



## Appeal Decision

Site visit made on 18 October 2025<sup>1</sup>

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

an Inspector appointed by the Secretary of State

Decision date: 3<sup>rd</sup> November 2025

**Appeal Ref: APP/G5750/C/23/3334701**

**3 Earlam Grove, Forest Gate, London, E7 9AL**

- 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 Israr Ahmed against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 6 November 2023.
- The breach of planning control as alleged is the material change of use of the basement to a self-contained unit of residential accommodation.
- The requirements of the enforcement notice are to cease the use of the basement as a self-contained unit of residential accommodation.
- The period for compliance is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (a), (f) and (g) of the 1990 Act.

### Decision

1. The appeal is allowed, and the enforcement notice is quashed.

### Ground (d)

2. The onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant’s version of events less than probable, there is no good reason to dismiss the challenge on ground (d), provided the appellant’s evidence alone is sufficiently precise and unambiguous on the balance of probability. Essentially, the claim is that the material change of use of the basement to a self-contained unit of residential accommodation is lawful due to the passage of time.
3. No. 3 is a two-storey terraced property, and its basement is separately accessed from the front of the dwelling via a staircase. There is no evidence before me to indicate any internal connection between the basement and the upper floors. That observation is supported by layout plans submitted with the Council’s evidence.
4. The appellant’s position is that the basement was converted into a self-contained unit of accommodation and has been continuously occupied and used as a single dwellinghouse from 5 October 2011. This date is significantly earlier than the relevant date of 6 November 2019. To succeed on ground (d) of section 174(2) of the 1990 Act, the evidence must clearly and convincingly demonstrate two key points. First, it must show when the basement was physically converted into a self-contained flat. Second, it must establish that this unit was occupied and used as a dwellinghouse for a continuous period of at least four years, without any significant interruptions in residential use.

<sup>1</sup> Despite access required site visit notifications sent to the appellant, access to the basement flat was not available. However, I am satisfied sufficient written representations are before me to determine this appeal and proceed on this basis.

5. The Council's statement and bundle set out a detailed list of the site's planning history most of which is irrelevant to the pertinent issue. For example, in 2005 planning permission was granted to excavate the basement and part of the front garden to provide an external staircase<sup>2</sup>. On 6 November 2023, a certificate of lawfulness of existing use of the basement as a 1-bedroom flat was refused<sup>3</sup>.
6. Upon close examination, I find that the evidence provided does not definitively establish that the basement was being utilised as self-contained residential accommodation as early as 2011. Nevertheless, the Council's own records<sup>4</sup> indicate that, during a site visit conducted on 14 January 2019—prior to the relevant date—the basement was equipped with all the necessary facilities to support daily domestic living. This is supported by dated photographic evidence, which offers a clear depiction of the basement's configuration and layout at that time. During that site visit, officers were informed that the basement was being used solely for storage or as ancillary accommodation. However, the presence of a physically separate space, complete with facilities for independent cooking, washing, and sleeping, should have immediately raised concerns regarding its actual use. This situation strongly suggests that the Council's investigation was effectively hindered as far back as 2019, when these indicators were first observed but not acted upon.
7. Following the site visit conducted in 2023, the Council issued a Planning Contravention Notice in relation to the use of no. 3. However, upon review, it is apparent that the Council could have initiated formal enforcement proceedings as early as 2019. At that time, clear and precise evidence had emerged, signifying a notable change in the character of no. 3's use as a single dwellinghouse. This evidence, which included the presence of a physically distinct unit of accommodation on the basement level, strongly indicated that the property had effectively been subdivided.
8. The formation of a self-contained unit at basement level represented more than a mere alteration—it amounted to the subdivision of the original planning unit at no. 3 into two discrete planning units. This subdivision should have been recognised and addressed as such for planning purposes, rather than being considered as part of the existing single dwellinghouse. The Council's delay in acting underscores the significance of the evidence available in 2019 and the consequent impact on subsequent enforcement decisions.
9. Be that as it may, the appellant must still overcome the evidential burden about the continued use and occupancy of the basement flat. In that context, the identity of the occupier, nor the exact financial arrangement, is determinative of a residential use. I attach significant weight to the sworn testimony submitted with the bundle. The Council has no evidence of its own to make less than credible the appellant's evidence which clearly indicates the basement flat has been continuously used as someone's home since the relevant date. The appellant's version of the events is unambiguous, and the testimony is supported by independent corroboration. In addition, I find the documentary information, like the utility bills, backs up the nature and scale of a separate residential use during the requisite period.
10. Notwithstanding the preceding points, it remains incumbent upon the appellant to satisfy the evidential burden relating to the ongoing use and occupancy of the basement flat. In this respect, neither the identity of the occupier nor the precise financial arrangements can be regarded as determinative factors in establishing residential use.

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<sup>2</sup> Council ref: 05/00234/FUL.

<sup>3</sup> Council ref: 32/02178/CLE dated 8 October 2023. The bundle of evidence submitted with this appeal includes the documentary information submitted with this application.

<sup>4</sup> Appendix 6 to the Council's bundle.

11. Significant weight has been attributed to the sworn testimony included within the submitted bundle. The Council, for its part, has not provided any evidence that would render the appellant's account less credible. The appellant's evidence offers a clear and unequivocal depiction of the basement flat's continuous use as a residence from the relevant date onwards. Furthermore, this account is reinforced by independent corroboration. Additionally, documentary materials such as utility bills further substantiate both the nature and the extent of the separate residential use throughout the required period. This body of evidence collectively strengthens the case for the lawful continued use of the basement flat as a dwellinghouse.
12. The Council has placed considerable emphasis on the appellant's purported efforts to conceal the residential occupation of the basement. One instance cited is the prior approval granted on 20 August 2018 for a single storey rear extension. The application submitted at that time described the existing use of no. 3 as a single dwellinghouse; however, it is important to note that this took place prior to the relevant date in question. Furthermore, although the appellant may have chosen not to proactively declare the separate residential use of the basement to Council officers, the body of evidence submitted demonstrates a level of openness. In particular, the appellant facilitated inspections by officials from both the Council's housing department and the local taxation section. Such cooperation is not indicative of a deliberate attempt to mislead planning enforcement officers. Taken together, these facts suggest that the appellant's conduct, while perhaps reserved, does not constitute positive actions aimed at concealing or misrepresenting the true use of the basement for residential purposes.
13. Upon careful consideration of the facts and evidence available, it is evident that, on or before the relevant date, the property at no. 3 had been formally subdivided into two distinct dwellings. In particular, the basement flat operated as an independent unit and was occupied and used as a single dwellinghouse for a continuous period of four years, with no substantial interruptions to its residential use.
14. Contrary to the Council's contentions, a comprehensive review and synthesis of all the evidence presented reveals a consistent and unambiguous picture. There are no contradictions or discrepancies apparent in the material before me. Furthermore, the Council has not required that the evidence be subjected to cross-examination<sup>5</sup>, and there is no indication that such a process would have undermined its credibility. I am satisfied that the quantity and quality of the documentary evidence provided are sufficient to meet the balance of probabilities standard. This includes records and testimony demonstrating both the subdivision of the property and the sustained residential occupation of the basement flat throughout the relevant period.

### **Overall conclusion**

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (d). The enforcement notice is therefore quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, do not fall to be considered.

*A U Ghafoor*

INSPECTOR

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<sup>5</sup> The Council's completion and submission of the appeal questionnaire confirm its agreement to proceed via the written procedure.