



Appeal Decision

Inquiry held on 8 and 21 July 2025

Site visit made on 9 July 2025

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th September 2025

Appeal Ref: APP/U5360/C/23/3328462

193 Homerton High Street, London, E9 6BB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Turkan Akbas against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 24 July 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the first, second and third floor of the property to 6 flats and the material change of use of part of the ground floor and basement of the property to one flat and associated operational development comprising of the installation of one window at ground floor level.
 - The requirements of the notice are:
 1. Cease the use of first, second and third floors as 6 residential flats;
 2. Cease the residential use of the ground floor and basement floors;
 3. Remove the window at ground floor level fronting Roding Road and restore the elevation to the previous state that existed before the unauthorised works were undertaken. The brickwork should use matching materials and finish of the property;
 4. Remove all fixtures and fittings including all internal partitions, doors, the bathroom & kitchen fixtures, and fittings associated with and facilitating the unlawful material change of use of the residential flats on the first, second and third floor;
 5. Remove all fixtures and fittings including all internal partitions, doors, the bathroom & kitchen fixtures, and fittings associated with and facilitating the unlawful material change of use of the ground floor flat;
 6. Make good all damage to the property resulting from the removal of the unauthorised works as listed above;
 7. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - i. At section 5.1 of the notice, deletion of the number '6', and
 - ii. At section 5.3 of the notice, deletion of the words "*The brickwork should use matching materials and finish of the property*" and their substitution with the words "*The brickwork should be completed using materials that match the existing finish of the property*"
2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Applications for costs

3. An application for costs was made by the Council of the London Borough of Hackney against Ms Turkan Akbas. This is the subject of a separate decision.

Preliminary Matters

4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024. Further amendments were published on 7 February 2025. Whilst these revisions and amendments post-date the issuing of the enforcement notice, the policy changes are not material to the matters raised in this appeal.
5. Despite various references throughout the appellant's submission to the acceptability of the development, an appeal on ground (a) has not been made. Therefore, planning merits are of no consequence to my determination of the appeal.
6. I held a Case Management Conference (CMC) via an online video call on 6 June 2025 with the appellant's agent and a representative of the Local Planning Authority (LPA). It was held to discuss the practical arrangements for the inquiry, including the inquiry procedure, how evidence would be dealt with at the inquiry, how the inquiry documentation should be organised, and other procedural matters to ensure the efficient running of the inquiry. The merits of the appeal were not discussed.
7. The appeal was initially made on ground (b) only. However, as part of the appellant's submission they assert that flats 1 to 6 have been occupied as self-contained flats for a continuous period in excess of four years and are therefore immune from enforcement action. After consulting the parties on this matter, the appellant confirmed that they wish to pursue this argument as a ground (d) appeal. I have therefore dealt with this as a 'hidden' appeal on ground (d), and this matter was fully examined at the inquiry.
8. At the inquiry, all evidence was given under oath.

The Enforcement Notice

9. Regardless of what grounds of appeal have been advanced, I have a duty to ensure that the notice is in order. If I consider that the notice is defective in any way, I have broad powers under the provision of s176(1) of the Act to make corrections. I can only do so where I am satisfied that this will not cause injustice to the appellant or the LPA. If corrections cannot be made, I must quash the notice.
10. It is clear that the purpose of the notice is to cease the use of the property as individual flats. Therefore, at section 5.1 of the notice, for clarity I will delete the reference to '6' flats to avoid any ambiguity should a lesser number be retained. This correction will ensure that the breach is remedied in full.
11. There also appears to be a drafting error at section 5.3 of the notice, with the second limb of this requirement containing a grammatical error that has the potential to create some ambiguity over what must be done. The wording was originally drafted as "*The brickwork should using matching materials and finish of the property*" [sic].
12. At the inquiry, the LPA confirmed that it was its intention to ensure that the brickwork used to block up the window, and restore the elevation, should match the existing

brickwork at the property. Following some discussion, the parties agreed that the notice could be corrected in the interests of clarity, and without causing any injustice.

13. The most straight forward approach would be to delete the current wording and replace this with wording that makes it clear that the brickwork should be completed using materials that match the existing finish of the property. The parties expressed no objection to this approach.
14. For the avoidance of doubt, the corrections are made in the interests of clarity and accuracy. I am satisfied that correcting the notice in this way would not cause any injustice to any party or prejudice their respective positions. In doing so, the requirements would not become excessive. I shall therefore correct the notice accordingly by exercising the powers available to me under s176(1) of the Act.

The appeal on ground (b)

15. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. This is a legal ground of appeal, and the onus is on the appellant to make their case on the balance of probability.
16. The appeal on ground (b) is pursued only in relation to whether a material change of use of part of the ground floor and basement of the property to one flat has occurred as a matter of fact. At the inquiry, the appellant conceded that the operational development comprising the installation of a ground floor window had occurred by the time the enforcement notice was issued.
17. The appeal relates to a four-storey property with basement that is located on the corner of Homerton High Street and Roding Road. At street level, fronting both Homerton High Street and Roding Road, the property accommodates a barber's shop. Adjacent to the shopfront on Roding Road, a single door provides access to the upper floors of the building. Immediately to the rear of this entrance is a further door which provides access to the part of the ground floor to the rear of the barber's shop, and which leads to the basement. It is this part of the ground floor and the basement which the LPA alleges to have been fitted out for use as a self-contained flat.
18. The area in dispute contains a fully equipped kitchen/lounge area that is fitted out with kitchen units, sink and hot water boiler, oven, hob and extractor, along with a washing machine and fridge freezer. The room is also furnished with two large sofas and a coffee table. This room is directly linked to two separate rooms within the basement area which were furnished with some cupboards, wardrobes and chest of drawers. In addition, from the kitchen/lounge, there is a shower room, with sink basin and toilet.
19. The appellant claims that the ground floor and basement is included as part of the lease for the barber's shop and is used as part of that commercial business. They assert that the area is used for staff rest breaks, and the washing of towels associated with the barber's business. Two individuals work at the barber's shop, and it is claimed that the works to install a fully fitted kitchen and lounge area, along with a shower room and toilet, were undertaken at their request.
20. However, no evidence has been presented to support the appellant's assertions in these respects. Furthermore, this area is physically separate and self-contained, with no internal access from the barber's shop. To use the area, staff from the barber's

would have to exit the shop onto the street and walk around to the Roding Road entrance. They would need to unlock this external door and then unlock a second door behind this to gain access. This would be rather impractical, or at least inconvenient, for use as a staff rest area for brief breaks. Furthermore, it was not clear why such extensive facilities - including a fully fitted kitchen, shower room and large furnished lounge area - was required as a rest area for only two members of staff. To my mind this appears to be excessive, and despite the tokenistic presence of a few towels and barber's robes during my visit, I find the appellant's account to be less than probable.

21. Furthermore, during cross-examination, the appellant explained that the basement area is used by her for the storage of surplus furniture and that this explains why there was a wardrobe and other furniture present at the time of my visit. However, this was later contradicted when the appellant stated that they do not occupy the area and have no right of use because it is part of the barber's commercial lease.
22. The inquiry heard how the ground floor and basement areas had never been let as a single self-contained residential unit, and the appellant relies on the fact that no evidence has been presented to suggest otherwise. Nevertheless, in keeping with settled caselaw¹, it is possible to find that a change of use took place before the premises was actually used or occupied as such. As it was held in the *Impey* judgement, there would plainly be a change of use in circumstances where operations are taken to convert the premises for residential use where they are ready for imminent occupation, but they had not yet actually been used.
23. From the evidence before me, and based on the physical characteristics described above, it appears more likely to me that this part of the ground floor and basement was fitted out with the intention for residential use. It contains extensive facilities for day to day living and so is imminently capable of being occupied as a residential unit of accommodation.
24. Consequently, on the balance of probability, and for the reasons given, I conclude that the alleged material change of use of part of the ground floor and basement of the property to one flat and associated operational development comprising of the installation of one window at ground floor level had occurred.
25. Therefore, the ground (b) appeal must fail.

The appeal on ground (d)

26. The ground of appeal is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters alleged in the notice. The appellant pleads ground (d) only in relation to the change of use of the first, second and third floors of the property to six flats.
27. The time limits for taking enforcement action are set out at s171B of the Act. S171B(2) provides that, no enforcement action may be taken in respect of a change of use of any building to use as a dwellinghouse after the end of the period of 10 years beginning with the date of the breach. However, in this case it is common ground that the change of use took place before 25 April 2024. Therefore, in

¹ *Impey v SSE & Lake District SPB* [1981] JPL 363, [1984] 47 P&CR 157 and *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

accordance with the transitional arrangements², the time limit for immunity is four years rather than 10.

28. The LPA has drawn my attention to the *Bansal*³ judgement, where it was considered that there had to be continuous use of the two residential flats in question, in order to demonstrate immunity in a case involving a material change of use from a single dwellinghouse to two residential flats. The suggestion being that, in this case, immunity from enforcement action must be demonstrated for all six flats in order for the appellant to have any success on ground (d).
29. However, I do not consider this appeal to be comparable to the *Bansal* case because this case involves a change of use to six flats. Also, in that case, notwithstanding the physical sub-division of the building, continuous occupation was only demonstrated in relation to one flat, such that no enforcement action could have been taken throughout the relevant period in respect of the use as two flats rather than a single dwelling. That is not to say that, in this case, I would need to find continuous occupation in respect of all six flats for ground (d) to succeed. There could be partial success provided that at least two flats have been in continuous use during the relevant period and, therefore, have become immune from enforcement action due to the passage of time.
30. I am also mindful that since the word 'building' can mean 'part of a building', the provisions of s171B(2) applies to each of the alleged flats which make up different parts of the appeal building. I will therefore consider whether any of the flats have become immune from enforcement action.
31. Consequently, in order to achieve any success on this ground, it is necessary for the appellant to demonstrate that the residential use of any of the flats had taken place for a consecutive period of at least four years before the notice was issued. The notice was issued on 24 July 2023, and so the use of each flat must have commenced no later than 24 July 2019. The evidential test is on the balance of probability, and it is for the appellant to prove their case with evidence that is sufficiently precise and unambiguous.

Background to the change of use

32. I have no reason to doubt the appellant's evidence regarding the conversion works. The property was converted to six self-contained flats during 2016. This is supported by the statutory declaration from Mr Demier which states that he was engaged by Mr Selim Aktas (the appellant's husband, freehold owner of the appeal property and named landlord for the property) to convert the property to six distinct self-contained flats. He states that this was successfully completed in November 2016, with each flat equipped with its own kitchen, toilet and shower facilities.
33. The appellant has submitted a variety of documentation upon which they rely to support their case that the flats are immune from enforcement action. The supporting documentation, chronology of events and periods of occupation differ for each flat. Therefore, I shall deal with the evidence for each flat in turn.
34. As a general point, I have statutory declarations and other statements from a number of individuals that did not attend the inquiry where the evidence could have been

² Section 5(b) of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

³ *Bansal v SSHCLG & LB of Hounslow (IP)* [2021] EWHC 1604 (Admin)

tested under oath. As a consequence, this tempers the weight I afford to that evidence.

Flat 1

35. Mr Aktas's statutory declaration states that Flat 1 was rented out to a Mr David O'Brian from November 2016 to February 2021, and that following this Mr Scott Lee rented the flat from March 2021 onwards. This is corroborated by the statutory declaration from Mr Aziz Kara, the owner of Locus Estates and the letting agency that was managing the tenancies at the property on behalf of Mr Aktas and the appellant. However, Mr Aktas and Mr Kara did not attend the inquiry and so their evidence remains untested.
36. Furthermore, their statements are contradicted by email correspondence on 18 September 2019 between the letting agency and the appellant⁴. This states that Mr O'Brian had moved out of the property apparently without any notice, and that the tenant's partner Mrs Sabah Zammoui would take over the tenancy. When giving her evidence to the inquiry, the appellant confirmed that Mr O'Brian left the property at some point in 2019, but she was unable to say when he vacated Flat 1. The appellant went on to assert that Mr O'Brian's partner continued the tenancy, but without a tenancy agreement, and that she was ultimately evicted from Flat 1 in February 2021. However, there is no positive evidence before me to confirm that Mrs Zammoui continued the tenancy of Flat 1 after Mr O'Brian had vacated. Nor do I have any evidence of her claimed eviction from the property.
37. This contradictory evidence undermines the credibility of the appellant's case, and it limits the weight I afford to both the appellant's oral submissions to the inquiry and the statements from Mr Aktas and Mr Kara.
38. Furthermore, I find the evidence with regard to Mr O'Brian's occupation of Flat 1 to be limited and confusing. His tenancy agreement covers an initial 12-month period commencing from 26 November 2016, whereas he is now said to have resided there until leaving without notice in 2019. The appellant states that Mr O'Brian's tenancy was 'rolled over' at the end of the initial 12-month period and in effect became a statutory periodic tenancy, pursuant to s5 of the Housing Act 1988. However, there is no evidence before me to corroborate that account - a tenancy agreement is not, of itself, conclusive evidence of continuous occupation.
39. Mr O'Brian was said to have initially resided in Flat 1 with his partner. I have been provided with some electricity bills for Flat 1 which are in the name of both Mr David O'Brian and a Ms Sabha Zannuer [sic] up to 9 November 2018. Beyond this point, and up to June 2021 the bill is only in the name of Mr David O'Brian. However, the appellant confirmed that Mr O'Brian had vacated the property at some point in 2019, with his partner then taking over the tenancy.
40. By way of explanation, the appellant told the inquiry that Mr O'Brian's partner stayed on at the property and maintained the electricity bills in his name. While this arrangement appears a little odd, if I accept this account, which was given under oath, then it is clear that the electricity bills provided in this case cannot be relied on as evidence of occupation by the person named on the utility bill.

⁴ Email from Ms Sultan Dugunyoru of Locus Estates Haringey, 18 September 2019 at 13:42

41. The appellant has submitted copies of Deposit Protection Certificates for Mr O'Brian for this flat and covering the period 26 November 2016 to 25 November 2017 and 25 November 2019 to 24 November 2020. Putting aside the gap from November 2017 to November 2019, this demonstrates that the Deposit Protection Certificates (DPCs) are also not conclusive evidence of residential occupation because they show a whole year from 2019 to 2020 where Mr O'Brian was named on the DPC, yet it has been established that he did not reside at the property during this period. In any case, I am not convinced that the largely administrative process of registering with a tenancy deposit protection scheme is conclusive evidence of continuous residential occupation.
42. Furthermore, the appellant confirmed that rent for all of the flats was transferred to her bank account on a monthly basis from each tenant. For Mr O'Brian, his tenancy agreement states a rental amount of £900 per month and for Mr Lee it was £825 per month. Despite this, and as pointed out by the LPA, no evidence has been presented to show that rent was paid or received for Flat 1 over the claimed periods of occupation.
43. In relation to the inventory checks, electrical installation reports and certificates, along with the energy performance certificates and receipts and invoices for maintenance works, these neither individually nor collectively demonstrate how the property was being used or if it was in continuous residential use over the relevant period. Whilst I appreciate this evidence could be indicative of a residential use, overall, the documentation lacks specificity as to whether a residential use was actually occurring.

Flat 1 conclusion

44. Drawing all of these points together, the appellant's evidence falls well short of being sufficiently precise and unambiguous. Even if I were to accept that it was likely that Flat 1 was first occupied for residential use in November 2016 by Mr O'Brian, the evidence indicates that he vacated the property without notice on an unspecified date prior to 18 September 2019. Beyond this, there is a lack of credible evidence to demonstrate that the flat was occupied until Mr Lee moved in in March 2021. However, this is beyond the key date of 24 July 2019 and so does not assist the appellant's case.
45. Consequently, it has not been demonstrated, on the balance of probability, that Flat 1 was occupied for residential use for a continuous four-year period prior to the notice being issued.

Flat 2

46. The declarations from Mr Aktas and Mr Kara suggest that Flat 2 has been occupied by Mr Manuel Lopez and Mr Isaac Shozi since August 2017 to the present day. This is supported by sworn statements from both Mr Lopez and Mr Shozi. However, none of these individuals attended the inquiry and so their evidence remains untested.
47. Tenancy agreements have been provided for Mr Lopez and Mr Shozi from 1 August 2017 and renewed annually, with new agreements up to 31 July 2020. The appellant suggests that the tenancy 'rolled over' beyond this and to the present day. However, it is not clear why this tenancy turned into a 'roll over' type tenancy after being purposefully renewed on an annual basis for three consecutive years. Furthermore, there is limited evidence before me to demonstrate that the tenancy did in fact

continue beyond July 2020. Again, as pointed out by the LPA, the evidence is not corroborated by records of any rental payments for this flat.

48. Electricity bills have been provided for Flat 2 in the name of Mr Lopez and Mr Shozi, along with some evidence of registration with a deposit protection scheme. However, this evidence does not cover the entirety of the claimed period of occupation and is therefore incomplete. Also, as per my findings in relation to Flat 1, it has already been shown in this case that this type of evidence cannot be relied on to demonstrate a period of occupancy. Therefore, I give little weight to this evidence.
49. The Electricity Certificate, Energy Performance Certificate (EPC), and the Electrical Installation Condition Report (EICR) submitted for Flat 2 do not demonstrate that the property was occupied or in residential use. Similarly, the two inventory checks do not demonstrate ongoing residential occupation. I also note that the 2016 inventory check took place at a point in time when it is not claimed that Flat 2 was occupied. It is also not signed. This adds strength to my earlier finding that this type of evidence does not indicate residential occupation.

Flat 2 conclusion

50. For all of the above reasons, I find that the evidence presented in relation to the residential occupancy of Flat 2 is imprecise and ambiguous, to the extent that it has not been demonstrated, on the balance of probabilities, that it had been in continuous residential use for the required four-year period.

Flat 3

51. The statements from Mr Aktas and Mr Kara indicate that Flat 3 has been rented out to Mr Oleksandr Chumak since November 2016, and that he maintains his occupancy at the premises. However, none of these individuals attended the inquiry for their evidence to be tested. Furthermore, the evidence from Mr Aktas and Mr Kara has already been proven to be unreliable and has been contradicted by the appellant's own version of events as presented to the inquiry.
52. Three tenancy agreements have been provided for Mr Chumak in relation to Flat 3. These agreements cover the periods: 23 January 2019 to 22 January 2020; 23 January 2020 to 22 January 2021; and 23 January 2021 to 22 January 2022. In addition, Mr Chumak has provided a sworn statement indicating that he has rented Flat 3 since November 2016 and continues to reside there.
53. However, as the LPA have pointed out, there is no evidence before me of Mr Chumak paying rent for Flat 3. Even if I were to accept that Mr Chumak resided at the property during the periods covered by the tenancy agreements, there is insufficient evidence of his tenancy existing prior to January 2019 or beyond January 2022. Therefore, this would still fall short of the required four-year period.
54. For the reasons I have already set out, the electricity bills, inventory checks, DPCs, EPC, and EICR submitted in relation to Flat 3 are not reliable forms of evidence in this case to demonstrate residential occupation.

Flat 3 conclusion

55. On the strength of the evidence before me, it has not been demonstrated, on the balance of probability, that Flat 3 was in continuous residential use for a period of four years prior to the notice being issued.

Flat 4

56. Mr Aktas and Mr Kara's statements indicate that Ms Mariam Marinescu rented Flat 4 from November 2016 to December 2018. It is then said that Miss Silvia Tumminia rented the flat from January 2019 to August 2021, and then to Ms Selen Ozbek from August 2021 to the present day. However, I have already found this source of evidence to be unreliable, and it was not tested at the inquiry.
57. A tenancy agreement has been provided for Ms Marinescu, commencing from 21 November 2016 and ending on 20 November 2017. The appellant claims that the tenancy rolled over beyond November 2017 until December 2018. However, there is nothing before me to support this, and there is no evidence of the date on which Ms Marinescu vacated the property.
58. Two annual electricity summary statements have been provided in the name of Ms Marinescu, stating her address as Flat 4. These cover the periods 24 October 2016 to 23 October 2017 and 24 October 2017 to 23 October 2018. Whilst, I have already found electricity bills to be unreliable in this case, it is worth noting that these periods start before Ms Marinescu's tenancy was said to have begun in Flat 4 and they fall short of when she was said to have vacated the flat, at some point in December 2018. Therefore, I find the evidence to support Ms Marinescu's claimed period of occupancy of Flat 4 to be limited and ambiguous.
59. Two tenancy agreements have been provided for Miss Tumminia in relation to Flat 4. These agreements cover the periods 23 January 2019 to 22 January 2020, and 23 January 2020 to 22 January 2021. However, it is unclear why the second tenancy agreement is not signed by the landlord⁵. Nevertheless, Miss Tumminia has provided a sworn statement which sets out that she was renting and residing at Flat 4 from 23 January 2019 to 6 August 2021.
60. I note that this statement was subscribed and sworn before a solicitor via a video conference. Other than when temporary measures were introduced during the COVID-19 pandemic, sworn statements, statutory declarations, and the witnessing of other legal documents, must be witnessed in the physical presence of a solicitor or commissioner of oaths. The physical presence of the witness is important and crucial for maintaining the integrity of the process. Consequently, Miss Tumminia's statement does not appear to have been correctly witnessed, and it does not bear the official stamp of the solicitor's firm. Therefore, I cannot treat this as sworn evidence. In any case, Miss Tumminia did not attend the inquiry and so her evidence remains untested and is reduced in weight accordingly.
61. Again, the appellant claims that Miss Tumminia's tenancy rolled over beyond the end date of the second tenancy agreement. However, beyond Miss Tumminia's statement, I have no evidence before me to confirm this to be the case. Without corroborating evidence, this indicates a potential break in the occupancy of this flat. I also find it odd that Miss Tumminia's initial 12-month tenancy was renewed with a second 12-month tenancy agreement, but beyond this it is said to have simply rolled over into a statutory periodic tenancy.
62. Two tenancy agreements have been provided for Miss Ozbek in relation to Flat 4. The first shows her tenancy of Flat 4 beginning on 14 August 2021 and ending on 13 August 2022, then beginning on 14 October 22 and ending on 13 October 2024.

⁵ Core Document 3.1.1 – Assured Shorthold Tenancy Agreement Dated 13/01/2020, Page 17 'Signatures to the Agreement'

Miss Ozbek has provided a sworn statement that sets out that she has been renting and residing at Flat 4 since 14 August 2021, but she did not attend the inquiry for her evidence to be tested. I must therefore limit the weight of this evidence.

63. There is a gap of 61 days between Miss Ozbek's tenancy ending on 13 August 2022 and it starting again on 14 October 2022. This appears to be a significant break. However, the appellant does not acknowledge the break and again suggests that the tenancy would have rolled over into a statutory periodic tenancy. However, if that were the case then it is not clear why the tenancy agreement was then formally renewed on 14 October 2022 after a gap of two months.
64. Furthermore, the tenancy agreements show that Ms Marinescu's rent was £875 per month, Miss Tumminia's rent was £850 per month, and Miss Ozbek's rent was £800 per month. Despite this, the LPA validly point out that no evidence has been presented to show that any of these individuals have ever paid any rent for Flat 4.
65. Miss Tumminia and Ms Ozbek's names appear on some electricity bills in relation to Flat 4. However, there are gaps in this evidence, and I have already found this type of evidence to be unreliable in this case for demonstrating residential occupancy.
66. For the reasons I have already set out, the submitted inventory checks, DPC's, EPC, and EICR are not reliable or sufficient forms of evidence, in this case, to demonstrate residential occupation.

Flat 4 conclusion

67. Bringing all of these points together, the evidence lacks credibility and precision. There are substantial gaps in the evidence which suggest that the flat was likely vacant for periods of time. Therefore, I find the evidence presented in relation to the occupancy of Flat 4 to be insufficient to demonstrate, on the balance of probability, continuous residential use over the required four-year period.

Flat 5

68. The declarations from Mr Aktas and Mr Kara state that Flat 5 was rented to Ms Phoebe Louisa Bishop-Wright from November 2016 to September 2018, and then to Ms Maud Emma Jade Le Fort-Allanic from January 2019 to August 2019. Following this it is said that the flat was rented to Mr Cieran J Power from August 2019 to July 2023, and then to Ms Claire Clark from July 2023 onwards. However, this evidence has already been proven to be inaccurate, and none of these claimed tenants attended the inquiry.
69. Even if I were to accept that Ms Bishop-Wright occupied Flat 5 from November 2016 to September 2018, the appellant's own account shows a significant break in occupancy from when Ms Bishop-Wright is said to have vacated the property in September 2018 and the beginning of Ms Fort-Allanic's tenancy in January 2019 – a gap of at least three months when the LPA could not have taken enforcement action. Therefore, the accrual period for immunity from enforcement action would reset at this point.
70. Ms Fort-Allanic has provided an affidavit stating that she rented Flat 5 from 29 January 2019 to 30 August 2019. However, this statement was not witnessed in the physical presence of the named solicitor, and it does not bear the official stamp of the solicitor's firm. I cannot, therefore, treat this as sworn evidence.

71. I have been provided with a tenancy agreement in the name of a Ms Fort [sic] for Flat 5, commencing on 29 January 2019 and ending on 28 January 2020. However, Ms Fort-Allanic states that she resided at the property only up to 30 August 2019. Accordingly, Ms Fort-Allanic is said to have vacated the property before the end of the tenancy agreement, clearly demonstrating why tenancy agreements are not, on their own, conclusive evidence of continuous residential occupation. Beyond this, no documentation has been provided to link Ms Fort-Allanic to Flat 5. In fact, the only electricity bill⁶ provided during Ms Fort-Allanic's claimed period of occupancy is addressed to 'The Occupier Flat 5'. Whilst not conclusive, this suggests that Flat 5 may have been vacant during this period.
72. Furthermore, despite Ms Fort's tenancy agreement stating a monthly rent of £885 per month, there is no evidence of any rent being paid or received for Flat 5 over this claimed period of occupancy. The inventory checks carried out in January 2019 and August 2019 do not assist the appellant's case because they give no indication that the property was occupied.
73. Consequently, I am not persuaded that the evidence is sufficiently precise and unambiguous to demonstrate that Flat 5 was likely occupied by Ms Fort-Allanic over this period. There is simply a lack of credible evidence to corroborate the appellant's case in this regard.
74. Mr Power is said to have occupied the property from 31 August 2019. However, this is after the critical date of 24 July 2019, the latest date from which the four-year period of continuous residential use must be demonstrated. Therefore, given my findings above in relation to Flat 5, even if I were to accept that Mr Power occupied the property, as the appellant states, and that this was followed with no break by Ms Clark, this would fall short of the requisite four-year period by at least one month.
75. In any case, I note there are similar deficiencies and gaps in the evidence provided to support the claimed periods of occupancy by both Mr Power and Ms Clark, including a lack of any tenancy agreement beyond August 2021 for Mr Power, and no tenancy agreement provided for Ms Clark. There are also gaps in utility bills and some utility bills are addressed to 'The Occupier', suggesting a period of vacancy. Furthermore, there is no direct evidence or statements from Mr Power or Ms Clark to support the appellant's case, and they did not attend the inquiry. The LPA also point out that the evidence is not corroborated by any records of any rent being paid for Flat 5 from these individuals.
76. The Council Tax bills provided for Flat 5 are initially in the name of Mr Akbas, with the earliest covering the period of 1 April 2021 to 31 March 2022. However, despite Mr Power being named on subsequent bills, this falls after the critical date of 24 July 2019, so it does not assist the appellant's case.

Flat 5 conclusion

77. Taking all of these points together, I find the evidence presented in relation to the occupancy of Flat 5 to be imprecise and ambiguous. I have found significant gaps in the evidence which suggest that the flat was likely vacant at points during the requisite four-year period, such that the LPA could not have taken enforcement action. Consequently, it has not been demonstrated, on the balance of probabilities,

⁶ British Gas Electricity Bill, dated 15 June 2019 and covering the period 27 April 2019 to 14 June 2019

that Flat 5 had been in continuous residential use for the required four-year period, before the notice was served.

Flat 6

78. The statements from Mr Aktas and Mr Kara state that Flat 6 was rented out to Mr Henri Edouard Laurent Chevallet from November 2016 to November 2017, Mr Samuel Robert Manning Edward from December 2017 to December 2018, Mr Tobias Michael Weiss from December 2018 to September 2019, Miss Veronika Esslerova from September 2019 to September 2020, Miss Lucy Ines Garcia and Miss Juliet Falavigna from October 2020 to October 2021, and Ms Rianka Gill from October 2021 to the present date.
79. However, this account is contradicted by the fact that a tenancy agreement has been provided for Flat 6 in the name of Ms Sasha Fellingham, commencing from 21 January 2017 to 20 January 2018, along with a single electricity bill⁷ in this name. Ms Fellingham's period of tenancy, as set out in the tenancy agreement, overlaps with Mr Edward's tenancy agreement, which is stated to commence from 1 December 2017. Therefore, it would appear that Ms Fellingham vacated Flat 6 before the end of her tenancy agreement, but it is unclear when she left the property. Beyond this, no further evidence has been provided to corroborate Ms Fellingham or Mr Edward's occupancy of Flat 6. Therefore, the evidence is both contradictory and lacks accuracy.
80. The affidavit from Mr Weiss states that he was renting and residing in Flat 6 from 28 December 2018 to 28 September 2019. However, this statement was not sworn in the physical presence of the named solicitor, and it does not bear the official stamp of the solicitor's firm. Therefore, it is not a statutory sworn statement, and Mr Weiss did not attend the inquiry for his evidence to be tested under oath.
81. Electricity bills in Mr Weiss's name have been provided and covering the period of 22 March 2019 to 28 September 2019, but this does not cover the entirety of his claimed period of tenancy, and I have already found this type of evidence to be unreliable in this case. A DPC has been provided in the name of Mr Weiss covering the period 28 December 2018 to 27 December 2019. This extends beyond the period in which Mr Weiss is said to have resided at the property and so does not prove actual residential occupation.
82. Furthermore, as the LPA notes, no tenancy agreement has been provided for Mr Weiss and there is no evidence of regular rental payments for Flat 6, or any other credible evidence to corroborate his claimed occupancy of the property. Therefore, the evidence to support Mr Weiss's claimed period of residential occupation is vague and imprecise.
83. Miss Esslerova is said to have occupied the property from 30 September 2019. However, this is after the critical date of 24 July 2019 and given the lack of credible evidence to demonstrate continuous residential occupation up to this point, a four-year period has not been demonstrated.
84. There are similar deficiencies in the evidence for the claimed periods of tenancy beyond September 2019. However, it is not necessary to interrogate this evidence

⁷ CD 3.1.1 British Gas Electricity Statement, dated 20 February 2017 and covering the period 21 January 2017 to 20 February 2017

further because even if I were to accept it, as noted above, it would still fall short of demonstrating four years of continuous residential occupancy for Flat 6.

Flat 6 conclusion

85. Bringing all of these points together, the evidence in relation to the claimed periods of residential occupancy of Flat 6 is contradictory, imprecise, and lacks credibility, to the extent that it has not been demonstrated, on the balance of probabilities, that it had been in continuous residential use for the required four-year period, before the notice was served.

Other evidence

86. Mr Alim Aygun told the inquiry that he regularly visited the appeal property between 2016 and 2020 to undertake plumbing and electrical maintenance services as instructed by Mr Aktas. During this period Mr Aygun confirmed the presence of six flats within the upper floors of the property. He stated that he would regularly visit the property on an almost monthly basis to carry out maintenance work within the flats. During his visits he recalled that each of the flats appear to be occupied by tenants. However, he was unable to identify any of the tenants by name and was unable to give a precise account of when he had visited the property. Overall, I found Mr Aygun's evidence to the inquiry to be unhelpfully vague and therefore not sufficient to support the appellant's case.
87. For similar reasons, the statutory declaration from Mr Aslan confirming that his company carried out maintenance at the property does not demonstrate that the flats were in continuous residential use. Nor did Mr Aslan attend the inquiry for his evidence to be tested.
88. Council Tax records for the property have been provided, but these are incomplete, and it does not appear that the flats were registered for Council Tax purposes until some point in 2021. Also, initially most of the Council Tax records were in the name of the landlord. Consequently, this evidence does not assist the appellant's case.
89. I am not persuaded that the submitted DPCs, EPCs, EICRs, inventory checks, and other receipts and invoices for maintenance provide evidence of continuous residential occupation of the flats, because this evidence is inconsistent, incomplete, and in many cases does not link any of the claimed tenants to the property. In essence, this documentation does not demonstrate actual residential use.
90. The appellant has suggested that gaps in the evidence are simply administrative oversights or represent occasions when they have been unable to gain copies of complete records from past tenants. Nevertheless, there are significant gaps in the evidence provided, and this does not address why there are contradictions in some of the evidence provided.
91. The LPA has claimed that the appellant deliberately concealed the use of the Flats in order to evade detection and avoid enforcement action. Therefore, it asserts that the standard timescales for proving immunity should not apply. However, I do not need to explore this matter because the appellant's evidence is not sufficient to demonstrate continuous residential use when applying the usual four-year timescale.

Ground (d) overall conclusion

92. Overall, I have found the evidence in this case to be contradictory, incomplete and lacking credibility. Consequently, the appellant has not provided sufficiently precise and unambiguous evidence to substantiate the claim that, on the balance of probability, the residential use of the Flats commenced before 24 July 2019 and continued for a four-year period, without any material break, prior to the enforcement notice being served.
93. Therefore, the ground (d) appeal fails.

Conclusion

94. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

J M Tweddle

INSPECTOR

