



Appeal Decision

Site visit made on 3 August 2026

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 03 September 2026

Appeal Ref: APP/G5750/C/25/3363772

158 Major Road, Stratford, London E15 1DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Habibur Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 5 March 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the ground and basement floors of the property to four self-contained units of residential accommodation AND Without planning permission operational development consisting of the erection of an extension (as shown in the approximate location edged in blue on the attached plan) to form two self-contained units of residential accommodation.
- The requirements of the notice are to:
 1. Cease the use of the ground and basement floors of the property as self-contained units of residential accommodation.
 2. Demolish extension to the property comprising two self-contained units of residential accommodation (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
 3. Remove from the ground and basement floors of the property all but one kitchen and all but one bathroom.
 4. Remove from the property any internal dividing doorways and internal partitioning facilitating the unauthorised use of the ground and basement floors of the property as self-contained flats.
 5. Remove from the ground and basement floors all duplicate doorbells, door buzzers and post boxes that serve the unauthorised self-contained flats.
 6. Remove from the property all duplicate supplies of electricity, gas and water that serve the unauthorised self-contained flats.
 7. Remove from the site all debris arising from compliance with steps 1 to 6.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Town and Country Planning Act 1990 (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision

Preliminary Matters

Framework

1. Since the appeal was submitted, the National Planning Policy Framework (the Framework) has been revised (August 2026). The parties have had the opportunity to comment on these changes, and I have taken these comments into account in the determination of this appeal.

Previous appeals and the “second bite” provision

2. The Council first issued an Enforcement Notice ('EN') (13/01190/ENFC) on 27 February 2015, alleging the unauthorised erection of a rear extension, front and rear roof extensions, and conversion of the first and second floors of the property to four self contained flats. On appeal, the Inspector issued a split decision (APP/G5750/C/15/3010602), effectively allowing the rear extension and the front and rear roof extensions to remain, whilst upholding the notice insofar as it required the cessation of the use of the first and second floors of the property as four self-contained flats (designated as Flats A, B, C, and D). Whilst the Inspector allowed the extensions to remain, he did not identify any specific lawful use for them. Instead, he suggested that an alternative lawful use might be pursued through a subsequent planning application.
3. A second EN was issued by the Council on 14 November 2022. This notice alleged a material change of use of the ground and basement floors to six residential units. On appeal (APP/G5750/C/22/3313022), the notice was quashed. While the notice alleged a material change of use across the entire building, the Inspector found that the rear extension constituted operational development in its own right. As the alleged breach had been incorrectly described, they concluded that it could not be corrected without causing injustice.
4. A third EN was issued on 5 March 2025 under section 171B(4)(b) of the Town and Country Planning Act 1990, commonly referred to as the "second bite" provision. Section 171B(4)(b) enables a local planning authority to take further enforcement action in respect of a breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. In effect, the provision prevents immunity from arising solely because an earlier enforcement notice was found to be defective. As the second EN was issued on 14 November 2022 and the third EN was issued on 5 March 2025, the latter was served within the four-year period prescribed by section 171B(4)(b) of the Act. This appeal relates only to the 4 flats located on the basement and ground floors of the original building and to the rear extension incorporating 2 flats.
5. The appellant considers that Flats A, B, C, D, located on the first and second floors, are lawful. However, the Council states that the requirement set out in the first EN (13/01190/ENFC) to discontinue the use of the first and second floors of the property as four self-contained flats remains outstanding. Notwithstanding this, any matters relating to the enforcement of that EN fall outside the scope of this appeal and are a matter between the Council and the appellant.
6. The appellant submits that the notice subject of this appeal is a nullity in respect of its requirement to fully demolish the extension. However, for the reasons I have set out in ground (f), I am satisfied that this EN is not a nullity.

Appeal on ground (d)

7. An appeal on ground (d) is that at the date the enforcement notice was issued the development was immune from enforcement action due to the passage of time, in this case four years.
8. The appellant accepts that two of the six flats which are located within the rear extension (158H and 158I) fall outside the scope of this ground. Accordingly, the appeal under this ground relates solely to the flats (Flats 158, 158E, 158F and 158G) within the original building. The appellant must therefore demonstrate, on

the balance of probabilities, that the use of each unit as a self-contained flat commenced on or before 14 November 2018 and then continued for a period of at least four years without significant interruption.

9. In respect of legal grounds of appeal, the burden of proof falls on the appellant to make their case, with the evidence tested on the balance of probabilities or whether something is more likely than not. Specifically, caselaw¹ has held that an appellant seeking to make out a lawful use pursuant to ground (d) must provide sufficient evidence which shows on the balance of probabilities that there had been a continuous use for the relevant immunity period. The court endorsed the Inspector's conclusion that the sparse nature of the declarations and 'patchy' evidence of lettings was insufficient to satisfy the onus of proof. In short, any evidence must be properly analysed on the balance of probabilities with regard to its source, content, consistency and probable reliability².
10. While it is for the decision-maker to rule on the evidence provided, an appellant's evidence should not be rejected simply because it is uncorroborated³. The Planning Practice Guidance (PPG) states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the application. This is provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
11. In support, the appellant has submitted a range of evidence, which includes personal statements, assured shorthold tenancy agreements (ASTs), banks statements, invoices, electrical installation certificates, and energy performance certificates.

Flat 158

12. At Flat 158, the ASTs indicate that the first tenancy started on 16 October 2018 and expired on 15 April 2019. A gap of approximately three weeks then arose before the second tenancy commenced on 4 May 2019, with a contractual expiry date of 3 May 2020. A further gap of approximately 87 days arose before the third tenancy commenced on 29 July 2020 and expired on 28 July 2021. Following this, there was a gap of approximately 34 days before the fourth tenancy commenced on 1 September 2021 and expired on 31 August 2022. The expiry of that tenancy was approximately 45 days short of the completion of the four-year immunity period on 15 October 2022.
13. The bank statements record initial payments made at the commencement of each tenancy, but do not always clearly correspond with the rental arrangements set out in the ASTs. While the rent specified in the first AST matches the payment made, the position is less clear in late tenancies. For example, the second AST required monthly rent payments of £1,250 on the 4th day of each month. However, the bank statements show payments of £2,000 on 4 May 2019 and £500 on 7 May 2019. Similarly, the third tenancy, the AST required monthly rent payments of £1,150 payable on the 29th day of each month, yet the bank statements record a payment of £2,135 on 29 July 2020. In respect of the fourth tenancy, the AST

¹ Ravensdale Ltd v SSCLG [2016] EWHC 2374 (Admin)

² Mahajan v SSTLR & Hounslow LBC [2002] JPL 928

³ Gabbitts v SSE & Newham BC [1985] JPL 630 7

specifies monthly rent of £1,175 payable on the first day of each month. However, the bank statements record a payment of £300 on 25 August 2021 followed by a payment of £2,050 on 31 August 2021. No explanation has been provided for these discrepancies.

Flat 158E

14. At Flat 158E, the ASTs indicate that the first tenancy commenced on 26 October 2018 and expired on 25 April 2019. A gap of approximately three weeks then arose before the second tenancy commenced on 17 May 2019, with a contractual expiry date of 16 May 2020. A further gap of approximately 102 days then arose before the third tenancy commenced on 27 August 2020 for a fixed term ending on 26 August 2021. Whilst the appellant states that this tenancy ended early, there is insufficient information to determine either the date on which the occupier vacated the flat or whether any gap arose before the commencement of the subsequent tenancy. The fourth tenancy commenced on 1 February 2021 for a term of 12 months. According to the appellant, the tenant subsequently renewed the tenancy and remained in occupation as of June 2025.
15. The first AST required monthly rent payments of £1,200 on the 26th day of each month and the bank statement shows that a corresponding payment was made on 26 October 2018. The second AST identifies an outstanding balance of £2,400, comprising two months' rent and a reference fee, less a holding deposit. The bank statements show that a payment of £2,400 was made on 17 May 2019, however, it does not identify a separate payment of the holding deposit. The appellant has not explained this discrepancy.
16. The third AST identifies an outstanding balance of £2,164, comprising two months' rent and a payment for 5 days rent. The bank statements record payments of £300 on 20 August 2020, £1,100 on 27 August 2020 and £764.40 on 1 September 2020. These figures match those which are set out in the AST instalment plan. The fourth AST identifies an outstanding balance of £1,800, comprising two months' rent, less a holding deposit. The bank statements show that payment of £1,800 was made on 22 January 2021, however, no separate payment of the holding deposit has been identified. The appellant has not explained this discrepancy.
17. Whilst the Council received a complaint regarding construction noise from the occupier of Flat 158E on 12 October 2019, the evidence before me does not establish whether that individual was the same person identified in the second AST. In any event, a Council visit on 20 December 2019 confirmed that Flat 158E was occupied at that time.

Flat 158F

18. At Flat 158F, the ASTs indicate that the first tenancy started on 26 October 2017 and expired on 25 October 2018. The second tenancy started on 26 October 2018 and expired on 25 February 2020. A gap of approximately 28 days then arose before the third tenancy commenced on 24 March 2020 and expired on 23 September 2021. Following this, there was a gap of approximately 54 days before the fourth tenancy commenced on 16 November 2021 and expired on 15 November 2022. According to the appellant, the tenant subsequently renewed the tenancy and remained in occupation as of June 2025.

19. The first AST required monthly rent payments of £1,200 on the 26th day of each month. However, the bank statements show a payment of £300 followed by a further payment of £2,250. The appellant has not explained this discrepancy.
20. The second AST required monthly rent payments of £1,200 on the 26th day of each month and the bank statement shows that a corresponding payment was made on 26 October 2018. The third AST required monthly rent payments of £1,150 payable on the 24th day of each month and the bank statement shows that a corresponding payment was made on 24 March 2020. In respect of the fourth AST, the AST identifies an outstanding balance of £2,100, comprising two months' rent, less a holding deposit. The bank statements show a payment of £300 followed by a payment of £2,100, which corresponds with those figures.
21. A Council visit on 20 December 2019, during the second tenancy, recorded that the flat was unoccupied. However, the Council later clarify that this flat was occupied at the time of the visit. While a visit by the Council on 29 September 2022 confirmed this flat was occupied, it is unclear whether the occupier at that time was the same individual identified in the fourth AST.

Flat 158G

22. At Flat 158G, the ASTs indicate that the first tenancy commenced on 20 April 2018 and expired on 19 April 2019. A gap of approximately 42 days then arose before the second tenancy commenced on 1 June 2019 and expired on 31 May 2020. According to the appellant, the tenant subsequently renewed the tenancy and remained in occupation. A further gap of approximately 256 days then arose before the third tenancy commenced on 11 February 2021 and expired on 10 February 2022. Following this, there was a gap of approximately 45 days before the fourth tenancy commenced on 28 March 2022. The fourth tenancy commenced prior to the completion of the four-year immunity period on 19 April 2022 and, according to the appellant, the tenant subsequently renewed the tenancy and remained in occupation as of June 2025.
23. The first AST identifies an outstanding balance of £1,645, comprising two months' rent and a reference fee, less a holding deposit. The bank statements show that corresponding payment was made on 21 April 2018. The second AST identifies an outstanding balance of £2,595, comprising two months' rent and a reference fee, less a holding deposit. The bank statements show that corresponding payments were made of £300 on 22 May 2019, followed by a further payment of £2,595 on 26 May 2019.
24. The third AST identifies an outstanding balance of £1,900, comprising two months' rent and a reference fee, less a holding deposit. The bank statements show a payment of £300 on 10 February 2021 followed by a payment of £1,900 on 11 February 2021, which corresponds with the AST. The fourth AST states that the rent is £1,200 payable on the 28th of each month. However, the bank statements show a single payment of £2,400 on 28 March 2022. Whilst this equates to two months' rent, the AST does not explain why a payment of that amount was made, and the appellant has not provided any explanation.
25. During a Council visit on 20 December 2019, officers were unable to gain access to this flat, although music was reported as being audible from within. During a further visit on 29 September 2022, officers confirmed that the flat was occupied but were unable to gain access.

Supporting documents

26. The appellant states that each of the undocumented days of use were covered by periodic tenancies arising from the continued occupation of the previous tenant in across all of the flats. While I recognise that each of the tenancies could have continued as statutory periodic tenancies pursuant to section 5 of the Housing Act 1988, the evidence before me does not unambiguously establish a complete chronology of occupation for each flat in terms of continuous use.
27. In particular, the bank statements do not demonstrate a consistent pattern of ongoing rent payments throughout the tenancies and, in particular, do not provide evidence of rent being paid during the periods between the expiry of one fixed-term tenancy and the commencement of the next. Accordingly, there is limited evidence before me to demonstrate that each flat remained continuously occupied throughout the relevant periods.
28. Furthermore, the discrepancies regarding the initial rental payments reduce the weight that can be attached to the bank statements. In a number of instances, no explanation has been provided to set out why the amounts shown as paid do not correspond with the payments set out in the ASTs. This makes it unclear on what basis those tenancies were intended to commence and whether the sums paid accurately reflect the contractual arrangements between landlord and tenant. Those inconsistencies make it more difficult to reconcile these statements and, accordingly, diminish their value in demonstrating a clear and continuous pattern of occupation.
29. Similarly, whilst Domestic Electrical Installation Certificates, Energy Performance Certificates and Electrical Installation Condition Reports have been provided, these documents only confirm that works and inspections were undertaken on those specific dates. They do not clearly demonstrate continuous occupation throughout the relevant period of each flat.
30. The appellant has submitted an invoice dated 14 April 2017 for the purchase of four compact kitchens, which they state were installed between May 2017 and September 2018. This invoice confirms that four kitchen units were delivered to the appeal site. However, upon delivery, there is no evidence before me identifying when the kitchen installation works took place. It remains unclear who carried out those works and no associated building contracts, invoices or other contemporaneous records have been submitted. In any event, it does not demonstrate continuous occupation of the four flats throughout the relevant period.

Imagery

31. The Council's evidence includes Google Street View imagery dated March 2019, during a period when the appellant submits that all four flats were already in residential use, having commenced on or before 14 November 2018.
32. The imagery shows workmen undertaking works immediately adjacent to the appeal property. The appellant maintains that these works were unrelated to the site and that they were simply undertaking work on the street. They state that they did not instruct these works and that they had nothing to do with the property. However, the imagery also shows that one of the ground floor windows is boarded up. Whilst the appellant states that this was due to a broken window, they are unable to confirm whether it was being repaired by any of the workmen present.

This is inconsistent with their assertion that the works had no connection with the property.

33. Whilst the appellant suggests that the works related to local utilities, the images indicate that excavation works were undertaken immediately in front of the entrance serving the appeal property. This indicates that it would not have been possible to access the property through this door while these works were being undertaken. The access door is shown standing open next to one of the workmen and the submitted plans identify this as the principal means of access to Flats E, F and G.
34. Moreover, one of the workmen appears to be undertaking works to pipework connected directly to the building. Whilst the precise nature and purpose of the works cannot be determined from the imagery alone, the proximity of the excavation to the entrance and the apparent works to infrastructure serving the property make it less likely that the activity was wholly unrelated to the appeal site, as suggested by the appellant. Taken together, the evidence indicates that significant works were taking place in the immediate vicinity of, and potentially serving, the appeal property. This imagery undermines the appellant's account that the works had no connection with the site, related solely to local utility works, or that the soil was only from the street, rendering this version of events less probable. Instead, taken together, these features indicate that significant works were ongoing during the relevant immunity period.
35. The imagery also shows that, in contrast to the upper floors, no curtains are visible at ground floor level. Whilst this may suggest that the ground floor flats were not occupied at the time, the windows also appear to be fitted with obscure glazing, reducing the need for curtains to maintain privacy. In contrast to later development at the appeal site, the images show that the individual external mailboxes serving each flat had not yet been installed. Instead, the appellant has stated that a shared post box was previously affixed to the side of the building. In any event, the presence or absence of curtains and mailboxes provides limited evidence as to whether the flats were occupied at this time.
36. Towards the rear of the property, the imagery indicates that the extension was only partially constructed. The boundary wall appears to have been raised above its previous height and has been partially covered by sections of rough timber boarding. However, unfinished concrete elements of the rear extension remain visible above this boarding and are fully exposed towards the rear. In later imagery, these surfaces are concealed by the white cladding that covers the remainder of the building. Similarly, areas of exposed brickwork are visible at the base of the extension, which had not yet been covered by the black facing material which is evident later. These features indicate that construction works to the rear extension were still ongoing, although its primary structural form appears to have been substantially complete.
37. There is no dispute between the parties that complaints concerning active, unauthorised works at the site were received on 1 October 2019 and 12 October 2019. Of particular relevance is a noise complaint made on 12 October 2019 by the occupier of Flat 158E, who stated that the adjoining flat had remained under construction since May 2019. The complaint supports the contention that Flat 158E was occupied at least at that particular time.

Ground (d) conclusion

38. On the balance of probabilities and the evidence before me, I find that whilst it is possible that statutory periodic tenancies continued to subsist following the expiry of the fixed term ASTs, there is limited evidence before me which demonstrates continuous residential occupation for each flat. The bank statements do not demonstrate a consistent pattern of rental payments and, in several instances, do not correspond with the payment arrangements set out in the ASTs. Additionally, they do not provide financial evidence in respect of the periods of time between the expiry of one fixed-term tenancy and the commencement of the next. As a result, they provide only limited support for the appellant's assertion that occupation continued uninterrupted between successive tenancies.
39. Nor do the remaining documents materially overcome this evidential deficiency. The Domestic Electrical Installation Certificates, Energy Performance Certificates, Electrical Installation Condition Reports and kitchen invoices demonstrate that works were undertaken or items were supplied at particular points in time, but they do not clearly evidence continuous residential occupation. Likewise, whilst I accept that the absence of further corroborating evidence is not, of itself, a reason to reject the appellant's case, the burden remains on the appellant to demonstrate, on the balance of probabilities, that the breach had become immune from enforcement.
40. In that regard, the Council's evidence raises a number of concerns regarding the reliability of the appellant's account. The March 2019 imagery indicates that construction and excavation works were taking place in close proximity to, and potentially serving, the appeal property, whilst elements of the rear extension remained unfinished. When considered alongside the October 2019 complaints regarding ongoing construction activity, the evidence suggests that building works remained an active feature of the site during the relevant periods. Whilst this complaint suggests that one of the flats was occupied at that particular time, it also diminishes the likelihood of the uninterrupted occupation history advanced by the appellant, rendering it less than probable.
41. Overall, I find that the appellant has failed to demonstrate, on the balance of probabilities, that Flats 158, 158E, 158F and 158G were in continuous residential on or before 14 November 2018 and then continued for a period of at least four years without significant interruption. Accordingly, I cannot be satisfied that they are immune from enforcement action due to the passage of time.
42. The appeal on ground (d) therefore fails.

Appeal on ground (a) and the deemed planning application

Main Issues

43. S177(1)(a) of the Act provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'.
44. In this case, the appellant seeks planning permission only for the retention of the rear extension structure as built and expressly excludes from consideration the internal subdivision and use of the extension and main building as residential accommodation. Consequently, even if this ground were to succeed, these units

would not benefit from a lawful planning use, such that any future use would require separate planning permission.

45. Granting planning permission for the extension would not authorise a substantially different form of development from that alleged in the notice, nor would it amount to the approval of an alternative scheme falling outside the matters specified therein. The extension would remain physically unchanged, and the appellant does not seek to regularise either its internal subdivision or its use as residential accommodation.
46. Having regard to the wording of the notice and the scope of section 177(1)(a), I am satisfied that the physical extension is capable of being considered separately as part of the matters alleged in the notice. Consequently, I am satisfied⁴ that determining the acceptability of the operational development alone falls within part of the matters of the deemed planning application.
47. The Council has identified a number of concerns, including the living conditions of occupiers and the adequacy of waste management facilities. However, those matters principally relate to the use of the extension as residential accommodation.
48. With regard to the deemed planning application (which relates only to the operational development of the rear extension), the evidence before me and my observations during the site visit, I consider the main issues to be the effect of the operational development of the rear extension on:
 - the character and appearance of the area; and
 - biodiversity.

Reasons

Character and Appearance

49. The rear extension occupies land that formerly served as the rear garden of the host property. During my site visit, I observed that the surrounding area is characterised predominantly by terraced housing set behind open front gardens. Together with the highway, these gardens contribute to a spacious and coherent street scene, reinforcing the predominantly low-density residential character of the area. Due to the orientation of the appeal property, the former rear garden provided visual continuity with the pattern of open front gardens along Colegrave Road. I observed that, whilst some more intense forms of residential use exist within the wider locality, the prevailing character remains that of terraced housing with open garden areas and a relatively balanced and spacious appearance. Prior to the construction of the extension, the appeal site contributed positively to that pattern.
50. The rear extension has resulted in the complete loss of the former garden area, such that the entirety of the rear curtilage has been developed, removing all soft landscaping and vegetation associated with the site. The replacement of this soft landscaped area with built development has significantly diminished the openness and visual relief that such gardens typically provide within the area. Consequently, the development disrupts the established pattern of these open spaces and contributes to an overly intensive form of development that appears out of keeping

⁴ Ioannou v SSCLG & Enfield LBC [2013] EWHC 3945 (Admin), [2014] EWCA Civ 1432

with the prevailing character of the area. As such, it causes harm to the character and appearance of the area.

51. Whilst the appellant considers that the extension follows the line of the former boundary wall, there is insufficient evidence before me to demonstrate that its scale, height and massing are comparable to the original enclosure. On the contrary, "Exhibit A", referred to within the appellant's statement, clearly indicates that the height of the boundary treatment increased between 2018 and 2019. Furthermore, whilst the appellant states that the extension is "almost the same height" as the former wall, the visual evidence indicates that there has been a material increase in height. No detailed measurements or other substantive evidence has been submitted to support the appellant's assertions regarding any alterations in height.
52. In any event, having regard to the generally modest boundary treatments that characterise the surrounding area, I find that the extension represents a materially more dominant and visually intrusive form of development than that which previously existed at the site. Due to its siting adjacent to the highway and the relatively open aspect of the site frontage, the extension is readily perceptible from the public realm and consequently has a significant influence on the character and appearance of the street scene.
53. I recognise that a degree of infill development is common within an urban environment such as this. However, the extension extends across the entirety of the former garden area and results in a form of development that is materially denser than that typically found in the surrounding area. Although the extension is constructed using materials that broadly resemble those of the host building, its scale, bulk and siting significantly diminish the openness that it used to contribute to local character.
54. In reaching this view, I have considered the previous appeal decision (APP/G5750/C/15/3010602/C) for the site, issued in 2016. However, that decision appears to have been concerned with a materially different form of rear extension, which included a three-storey element. In any event, it has limited relevance in terms of this particular ground, particularly given its conclusion that the residential use of the extension constituted overdevelopment.
55. In conclusion, the rear extension has a significantly harmful effect on the character and appearance of the area. By reason of its scale, massing and siting, it would fail to support a high quality of urban design or secure integration and coherence with the local context, contrary to Policies SP3 and SP8 of the Newham Local Plan 2018 (NLP). Furthermore, it would fail to deliver appropriate amenity or ensure that the public realm is well-designed, contrary to Policies D3 and D8 of the London Plan 2021 (LP).

Biodiversity

56. It is not disputed that the extension has resulted in the complete loss of the former rear garden. The development occupies the entirety of that area and has removed all soft landscaping, vegetation and natural features that previously existed on the site.
57. There is no evidence before me that any measures have been incorporated to compensate for this loss, whether through on-site habitat creation or other

biodiversity enhancements. Whilst I recognise the constraints associated with a densely developed urban environment, access to nearby parks and open spaces would not compensate for the loss of biodiversity previously present within the appeal site itself.

58. I have considered the appellant's submission that the extension is a relatively small-scale development that contributes to housing supply. However, that consideration carries little weight in my assessment which relates solely to the operational development before me. Instead, the evidence before me confirms that the development has resulted in the complete removal of the site's green space without any ecological enhancement or mitigation.
59. In conclusion, the rear extension would have a harmful effect on biodiversity. It would not enhance the site's environmental potential or protect and enhance biodiversity, contrary to Policies SC1 and SC4 of the NLP.

Planning Balance

60. Policy S4 of the Framework states that development proposals within settlements should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework.
61. I recognise that the rear extension may provide some useful space within an urban area. However, no alternative use has been identified or proposed, limiting the weight that can be attributed to any potential benefits arising from its retention. Against this, I have found significant harm in relation to its effect on character and appearance of the area to which I attach substantial weight and to biodiversity to which I attach further weight. Within this context, I am satisfied that any benefits of approving the development would be substantially outweighed by the adverse effects.
62. In reaching this view, I have considered Policy DM8 of the Framework and note that this appeal site has a long and protracted planning and enforcement history. Having considered the evidence before me, I am satisfied that the unauthorised development was undertaken intentionally. That is a matter to which I attach further substantial weight in the planning balance.
63. Taking all these matters into account, I conclude that the development conflicts with Policy S4 of the Framework.

Conclusion on ground (a) and the Deemed Planning Application

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (f)

65. An appeal on ground (f) is a claim that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

66. The notice seeks the cessation of the use of the ground and basement floors of the property as self-contained units of residential accommodation and the demolition of the rear extension. The purpose of those requirements is to remedy the breaches of planning control alleged in the notice, in accordance with section 173(4)(a) of the Act.
67. I am satisfied that the EN is not defective on its face and does not miss some vital element so as to render it hopelessly ambiguous and uncertain. While a lawful boundary wall may previously have existed, the evidence indicates that it has since been replaced by the rear extension. As the former wall no longer exists, any lawful entitlement associated with it does not attach to the replacement structure and is therefore of no relevance to the steps required to comply with the notice. In any event, should a replacement boundary wall be required, the evidence indicates that one could be erected pursuant to permitted development rights.
68. The appellant's ground (f) case is expressly limited to the operational development of the rear extension. They do not seek to regularise either its internal subdivision or its use as residential accommodation. Their case for retaining the extension as operational development has been dealt with earlier in ground (a).
69. The appellant suggests that a potential lesser step would be to require the cessation of the residential use of the rear extension as residential accommodation, thereby preserving the possibility of securing an alternative lawful use through a future planning application. However, no evidence has been provided to demonstrate that such an alternative scheme exists or would satisfactorily remedy the breach. Similarly, any form of re-facading of the rear extension would fail to fully remedy the breach.
70. On that basis, I am satisfied that retaining the extension as a structure with no lawful use would not adequately remedy the breach. Whilst demolition may be costly and disruptive, and may temporarily affect neighbouring occupiers, those matters are not relevant to the ground (f) test. In the absence of a realistic alternative scheme that would fully remedy the breach, I am not persuaded that the requirements are excessive. Rather, I am satisfied that the steps required by the notice to be taken do not exceed what is necessary to remedy this breach of planning control as anything less would not fully remedy the breach.
71. The appeal on ground (f) therefore fails.

Appeal on ground (g)

72. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. Although the compliance period set out in the notice is 6 months, the appellant seeks a period of 9 months.
73. I accept there may be some delay associated with securing structural calculations and contractors and that completing the necessary works may reasonably take longer than 6 months.
74. I also consider that the existing occupiers may require additional time to secure alternative accommodation, especially in London where rental demand is likely to be high. Whilst many of the flats may be of very limited size, the units nevertheless provide housing for occupants who may be vulnerable to a rapid change in

circumstances. Taking all relevant circumstances into account, I conclude that a compliance period of 9 months would be reasonable.

75. The appeal on ground (g) succeeds to this limited extent and I have varied the notice accordingly.

Other Matters

76. I have considered the appeals on ground (a) and (g) in the context of Article 8 of the Human Rights Act 1998, which protects the right to respect for private and family life. I recognise that the dwellings allow the occupants to continue to work and live in this area. However, Article 8 is a qualified right, and interference may be justified where it is in the public interest and proportionate. In this case, any interference arising from my decision is necessary and proportionate in the pursuit of the legitimate planning objectives reflected in the development plan and national policy. I am satisfied that these objectives could not be achieved by less intrusive means without undermining the public interest, notwithstanding my variation of the notice to provide additional time for the occupants to secure alternative accommodation. Consequently, the dismissal of this appeal would not amount to a breach of Article 8.

Formal Decision

77. The notice is varied in Section 5 by deleting “6 months” and substituting “9 months”. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

S Lo

INSPECTOR