Planning Inspectorate

Appeal Decision

Inquiry held on 17 and 19 June 2025

Site visit made on 17 June 2025

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 JULY 2025

Appeal Ref: APP/N5090/C/25/3358758
Land at 38 Elmcroft Crescent, London NW11 9SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Garmen Sahakian against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 17 December 2024**.**
- The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey rear extension (as edged in red); the construction of a part first-floor side and part roof and dormer extension (as edged in blue); and the making of a material change of use of the house to use as seven self-contained flats.
- The requirements of the notice are to:
  1. Cease the use of the house as 7no. self-contained flats.
  2. Demolish the single storey rear extension.
  3. Demolish the part first-floor side and part roof and dormer extension.
  4. Restore the property to the state in which it was prior to the breaches of planning control taking place by:
     - i) Removing all but four sets of bathroom facilities (including toilets, showers, baths and sinks) from the house.
     - ii) Removing all but one kitchen facility from the property, the removal to include ovens, hobs, hotplates, extractor units, sinks, work surfaces, kitchen style cupboards, hot and cold-water supply and foul waste drainage pipework.
     - iii) Restoring the rear wall and roof to their pre-existing specifications
     - iv) Restore the front and side of the property (along the boundary with No.40) to the state shown in the attached photo No. 3.
  5. Permanently remove from the site all constituent elements resulting from the work in 1-4 above.
- The period for compliance with the requirements: 8 Months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variations.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.

2. Matters concerning the Enforcement Notice (EN2) were raised in the Case Management Conference (CMC) prior to the Public Inquiry and were discussed before evidence was presented on the ground (d) appeal.

3. The plan referred to in paragraph 2 and attached to EN2 includes the land and main building at 38 Elmcroft Crescent but also includes an outbuilding to the rear. The outbuilding to the rear was included in the allegation of an initial enforcement notice issued on the land (hereafter referred to as EN1) but was omitted from the allegation in EN2 due to evidence showing it to be immune.

4. As the outbuilding was included in the land identified, but was not part of the allegation, the Council proposed to vary the wording of paragraph 2 of EN2 as well as the attached plan to make it clear that the outbuilding was not part of the alleged breach. The Council has amended the plan by overlaying a black edged area over an aerial photograph of the main building and garden and a green-edged area over the outbuilding. The Council has also suggested amending the description of the land to: -

   'Land at 38 Elmcroft Crescent London NW11 9SY, shown edged and coloured black on the attached plan, excluding the outbuilding (which is shown edged in green) (hereinafter called "the Property").'

5. The Inspector's powers to correct EN2 extend to the substitution of the plan. I canvassed the parties on the proposed variation to paragraph 2 and the attached plan to identify the land to which EN2 relates and exclude the outbuilding. From a brief discussion at the Public Inquiry, neither party objected to these variations, nor considered that it would cause injustice to their cases. In my judgement, the varied plan and wording provide more clarity on the land and property where the breach is alleged and can be substituted without causing injustice to either party.

6. Paragraph 2 of EN2 identifies the land to which the Notice relates as "the Property". However, in paragraph 3, EN2 alleges a material change of use of a house to a use described as seven self-contained flats (my emphasis). Although it is generally understood what is meant by 'a house', it was agreed that using the words 'the Property' in the allegation rather than 'house' would be more consistent with paragraph 2, which identifies the land to which EN2 relates. This correction would not alter the nature of the breach or cause any injustice.

7. It was also discussed that the allegation in EN2 would be clearer if it referred to the 'attached photographs XX' when describing the operational development in red and blue. All parties agreed that this was a sensible correction for clarity, and no objections were raised. The corrections to include reference to the photographs attached to EN2 do not alter the nature of the allegation and simply make it clear to the recipient what is being referred to in the allegation. I consider this to be a situation where I can use my powers to correct EN2 without causing injustice.

8. However, I must highlight that when I received the electronic version of the varied plan, I also received alternative photographs with blue and red highlights titled 'Notice Plan 1'. While I appreciate the Council's effort to provide improved photographs, this was not discussed during the Public Inquiry, and the appellant did not have the opportunity to comment. Furthermore, I do not consider it necessary to modify the attached photographs for further clarity. Therefore, I cannot accept the varied photographs as late evidence, and I am referring to the original photographs when referencing them in the corrected allegation.

9. It was confirmed in correspondence before the Public Inquiry that the Council was not simply alleging operational development in the form of the extensions and a

material change of use (MCU) to flats, but also that the MCU to seven flats was facilitated by the unauthorised extensions.

10. In my judgement, the wording of the allegation reads as separate allegations of operational development and an MCU rather than the MCU being facilitated by unauthorised operational development. As such, I made it clear to the parties that the allegation would need to be corrected to make it clearer to the recipients that the Council is alleging the MCU is facilitated by the extensions. Neither party indicated that the correction would cause any injustice to their case. Considering this, the Council suggested the wording of the allegation was corrected to: -

    Without planning permission, the construction of a single storey rear extension (as edged in red on photograph 1); the construction of a part first-floor side and part roof and dormer extension (as edged in blue on photograph 1 and 2); and the making of a material change of use of the Property to seven self-contained flats facilitated by the alleged extensions.' (my emphasis)

11. I have had regard to the suggested correction to include the words 'facilitated by the alleged extensions', and my powers to correct an allegation provided no injustice would be caused. I initially had concerns that the correction could alter the nature of the breach alleged and cause some injustice to the appellant. However, the appellant has consistently maintained that the material change of use to flats occurred before the extensions were constructed. Furthermore, as the extensions already formed part of the allegation as operational development, the requirements did not need to be expanded upon to require the removal of the extensions.

12. Consequently, I am satisfied that the variation would not make the requirements more onerous and the correction to the allegation could be made without causing injustice to the appellant.

13. The appellant has highlighted that in the reasons for issuing the notice, EN2 states 'It appears to the Council that the above breach of planning control has occurred within the last four years.' It was agreed by both parties that as EN2 was served under section 171B(4)(b) of the 1990 Act, reference to the breach occurring within the last four years was an error and a variation would be needed. The Council proposed a variation to the wording by deleting this sentence and substituting it with: -

    'It appears to the Council that the above breach of planning control has occurred within four years of the date of issue of the previous Enforcement Notice ENF/1292/21 on 17 February 2022.'

14. The appellant has not objected to the proposed variation to the words but has made the case in his written submissions that this error has caused injustice to his ground (d) case. The appellant has indicated that when appealing, he took it that he would only need to demonstrate that the use as seven self-contained flats had been continuous, and the extensions substantially completed, 4 years from the issue of EN2 on 17 December 2024, and not from the issue of EN1 on 4 February 2022. The Council expressed that such a change could be made without causing injustice. The Council indicated that the wording in EN2 was a simple drafting error and directed me to correspondence demonstrating that the appellant's agent was aware that the Council were seeking to use section 171B(4)(b) of the 1990 Act.

15. I have had regard to the appellant's concerns over injustice being caused. Notwithstanding the correspondence between the parties indicating EN2 was being

served under section 171B(4)(b) of the 1990 Act, I do not consider that the variation would cause injustice. The drafting error in EN2 did not prevent the appellant from making the ground (d) appeal, and there are no other grounds of appeal that could have otherwise been pleaded if the correct wording had been expressed. The error also does not affect the appellant's case in this instance, which has consistently been that the use occurred more than 4 years before EN1. Furthermore, in a ground (d) appeal the clock does not run back from the date EN2 was issued but runs forward from the date the breach of planning control occurred. Consequently, the error in the drafting should not affect the date the breach of planning control occurred, or the appellant's case pleaded on ground (d). As such, I am satisfied that I can make the variation without causing injustice to the appellant.

16. Lastly, it was discussed with the parties that when alleging a material change of use of a single dwelling to multiple flats it is good practice to be careful with the number of flats when requiring them to cease. I suggested that the first requirement should be varied to require 'the use as self-contained flats to cease' rather than 'the use as 7no. self-contained flats to cease.' The risk of requiring the use of 7 self-contained flats to cease is that you can be compliant with the requirements when using the Property as six or eight flats.

17. This variation would not cause injustice to the appellant and ensures that the breach of planning control is remedied. Both parties agreed to the variation and did not raise any concerns with injustice being caused if I were to vary the requirements in this manner. However, as the matters above are affected by the ground (d) appeal, and to avoid any confusion, I will confirm the corrected and varied wording of EN2 in the Formal Decision.

Preliminary Matters

18. Following the CMC and before the Public Inquiry event, it was indicated that the appellant intended to make a ground (f) appeal. An appeal on this ground asserts that the steps required by EN2 to be taken, or the activities required by EN2 to cease, exceed what is necessary to remedy any breach of planning control.

19. However, based on the submissions made by the appellant, the primary focus was on the potential consequences of a successful outcome, in whole or in part, of the ground (d) appeal. I outlined this to the appellant during the Inquiry and asked if I was misrepresenting his intention regarding the ground (f) appeal. I clarified that it would be my duty to correct or vary the Notice accordingly if he was successful in part on the ground (d) appeal. The ground (f) appeal did not, therefore, need to be considered and the appeal could proceed on grounds (d) and (g) only. The appellant did not express any objections or concerns regarding these points and was content to move forward on those grounds.

20. The in-person Public Inquiry event commenced on 17 June 2025 and lasted for one day. An additional virtual event was held on 19 June 2025 to hear the closing submissions. All oral evidence presented during the Inquiry was given under sworn affirmation. Although all witnesses gave oral evidence on that day, the parties primarily relied on written submissions to deal with the issues of deliberate concealment and whether EN2 addressed the same breach of planning control as alleged in EN1, which was issued on 17 February 2022.

21. Following the in-person event, I conducted an accompanied site visit in the evening to view the premises internally. I inspected all seven units within the building and

assessed the rear garden space externally. The remaining part of the site visit around the area was carried out unaccompanied.

The Appeal on Ground (d)

22. An appeal on this ground is that, at the date on which the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. My consideration of the ground (d) appeal is confined to the matter of the building operations to form a rear extension as well as a first floor side, and a roof extension and dormer as well as a material change of use to seven flats, which were facilitated by the alleged extensions.

23. As a matter of clarification, the wording of section 171B (1) (a) of the 1990 Act has been changed. Section 171B (1) (a) states that the time limit for taking enforcement action on all development in England is 10 years, beginning with the date on which the use commenced. However, the ten-year limit only applies where the date of an alleged material change of use to a dwellinghouse or operational development, was on or after 25 April 2024. From the submissions, it is understood that the alleged material change of use and operational development commenced prior to this date.

24. Consequently, to succeed on ground (d), the appellant must show that on the balance of probability, the material change of use to seven flats had been continuous for a period of four years beginning with the date of the breach. Any 4-year period is relevant, provided the use was established before the issue of the notice and the use had not been abandoned or lost by a supervening event. With building operations, it must be shown that four years have elapsed beginning with the date on which they were substantially completed, before the notice is issued.

25. However, in this case, the matter of the second bite provision relied on by the Council is also in dispute together with matters of deliberate concealment. Both of these issues can affect the immunity of an alleged unauthorised development.

26. In cases such as this, the burden of proof rests with the appellant to make their case on the balance of probability. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous. Having regard to the matters in dispute, the main issues in the ground (d) appeal are as follows:

    - Whether EN2, issued on 4 December 2024 under section 171B(4)(b) of the 1990 Act, was concerned with the same breach of planning control as that alleged in EN1 issued on 17 February 2022.

    - Whether the appellant has taken steps to deliberately conceal the existence of the alleged seven self-contained flats and the unauthorised extensions.

    - Whether or not the relevant enforcement notice was issued after the end of the period of four years beginning with the date on which the alleged operations were substantially completed.

    - Whether the use alleged has been continuous for a period of four years or more without significant interruption beginning with the relevant date of the breach.

Section 171B(4) of the 1990 Act- Second Bite Provision

27. The time for enforcement action by the Council will expire if it fails to issue an enforcement notice within the relevant timeframes specified in sections 171B(1), (2), or (3) of the 1990 Act. If an enforcement notice is withdrawn or quashed, the Council cannot pursue further enforcement action unless it issues a second enforcement notice within the designated time limit established under section 174B(4) of the 1990 Act. This provision is commonly referred to as the 'second bite' provision.

28. In essence, provided the Council issues an enforcement notice regarding a breach of planning control within the appropriate period (4 years in this instance), the second bite provision affords the Council an additional 4-year window to issue another enforcement notice concerning what must be the same breach and at the same location. If the timeframe has expired or the alleged breach has changed, the second bite provision is rendered inapplicable. Should the second bite provision apply, it necessitates consideration of the ground (d) appeal based on the lawfulness of the development at the time EN1 was issued on 17 February 2022.

29. The appellant does not dispute that EN2 was issued within the 4 years following the issuance of EN1. However, the appellant argues that the alleged breach detailed in EN2 differs from that alleged in EN1. The written submissions indicate that EN1 only references a dormer window and does not mention a part first-floor or part roof extension. Consequently, the appellant contends that EN2 introduces new operational development, specifically a first-floor side extension and additional roof and dormer extensions, which were not included in EN1 and thus fall outside the second bite provision.

30. The Council asserts that EN1 was issued concerning the alleged use and extensions as the time for taking action was approaching immunity, necessitating a "stopping of the clock." This approach was intended to prevent the alleged use and operational developments from becoming immune to action, allowing the appellant time to provide evidence in support of his position that the use and extensions were lawful. The Council was also afforded time to review this evidence and assess the expediency of further action. In drafting EN2, the Council considered the evidence provided and decided to omit reference to the outbuilding in the rear while elaborating on the descriptions of the extensions in the upper storey and roof.

31. The parties have cited various case law relating to the second bite provision[1]. Notably, in *Jarmain*, it was determined that the applicability of the second bite provision hinges on the physical reality of the breach and whether the facts forming the basis of the allegation remain consistent. In *Fidler*, the Court found that the enforcement notice in question was not a second bite notice since it encompassed a broader scope of allegations, effectively addressing additional facts rather than providing a more accurate description of previously stated facts. Furthermore, *Lambrou* established that the Courts interpret the concept of ‘purported’ liberally, agreeing that an enforcement notice could still be issued under the second bite provision, even when the first notice was deemed a nullity.

32. The appellant has submitted that the Council might argue that the phrase "dormer window" could reasonably be interpreted as constituting a roof extension. However, he contends that it is essential to recognise that a dormer window is materially distinct

[1] Jarmain v SSETR & Welwyn Hatfield DC [2000] EWCA Civ 126; Fidler v FSS & Reigate and Banstead BC [2004] EWCA Civ 1295 and Lambrou v SSCLG [2013] EWHC 325 (Admin)

from a roof extension. Neither party has provided a formal definition for a dormer window, nor does the 1990 Act offer one. In determining the meaning, I have relied on its ordinary English definition.

33. According to the Collins Dictionary, a 'dormer'—also referred to as a 'dormer window'—is defined as: 1) A vertical window set in a structure that projects outward from a sloping roof; and 2) the entire structure that projects out. In my judgement, the terms 'dormer window' or 'dormer extension' are not materially different. A dormer window could also be typically used to describe a roof extension, when they are the same operational development. Moreover, the written submissions and the evidence provided by the appellant under oath indicate that the part first-floor side extension, part roof extension, and dormer extension were constructed as a single building operation. In fact, the dormer window or extension encompasses the majority of the rear roof plane, which includes the extended roof of the part of the first floor and the roof extension.

34. Therefore, although EN2 provides a more detailed description of the extensions on the site, in my judgement, the Council has taken or purported to take action concerning the same operational development breach in EN2 as it did in EN1. I do not accept that EN2 is broader in scope and targeting additional operational developments; rather, it addresses the same operational elements with a more detailed description than that expressed in EN1.

35. I consider this case to be consistent with the findings in *Jarmain* and *Lambrou*, but distinct from those in *Fidler*. Accordingly, the EN2 falls within the 'second bite' powers available to Councils under section 171B(4)(b) of the Act. The consequences of such are that as part of the ground (d) appeal, the appellant must demonstrate immunity prior to the issuing of EN1 on 17 February 2022.

Deliberate Concealment

36. The leading case on deliberate concealment is *Welwyn Hatfield*[2]. Where there has been deliberate concealment, a person will be precluded from relying on s171B(2) to gain immunity from enforcement action. Though these are not necessary tests in what is a highly fact sensitive question, the following factors would be sufficient to demonstrate deliberate concealment: (i) there has been positive deception in a matter integral to the planning process; (ii) that deception was directly intended to undermine the planning process; (iii) it did undermine that process; and (iv) the wrong-doer would profit from the deception if the normal limitation period were to enable him to resist enforcement.

37. Following *Welwyn Hatfield*, the Localism Act 2011 introduced sections 171BA to 171BC into the 1990 Act, allowing councils to apply for a Planning Enforcement Order (PEO) in cases of deliberate concealment. The Council has not sought a PEO in this case, yet there are allegations of deliberate concealment regarding the change of use of the property. However, *Jackson*[3] confirmed that even without a PEO, local planning authorities can still invoke the *Welwyn principles*. It has also been held that there could be deliberate concealment even where the use could be seen – and it is not necessary for the four matters identified by Welwyn Hatfield to be made out. There is no 'exceptionality' or 'egregious' test to be applied when determining whether there has been deliberate concealment.

[2] Welwyn Hatfield v SSCLG v Beesley [2011] UKSC 15
[3] Jackson v Secretary of State for Communities and Local Government [2015] EWHC 20 Admin

38. The dispute centres on email exchanges from the appellant, indicating potential misrepresentation. Notably, in an email dated 17 November 2021, the appellant claims that the property has been a House in Multiple Occupation (HMO) since 2001. However, a later email dated 14 February 2022, states that the property has contained seven flats since 2015, raising questions about the accuracy of the appellant's statements.

39. The appellant contends that the breach of planning control was not concealed and that the email communication reflects a misunderstanding of the definitions of an HMO and a self-contained flat. The appellant also claims that the Council has been aware of the situation since May 2018 when an earlier enforcement complaint regarding the subdivision of the property into eight bedsits[4] was conducted. The Council chose not to take formal action at that time following approval of a planning application that was submitted to convert the property into three flats[5].

40. The Council acknowledges the potential misunderstanding on the appellant's part and recognises the confusion surrounding the definition of an HMO. This distinction is critical: an HMO is typically defined as a property where multiple tenants share facilities. However, the HMO licence[6] granted by the Council's Licensing Department specifies that buildings entirely converted into self-contained flats that do not comply with building regulations at the time of conversion and are occupied by less than two-thirds owner-occupiers can also be classified as HMOs. The property would, therefore, comply with this interpretation and be regarded as an HMO, despite being subdivided into flats. Given the broader interpretation, it is highly likely that the appellant misunderstood the allegations, and the discrepancies do not appear to stem from a deliberate attempt to misdirect the Council or conceal the breach.

41. Regardless of the appellant's understanding of the terms, it is important to note that the Council conducted an enforcement investigation and considered a planning application before the email exchanges and the issuance of EN1.

42. The appellant indicated on the application form and in the plans for the planning application that the property was a single dwelling. However, the appellant's agent has admitted that this was an error due to his failure to visit the property prior to applying. Nonetheless, a site visit was conducted as part of the planning application process, during which the Council inspected the property and confirmed that it was in multiple occupation. Furthermore, according to the Council's timeline, the extensions would have been completed, and the seven self-contained units would have been arranged by the time of the visit. The appellant did not obstruct the Council from inspecting the property, and there is no evidence to suggest that the Council was prevented from conducting further visits.

43. Overall, based on the evidence presented, I do not find that the appellant's correspondence or actions were intended to undermine the planning process or could be accurately described as deceptive. Therefore, in my judgment, there has been no deliberate concealment of the alleged breaches of planning control.

Operational Development

44. To be immune from enforcement action, it is necessary for the appellant to demonstrate that the operational development was substantially complete at least

[4] Council reference ENF/0644/18
[5] Council reference 19/0751/FUL
[6] Core Document P. 49- Exhibit 1- HMO licence July 2020

four years before the date the notice was issued. In regard to operational development, EN2 is directed at the erection of a single storey rear extension, a part first floor side, part roof and a dormer extension, and the relevant date in this instance is the 17 February 2018.

45. The dispute, and a large part of the cross-examination of the appellant and Council witness, primarily centred on a Google Street View image from April 2018, hereafter referred to as the "2018 Image." The Council argues that this image is crucial because it captures a time when the extensions were being constructed but were not yet substantially completed. To provide context, the 2018 Image was compared with another Google Street View image from August 2014 and from May 2019, hereafter referred to as the "2014 Image" and "2019 Image" respectively. The 2014 Image was taken when all parties agreed that no unauthorised extensions had been erected. In contrast, the 2019 Image depicts the property at a time when the Council acknowledges that the extensions had been substantially completed. The 2014, 2018 and 2019 images all show 38 Elmcroft Crescent from the front. A close-up 2018 image that shows the side of the property was also included[7].

46. The Council states that the 2018 image shows the extensions were not substantially completed two months after the relevant date. Key indicators highlighted by the Council from the 2018 image include the lack of render on the block wall, a window opening with no window, missing gutters, drainage, downpipes, and roof ridge tiles. The later 2019 Image also reveals replacement windows across the entirety of the front, new meter cupboards, vents, and a fourth rooflight window, which would have been carried out after April 2018. The Council has also provided Google Earth images from 7 May 2018 and 29 June 2019 as well as notes from enforcement case files to show the extensions were not substantially complete by 17 February 2018.

47. The appellant contends that the 2018 image and related matters do not demonstrate that the extensions were partially complete at that time. Instead, he has maintained that the 2018 image reflects a period where the property required some repair and maintenance after completion. This work involved replacing the original render, installing a window, and replacing the ceiling plasterboard in unit 3 following completion in January 2018. As part of the appellant's testimony, it was also indicated that the differences between the 2018 Image and the 2019 Image simply reflected his duty as a landlord to maintain his property following completion of the works

48. To support his case, the appellant has submitted four Statutory Declarations (SD), all signed by the author and co-signed by a solicitor in accordance with the Statutory Declarations Act 1835.
    - SD1: By the appellant, dated 5 April 2022.
    - SD2: By Mr Sarkis Mahseredjian, Director of Sacron Developments Limited, dated 24 April 2025.
    - SD3: By Ms Camelia Bonta, tenant and occupier of the self-contained dwelling in the rear garden, dated 24 April 2025.
    - SD4: By Mr Hagop Cherchian, the appellant's father-in-law, dated 20 May 2025.
    - Additionally, there is a letter dated 15 March 2022 from a subcontractor for the main builder. This correspondence is not a sworn declaration.

[7] Reference ID2

49. According to SD1, the extensions to the property commenced in 2017. Specifically, the rear dormer was finished just before Christmas of that year, and the rear single-storey extension was completed in January 2018. In SD2, it is indicated that he was tasked by the appellant to carry out the extensions and to refurbish seven self-contained flats. It states that roof work began in October 2017, with the construction of the rear single-storey extension starting in early December 2017. All the construction work on the building was finished by January 2018. In SD1, it states that the timing of the completed works coincided with a visit from the appellant's mother-in-law, who came to the site on her birthday on 25 January 2018.

50. Furthermore, SD1 indicates that additional work involving re-rendering and replacing a window began in March 2018 but does not indicate a completion date. SD2 confirms he was asked to remove the faulty render and replace it, along with replacing a window and plasterboard. SD2 states that the work to remove the render began in March 2018 and all the work was finished by April 2018. SD3 from the occupier of the outbuilding indicates that she recollects the extensions started being erected in late 2017 and were completed in January 2018. SD4 outlines that he visited the property on the afternoon of his wife's birthday, 25 January 2018, and the extensions were complete on that date. The additional letter from a subcontractor for the main builder also indicates the works were completed by January 2018.

51. I acknowledge that the four SDs and the supporting letter collectively substantiate the appellant's claim that the extensions were substantially complete four years before the issuance of EN1 on 17 February 2022. However, none of the SDs specify precise dates regarding the commencement or completion of the work. I have taken into account that SD1 and SD4 note the appellant's mother-in-law's birthday on 25 January 2018, which is when she viewed the completed work. This provides a date, and it is reasonable to assume that the family would remember her birthday. Nonetheless, neither SD1 nor SD4 offers a clear explanation as to why her birthday held significance or was particularly memorable in 2018. Furthermore, the appellant was unable to elaborate on why his mother-in-law's birthday was notable in 2018 during his oral evidence.

52. I acknowledge that the SDs, along with the appellant's oral testimony, assert that repair and maintenance work explain the property's appearance in the 2018 image. The SDs describe work being carried out, including rendering, a window replacement, and internal plaster boarding within Unit 3 between March and April 2018. Similar to the initial works, SD1 and SD2 does not provide precise dates regarding when this work commenced or was completed. Additionally, certain aspects of the property's appearance in the 2018 image, as well as the aerial photographs from 7 May 2018 and 29 June 2019, contradict the appellant's timeline.

53. Although there is no direct image of the property's rear from 2018, the aerial images yield valuable insights. The aerial image from May 2018, taken shortly after the completion of repairs, shows scaffolding at the rear, with no ground floor extension visible. In contrast, the June 2019 image displays the roof and rear ground floor extensions without any scaffolding present. While the May 2018 aerial does exhibit increased shadowing that obscures neighbouring extensions, this is not the central focus of the appeal nor directly comparable. Indeed, in my judgment, the ground floor extension under consideration is larger and extends further into the garden, making it less likely to be affected by shadowing. Moreover, the concrete path in the appeal garden, which runs from the property to the outbuilding, is visible in the May 2018

aerial up to the location where the extension would be situated, but it terminates at the rear extension in June 2019.

54. I find the differences illustrated by the aerial evidence to be clear, with critical dates spanning the timeline of the appellant's assertions. In my judgement, the May 2018 aerial serves as evidence that the extension works were ongoing after 17 February 2018. This evidence contradicts the appellant's claim that all extensions were complete by January 2018 and that the work at the front pertained solely to repair and maintenance. I have accorded significant weight to the aerial images in this instance.

55. The examination of the 2018 image also reveals features of the property's condition that contradict the appellant's narrative, rendering it less than probable. While I acknowledge that other issues were raised in the Council's submission, I have concentrated on two aspects that I do not consider were sufficiently addressed in the appellant's written or oral evidence. Specifically the incomplete roof tiles and the absence of drainage holes for Units 1 and 2.

56. Based on the evidence presented, the 2018 image shows the main roof and the area above the projecting window as incomplete. Notably, the absence of ridge tiles on the extended main roof and above the bay window is evident. Additionally, the presence of a roof ladder positioned near the incomplete ridge tiles on the projecting bay window roof underscores this point. The appellant contends that the angle of the image may obscure the lack of ridge tiles on the main roof; however, no alternative angles or images have been provided to support this claim. Moreover, even if the angle of the 2018 image obscured views of the main ridge, it does not offer a clear reasoning as to why the roof above the bay window remains incomplete.

57. Furthermore, the appellant suggested that the lack of drainage downpipes and guttering in the 2018 image is a result of their removal before rendering. While this may indeed be plausible, it does not account for the absence of holes that would have been necessary for connecting drainage pipes from the kitchen units. In my judgment, such holes would have been visible in the 2018 image had they been created, regardless of the removal of the render, downpipes, and gutters to facilitate the repair work. The appellant's assertion that these holes might not be visible in the 2018 image does not satisfactorily explain their absence. The lack of these holes in the elevations indicates that the extensions were not substantially complete on that date.

58. I find the evidence provided by the appellant, including his SD and his oral testimony, lacked sufficient detail and was characterised by vague recollections of months when work was started or finished, which in my judgement leads to insufficiently precise assertions. Similarly, while SD2 to SD4 support the appellant's timeline, they too lack specificity regarding the commencement and completion of work and were not tested through cross examination. The appellant's evidence on its own is too vague and imprecise to demonstrate, on a balance of probabilities, that the extensions were substantially complete by 17 February 2022. Furthermore, evidence has been produced, which indicates that the extensions were not substantially complete by 17 February 2022, contradicting the appellant's claims and making his version of events less than probable. As such, the operational development was not immune to enforcement action at the time EN1 was issued.

Use of the Property as Flats

59. The appellant states in his written evidence and oral testimony that he purchased the property in 2001. At that time, the upper floors contained four self-contained units, while the ground floor had three rooms that shared facilities. In 2010, the appellant began upgrading the property to create seven self-contained flats, each with its own bathroom and kitchen. This work was completed by 2011. Since 2013, the property has had eight electricity meters, including one for the outbuilding unit, which is not subject to EN2.

60. The appellant acknowledges that some of the units were very small before the extensions were added, particularly units 1 and 2 on the second floor and unit 6 on the ground floor. I have focused on the evidence presented in the appeal aimed at demonstrating that, prior to the extensions, there were already seven self-contained flats or dwellings within the property. In making this assessment, it is essential to determine whether the units are self-contained dwellings that were continuously used for a period of four years without significant interruption before EN1 was issued.

61. In addition to Mr. Sahakian's written evidence in the form of a Statutory Declaration (SD1) and his oral testimony given under oath, there is supporting evidence included with the appeal to corroborate that the seven units were established before the work to extend the units commenced. I appreciate that there is additional corroboratory evidence in support of the use of the units after the extensions, but in line with the appellant's case and for simplicity I have focused on the evidence, which addresses the use before the extensions. This consists of the following items (my compiled list):

    - Assured Shorthold Tenancy Agreements (AST) for all seven units-
        - Flat 1- dated- 29 June 2011
        - Flat 2- dated- 4 May 2013
        - Flat 3- dated- 23 July 2011 and 12 July 2014
        - Flat 4- dated- 1 September 2009 and 1 June 2015
        - Flat 5- dated- 12 January 2013 and 12 August 2015
        - Flat 6- dated- 1 November 2012 and 4 October 2014
        - Flat 7- dated- 8 December 2011 and 28 November 2015

    - Electricity bills-
        - Flat 1- Electric bill dated 12 September 2014;
        - Flat 2- Electric bill dated 12 September 2014 and 5 April 2017.
        - Flat 3- Electric bills dated 8 May 2013, 3 March 2015, 29 June 2015. and 12 September 2014. December 2014 and December 2018.
        - Flat 4- Electric bills dated 8 May 2014, 12 September 2014

    - Statutory Declarations/Letters/miscellaneous items
        - SD2: By Mr. Sarkis Mahseredjian, Director of Sacron Developments Limited, dated 24 April 2025.
        - SD3: By Ms. Camelia Bonta, tenant and occupier of the self-contained dwelling in the rear garden, dated 24 April 2025.
        - A letter to the tenant of Flat 4 from NHS Barnet, dated 10 February 2011.
        - Letter from a tenant of Flat 4 (2009 to 2015) regarding occupancy and the changes to the ground floor of the property in 2010.
        - Letter from a tenant of Flat 5 (2015 to 2018) regarding occupancy and use of the property.

Self-Contained Flats

62. In making this assessment, it is first essential to determine whether there are indeed distinct dwellings based on factual evidence and specific circumstances. There is no dispute that after the extensions, the property was arranged into seven self-contained flats. Based on my observations on site and the detailed floor plans, the layout comprises two units on the second floor (units 1 and 2), two units on the first floor (units 3 and 4), and three on the ground floor (units 5, 6, and 7). However, the appellant claims that prior to the extensions, the property was already being used as seven self-contained units. While the appellant indicated that the layout remained essentially the same, the extensions were carried out to enlarge them not increase the number.

63. Both SD1 and SD2 confirm that before the extensions the property was subdivided into seven self-contained flats. SD1 states that the self-contained flats each had their own bathroom and kitchen facilities. SD2 describes units as seven small flats, with two very small studio-type flats in the roof space, with glazed type roof lights at the rear to provide light. SD3 simply confirms that the property had been continuously used as multiple flats since she occupied the outbuilding from January 2010. The letter from the tenant of unit 4 (first floor) states that in 2009 when he initially moved into the property, it was being used as four flats, but the ground floor comprises three rooms each with an en-suite that shared a kitchen. Sometime in late 2010, the arrangement on the ground floor changed to remove the kitchen and make each of the rooms into self-contained units.

64. Even though the SDs and letters all confirm seven self-contained flats existed from 2011 onwards, they are limited in detail and provide little clarity on what is meant by the term self-contained flats or small studio flats. Furthermore, the SDs do not expand upon what they mean by ‘bathroom and kitchen facilities.’ As the authors of SD2, SD3 and the letters did not attend the Public Inquiry, I was unable to fully understand what they meant when describing the units as flats or studio flats. I do not have any detailed floor plans of the property before the extensions were made and it is difficult to envisage where the kitchen, bathroom and living facilities were before the changes.

65. However, during cross-examination, the appellant presented an overview of the layout, and the Council focused on the size and facilities of the smaller units. Concerns were raised about the adequacy of space and amenities in units 1,2, 3 and 6. The appellant acknowledged the cramped conditions of units 1, 2, and 6, indicating that their small size was a key factor in the need for the extensions. The appellant clarified that the very small units—units 1, 2, and 6—functioned as single rooms equipped with a toilet, sink and showerhead separated by a sliding door. The washing and cooking facilities consisted of a single kitchen unit with a sink and a countertop oven and a hob and no storage. Units 1 and 2 would have also had extremely low levels of natural light and low sloping ceilings with limited head room. However, he contended that unit 3 did not vary significantly in floorspace and facilities, but the extensions simply provided improvements in headroom.

66. Given these conditions, once a bed—the bare minimum for sleeping—was placed in these small rooms- units 1, 2 and 6- there would have been scarcely any remaining space for additional furniture, let alone proper kitchen appliances and storage for personal items or cooking. While it is true that some individuals may adapt to living in such confined spaces, as indicated by the ASTs showing rentals of these units, we must consider what constitutes a dwelling. My concern is not about how individuals

survive in substandard conditions but rather what defines a habitable living space for everyday use. If we were to conclude that a single bedroom with an en-suite behind a sliding door with plug-in cooking appliances constitutes a dwelling, it could lead to absurd conclusions.

67. Accordingly, in my judgement, a small single room with only a small en-suite, sink, and minimal cooking equipment may suffice for occasional use but, as a matter of fact and degree, falls short of providing for regular, day to day private domestic existence. The lack of adequate facilities for cooking, relaxing, and storing necessities in units 1, 2, and 6, in my judgement discounts them from being considered a dwelling. Moreover, the inadequate headroom, natural light, and ventilation in units 1 and 2 further deteriorate their living conditions. Thus, based on the evidence available, and in my judgement, units 1, 2, and 6 did not possess the essential characteristics of a dwellinghouse prior to the extensions being carried out.

68. Conversely, after visiting the site and reviewing the detailed floor plans along with the appellant's oral testimony, it is understood that units 3 and 4 would have remained largely the same in space and facilities. Despite the reduced floorspace in units 5 and 7, both would have still maintained a separate double bedroom, a kitchen and bathroom with the necessary facilities. Based on the evidence before me, units 3, 4, 5, and 7 would have been adequately sized, self-contained flats complete with independent kitchen and bathroom facilities and spacious double bedrooms. Thus, on the balance of probabilities, the evidence is sufficiently precise and unambiguous when demonstrating that units 3, 4, 5, and 7 were sufficient for everyday domestic life and embodied the essential characteristics of a dwelling house.

69. The Council has contended that the use before the extensions was an HMO. For clarity, the Council confirmed during the Inquiry that they regarded an HMO in planning as a property where multiple occupiers rent private rooms but share communal facilities, such as a kitchen, living room and bathroom. The Council highlighted evidence in the form of the appellant's responses to a Planning Contravention Notice (PCN) [8]; the content of an email, where the appellant describes the use of the property as an HMO and the low cost of the electricity bills and rent.

70. I have had regard to the evidence highlighted by the Council. However, there is no credible evidence that demonstrates that units 3, 4, 5, and 7 shared facilities after the changes made in 2010/2011. The low utility bills at this time could also easily be due to the lack of accurate meter readings, as highlighted during cross-examination. Similarly, the rents before the extensions would have been lower due to the small size of the units. The appellant's oral evidence also revealed a misunderstanding regarding the definition of an HMO. This confusion arises from the Council's Licensing Department's interpretation, which states that self-contained flats can also be classified as HMOs and has been discussed in detail above under deliberate concealment[9]. As such, there is limited evidence to support the Council's contention that the property was in use as an HMO before the extensions were carried out.

71. In summary, I am satisfied that the appellant has demonstrated, on a balance of probabilities that units 3, 4, 5 and 7, were self-contained flats of an appropriate size with all of the necessary facilities required for day-to-day private domestic existence, and therefore would be regarded as separate dwellinghouses. However, for the reasons set out above, the appellant has not satisfied the required burden of proof to

[8] Appendix 14- Core Document Page 144
[9] Core Document P. 49- Exhibit 1- HMO licence July 2020

demonstrate, on a balance of probabilities, that units 1, 2 and 6 were self-contained flats or dwellinghouses before the extensions were carried out.

Continuous Use

72. Considering the conclusions above, I will concentrate on units 3, 4, 5, and 7 to assess their continuous residential use. The appellant needed to establish that these units were occupied continuously for a minimum of four years before the issuance of EN1. It is important to note that such a use may be demonstrated over any continuous four-year period leading up to the issuance of EN1. Upon gaining immunity, the established use can only be lost through abandonment or a supervening event. In the absence of any abandonment or intervening events between the use being established and EN1 being issued, the units should be regarded as immune from formal enforcement action.

73. The appellant has submitted SD1 and provided oral testimony at the Public Inquiry that outlined the case for continuous use. The corroborative evidence includes copies of Assured Shorthold Tenancies (ASTs) for units 3, 4, 5, and 7 before the completion of any extensions. There are also letters from tenants of Flats 4 and 5 confirming their occupancy during critical timeframes. Additional supporting documents include a letter from NHS Barnet addressed to the tenant of Flat 4, dated 10 February 2011, alongside electricity bills for each unit prior to the extensions being carried out.

74. The documentation shows that Flats 3, 4, 5, and 7 were rented under fixed six-month contracts to different tenants beginning on 23 July 2011, 1 September 2009, 12 January 2013, and 8 December 2011, respectively. Second ASTs for each flat also indicate different named tenants on similar six-month fixed terms, ranging from 12 July 2014 to 28 November 2015. While these ASTs do not comprise a single continuous four-year term, the appellant contends that they functioned as rolling contracts and that there has been no significant interruption in their use prior to the extensions and the extended period he was out of the country[10].

75. The letter from NHS Barnet corroborates that the named tenant at Flat 4 was receiving correspondence in February 2011, supporting continuity of occupation during the specified time frame. Furthermore, the ex-tenant's letters, although not sworn statements, remain relevant information and detail their occupancy in accordance with the ASTs and the appellant's evidence.

76. In my judgment, the appellant's Statutory Declaration, his proof of evidence, and his oral testimony provide a clear and unambiguous account demonstrating that units 3, 4, 5, and 7 were self-contained flats that had been continuously occupied for over four years preceding the issuance of EN1. A rolling contract is understood to continue under the original terms' month by month after the initial six-month period unless terminated by mutual agreement or appropriate notice. The nature of the rolling contracts evident in the ASTs reflects a standard rental arrangement, while the NHS correspondence and ex-tenant letters reinforce that tenancy persisted well beyond the formal expiration of the fixed 6-month ASTs. I have given substantial weight to the appellant's Statutory Declaration, his oral evidence, and the AST documentation in reaching this conclusion.

77. Likewise, the electricity bills, although not spanning the entire four-year period, support his version of events by demonstrating ongoing utility arrangements tied to

[10] Page 6, Paragraph 1.10- Mr. G. Sahakian Proof of Evidence

each specific unit. Furthermore, the ASTs at that time involved the inclusion of utilities in the rent, which would be paid by the appellant as the landlord. As such, the fact that the bills are directed to the appellant and not a tenant, prior to the extensions, further substantiates the appellant's version of events.

78. While it is acknowledged that additional independent corroborative evidence—such as invoices for materials used during changes in 2010, bank statements documenting regular tenant rent payments, and separate Council tax records would have enhanced the robustness of the appellant's claims, the evidence presented is sufficiently clear and compelling to demonstrate the continuous use of the units on a balance of probability. The absence of such supplementary information does not inherently contradict the appellant's version of events or render them improbable. Furthermore, the Council has failed to provide any contrary evidence to the appellant's claims that these units were self-contained or used continuously over this period. They have also not provided any reason why enforcement action could not have been pursued had they investigated during the relevant period.

79. I have considered the inconsistencies in the information available to the Council, including the planning application submitted in 2019, as well as responses to a Planning Contravention Notice (PCN) and email exchanges. These matters have been discussed in detail above. However, for completeness, I do not believe that this information contradicts the appellant's account regarding units 3, 4, 5, and 7, nor does it demonstrate that the property was used as a single dwelling or an HMO at this time.

80. Accordingly, the evidence is sufficiently precise and unambiguous when demonstrating, on a balance of probabilities that four of the seven units possessed the characteristics of dwelling houses and had been used continuously for a period exceeding four years without significant interruption, before the extensions were carried out. I have no evidence to suggest that the established use was abandoned or lost by a supervening event prior to the issuance of EN1 on 17 February 2022.

Conclusions on Ground (d)

81. In summary, the ground (d) appeal succeeds insofar as it is too late to take enforcement action in respect of 4 of the 7 self-contained flats at the property. However, I conclude that the appeal on ground (d) should not succeed in respect of 3 of the 7 flats and the operational development comprising a rear ground floor extension, part first floor extension, part roof extension and dormer extension.

82. I shall, therefore correct and vary EN2 prior to upholding it. The allegation is inaccurate and would need to be corrected. Specifically, the material change of use element of the allegation would need to be corrected to reflect the lawful use of four of the self-contained units. I will correct the allegation to the following: -

    'Without planning permission…… and the making of a material change of use of the property <u>from four to seven self-contained flats</u>, facilitated by the alleged extensions.' (my emphasis).

83. Further to the above, the requirements of EN2 would need to be varied to ensure the use as seven self-contained flats ceases by removing three of the flats, together with the extensions and internal layout and fittings that facilitate the use. This would involve variations to step 1 and step 4 of the requirements. The wording of the correction and subsequent variations are set out in the Formal Decision below.

The Appeal on Ground (g)

84. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.

85. The period of compliance of 8 months is considered too short by the appellant, and it is requested that this is extended to 12 months. The extension is requested on the basis that notice would need to be served on the tenants and in the event that tenants refuse to vacate the premises, then time is needed to follow the eviction process. The Council set out in the CMC prior to the event and confirmed in the Inquiry that they would not be challenging the appellant's ground (g) and would not object to me varying the time of compliance.

86. When considering the appeal on this ground, I have had regard to the rights conveyed within the Human Rights Act (1998) which, in broad terms, refer to the peaceful enjoyment of property and home. Having regard to the loss of some of the flats as homes, and the fact that steps two, three and four would have to be undertaken following the departure of tenants, extending the time for compliance to 12 months would be appropriate in this instance.

87. In view of the above, the ground (g) appeal succeeds, and I will vary the Notice accordingly.

Conclusion

88. For the reasons given above, I conclude that the appeal should not succeed, save to the extent indicated. I shall, therefore, correct the allegation and vary the requirements as well as the period for compliance prior to upholding EN2.

Formal Decision

89. It is directed that the enforcement notice is corrected and varied by:

In paragraph 2, the words use to describe the land to which the notice relates shall be deleted and substituted with 'Land at 38 Elmcroft Crescent London NW11 9SY, shown edged and coloured black on the attached plan, excluding the outbuilding (which is shown edged in [green]) (hereinafter called "the Property").'

In paragraph 3, the allegation shall be deleted and substituted with 'without planning permission, the construction of a single storey rear extension (as edged in red on the attached photograph 1); the construction of a part first-floor side and part roof and dormer extension (as edged in blue on the attached photographs 1 and 2); and the making of a material change of use of the Property from four to seven self-contained flats, facilitated by the alleged extensions.

In paragraph 4, delete the words 'It appears to the Council that the above breach of planning control has occurred within the last four years' and substitute it with 'It appears to the Council that the above breach of planning control has occurred within four years of the date of the issue of previous Enforcement Notice ENF/1292/21 on 17 February 2022.'

In paragraph 5, step 1, delete the requirement and substitute the words 'Cease the use of the property as seven self-contained flats by removing 3 self-contained flats.'

In paragraph 5, step 4, delete the requirement and substitute the words 'Restore the property to the state in which it was prior to the breaches of planning control taking place by:

i) Removing all but four sets of bathroom facilities (including toilets, showers, baths and sinks) from the Property.

ii) Removing all but four kitchen facilities from the Property, the removal of the kitchen facilities includes ovens, hobs, hotplates, extractor units, sinks, work surfaces, kitchen style cupboards, hot and cold-water supply and foul waste drainage pipework.

iii) Restoring the rear wall and roof to their pre-existing specifications.

iv) Restoring the front and side of the property (along the boundary with No.40) to the state shown in the attached photo No. 3.'

In paragraph 5, under time for compliance delete the number '8' and substitute it with the number '12.'

The substitution of the plan annexed to this decision for the plan attached to EN2.

90. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joseph Thomas	Counsel appointed by the appellant.
Mr Garmen Sahakian	Appellant.
Mr. Joseph Henry	Planning Agent appointed by the appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Ms Merrow Golden	Counsel appointed by the Council of the London Borough of Barnet.
Mr Brian O'Dumody	Planning Compliance Officer- Council of the London Borough of Barnet.
Ms Shinal Badiani	Solicitor appointed by the Council of the London Borough of Barnet.

INQUIRY DOCUMENTS

ID1- Photograph of the site and Floor Plans of units 1 and 2 before extensions with coloured annotation by Council.

ID2- Close up Google Street View Image April 2018, centred on first floor side

ID3- Google Street View Image May 2019, including appeal site and neighbouring property, 40 Elmcroft Crescent

ID4- Email correspondence between appellant and Council Dated 9 and 14 February 2022.

ID5- Image of replacement window in garden not installed

ID6- Floor Plan of loft as two flats before extensions were built

ID7- Internal photograph of roof light serving communal staircase.

The Planning Inspectorate

This is the annexed plan referred to in my decision dated: **18 July 2025**
by M P Howell BA (Hons) Dip TP MRTPI

Appeal Ref: APP/N5090/C/25/3358758

Land at 38 Elmcroft Crescent, London, NW11 (scope of Notice land edged black. Land edged green specifically excluded)