



Appeal Decision

Site visit made on 18 November 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2026

Appeal Ref: APP/T5150/X/25/3369144

Flats 1 to 6, 246A High Street, London NW10 4TD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Dr Satwinder Sahota against the decision of the Council of the London Borough of Brent.
- The application ref 24/3139, dated 30 September 2024, was refused by notice dated 15 January 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is 'Flats 1 to 6 – Use Class C3 – Dwelling Houses'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the date provided on the Council's decision letter, I have taken the date of the application from the application form, which is 30 September 2024.
3. Since the submission of the application, an enforcement notice has been issued by the Council. The relevant date under consideration is 30 September 2024. Since the enforcement notice was issued well after this date, it does not prevent the appeal from succeeding. The issue of an LDC does not, however, remove the need to comply with an enforcement notice which has been issued and come into effect after its issue.

Main Issue

4. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

5. An application under section 191(1)(a) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

¹ Town and Country Planning Act 1990 (as amended)

6. The main thrust of the appellant's case is that the use of the flats is immune from enforcement action by virtue of the passage of time. The application was made on 30 September 2024, therefore the appellant will need to show that the material change of use of the building to use as six flats occurred on or before 30 September 2020 and continued without significant interruption for a period of at least 4 years thereafter.
7. A use can only become lawful if it continues throughout the four year period, to the extent that the local planning authority could have taken enforcement action at any time. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. Within their application form, the appellant states that the 5 residential units have been in continuous use since January 2017 and the ground floor flat, Flat 6, has been in continuous use since September 2019. However, this contradicts the appellant's appeal statement, which states that the first 4 units have been in continuous use since 2015, and the further 2 units (one on the first floor and the other located on the second floor) have been in continuous use since 2017. It is also contradicted by the appellant's final comments, which states that the property was converted into six self-contained units well before 2017, with occupation and services continuing uninterrupted.
9. The property has previously been let and managed by a company, Westfield Estates, which has now ceased trading. The appellant states that they tried to get matters in order, contacting Brent Council Tax department and Business Rates via email on 7 April 2022, advising them of various issues. A copy of the email is provided and is consistent with the appellant's explanation in this regard. However, it does not explain why the banding for flats 1-5 was not done until October 2023, whereas the banding for flat 6 was done in September 2022.
10. A Surveyors report, dated 11 September 2015, describes the ground floor as '*a retail unit to the front elevation with WC off whilst there is a residential flat beyond access of a side passage*'; '*The first floor comprises two flats with a further flat on the second floor*'. A floor plan of the property is not provided with the report and so it is not clear what the layout of the flats was at that time, nor is it clear whether they were occupied. Although the report uses the term 'flats', such a description is not determinative that the units each comprised a single dwellinghouse for the purposes of the Act, since that was not the purpose of the surveyor's assessment.
11. During my visit, I saw that the first floor now comprises three flats and the top floor comprises two flats, which is consistent with the plan provided by the appellant. At some point between 2015 and date of the LDC application, it seems that the configuration of the premises has changed. Section 55(3)(a) of the Act sets out that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. Therefore, even if there were flats on the first and second floors of the building in 2015, their subdivision is likely to have been a material change of use by virtue of section 55(3)(a). It is therefore important to understand how the layout of the premises has changed over time.

12. A fire risk assessment, along with an invoice dated 19 June 2017, is provided for the premises and describes the address as 'Flats 1-6, 246 High St London NW10 4TD'. The Fire Premises Risk Assessment identifies the appeal site as *'a ground shop leading off the main road pavement were [sic] the shop is situated, it has small front office area, a rear ground floor flat and communal areas accessed by five flats above.'* An Electrical Installation Condition Report, dated 10 November 2019 identifies the address as 'Flats 1-6, 246 High St N/A London NW10 4TD' and a Landlord/Home owner gas safety record, dated 17 August 2020, identifies the address as 'Studio Flat 1-6'.
13. On first blush these documents seem to support the appellant's case that there were 6 flats when these documents were written. However, no floor plans are provided in these documents and, it is not clear whether the 'flats' at that time were self-contained and had all the facilities required for day-to-day existence, or whether users of the premises had access to (and relied upon) communal facilities. For example, it is not clear what is meant by 'communal areas' referred to in the Fire Premises Risk Assessment. Photographs included in the assessment appear to be of the ground floor, not the flats above. Within the assessment, cooking equipment is not identified as a source of ignition, suggesting that the assessment relates to the commercial premises and not any of the residential properties. Only 3 hobs were identified in the gas safety record, which suggests that there may have been some sharing of facilities.
14. While the documents may have been produced by professionals, the professionals producing them were unlikely to have been tasked with assessing whether or not each unit comprised a single dwellinghouse for the purposes of the Act. It is more likely they have used the description provided by the individual procuring their services. Moreover, contrary to the appellant's suggestion, the fire safety documentation, gas safety certificate and electrical installation reports do not demonstrate occupation of any of the flats.
15. I have been provided with a series of tenancy agreements in respect of the property. A Tenancy Agreement (TA), dated 1 January 2017, between the landlord and a named individual, whom I shall refer to as AA, identifies the property as 'The dwellinghouse at Top Floor (1st and 2nd floor), for a fixed term of 3 years. The TA does not appear to include the ground floor. This shows that the named individual had the right to occupy the 1st and 2nd floor, not that they did. The agreement includes a clause, which sets out that during the first three months of the tenancy, the tenant is not to assign or sublet the Property and not to part with possession of it in any other way and, thereafter, not to assign, sublet or part with possession of the Property in any way without the consent of the Landlord. It seems likely that at some point after entering into this agreement, parts of the property have been sublet, as I have been provided with tenancy agreements issued in 2019 for Flats 2, 3 and 4, as well as a TA for the ground floor. The agreements are between named individuals and Westfield Estates.
16. A TA, dated 1 January 2020, between the appellant and Westfield Estates, concerns the property '1st and 2nd floor' for a period of 3 years. Clause 9 of the agreement allows the tenant to sublet the property. The first page of a TA, dated 30 March 2020, is provided for Flat 1, for a period of 6 months. It is not clear why the entire document is not provided, nor is it clear what the terms of the tenancy were, or whether it was signed. Nevertheless, this is consistent with the property being let out during this period.

17. It seems that Westfield Estates ceased trading around March 2022 and, by 7 April 2022, the appellant had taken over the management of the property (as evidenced by the appellant's email to the Council, dated 7 April 2022 referred to above). Subsequent TAs are between the appellant and various named individuals. However, the agreements provided are dated mid to late 2023 and early 2024. While the fact that Westfield Estates ceased trading may account for the limited evidence provided prior to April 2022, it is not clear why such limited documentation has been provided for the period following April 2022.
18. It seems from the evidence that the occupants of the different flats have changed over time, as indicated by the different names on TAs for the same units. For example, a TA dated 27 May 2019 identifies an individual, whom I shall refer to as TZ, as the tenant of Flat 2, while a TA dated 7 June 2023 identifies an individual, whom I shall refer to as ASA, as the tenant of the same property. It has not been explained when the various occupants moved out. It is unusual, in my experience, for this to be concurrent with the next occupant moving in.
19. Whether a gap in occupancy has resulted in the clock starting again in terms of immunity will be a matter of fact and degree. Without further detail, it is simply not possible to conclude whether any gaps meant that the Council could (or could not) have taken enforcement action at any time during a four year period. Furthermore, while the TAs show that individuals entered into contracts and had the right to occupy the respective flats, as pointed out by the Inspector in respect of appeal decisions APP/G5750/C/14/222/4702 & 2225963, there is no guarantee they were taken up and the flats occupied on those dates. I therefore afford these documents limited weight.
20. A TA dated 1 January 2024 is provided for Flat 1, for a period of 12 months. That tenant, whom I shall refer to as CM, has provided a statutory declaration, as well as a copy of a letter from their doctor, dated 20 February 2019. Within their statutory declaration, they state that they have been residing continuously in the back flat (Flat 1) on the 1st floor since April 2017 to the present date and that there were 6 flats in the building when they moved in and that they have been in continuous use since 2017. The letter from their doctor gives their address as 'Floor 1 Back Flat, 246 High Street, London, NW10 4TD', rather than 'Flat 1'. The patient is stated as being registered on 10 January 2018. While this reflects when the patient was registered with the surgery, rather than when the patient started to live at the aforementioned premises, I would expect registration with the local doctor to be done shortly after moving.
21. Receipts for Flat 5, purport to show evidence that Flat 5 has been in occupation since April 2017. However, receipts for Flat 5 identify CM as having paid rent for that property (Flat 5) in 2018, not Flat 1. Rent for Flat 5 was paid by a different named individual in 2017, suggesting that a different individual occupied the flat at that time. CM states that the numbering of their flat has changed from Back flat (Flat 1) to Flat 5 and finally to Flat 1, but they have resided in the same physical flat since 2017. However, this is contradicted by TAs dated 15 October 2023 (identified as 'Flat 1(Ground floor)') and 1 November 2023 (Flat 5), which identify other named individuals as the respective tenants and not CM. If CM's suggestion was correct, I would expect their name to be on one of those agreements.
22. Moreover, it is not clear what CM means by 'continuous use', nor do they provide any detail as to who they believe may have occupied the other flats, or how they

were occupied, i.e., whether they were self-contained units or whether some of the facilities were shared. I therefore afford their evidence very limited weight.

23. An employee at Mind the Brew Café, whom I shall refer to as PV, has provided a statutory declaration, which states that, since they began working at the café in October 2019, there have been 6 self-contained flats at the appeal site and that they have been in continuous use. PV suggests that they made enquiries with both the previous leaseholder and current freeholders, who confirmed that there have been no vacant flats, and that they have expressed their own interest in renting one of the flats due to the proximity to their workplace but were advised that none were available. However, PV does not state when they made such enquiries, or whether they entered the premises to see how it was laid out or occupied.
24. While some of the tenants who occupied the building may have been regular customers of the café, no details, such as names, have been provided and so it is not clear whether some, or all of the tenants have been regular customers, nor is it clear the extent to which they will have discussed their living arrangements with PV. Furthermore, it is not clear what PV means by 'continuous use'. Occupants may have gone away, or there could have been a gap between one occupant moving out and another moving in. It is not clear whether PV has taken into account any such gaps in occupancy when suggesting that the use of the flats was continuous. Moreover, the period of time that PV is recollecting details over is a significant one. I would not expect a neighbour to keep track of every individual who has lived in an adjoining property over such a long period. I therefore afford their evidence limited weight.
25. The appellant suggests that PV had sustained and direct interaction with the property over a number of years. However, while the appellant suggests that PV regularly accessed communal areas and repeatedly entered into individual flats, this is not reflected in the statutory declaration provided by the individual and, even if the appellant's suggestion is correct, it lacks sufficient detail. For example, it is not clear what is meant by 'regular access', 'repeated entry', 'many occasions', 'prolonged period'. While the appellant suggests that PV has viewed the flats when enquiring about potential vacancies, the witnesses' evidence is that it was confirmed there were no vacant flats. It seems unlikely an individual would view a flat which has been confirmed as unavailable.
26. A statutory declaration, written by a qualified Energy Assessor (the Assessor) states they carried out an assessment of all six individual flats within the property on 5 October 2023. The Assessor states that, due to the configuration of the building, EPCs were issued per floor rather than separately for each of the six flats. This approach was taken to ensure the assessments could be completed and lodged without requiring six fully separate EPC submissions. However, while the Assessor states that the work undertaken reflected the need to assess each flat individually and the fee charged corresponds to the assessment of each of the six flats, this is not reflected in the EPC certificates provided.
27. Furthermore, they do not explain what it was about the configuration of the building that meant they were issued per floor. Premises where facilities are shared, for example, may be expected to have a single EPC certificate. However, I would expect each individual self-contained unit of accommodation to have its own EPC, since this is likely to be a requirement for letting the property out. While the timing of the EPC may reflect administrative regularisation, and not a change in physical

form or use, even if the premises was laid out as 6 flats at the time of the Assessor's visit, this provides a snapshot of the layout at that date, which is less than four years prior to the LDC application being made.

28. While it seems likely that there has been some residential use of the property, it is not clear from the evidence provided when the material change of use of the building (or parts of the building) to flats took place, or, if there was a subsequent material change of use by virtue of section 55(3)(a), when that took place. Nor is it clear whether the use of any of the flats has occurred for a period of at least 4 years without significant interruption. The evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities, that at the date the application was made, any of the flats were immune from enforcement action. The appeal must therefore fail.

Conclusion

29. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for Flats 1 to 6 – Use Class C3 – Dwelling Houses is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR