



Appeal Decision

Site visit made on 31 July 2026

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2026

Appeal Ref: APP/N5090/C/25/3361181

48 Sturgess Avenue, London NW4 3TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Seyed Safar Salehi Rihani against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 13 January 2025.
- The breach of planning control as alleged in the notice is *without planning permission, the making of a material change of use of the land by the sub-division of the property into 2 self-contained flats*.
- The requirements of the notice are:
 - 1 Cease the use of the property as self-contained flats.
 - 2 Permanently remove all but one set of kitchen facilities (units, sinks, cookers, and food preparation areas) and 1 bathroom from the property.
 - 3 Restore the property to the state in which it was prior to the breach by removing any partition walls or entrances that create self-containment.
- The period for compliance with the requirements are 6 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 1990 Act (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Formal Decision

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

Appeal under ground (d)

2. An appeal under ground (d) is that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters. The test of the evidence is the balance of probability, and the onus of proof is on the appellants. If the Council has no evidence to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
3. Section 171B of the 1990 Act (as amended) sets out the relevant time limits for taking enforcement action. The time limits have been amended with transitional arrangements in place¹. In this instance, the relevant period is four years beginning with the date of the breach. I must therefore consider whether a continuous uninterrupted period of four years has occurred in relation to each individual flat. The relevant date therefore is 13 January 2021.
4. The appeal site is a dwellinghouse located in a residential area of Barnet close to the Brent Cross shopping centre. The property has been subdivided into two flats, one at the ground floor and the other occupying the first floor and an extension to the roof space.

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

5. In support of their case the appellant has submitted information which includes an inspection report for electrical installations dated May 2021. This highlights that the dwellinghouse has been fitted with two separate consumer boards. Similarly, there are two separate gas safety certificates dated May 2022 and February 2024, highlighting that there are two separate boilers and cooking facilities at the appeal site. Whilst this provides an indication of the property being subdivided into two, this alone does not warrant sufficient evidence to conclude that the use as two self-contained residential units has continued on an uninterrupted basis for the relevant four year period, given they post-date January 2021.
6. The appellant has also submitted several Assured Shorthold Tenancy (AST) Agreements as part of their evidence, which sets out the tenant and landlords' obligations. These highlight that the landlord would pay the utilities from the rents collected throughout the term of the ASTs. It is unclear from the ASTs to which units the agreements related, with the majority of the agreements simply referring to the address as 48 Sturgess Avenue, London NW4 3TS. There is a reference to Flat B, however it is unclear whether this pertains to the ground or upper floor flat. Nevertheless, the various ASTs date from September 2019 until February 2025 which would cover the relevant four year period.
7. In addition to the AST documents, the appellant has also produced two sworn statutory declarations (SD). The first SD is from Ali Akbar Gharooni-Dowrani which states tenants have resided in the ground floor and first floor flats for five years between September 2019 and February 2025, which would corroborate the evidence in the ASTs. The other SD is from Saeid Laali, a maintenance employee at the appeal site since 2020, who confirms that 48 Sturgess Avenue has been rented as two self-contained residential units throughout their employment time. There is no sound reason which would lead me to believe that either of these SDs are not authentic.
8. The submitted evidence indicate that the relevant rent payments need to be made by the tenants to the landlord, and the landlord agreed to pay the utilities. Subsequently, there should be records available, such as council tax records, bank statements, invoices, or rent book receipts which could have assisted the appellant in providing further evidence to corroborate their claim. It is unclear why these would not be supplied.
9. Nevertheless, having regard to the evidence already made available and in the absence of any to the contrary, the lack of utility or service bills does not create any significant uncertainty over the use as two flats for the relevant period, nor is there a requirement for these to be provided. Moreover, it is well-established that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence.
10. When taken together the evidence demonstrates the existence of two self-contained flats at the appeal site, which have been resided in during the periods specified. Consequently, there is little to suggest that there was any substantial interruption in the use of either of the units during these periods. Furthermore, the Council have provided little evidence to counter the information supplied in the appellants statement of case, accompanying documents or the appellants SDs.
11. As a result, based on the evidence before me, the absence of details concerning utilities and services does not create any significant uncertainty over the use of the

dwellinghouse as two self-contained residential units for the relevant period, given the submitted information. As mentioned, the burden of proof is on the balance of probabilities, not beyond all reasonable doubt. Based on the submitted information and lack of evidence to the contrary, I must therefore conclude that 48 Sturgess Avenue has been occupied continuously as two independent, self-contained residential units for the requisite four year period. Accordingly, the appellant has therefore discharged the burden of proof.

12. Consequently, the appeal property is immune from enforcement action through the passage of time as no enforcement action may be taken after the end of a period of four years beginning with the date of the breach. Therefore, I conclude that the appeal should succeed on ground (d).

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
14. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) does not fall to be considered.

Robert Naylor

INSPECTOR