



Appeal Decision

No site visit made

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2026

Appeal Ref: APP/N5090/C/25/3362355

516 Finchley Road, London NW11 8DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Josh Shapiro of Matchforce Ltd against an enforcement notice ("EN") issued by the Council of the London Borough of Barnet.
 - The EN was issued on 31 January 2025.
 - The breach of planning control as alleged in the EN is: Without Planning Permission, the material change of use of the outbuilding to self-contained residential use.
 - The requirements of the EN 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 ground set out in section 174(2)(d) of the 1990 Act.
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Decision

1. It is directed that the EN is corrected by:
 - *the deletion of the words "Without planning permission, the material change of use of the outbuilding to a self-contained residential use" and their substitution with the words "Without planning permission, the material change of use of the outbuilding as a self-contained dwellinghouse" in section 5 of the EN.*

Subject to the correction, the appeal is dismissed and the EN is upheld.

Matter Concerning the Notice

2. It is necessary for the alleged breach of planning control to be described consistently throughout the EN. Therefore, I must correct the alleged breach of planning control to refer to a "*self-contained dwellinghouse*" rather than a "*self-contained residential use*". As this correction is for precision, I am satisfied that it would not cause injustice to either party.

Preliminary Matters

3. Interested parties raise matters within their submissions regarding the planning merits of the development. However, the appellant has not appealed the EN under ground (a) and therefore, I am unable to consider these comments.
4. Neither the appellant nor the Council considered a site visit would be necessary. Given the ground of appeal pleaded and the matters in dispute, I agreed with them. I therefore informed the main appeal parties that a site visit would not be undertaken.

Background Information

5. 516 Finchley Road consists of a semi-detached property located on a residential street. On 12 June 2017, a Lawful Development Certificate¹ was approved for the use of the dwelling as four self-contained flats. The Council confirm that the dwelling was subsequently converted into four flats.
6. An outbuilding was erected in the rear garden of 516 Finchley Road without planning permission. The appellant has provided letters from Aggrandise Plan & Design that refer to the construction of a *“2 Bed Flat at Rear of 516 Finchley Road, London NE11 8DD”*. A letter dated 17 September 2019 states that work is due to commence shortly, and a letter dated 14 February 2020 states that all works have been completed.
7. An interested party has submitted a copy of a letter dated 16 February 2021 they sent to the Council advising them that their *“neighbours at 516 Finchley Road, NW11 are in the process of erecting a structure in their garden”*. In the letter they describe the building as a single skinned building on a concrete base with thermalite block walls and a flat roof.
8. Photographs of the building under construction are included with the letter but are undated. The building depicted in one of the photographs shows the building in its early days of construction, while the other two photographs show it constructed to above the headers of the windows but without a roof. Given the description of the building in the letter, the photographs must pre-date it.
9. The appellant states that the outbuilding was constructed and used as a dwelling, which could be considered a *“hidden”* ground (b) – that the matters stated in the EN have not occurred. However, following receipt of the neighbour’s letter, the Council investigated the outbuilding in February 2021.
10. The Council recommended the case for closure in February 2022 *“as it was confirmed that the outbuilding was not in use as a dwelling at the time”* and even though planning permission was required for the outbuilding, the Council did not take enforcement action against it as they deemed it did not cause harm to the locality. This casts doubt on the appellant’s statement that the outbuilding was constructed and used as a dwelling. Furthermore, the appellant has not provided substantive evidence to prove their assertion. Accordingly, I will continue to deal with the appeal under ground (d) alone.
11. Taking these matters together, I am satisfied that the evidence before me indicates that the outbuilding was completed around the beginning of February 2020 and it was not used as a dwelling at this time.

Appeal on Ground (d)

12. An appeal under ground (d) is that at the time the EN was issued, it was too late to take enforcement action against the breach of planning control.
13. In relation to the material change of use of the outbuilding to a dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Therefore, to succeed on this ground, the appellant must show that the use of the outbuilding as a self-contained

¹ Planning Ref 17/3185/191

dwellinghouse (“dwelling”) occurred before 31 January 2021 and was occupied continuously for at least four years thereafter. The relevant test is the balance of probability, and the burden of proof is on the appellant.

14. The appellant does not provide a precise date when the outbuilding was first used as a dwelling. However, they state it has been tenanted since “15th of March 13, 2020” [sic].
15. Five tenancy agreements have been provided with the first commencing on 15 March 2020 and the last commencing on 14 June 2024. There are no gaps within the timeframe the tenancy agreements cover. However, tenancy agreements do not on their own provide evidence of continuous occupation by the tenants. They only demonstrate that a tenancy was taken out for a period of time and the date the tenancy commenced.
16. Each tenancy agreement is signed by the landlord and tenant(s). However, none of the agreements are witnessed and they are in three different formats. The first, second, third and fourth tenancy agreements refer to the property as “*Rear of 516 Finchley Road, London, NW11 8DD*” where-as the last tenancy agreement refers to the property as “*Outhouse, 516 Finchley Road, London NW1 8DD*”.
17. A “*Lease Plan*” drawing² has been submitted, dated 10 January 2020. A key included on the drawing indicates that the outbuilding edged in red is the “*Lease Area*”. However, the drawing has been submitted separately to the tenancy agreements, and the tenancy agreements do not refer to the “*Lease Plan*” drawing. Therefore, it is unclear whether the drawing formed part of the tenancy agreements.
18. I acknowledge that the last tenancy agreement that commenced on 14 June 2024 specifically mentions “*outhouse*” in the address and therefore it is likely that it refers to the outbuilding the subject of this appeal. However, the address of the other tenancy agreements is ambiguous, particularly as the original dwelling at the appeal site is converted into four self-contained apartments.
19. The appellants have provided a statement from a witness named Sidney Bloch that is dated 6 March 2025. The witness states they were a tenant at 516 Finchley Road from 2019 until late 2024 and that during their time at the property, the two bedroom flat at the rear of the building was occupied by tenants continuously. They also state that they witnessed the construction of the rear flat and that it was occupied since the completion of the building works in 2020.
20. The witness statement contains no current address for Sidney Bloch; it does not identify which part of 516 Finchley Road they occupied and whether a view of the outbuilding could be gained from their accommodation; it is not witnessed by a solicitor or a commissioner for oaths; and no evidence is provided to substantiate how they knew the outbuilding was occupied or by whom. Furthermore, Sidney Bloch’s witness statement contradicts the occupiers of two neighbouring properties.
21. The occupiers of a neighbouring property state that up until June 2024 the outbuilding appeared empty during the evening with only very occasional activity during the day. They assert that around July 2024, a workman installed a new side

² Drawing Number 516FR.8DD

door for access to the garden, and a “ring-type” doorbell was added shortly afterwards. Around August 2024, the neighbouring occupiers assert that the outbuilding was occupied as overnight accommodation with lights being turned on and off and curtains opening and shutting, and they observed people accessing/inhabiting the outbuilding.

22. The occupier of a different neighbouring property asserts that a change in the use of the outbuilding occurred around a similar time as their neighbours. They report that regular viewings were made in May/June 2024; that tenants moved into the outbuilding in July 2024; and a new side gate with a lock keypad and a “ring-type” doorbell were added to the property.
23. Two of the letters from Aggrandise Plan & Design refer to the construction of a “2 Bed Flat at Rear of 516 Finchley Road, London NE11 8DD”. Their letter dated 4 September 2019 describes internal works to a kitchen and bathroom. However, the appellant has not provided substantive evidence to prove that these works were undertaken. Furthermore, as previously stated, in February 2022, the Council recommended the closure of an enforcement case against the outbuilding as they were satisfied it was not in use as a dwelling at that time.
24. Two quotes dated 10 and 22 November 2019 from ENG Glazing Ltd for three windows do not demonstrate that they were purchased. Even if they were purchased and used in the construction of the outbuilding, they do not prove the use of the outbuilding.
25. A Gas Safety Certificate (“GSC”) dated 12 March 2021, and an Energy Performance Certificate (“EPC”) undertaken on 24 February 2021 include the address as “Rear Flat, 516 Finchley Road”. As with four of the five tenancy agreements, this address is ambiguous. Even if it could be demonstrated that the GSC and EPC relate to the outbuilding, they only demonstrate that a boiler is within the outbuilding and that an EPC was undertaken.
26. No affidavits or sworn statements have been provided by any of the tenants listed within the tenancy agreements or the tradespeople involved in its construction. Furthermore, I have not been provided with any Council Tax records for the outbuilding, or any bank statements to demonstrate that the deposits or monthly rent shown in the tenancy agreements was paid by the tenants named.
27. Taking all these factors together, I am not satisfied that the evidence presented by the appellant is sufficiently clear, precise or unambiguous to show that on the balance of probability, the material change of use of the outbuilding to a self-contained dwellinghouse began more than four years prior to the date of the application and has been continuous thereafter.
28. The appeal on ground (d) therefore fails.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a correction.

A Berry

INSPECTOR