Planning Inspectorate

Appeal Decision

Site visit made on 2 September 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2025

Appeal Ref: APP/N5090/C/23/3321486
46 The Drive, Edgware HA8 8PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr D Kerai against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 24 March 2023.
- The breach of planning control as alleged in the notice is *without planning permission, the making of a material change of use of the outbuilding in the rear garden to self-contained dwellinghouse.*
- The requirements of the notice are:
    1. *Cease the use of the outbuilding as self-contained dwellinghouse.*
    2. *Permanently remove any kitchen unit, sink, cooker and food preparation area from the outbuilding.*
- The period for compliance with the requirements is *6 months after this notice takes effect*
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the 1990 Act (as amended).

Formal Decision

1. The appeal is dismissed, and the enforcement notice (EN) is upheld.

Preliminary Matters

2. It would be appropriate to detail the planning history associated with the site. The Council was alerted to an alleged breach of planning control relating to an outbuilding being used as an independent self-contained dwellinghouse. Various correspondence between the parties took place, including the Council issuing a Planning Contravention Notice (PCN) in December 2022.

3. Following the PCN, the appellants submitted a lawful development certificate application[1] (LDC) in January 2023, under section 191 of the 1990 Act (as amended), regarding the existing use of the outbuilding as a self-contained dwelling. The Council did not issue the LDC, opining that the appellant failed to provide sufficient, clear and unambiguous evidence to demonstrate on the balance of probabilities[2] that the outbuilding at 46 The Drive had been continuously occupied as a self-contained dwelling for more than 4 years. The Council also opined that the use had been deliberately concealed. The refusal was issued on 28 February 2023.

4. Nevertheless, the appellants submitted a further LDC application[3] on 13 March 2023 for the same development. This LDC application currently remains undetermined. It appeared that the Council were mindful of the time limits for

[1] London Borough of Barnet Planning Ref: 23/0312/191
[2] Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732
[3] London Borough of Barnet Planning Ref: 23/1088/191

taking enforcement action, and thus to protect their position, the Council considered it expedient to serve an EN on 24 March 2023.

Appeal under ground (c)

5. An appeal under ground (c) is that, although the appellant accepts that the matters alleged are taking place, they are claiming that planning permission is not required for the use's lawful continuation.

6. From the evidence before me, the outbuilding appears to have been completed in July 2004[4]. I have been presented with no planning permission or LDC for the building itself; thus, it is assumed that the operational development pertaining to the outbuilding is lawful through the passage of time. However, the Building Control certificate indicates that the outbuilding was fitted out as a gym/store. This is subsequently confirmed by the appellant in their letter to the Council dated 14 September 2022[5], alongside the appellants affidavit submitted as part of this appeal. Thus, the lawful use of the outbuilding would be as a gym/store use which would be incidental to the enjoyment of the main dwellinghouse.

7. The appellant has indicated that the outbuilding was fitted with facilities (including a kitchen) which effectively resulted in the unit being capable of operating as a self-contained dwelling, as confirmed on my site inspection. Furthermore, given it is accessed separately via a side gate, adjoining the main dwellinghouse, it represents an additional self-contained unit of accommodation capable of independent occupation, separate from the main dwellinghouse at 46 The Drive.

8. This is materially different to the previous incidental use as a gym/store where there remained a functional relationship between the main dwelling and the outbuilding, given the interaction between the users. However, when this arrangement ceased the planning position changed. Accordingly, there has been a breach of planning control resulting in an unauthorised change of use to a self-contained dwelling, which required planning permission.

9. The appeal on ground (c) therefore fails.

Appeal under ground (d)

10. A ground (d) appeal is that, at the date when the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged.

11. As with ground (c), the onus of proof is on the appellant, with the relevant test also being the balance of probabilities, and their evidence should not be rejected simply because it is not corroborated[6]. If there is no evidence to contradict the appellants version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Case law[7] highlights that an appellant seeking to make out a lawful use pursuant to ground (d) must provide sufficient evidence that there had been a continuous use for the relevant immunity period.

[4] London Borough of Barnet Building Control certificate of completion Ref: B 00/1495 dated 12/07/2004
[5] Supporting document with the Councils Statement of Case
[6] Gabbitas v SSE & Newham LBC [1985] JPL 630
[7] Ravensdale Ltd v SSCLG [2016] EWHC 2374 (Admin)

12. The provisions of the Levelling Up and Regeneration Act, which came into effect on 25 April 2024, mean all unauthorised uses are subject to the ten year bar. However, as the EN was issued on 24 March 2023, in this instance the four year bar still applies for unauthorised residential uses. To demonstrate immunity from planning control, the appellant must therefore show that the use as a separate self-contained dwelling has continued on an uninterrupted basis for at least four years from the date of when the EN was issued. Accordingly, the material date here is 24 March 2019.

13. The appellant has supplied a plethora of information in support of their ground (d) appeal to show that the change of use is immune from enforcement action. The evidence submitted by the appellant includes a letter from Amit Shah and Aruna Jain indicating that they were residing in the outbuilding (Annex) from 01 April 2018 until 01 September 2020. This is corroborated through a signed 12 month Assured Shorthold Tenancy (AST) dated 29 March 2018; a Tenancy Deposit Protection Certificate (TDPC) dated 5 April 2018 and registration with the Electoral Role dated March 2019. There are also various correspondence and mobile phone bills with the address of the appeal site. Bank statements also correctly addressed have been submitted which highlight rent payments made to the appellant from May 2018 until August 2020, albeit these payments are intermittent and vary in amount to that stated in the AST.

14. A letter has also been submitted by Sankalp and Aakrati Chadha also confirming tenancy in the outbuilding (Annex) from 02 September 2020 until 19 September 2021. An AST has also been submitted for 12 months commencing 16 September 2020 along with a TDPC also dated September 2020. However, the AST states the tenancy relates to Room B at 46 The Drive, Edgware HA8 8PT with reference to the “Anex” as a later handwritten addition. There is a single mobile phone bill address to Aakrati Chadha at this address accompanied by various bank statements detailing rent paid to the appellants.

15. There is a letter confirming a tenancy in the Annex at 46 The Drive, Edgware HA8 8PT between 20 September 2021 until 19 January 2022 for Mita Vekria, alongside another signed AST for six months dated 19 September 2021. This information is also accompanied by bank statements, again with varying amounts differing to that agreed in the AST albeit paid to the appellant. There is also an Electoral Role record for Mita Vekria dated February 2023. However, this does not correspond with her specified tenancy dates, given that this date would coincide with the next tenant (Vinodkumar Patel).

16. Finally, there is a similar level of detail including a letter stating tenancy dates; a 12 month AST dated 8 January 2022; and various bank statements highlighting the payments made and received from Vinodkumar Patel to the appellants in respect of the rent at the Annex, 46 The Drive. At the time of the submission Vinodkumar Patel was the existing tenant.

17. The submitted information is lacking in copies of council tax records, and/or utility bills that would provide substantive information showing that the appeal site was supplied with separate services, which would provide additional assistance in verifying the appellant’s claim to the site being used as a separate residence for over four years.

18. In regard to utility bills, the appellant highlights that the ASTs specifically state that bills are not included as part of the rent. The appellant also indicates that separate readings are made from a submeter, in order to distinguish the invoices to be apportioned to the appeal site. Nevertheless, I have not been supplied with any detail in respect to separate utility bills at the Annex.

19. The appellant claims that he was unaware that a separate residence would attract council tax, hence a lack of invoices or payments in respect of the appeal site. However, I am unclear how a landlord would be oblivious to the council tax requirements associated with a separate, occupied and rented residential dwelling.

20. The appellant has also submitted contradictory written statements in respect to the use of the outbuilding. In their letter dated 14 September 2022, the appellants claim the outbuilding was used as *'…a store/gym and a 'man cave/annex'. It has been used in this manner for over 10 years. Therefore, it is not a 'separate self-contained flat' as referred to in your letter.'* However, as part of this appeal, the appellant has submitted an affidavit dated 9 March 2023. The affidavit conversely claims the outbuilding has been rented out as a *'…self-contained flat for over four years.'*

21. There also appears to be an anomaly in the AST for Sankalp and Aakrati Chadha, which references Room B at the main house, rather than reference to the appeal site which is known as the Annex. Although, I do acknowledge there is a handwritten correction to the AST, but this is neither dated nor signed.

22. It is clear that a significant amount of evidence has been provided by the appellant, in an attempt to demonstrate that the use as a separate self-contained dwelling, has occurred since 24 March 2019. However, given the irregularities in the information submitted I find this evidence inconclusive and somewhat patchy. Specifically, I do not find the submissions either precise or unambiguous, regarding the rent payments received from tenants, which do not tally with the rents agreed in the ASTs, alongside the distinct lack of council tax records and utility bills despite the separate submeter.

23. Given my findings in respect to the ground (c) appeal, there has clearly been a change of use at the site. However, I do not find the submitted information sufficiently precise and unambiguous, for me to conclude that this change of use is immune from enforcement action. As the onus is on the appellant to provide compelling evidence to support their case, I find for the above reasons, that they have failed to demonstrate the four year immunity from planning control from when the EN was issued.

24. Notwithstanding this, even if I was to conclude the submitted evidence met the requisite four year period, the Council highlight that the appellant has deliberately concealed the change of use, thus the relevant time frame to demonstrate immunity would be ten-years.

25. The concept of deliberate concealment is set out in the *Welwyn Hatfield* case law[8] and is fact sensitive. The *Welwyn Hatfield* principles set out the following factors are sufficient to demonstrate deliberate concealment has occurred: (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

[8] Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15; [2011] JPL 1183

undermine that process; and (iv) the wrong-doer would profit from the deception if the normal limitation period were to enable them to resist enforcement action. Case law as set out in *Jackson*[9] held that for concealment to have taken place there has to be 'positive deception' such as misleading correspondence where fake information has been provided.

26. Based on the contradictory written evidence submitted by the appellant in respect to when the change of use took place, I find that this would amount to deliberate conduct intended to conceal the breach of planning control from the Council. Thus, it would undermine the planning process to the benefit of the appellant.

27. The *Welwyn Hatfield* and *Jackson* judgements indicate that in the interests of public policy, such conduct takes the case outside of the scope of the time limits set out in s171B(2) of the 1990 Act (as amended). Consequently, this disentitles the appellant from benefitting from the s171B(2) time limit, and therefore, the ground (d) appeal fails.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN accordingly.

Robert Naylor

INSPECTOR

[9] Jackson v SSCLG & Westminster CC; Bonsall v SSCLG & Rotherham MBC [2015] EWCA Civ 1246; [2016] JPL 506