



Appeal Decisions

Site visit made on 16 July 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st July 2025

Appeal A Ref: APP/V5570/C/24/3351705

Land at Ground floor, 91 Grosvenor Avenue, Islington N5 2NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr Rajesh Rajnikant Patel against an enforcement notice issued by the Council of the London Borough of Islington (the Council).
 - The notice was issued on 7 August 2024.
 - The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of existing ground floor unit from Class E(etail) to Class C3 (residential) to provide 1x one-bedroom (2 person) flat.
 - The requirements of the notice are: 1. Cease the use of the ground floor area of the premises as a self-contained residential flat. 2. Remove all kitchen cupboards, cookers, extract ducts and sinks from the ground floor area and also remove the partition wall at the front area of the flat which separates the flat and the shopfront. 3. Remove the ensuite shower room including the shower unit, sink and WC. 4. Remove all debris, rubbish, building materials, plant and machinery in compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is six calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), and (f) of the Act.
- Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.**

Appeal B Ref: APP/V5570/X/24/3351241

91 Grosvenor Avenue, Islington, London N5 2NL

- The appeal is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Rajesh Patel against the decision of the Council.
- The application ref P2023/3279/COLU, dated 10 November 2023, was refused by notice dated 25 January 2024.
- The application was made under section 192(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is described in the application form as 'Class MA – Use Class E to Residential'.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. A copy of the Council's officer report relating to the notice¹ was provided to the appellant with the Council's appeal questionnaire in advance of the deadline prescribed in the appeal start letter. This was a significant period before the deadline by which the appellant was free to submit a Statement of Case. The report sets out why the Council considered it expedient to issue the notice. The appellant has therefore been provided with sufficient opportunity to comment on this and has not been prejudiced in any way by not being able to find a copy of the report on the Council's website prior to submitting their Grounds of Appeal.
2. It is not for me to determine whether the Council has complied with The Local Government Act 1972 (as amended) and The Openness of Local Government

¹ The Council's ref: ENF/2021/84, dated 6 August 2024

Bodies Regulations 2014 when issuing the notice. The proper course to challenge the issue of an enforcement notice is by judicial review.

3. The notice is headed 'operational development', yet it relates to an alleged unauthorised change of use. There is no need for the heading of the notice to state which type of development it relates to, and I shall therefore delete that text at the top of the first page of the notice. Overall, the notice is clear that it relates to an alleged unauthorised change of use, and this minor correction will not cause injustice to any parties.
4. Schedule 2 of the notice refers to an alleged unauthorised change of use from 'Class E (retail) to Class C3 (residential)'. With regard to sections 55 and 57 of the Act, a change of use does not necessarily require planning permission unless it is a material change of use. Moreover, the planning practice guidance² explains that enforcement notices are not improved by over-elaborate wording or legalistic terms, with plain English always being preferable.
5. Classes E and C3 are defined in The Town and Country Planning (Use Classes) Order 1987 (as amended). Reading the notice as a whole, it is clear that a material change of use from a shop falling in Class E to a dwellinghouse falling in Class C3 is alleged to have taken place in breach of planning control. The appellant's submissions reflect this. I shall therefore also make minor corrections to the notice in these regards, in the interests of clarity, without causing injustice.
6. An explanatory note attached to the notice outlines the right of appeal. It follows a generic template which has not been adapted to suit the specific circumstances of the notice, because it fails to take account of a previous refused planning application. The appellant therefore has no right of appeal under ground (a) in Appeal A. Although incorrect information is provided in the explanatory note, it does not affect the validity of the notice. The appellant has not been prejudiced by this and there is no need for me to correct the explanatory note.
7. The appellant disputes the reasons for issuing the notice, stated at Schedule 3. However, as there is no appeal under ground (a) in Appeal A, there is no deemed application for planning permission for me to consider the planning merits of any development. The reasons stated for issuing the notice are not manifestly incorrect and there is no need to correct or vary this part of the notice.

Appeal A, Ground (c)

8. To succeed under this ground of appeal the appellant needs to show, on the balance of probabilities, that the change of use from a shop to a dwellinghouse did not constitute a breach of planning control.
9. Section 57 of the Act states that planning permission is required for the carrying out of any development of land, subject to the provisions of that section. Section 55 provides the relevant meaning of development, which includes the making of any material change in the use of any buildings or other land.
10. There is no dispute that the site was used as a shop prior to it being used as a dwellinghouse. There are broad and distinct differences between the operation and character of those two very different uses of the site. It is therefore clear that a material change of use has taken place which required planning permission.

² Paragraph: 019 Reference ID: 17b-019-20180222

11. Article 3(1) and Class MA of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E to a use falling within Class C3, subject to limitations and conditions. There is no dispute that the development complies with the limitations set out at paragraph MA.1. of Class MA, and I see no reasons to find otherwise.
12. The condition set out at paragraph MA.2.(2) of Class MA requires, before beginning development under Class MA, the developer to apply to the local planning authority for a determination as to whether its prior approval will be required as to various issues. It is required under paragraph MA.2.(4) of Class MA that the provisions of paragraph W of Part 3 apply in relation to any such application. Furthermore, paragraph W.(1) of Part 3 states that the provisions of paragraph W apply where a developer needs to make an application for a determination as to whether prior approval is required under Part 3.
13. Paragraph W.(11) states the development specified by Class MA must not begin before one of three things happens: (a) where the Council state prior approval is not required; (b) where the Council give prior approval; or (c) where the Council fails to notify the applicant whether prior approval is given or refused within 56 days of the date of the application.
14. An application for prior approval³ is said to have been made to the Council in 2021, but I have been provided with very little information in that regard. It is disputed whether the development had commenced prior to that application being made. It is, however, not disputed that the application was withdrawn by the appellant before the application was determined⁴. There is no evidence that paragraph W of Part 3 or the condition set out at paragraph MA.2.(4) of Class MA have been complied with, and as such there is no evidence that the development is in accordance with the planning permission granted by Article 3(1) and Class MA of Schedule 2, Part 3 of the GPDO.
15. I have been referred to other applications⁵ which sought planning permission for the use of the site as a dwellinghouse, but these have been refused, and one appeal⁶ subsequently dismissed.
16. Although the GPDO grants planning permission for the change of use from a shop to a dwellinghouse where limitations and conditions are complied with, it has not been shown, on the balance of probabilities, that the development carried out complies with any planning permission. The evidence shows that the development is unauthorised and in breach of planning control.
17. The appeal under ground (c) must therefore fail.

Appeal A, Ground (d)

18. For the appeal to succeed under this ground the appellant needs to show that, at the date when the notice was issued, no enforcement action could be taken in respect of the unauthorised material change of use from a shop to a

³ The Council's ref: P2021/1695/PRA

⁴ Copy of email dated 22 June 2021, Appendix 1 to the Council's Statement of Case

⁵ The Council's refs: P2021/1871/FUL and P2021/3467/FUL

⁶ Appeal Ref: APP/V5570/W/22/3298080

dwellinghouse. The appropriate test of the evidence is the balance of probabilities. Case law confirms that the appellant's evidence should be accepted if there is no evidence to contradict their version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous.

19. Section 171B of the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse which took place before 25 April 2024, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Therefore, if the change of use took place on or before 10 November 2019, it would have been exempt from planning control and lawful when the notice was issued.
20. The Council first received an allegation that the change of use had taken place on 19 March 2021. The appellant has not provided any sufficiently precise and unambiguous evidence to show when the change of use may have taken place. It has not been shown, on the balance of probabilities, that the breach took place at least four years before the notice was issued.
21. The appeal under ground (d) therefore fails.

Appeal A, Ground (f)

22. To succeed under this ground of appeal the appellant needs to show that the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity.
23. The notice requires the use as a dwellinghouse to cease and for all kitchen cupboards, cookers, extract ducts and sinks to be removed, along with a partition wall and shower room. Its purpose is therefore to remedy the breach rather than any injury to amenity, and it is necessary for me to consider whether this could be achieved with less cost and disruption.
24. Section 173(3) and (4) of the Act provides that an enforcement notice can remedy a breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place. Case law⁷ has confirmed that an enforcement notice issued in respect of a material change of use can require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development requiring planning permission, so that the land is restored to its condition before the change of use took place.
25. Although the items required to be removed by Steps 2 and 3 of the notice could be lawfully installed within a shop without carrying out development requiring planning permission, it has not been shown that any of these items were likely installed in association with the former shop use. On the limited evidence it appears more likely than not that they were installed directly in association with the unauthorised material change of use to facilitate use as a dwellinghouse. Their function, design and integration with the layout of the dwellinghouse leads me to find that they are part and parcel of the breach. It is therefore reasonable and proportionate for the

⁷ *Somak Travel v SSE* [1987] JPL 630, which followed *Murfitt v SSE* [1980] JPL 598, and has since been upheld in *Bowring & Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin) and *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] EWHC 1654 (Admin), [2016] EWCA Civ 784

notice to require their removal to achieve its purpose of remedying the breach by restoring the land to its condition before the breach took place.

26. There is a claimed fallback position where the notice could be complied with, a shop use reinstated, then an application for prior approval made and all limitations and conditions complied with which are applicable to the development granted planning permission by Article 3(1) and Class MA of Part 3, Schedule 2 of the GPDO. Such an application would have to demonstrate prior approval would not be required, or should be granted, in respect of various matters, including the provision of adequate natural light in all habitable rooms. It has not been shown how such approval may not be required or could be obtained, and the evidence suggests either is unlikely. I therefore find there is less than a theoretical possibility that the site would be used as a dwellinghouse, following compliance with the notice, in accordance with any planning permission granted by the GPDO.
27. With the above in mind, it is not perverse or disproportionate for the notice to require the land to be restored to its condition before the breach took place through Steps 1, 2, 3, and 4. These are the minimum steps needed to be undertaken to achieve the purpose of the notice, and that purpose could not be achieved with less cost or disruption. I reach this view fully aware of the Government's intention to significantly boost the supply of housing, including through the conversion of shops into dwellinghouses, where appropriate.
28. There is a minor typing error in Step 4, where it has not been clarified that all debris, rubbish, building materials, plant, and machinery to be removed should be that associated with compliance with Steps 1, 2, and 3. I shall vary Step 4 accordingly.
29. The appeal under ground (f) therefore succeeds, but only insofar as I shall correct Step 4 as set out above. Otherwise, the appeal under ground (f) fails.

Appeal B

30. For Appeal B to succeed the appellant needs to show that the Council's decision to refuse to issue an LDC was not well-founded. The appropriate test of the evidence is the balance of probabilities. The appellant claims that a material change of use of the site from a shop (Class E) to a dwellinghouse (Class C3) would have been lawful on the date of the application.
31. It is correct to say planning permission granted by Article 3(1) and Class MA of Part 3, Schedule 2 of the GPDO existed for the change of use from a shop falling in Class E to a dwellinghouse falling in Class C3 on the date of the application. However, that does not mean such development would have been lawful at the site had it begun on the date of the LDC application. This is because the limitations and conditions attached to that planning permission needed to be complied with in order to benefit from the planning permission granted by Article 3(1) of the GPDO, as confirmed by Article 3(2).
32. Specifically, in this case, the conditions at paragraph MA.2.(2) and (4) of Class MA and the provisions of paragraph W of Part 3 applied. It has not been shown that these conditions had been complied with on the date of the application for an LDC. Furthermore, on the date of the application, the limitation at paragraph MA.1.(1)(a) of Class MA was in effect, stating that such development was not permitted by Class MA unless the building had been vacant for a continuous period of at least 3

months immediately prior to the date of the application for prior approval. It has not been shown that this limitation had been complied with either.

33. It has not been shown, on the balance of probabilities, that a proposed use of the site for residential purposes, including as a dwellinghouse falling in Class C3, would have been lawful on the date of the LDC application. The onus is on the appellant to show an LDC should be issued, and they have failed to do that.
34. I therefore find that the Council's decision to refuse to issue an LDC was well-founded and that Appeal B should be dismissed.

Conclusions

35. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with corrections and a variation.
36. For the reasons given above I also conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Class MA – Use Class E to Residential' is well-founded and that Appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Formal Decisions

Appeal A

37. It is directed that the enforcement notice is corrected and varied by:
- The deletion of the text 'OPERATIONAL DEVELOPMENT' within the box at the top of the first page of the enforcement notice, immediately below the text 'ENFORCEMENT NOTICE';
 - The deletion of the text 'change of use of existing ground floor unit from Class E (retail) to Class C3 (residential)' at Schedule 2 of the enforcement notice and the substitution of the text 'material change of use of the ground floor unit from a shop (Class E) to a dwellinghouse (Class C3)'; and
 - The deletion of the text 'in' at Step 4 of Schedule 4 of the enforcement notice and the substitution of the text 'associated with'.
38. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

39. The appeal is dismissed.

L Douglas

INSPECTOR