer indicates that they resided in the main house at the appeal site until recently. I note that this evidence is not in the form of a statutory declaration which carries with it certain sanctions, should it contain false or misleading evidence. I also note that it has not been signed. Whilst it does corroborate the appellant's claims, for the reasons given above I cannot regard it as carrying substantial weight in this case.
23. I note the email from British Gas; the appellant's document 11. Whilst this refers to the supply of gas from May 2012 and electricity from September 2013, this is in relation to an address stated as 4a Elgar Avenue. This might demonstrate a single supply of gas and electricity from these times, separate to that for the main dwelling on the appeal site. This does not, however, corroborate the appellant's claims of the presence from this time of three separate self-contained units with the energy supply to three metres, as shown in the recent photographs (the appellant's document 12). Furthermore, whether this supply relates to the garden flat alone, as opposed to any other part of the appeal site, is not clear.
24. The Council have provided evidence in an attempt to contradict that of the appellant. This includes reference to the Council tax and electoral roll records. I note that the appellant's document 13 demonstrates a record of a council tax rating for the property described as 'Annexe R/O, 4 Elgar Avenue'. However, this relates to a single rating (i.e. a single unit in addition to the main house) and the commencement of the rating is from 2006, some 7 or 8 years prior to when the appellant says the breach commenced. The appellant has provided council tax correspondence relating to the 'garden annexe flat 1', the 'garden annexe flat 2' and the 'annexe flat 3'. These are, however, only recent records (council tax year 24/25); the appellant does not dispute that only until recently have Council tax records existed for all three units. The Council tax records not only fail to corroborate the appellant's claims, but also contradict them with regard to the presence and use of three self-contained units to the rear and side of the main building on the appeal site.
25. As with the Council tax records, there are only two properties recorded at the appeal site in the electoral roll records between 2013 and 2024, provided by the Council. These are referred to as '4 Elgar Avenue' and the 'Annexe, 4 Elgar Avenue'. Notwithstanding that these records refer to only a single annexe, rather than the three units subject of this appeal, I do not find it unusual that these records do not record all tenants of the units in question.
26. However, of the records that refer to some of those who the appellant says resided in the units, some are recorded as property electors at No. 4, rather than within the Annexe. These are some of the most recent tenants of the ground floor flat and conservatory flat prior to the sale of the property to the appellant. Furthermore, some are recorded at both No. 4 and then at the Annexe. As this evidence records only two properties at the appeal site, and records some of the units'

tenants as property electors at No.4, this is evidence that fails to corroborate the appellant's claims and contradicts the appellant's version of events.

27. Having regard to both the council tax and electoral roll records, I am mindful of the appellant's alternative claim with regard to the lawfulness of the use of the garden flat alone. There is, however, a lack of evidence sufficient to demonstrate that the 'Annexe' referred to in both records is to the unit known as the garden flat. Furthermore, and as noted above, the Council tax records for the 'Annexe' commence some 7 or 8 years prior to the date on which the appellant says the use of the garden flat commenced. I cannot, therefore, find it more likely than not that these records relate to the garden flat.
28. Bringing all of the above together, I acknowledge that there is evidence that supports, to a degree, the appellant's case with regard to the three units subject of this appeal. However, the tenancy documents are not sufficient to be relied upon to demonstrate the continuity of the use of the units for a period of four years or more. Furthermore, certain of the tenancy documents have not been signed. Taken as a whole, the evidence is vague in some respects, contains certain inconsistencies, and there are gaps that are not adequately explained. The evidence submitted in an attempt to support the tenancy documents either fails to corroborate the appellant's claims, or does not add sufficient weight in favour of the appellant's case.
29. I have no doubt that the appeal site as a whole has been let in various forms and to various tenants over the period referred to in evidence. Indeed, I note reference to there having been lodgers at the appeal site during Dr Meer's ownership and residency. The appellant's evidence is not, however, sufficiently precise and unambiguous in relation to the breach of planning control in question. It is also contradicted by other evidence, particularly that referred to by the Council.
30. In view of the above, I cannot conclude that, prior to the vacation of the appeal site in early 2022, in preparation for its sale, the use of the outbuilding and single storey side extension as three separate self-contained dwellings had continued substantially uninterrupted for a period of four years, on the balance of probability. Accordingly, I find it more likely than not that the use was not lawful at the time the appeal site, including the three units in question, was vacated in 2022. Even if the use of the three units had commenced at some time prior to this date, the subsequent period during which the units were not in use is a substantial interruption in their use as three separate self-contained dwellings.
31. My findings above are unaltered for the reasons given, even when considering the appellant's alternative case made with regard to the use of the garden flat alone.
32. Accordingly, the use alleged in the enforcement notice was not lawful at the time the enforcement notice was issued and enforcement action could be taken in respect of it at that time. The ground (d) appeal must, therefore, fail.

Ground (f)

33. A ground (f) appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The purpose of the notice is clearly to remedy the breach.

34. The appellant suggests that some of the kitchen units, equipment and a bathroom could remain to serve some other potential use of the buildings. Whilst it may be the case that the buildings in question could be put to some other useful purpose, planning permission might be necessary for some alternative use. I have not been advised that permission has been granted for an alternative use and it is not for me to decide within the remit of this ground (f) appeal whether or not permission ought to be granted. In view of this, I have no reason to alter or remove certain requirements of the notice.
35. Permission may not be necessary for certain internal works within a building. However, in the case of the buildings in question, there is no suggestion that the kitchen units, appliances and bathrooms were installed for any reason other than to facilitate the breach of planning control that is the subject of the enforcement notice. Accordingly, in accordance with section 173(3) and (4) of the 1990 Act an enforcement notice can specify the steps necessary to achieve the purpose of discontinuing the use and restoring the land (or buildings in this case) to their condition before the breach took place.
36. I have considered under the ground (d) appeal the alternative put forward by the appellant, which is that the evidence is sufficient to demonstrate that, at the time the enforcement notice was issued, the use of the garden flat was lawful, on the balance of probability. I have been unable to agree with this element of the appellant's case in my conclusions on ground (d). This means that enforcement action could be taken in respect of the breach of planning control taking place in all three units, including in the garden flat. For this reason, I cannot agree that the requirements exceed what is necessary to remedy the breach.
37. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Ground (g)

38. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of three months from the date it takes effect.
39. In suggesting that a 12 month period would be reasonable, the appellant refers to the notice he would have to give to the existing tenants of the units in order to terminate their tenancy. He also says that further time would be needed to obtain the necessary finances to carry out the works required by the other requirements of the notice.
40. The most recent tenancy agreements provided by the appellant expired in 2025. New tenancy agreements may well have been signed since the deadline for the submission of all evidence in this appeal, meaning that at the time of this decision any existing tenancies would be part way through their term. Nevertheless, the appellant does not indicate what period of notice would be necessary. The Council refer to section 21 of the Housing Act 1988, which allows a landlord to recover possession of a property on the expiry or termination of an assured shorthold tenancy. The Council suggests that the minimum period of notice would

be 2 months. Whilst this is noted, it is necessary for a court to make an order for possession, which would require an application to the courts. I do not understand that such an order would be granted instantly, following the determination of this appeal.

41. It is also reasonable to allow time for the existing tenants to find accommodation elsewhere. Whilst the appellant suggests in his final comments that there is a shortage of this type of accommodation in the area, there is no evidence to substantiate this. Nevertheless, I do consider the three month period specified in the notice insufficient time for the current tenants to be given notice of the termination of their tenancy and for alternative accommodation to be found.
42. Whilst I note the amount owed by the appellant, secured against the appeal site, this alone does not persuade me that the appellant's financial position is such that he does not have the finances to carry out the works required by the notice. Nevertheless, a period of three months is not sufficient for the necessary works to be carried out, following the tenants' vacation of the units.
43. The notice does not require that the units be used for an alternative use. Neither does it require that permission should be obtained for an alternative use. If it did, the notice would exceed what is necessary to remedy the breach. Accordingly, that the period for compliance with the notice does not allow time for such steps to be taken is not unreasonable.
44. I note the Council's comments with regard to granting a longer compliance period, that this would be detrimental to the tenants' access to assistance to find alternative accommodation. However, I cannot regard a three month period for compliance with all of the steps of the notice to be reasonable. Whilst I have no reason to conclude that 9 or 12 months would be reasonable, a 6 month period for compliance would, in my judgment, allow sufficient time for the tenants to be notified of the termination of the tenancy, for them to find accommodation elsewhere, to move from the property and for the appellant to carry out the works necessary to comply with the notice.
45. For these reasons the ground (g) appeal must succeed and I will vary the notice to allow a 6 month period for compliance.

Conclusions

46. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. The appeal on ground (g) succeeds to that extent. Otherwise, the appeal is dismissed. I shall vary the enforcement notice prior to upholding it.

Formal Decision

47. It is directed that the enforcement notice is varied by the deletion of "three months" and its substitution with "six months" as the time for compliance.
48. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR