



Appeal Decision

Inquiry held on 3 March 2026

Site visit made on 3 March 2026

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2026

Appeal Ref: APP/T5150/C/25/3375410

19 Nutfield Road, London NW2 7EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Rashed Khan against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 26 September 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to two flats.
- The requirements of the notice are:
 - STEP1 Cease the use of the premises as flats.
 - STEP2 Restore the internal configuration of the ground, first and loft floor to the layout which existed prior to the unauthorised change of use taking place, as shown in Appendix I attached to this notice.
 - STEP3 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended) ("the Act").

Summary of decision: The appeal is dismissed and the enforcement notice is upheld.

Applications for costs

1. Applications for costs were made at the Inquiry by the Council of the London Borough of Brent against Mr Rashed Khan, and by Mr Rashed Khan against the Council of the London Borough of Brent. These applications are the subjects of separate decisions.

Preliminary Matters

2. The appellant did not make submissions entitled 'Statement of Case' or 'Proof of evidence' but relied on his comments on the appeal form and an email with accompanying documentation to support occupation of two flats within the building. He gave evidence and represented himself at the Inquiry.
3. All evidence at the Inquiry was given under solemn affirmation.

Reasons

4. Appeals on ground (d) are made on the basis that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control.
5. Section 171B(2) of the Act specifies the period after which no enforcement action may be taken where there has been a breach of planning control consisting in the

change of use of any building to use as a single dwelling house. Applying transitional provisions¹, that is four years beginning with the date of the breach.

6. However, Section 336 of the Act specifies that 'building' includes any part of a building. As the first use of each flat is a change of use to use as a single dwelling house I must therefore consider whether a continuous period of four years has occurred in relation to each individual flat.

The premises as a single dwellinghouse:

7. The appellant's initial case was that the material change of use of the premises from a single dwellinghouse to two flats occurred before January 2019. But there is no convincing evidence of that, either in documentary terms or through evidence in person at the Inquiry.
8. In 2016 the entire premises was let to a single tenant. In 2017 a 6m single storey rear extension was determined not to require prior approval. On 9 January 2018 an Initial Notice for Building Control purposes was submitted for a single storey ground floor rear extension, formation of WC and associated works. On 9 November 2018 a Final Certificate was issued. That certificate clearly specified that the work did not concern a new dwelling, and the appellant's evidence is that that was a separate matter to the conversion of the building into 2 flats.
9. The appellant's verbal evidence was that the tenant remained in residence of all or part of the property throughout building works undertaken in 2018. And in response to questions about when the extension works and physical conversion to two flats took place, whether they occurred as one or several building operations, and how the tenant was accommodated in that process, the appellant's evidence appeared confused and lacked clarity.

The ground floor flat (No 19):

10. On 20 April 2018 the original tenant had signed a new tenancy agreement for the 'Ground Floor Flat, 19 Nutfield Road' ("No 19"). I have seen no corroborating evidence of actual use occurring at that time, but neither have I seen any evidence to the contrary. On the evidence before me, that is likely to have been the date the change of use of the ground floor of the building to use as a single dwelling house first occurred.
11. The appellant advises that following the 12-month fixed term of that tenancy it continued as a periodic tenancy, and in evidence a Possession Order dated 27 April 2022 (for eviction on or before 11 May 2022) was submitted.
12. The only evidence before me of residential occupation of the ground floor as an independent dwelling over a period of 4 years is therefore those two documents. A tenancy agreement apparently entered into on the day of occupation in 2018 and an eviction notice for the ground floor flat in 2022. These documents indicate occupation at the beginning and end of a period just exceeding four years. But there is no evidence of any kind of occupation throughout the period, such as records of rental payments, utility bills, photographs of occupation, or communication between landlord and tenant. And none of the documents submitted to the court in application for the Possession Order have been put in

¹ Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452

evidence, and the eviction therefore did not necessarily occur in relation to the 2018 tenancy.

13. There are therefore weaknesses in the appellant's evidence in relation to evidencing the tenant was in continuous occupation of the ground floor of the building for the entirety of the period from 20 April 2018 to a date between 27 April and 11 May 2022. Nevertheless, there is no opposing evidence and, on the balance of probabilities, that tenant remained in occupation until evicted.
14. On the evidence, a change of use of part of the building to use as a single dwelling house therefore occurred and was used for a period exceeding four years of consecutive use in relation to the ground floor flat in the period up to May 2022.

The flat on the upper floors (19A):

15. I have seen no evidence that the remainder of the building had been converted to a separate dwellinghouse with all the facilities required for day to day living at the time the ground floor flat was first occupied.
16. On 11 January 2019 a Gas Safety Record was issued in relation to '19A' Nutfield Road and on 15 January 2019 an Energy Performance Certificate ("EPC") was issued in relation to '19A' where the property type was described as 'Top-floor flat'. But the evidence does not demonstrate that the upper floors of the building had all the facilities required for day to day living at that time.
17. An undated tenancy agreement authorised a 12-month tenancy of '19A' from 19 January 2019, and correspondence from Milestone Letting Agents in relation to deposit, commission and notice to quit at the end of the period supports occupation for the 12-month period. That is the first date for which there is any evidence of use of the upper floors as a separate flat, and in terms of the evidence, the date the change of use of the upper floors of the building to use as a single dwelling house occurred. The 19 January 2019 tenancy agreement for '19A' ran for the period ending on 18 January 2020.
18. There was a period of 8 days between the first and second tenancies for '19A', and a break in continuous use is capable of amounting to a loss of continuity of the use. In retrospect it is clear that the appellant intended to re-let the part of the property known as 19A, having done so within 8 days. But the relevant test is whether the Council could have enforced against the use at that time.
19. There is no evidence before me as to the condition of that part of the property during the vacancy period, and no information about whether it was being marketed for let. However, the upper floors of the building had been laid out with a separate kitchen and bath and shower rooms, and separate internal doors had been installed in the hallway. And neither party has made any suggestion that the ground floor tenant had any access to the upper floors during that period. In my judgement, the Council could have taken enforcement action against the material change of use of the building during the brief 8-day period of vacancy. That period was de minimis and there was no break in the continuity of the use.
20. The second tenancy agreement for '19A', with a different tenant, commenced on 26 January 2020 for a period of 12 months. A utility bill indicates that that tenant was the person liable for gas use at the premises in June and July 2023, with the standing charge calculated until 3 July 2023.

21. The 12 month fixed period ended on 25 January 2021 and, as with the tenancy for the ground floor flat, there is no corroborating evidence of occupation throughout the period. But it is more likely the second tenant remained in occupation throughout the period than that he returned on a separate tenancy. On the balance of probabilities, the upper floor flat was in continuous use from 19 January 2019 to 3 July 2023, and there is no evidence demonstrating otherwise.
22. Consequently, use of the upper floors as a separate flat constituted a change of use of part of the building to use as a single dwelling house, and that use continued for a period exceeding four years in the period up to July 2023.

Subsequent use of the building:

23. In relation to the upper floors, the Council's evidence then shows a further 12-month tenancy agreement for '19A' commenced on 8 July 2023 with a third tenant. On 12 February 2025 that tenant was found to be in occupation of the 'flat on the ground floor', when he stated he was "previously living upstairs and when the landlord moved from the ground floor, then he took over." The verbal evidence of the appellant was that he was in occupation of the ground floor flat between May 2022 and March 2024.
24. The evidence from mid-2024 was unclear, confusing and potentially contradictory, and February 2025 is when the documentary evidence for use of either of the flats as independent dwellings ends.
25. In August 2024 a member of the public alleged HMO use of the premises with 20 occupants. The appellant advised verbally that this arose on account of relatives of the first-floor tenant staying there without the landlord's knowledge. Such use is potentially capable of amounting to a material change of use of the flat as a large House in Multiple Occupation ("HMO").
26. On 17 March 2025 the appellant made an application for a HMO license, and at the Inquiry he advised it related to the entire premises. There are a number of inconsistencies or inaccuracies in that application in relation to the premises as a whole, but it stated that only one household lived at the property at the time, that there was only one tenancy, and that he sought a license for 7 occupants. The appellant described a couple downstairs with 3 children and a couple upstairs but wasn't sure how many children they had. He advised he would not class it as a HMO, but appeared to suggest he had made the application having had a letter from the Council. That letter was not before me. On the evidence, a material change of use of the whole property to a single unit appears to have occurred, with use of the property as a single dwelling of seven or more people comprising two families.
27. In May 2025 the Council served a Planning Contravention Notice (PCN), which included questions relating to the number of units, use of the building, and any use as a HMO. The appellant's verbal evidence was that he may have been abroad. But even if that were the case, he did not respond on his return, or at any time. And his failure to respond introduces significant doubt as to the nature of the use of the building at that time and in the preceding years, particularly in relation to any use of the premises as one or more HMOs.
28. From June 2025 the Council's housing service served a Hazard Awareness Notice on the appellant, and reported attempting to arrange access to the building on

multiple occasions over the period since March 2025. The appellant's response in May 2025 was that he was out of the country and that the premises was two self-contained flats, and was not a HMO.

Evaluation of the evidence as a whole:

29. On the balance of probabilities, the evidence demonstrates that a change of use of the ground floor of the building to use as a single dwelling house occurred in 2018 and that that use continued for a period exceeding four years. It also demonstrates the change of use of the upper floors of the building to use as a single dwelling house occurred in 2019 and that that use continued for a period exceeding four years.
30. However, the evidence before me of use of the building from 2023 onwards suggests a different and variable pattern of use. It is likely that at some point in 2025 the whole building was used as a single large HMO and that in 2024 the upper floor flat was used as a large HMO. The appellant's evidence for that period was unclear, and at times uncertain and apparently contradictory. The PCN contained a number of questions, including about HMO use, and the appellant's failure to respond to it at all, and his apparent reluctance to afford the housing officers access to the building, introduces further doubt over the use of the building in 2025.
31. The evidence is not clear as to whether the building was occupied as two separate dwellings at the time the Notice was issued, as it was at the time of my visit. Whenever it occurred, the evidence suggests that use as two flats within use class C3 constituted a further material change of use, for which no planning permission or 4 year period of continuous use has been demonstrated.
32. The appellant advised at the Inquiry that it would be apparent at my visit that the property had been two flats since their earlier conversion, and that no further physical changes had been made. But physical changes would not have been required for large HMO use of either flat. And by unlocking the two internal front doors, the building as a whole could be used as a large HMO without the need for physical changes.
33. Overall, on the balance of probabilities, any immunity which may have been gained through conversion and use of the building as two flats between 2018 and 2023 was lost (on the balance of probabilities) through a material change, or material changes, of use prior to the issue of the Notice.
34. There is a lack of precision and significant ambiguity in the appellant's evidence for the years 2024 and 2025. Consequently, the evidence as a whole does not demonstrate, on the balance of probabilities, that no enforcement action could be taken at the time the Notice was issued in relation to the material change of use of the premises to two flats.
35. The appeal on ground (d) therefore fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

37. The appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Rashed Khan - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks BTP Dip Law MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1: Signed tenancy agreement

ID2: Energy bill

ID3a & b: Council tax bills

ID4a, b & c: Letting agent documents