
Appeal Decisions

Site visit made on 25 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 26 May 2026

Appeal A Ref: APP/M5450/C/24/3362509

5 Stuart Road, Harrow, HA3 7RF

- 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 "Act").
- The appeal is made by Mr Kangaichelian Sirijeyanantham on behalf of Mulgrave Wealth Management Limited against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 27 February 2025.
- The breach of planning control as alleged in the notice is the creation of a residential flat (C3) at the rear of the commercial premises.
- The requirements of the enforcement notice are to: (1) Cease the unauthorised use and (2) remove the bathroom, kitchen unit, internal partitions and all paraphernalia which is associated with the unauthorised use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) (added later by the appellant,) and (d) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal B Ref: APP/M5450/X/25/3362512

5 Stuart Road, Harrow, HA3 7RF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended ("the Act")) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Gnanasivam Kesavananthan (taken from the application form) on behalf of Stop 'n' shop against a refusal to grant an LDC by the Council of the London Borough of Harrow.
- Application ref PL/1841/24, dated 4 July 2024, was refused by notice dated 11 December 2024.
- The application was made under section 191(1)(a) of the Act.
- The existing use for which a LDC is sought is described in the application as follows: the rear flat of stop 'n' shop of 5 Stuart Road, Harrow, Middlesex, HA3 7RF is in existing use as one bed flat with HMO licence.

Appeal A - Decision

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

Appeal B - Decision

2. The appeal is dismissed.

Appeal A - ground (b) - *has the alleged breach occurred?*

3. No. 5 is a corner retail unit at ground floor level with residential above the shop. The notice relates to the rear part of the premises, and the Council's investigation discovered the rear portion had been converted into a residential flat in 2022, but it was unoccupied at the time. However, during a site visit in June 2024, it was occupied as someone's home, which is evidenced in the images taken during the visit. Furthermore, the appellant's own evidence is that no. 5's rear part had been converted into a self-contained flat in excess of several years and that it had been used for residential purposes albeit occasionally. That was the circumstances during the period leading up to the issuing of the notice and at the date of issue:

it does not matter if the flat was unoccupied at the date of issue. Ground (b) must fail because the evidence points in the probability that the breach had in fact occurred.

Ground (c) – *do the alleged matters constitute a breach of planning controls?*

4. The argument is the alleged use does not amount to a material change in the use of the land. No. 5 forms a separate commercial premises at ground floor level with residential flat at first floor. The rear part's use was probably characterised as functionally linked to the primary commercial use of the premises. For example, use for storage purposes although there is no firm evidence indicating any ancillary residential use. In any event, the latter would have been low in scale and limited in extent. Similarly, there is nothing before me to suggest the residential use is linked to the occupation and use of the first floor flat. My deductions are consistent with the relevant planning permission cited by the Council¹.
5. As I have already said elsewhere, a change in the use of the whole premises occurred at some point in time because the rear portion was physically converted into a separate flat, which possessed the necessary wherewithal for private domestic existence². The flat is independently accessed and has been occupied and used for residential purposes. To my mind, a separate planning unit has been created to the rear of the ground floor premises because a physically and functionally self-contained unit of accommodation has been created.
6. The separate residential use of the rear part is likely to generate comings and goings associated with the residential use, which is likely to have significance given the property's commercial and residential use at first floor level. The internal layout of the ground floor premises has also changed, which has potential on site effects and requires assessment in terms of effects on living conditions. When the on and off-site impacts are taken together, the residential use of the rear part of no. 5 has planning consequences requiring assessment.
7. As a matter of fact and degree, contrary to the appellant's case, I find that the introduction of the residential use to the rear portion of no. 5 represents a significant and definable change in the character of the lawful use from commercial to residential and the alleged matters fall within scope of s55(1) of the Act. Such a change in use is not permitted development by virtue of article 3, schedule 2, part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, because qualified rights to change commercial to residential in whole or part are subject to the prior approval process, which has not been done. Express planning permission is required for the material change to residential use of the rear portion to no. 5 and it has not been obtained. Therefore, ground (c) fails.

Appeal A and B - Ground (d) – *is it too late to act and the LDC appeal*

8. In short, no: here is why. Firstly, as the Planning Practice Guidance (PPG) explains, precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date. Although the LDC submission to the Council describes the existing use as a one bed flat with HMO licence, reference to a house in multiple occupation is irrelevant, because the appellants argue the rear portion was occupied as a 1-bed self-contained flat. The latter being the subject of enforcement action. Secondly, as there is significant overlap between the ground (d) and LDC arguments, I will determine them together, which should avoid unnecessary duplication.
9. Essentially, the appellants claim is a simple one, namely, that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which

¹ Council ref: LBH/12485/1 granted on 21 July 1977 for the change of use of ground floor shop with living accommodation to meeting place and office with ancillary storage and provision of self-contained flat on 1st floor.

² Applied: *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

may be constituted by those matters: the relevant date is 27 February 2021. In the LDC submissions, they also maintain the use as a self-contained flat started on or before 4 July 2019. In these combined appeals, the burden of proof is on the appellants, and standard is the balance of probability.

10. I pause here. It is important to make a distinction between the terms *use as a single dwellinghouse* from what might normally be regarded *as being a single dwellinghouse*. Beginning with *Gravesham*, the Courts have consistently held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence. The key message from these judgments and the findings therein serve to illustrate that, with each case, it is a matter of fact and degree based on the circumstances [my emphasis].
11. Against that background, I have reviewed all the evidence. To my mind, all this information demonstrates a fundamental misunderstanding. This is because the appeal parties focus on dis/proving the actual residential use without grappling with first principles. To succeed on this ground of challenge, and to demonstrate an existing lawful use, the evidence must clearly demonstrate two key points: (1) when the rear part of the property was physically converted into self-contained flat as claimed and, (2) when each unit was occupied and used as a dwellinghouse for a continuous period of at least four years, without any significant interruption in residential use. In that context, for the following reasons, the appellants face an uphill struggle.
12. The appellants maintain that the rear flat has existed in its current form since the commencement of their lease with no alterations made since 1998 apart from routine repairs and maintenance, which is broadly consistent with their response to the Planning Contravention Notice submitted in August 2022. The claim is that since 1998, the leaseholder has used the flat either for staff accommodation or for letting purposes, depending on operational needs. They also refer to interested party's complaints about the alleged residential use from 2016 onwards, but the comments are imprecise because they do not clearly show when the unauthorised use commenced. In any event, given the onus, the appellants do not provide cogent evidence showing when the self-contained flat afforded viable facilities for independent cooking, washing and sleeping. In addition, the appellants do not clearly explain a timeline for the work of conversion, nor say who did the building work and how it was arranged and implemented.
13. I appreciate the 2018 Google street view images show alterations to the external elevations and the insertion of a side door with a letterbox, but that does not demonstrate the rear part was in residential use. In a similar vein, there are no details about the nature, extent, scale, sequence or timings of the conversion work. Based on the available evidence, I cannot firmly conclude that the rear part of the property's use as a self-contained dwelling commenced in 1998, 2019 or 2021.
14. In my experience, documentary evidence is occasionally submitted to demonstrate and substantiate immunity claims together with a persuasive explanation of a timeline. For example, invoices for building materials might have given credence to the appellants refurbishment claims and arguments that the flat provided independent cooking, washing and sleeping facilities on or before the relevant dates. In a similar vein, specific details about the residential use and flat's maintenance, nor utility supplies have been provided. Further, invoices or receipts for material like kitchen units or other goods would have supported the immunity claim. The absence of this kind of detailed information makes comparisons difficult to make between the timings, sequence and scale of the physical conversion. The lack of detailed evidence on this specific issue is unsurprising given the misdirected focus on solely establishing the residential use of the rear flat.

15. My reasons above are sufficient to dislodge the ground (d) and existing use LDC appeals. For completeness, I have reviewed arguments pertaining to use of the rear flat. There is confusion as to the exact nature of the claimed residential use because the appellants refer to occasional storage and residential use by staff, which may be linked to the commercial use of the premises. Although the appellants focus on proving use of the rear portion as a self-contained flat, there is no specific detail as to who occupied and used the flat as their own home and when it was occupied. It is also unclear whether the residential use was intermittent. Additionally, tenancy agreements do not prove occupation nor use, nonetheless, they are helpful in appreciating the timings and level of occupancy. Based on the available evidence, it is difficult to conclude that the rear flat was in primary residential use on or before the relevant dates for either enforcement notice or LDC application.
16. The appellants refer to an HMO licence ref WK/000704295, granted in May 2022, but this does not prove when the rear part was converted into a self-contained flat nor how it was occupied and used. At best, it shows a HMO use started on 30 May 2022, which is well within the relevant period.
17. Drawing all the above points together, contrary to the arguments advanced by the appellants, I find that evidence presented does not clearly or unambiguously show, on the balance of probability, the material change in use of the rear part began on or before the relevant date for either the ground (d) nor LDC appeals.

Overall Conclusions

18. For all the above reasons and having considered all other matters raised, I conclude that appeal A and B should fail. In terms of the LDC appeal, I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR