



Appeal Decision

Site visit made on 17 June 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/T5150/C/23/3329170

Land at 16 Birchen Grove, London NW9 8SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ali Walji against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 18 August 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the former garage to a dwelling.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the former garage as a dwelling.
 - STEP 2 Remove all fixtures and fittings, associated with the unauthorised change of use, including the kitchen and the bathroom, from the former garage.
 - STEP 3 Remove all associated items, waste, debris and materials, arising from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is 3 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. Whilst the appellant was notified of the arrangements for the site visit, he did not attend. The visit was, therefore, conducted in the presence of the occupier of the building subject of this appeal and a Council representative.

Ground (d)

The Main Considerations:

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 the matters alleged.
3. Despite the compact size and limited facilities within the unit in question, I have no reason to find that at present this building has the distinctive characteristics of a dwellinghouse in that it comprises the facilities required for day-to-day private domestic existence.
4. It is agreed that the relevant time limit¹ in this case is 4 years. Accordingly, the main consideration is whether, on the date the enforcement notice was issued, the use of the former garage as a dwellinghouse had continued substantially

¹ Having regard to section 171B(2) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

uninterrupted for a period of 4 years or more beginning with the date of the breach. The test of the evidence is on the balance of probability and the burden of proof is on the appellant.

Reasons:

5. The appellant has prepared a statutory declaration, signed on 4 September 2023, in which he confirms that the building in question has been 'in use as a self-contained flat' by the tenants he lists for the periods specified. He also says that these tenants occupied the outbuilding 'on a continuous basis'. Four tenants have been listed in the declaration and a series of tenancy agreements have been provided that relate to each of those listed.
6. Whilst the appellant says that the first tenants occupied the building until 10 February 2020, the term of their tenancy agreement ended earlier than this, on 2 March 2019. Nevertheless, it is not unusual for a tenant to continue to occupy a property following the expiry of the term of a tenancy agreement. Indeed, a statutory declaration has been provided by one of these tenants, in which they corroborate the appellant's evidence with regard to the period of their occupation of the building.
7. The last tenant listed has also provided a statutory declaration, signed 6 June 2023, in which they describe their occupation of the outbuilding from 25 December 2022 to date. I have also had regard to the documentation which refers to the other tenants, giving their address at the appeal site.
8. The Council does not dispute that each of the tenants listed in the appellant's declaration continuously occupied the building in question for the duration stated. Indeed, I have been given no reason to find otherwise. The appellant's case appears to be that the date of the breach is the date of the first occupation of the building, which is 3 March 2018. I acknowledge that a period of more than 4 years has passed from this date to the date the enforcement notice was issued, which is 18 August 2023. Notwithstanding this, a use can only become lawful if it continues throughout the relevant immunity period, such that the Council could have taken enforcement action at any time during the relevant period.
9. In this regard, the Council point to the periods of time between each of the terms of the tenants' occupation of the building. These include from 10 February to 18 July 2020 (some 5 months); from 17 July to 1 November 2021 (just under 4 months); and from 1 November to 25 December 2022 (just under 2 months). There might well be small gaps in the use of a dwelling such as this, between one tenant moving out of a property and another moving in. During this time works of repair might also be carried out with the intention of furthering the breach. However, for a use to be regarded as continuous, such periods of non-occupation should be minimal and for a short period of days, rather than weeks or months, as in the case before me. I cannot regard the periods of time between the terms of occupation by each long term tenant to be minimal.
10. During the periods specified above, the appellant says that the property was let on 'short lets on Airbnb' whilst long term tenants were found. The appellant does not, however, indicate when these short term lets occurred, how many there were, and the duration of each. I have no doubt that the building was fitted out as a dwellinghouse during the periods between its use by the tenants listed by the appellant, and that during these times it was used on occasion as a dwellinghouse

for short periods. The appellant has, however, failed to provide evidence sufficient to demonstrate that, as a result of the short term lets, the use of the building as a dwellinghouse was uninterrupted during the periods between its use and occupation by the long term tenants listed.

11. Accordingly, I find it more likely than not that, since 3 March 2018, there were periods during which the Council could not have taken enforcement action in respect of the alleged breach. The appellant has failed to discharge the burden of proof that is upon him in this case. Accordingly, I conclude that, on the balance of probability, on the date the enforcement notice was issued, the use of the former garage as a dwellinghouse had not continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR