



Appeal Decision

Site visit made on 2 August 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMi fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 18 August 2025

Appeal Ref: APP/N5660/C/24/3343138

9 Rosedene Avenue, London, SW16 2LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “1990 Act”).
- The appeal is made by Mr A Naqvi against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The enforcement notice was issued on 9 February 2024.
- The breach of planning control as alleged is the erection of a single storey outbuilding within a fenced off area in the rearmost part of the garden of the premises and separately accessible from the side of the host property (‘the unauthorised outbuilding’) and its use as a self-contained residential flat (‘the unauthorised self-contained flat’).
- The requirements of the enforcement notice are to: (a) Cease the use of the outbuilding as an unauthorised self-contained flat, (b) remove all kitchen units and appliances, and associated electrical and plumbing supplies, fixtures and fittings that facilitate the unauthorised use of the outbuilding as a self-contained flat, from the premises, (c) remove the wooden boundary enclosure which separates the unauthorised outbuilding from the host property and facilitates the unauthorised use of the outbuilding as a self-contained flat, (d) demolish the unauthorised outbuilding in its entirety and reinstate the rear garden as existed prior to the breach of planning control, and (e) remove all associated waste and debris resulting from compliance with the above steps, from the premises..
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary decision: The appeal is dismissed, and the enforcement notice is upheld with a minor variation in the terms set out below in the formal decision.

Reasons

1. Essentially, in this appeal the challenge is a simple one, namely, that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
2. The notice was issued before April 2024 when time limits changed, and the appeal parties agree the 4-year immunity period is relevant to both the alleged operational development and the material change in use of the outbuilding. The relevant date therefore is 9 February 2020.
3. By way of background information, the Council concede that the operational development comprised in the erection of a single storey outbuilding is immune from enforcement action, due to the passage of time. A certificate of lawfulness for

existing residential use of the outbuilding was also refused¹. The principal issue is whether the material change of use to a self-contained residential flat occurred on or before the relevant date.

4. It is important to make a distinction between the terms *use as a single dwellinghouse* from what might normally be regarded *as being a single dwellinghouse* [my emphasis]. Beginning with *Gravesham*, the Courts have consistently held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence². The key message from these judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances.
5. I have reviewed all the evidence submitted by the appellant including the bundle of evidence submitted with the LDC application. To my mind, all this information demonstrates a fundamental misunderstanding. This is because the appeal parties focus on dis/proving the residential use of the outbuilding as a self-contained flat without grappling with first principles. Having regard to well-established case law, it is first necessary to consider evidence showing when the outbuilding became a single dwelling and when/how it was occupied and used as a single dwellinghouse without significant interruption [my emphasis]. Against that background, the appellant faces an uphill struggle.
6. Clearly, the outbuilding forms a self-contained residential planning unit. It is physically separate from the appeal property: located to the rear segregated by close-boarded timber fence. The latter divides the rear garden and provides an amenity space to the users of the outbuilding as a flat. The latter is separately accessed from the side passageway to the main dwelling.
7. I observed the outbuilding contains facilities for day-to-day living – independent cooking, washing and sleeping. However, whilst floor plans of the outbuilding have been provided, this kind of information does not show when the outbuilding was physically converted into a flat. I have considered the appellant's sworn testimony but evidence as to how, and by whom, the outbuilding was physically converted into a flat is lacking in extent, detail and specificity. For example, there are no details about the nature, extent, scale or sequence of the work.
8. In my experience documentary evidence is occasionally submitted to demonstrate a timeline. For example, invoices for building materials might have given credence to the argument that the outbuilding was physically converted at a certain point in time. In a similar vein, detail as to when water or electric supply was installed and how this is charged would have helped understand timings. Further, receipts for goods would have demonstrated when the building was ready for providing independent living facilities. None of this type or kind of supporting documentary evidence has been tendered for analysis. The absence of this kind of information makes comparisons between the appellant's claim and residential use difficult to make. The lack of detailed evidence on this specific issue is unsurprising given the misdirected focus on solely establishing the residential use of the outbuilding.
9. At final comment stage, the appellant confirms a separate land registry title but there is nothing before me to support the proposition that the outbuilding afforded viable facilities for day-to-day living on or before the relevant date. On the balance

¹ Council ref: 23/03570/LDCE refused on 3 January 2024.

² See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

of probabilities, I find the evidence presented, at best, ambiguous and uncertain. My analysis of the first issue is sufficient to conclude the appeal fails. However, for completeness, I will also review the evidence about occupation and use.

10. In that context, tenancy agreements and sworn testimony have been provided, but rental agreements of this kind do not necessarily show occupation and use of the outbuilding as a self-contained flat. In any event, there is no evidence showing rental payments received throughout the period of occupation. The agreements indicate electricity is the landlord's responsibility, but no specific details have been provided. It is unclear how council tax has been paid. In addition, the electoral register details supplied by the Council do not correspond with the tenants.

Conclusions

11. Pulling all the above threads together and applying the proper standard to the evidence, on the balance of probability, I find that the onus of proof on the appellant has not been discharged. This is because in support of ground (d) appeal, the evidence as to when the outbuilding materially changed from an ancillary or incidental use to a self-contained flat is insufficient, lacking in detail and unambiguous and imprecise. Ground (d) in respect of the alleged material change of use fails.
12. As I have said elsewhere, action against operational development involved in the erection of the outbuilding is now time-barred but instead of correcting the allegation, I should vary the steps for clarity's sake. This is because step (d) requires the demolition of the outbuilding and reinstate the rear garden as existed prior to the breach of planning control. As there is agreement between the appeal parties, no injustice is caused by such variation. Accordingly, I will vary the issued notice.

Formal decision

- (a) It is directed that the enforcement notice be varied by deleting the following text in section 5 what you are required to do: Demolish the unauthorised outbuilding in its entirety and reinstate the rear garden as existed prior to the breach of planning control.
13. Subject to the variation, the enforcement notice is upheld, and the appeal is dismissed in legal ground (d).

A U Ghafoor

INSPECTOR