Item 4/01

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Application Number: 04/3542 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: O'Hara Brothers, Atlas Road, Wembley, HA9
Proposal: 0JH

Formation of car park with associated access onto Hannah Close, erection of 2.5-metre-high boundary fencing, lighting columns, sliding gate and landscaping to front and side boundaries.

Application Number: 05/0031 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 20A The Avenue, London, NW6 7YD
Proposal:

Demolition of garage and erection of single storey side extension and two storey rear extension and conversion of lower ground floor into 2 self contained flats

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Application Number: 05/0157 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 98 & 100, The Fairway, Wembley, HA0
Proposal:

Erection of first floor side and rear extension, conversion of an existing side garage into a habitable room and external alterations involving replacement of the garage doors with a window and installation of new replacement windows to dwellinghouse at no. 100 The Fairway and erection of single storey rear extension and first floor side and rear extension to dwellinghouse at no. 98 The Fairway.

Application Number: 05/0269 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 6 Palace Court, Harrow, HA3 0SN
Proposal:

Retention of front garden wall and gates to dwellinghouse

Application Number: 05/0374 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Radia Partnership, 595 Kenton Road, Harrow,
Proposal: HA3 9RT

Erection of single storey building to the rear garden of property

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Application Number: 05/0413 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 681,683,685,687,687A,689,691, Harrow Road, Wembley, HA0
Proposal:

Alterations and extensions to convert hipped roof to a mansard roof containing windows on all frontages in conjunction with the formation of an additional floor to provide 3 two-bedroom self contained flats and provision of 8 car parking spaces served by two proposed accesses at either end of the site.

Application Number: 05/0689 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 28 Pasture Close, Wembley, HA0 3JE
Proposal:

Installation of replacement upvc hall, landing and porch windows and doors to dwellinghouse (as accompanied by un-numbered Porch Elevation and Landing and Hall window elevations)

Application Number: 05/0780 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 22A-C Inc, Harvist Road, London, NW6
Proposal:

Demolition of existing outbuilding, erection of two-storey dwellinghouse in rear garden of flats, erection of new boundary wall with gates, alterations to existing vehicle access and new pedestrian access

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Application Number: 05/1051 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 12 Balnacraig Avenue, London, NW10 1TJ
Proposal:

Retention of rear dormer window with balcony, enlargement of two front rooflights, and installation of one side window to first floor flat.

Application Number: 05/1250 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 25 Bovingdon Avenue, Wembley, HA9 6DH
Proposal:

Conversion of dwellinghouse into 2 one-bedroom self contained flats (as accompanied by supporting statement dated 30 May 2005)

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Application Number: 05/1260 **Team:** Western Team **Application Type** Other ADV
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Bank House, 335-337 Harrow Road, Wembley, HA9 6BA
Proposal:

Retention of two projecting, internally illuminated signs on front elevation and one projecting, internally illuminated sign on side elevation of building

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Application Number: 05/1518 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 75 Paxford Road, Wembley, HA0 3RJ
Proposal:

Alterations to and completion of a detached outbuilding to be used as a games-room at the bottom of the rear garden of the dwellinghouse

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Application Number: 05/1651 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 18B Willesden Lane, London, NW6 7SR
Proposal:

Erection of dormer window at front of second floor flat

Application Number: 05/1759 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 25 Brook Avenue, Wembley, HA9 8PH
Proposal:

Demolition of existing dwelling and erection of part three and four storey building comprising 2 one-bedroom, 6 two-bedroom and 1 three-bedroom flats with 2 vehicle crossovers, 4 frontage car parking spaces, bin store and landscaping (as accompanied by the Planning Statement by Lichfield Planning dated June 2005)

Application Number: 05/2086 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 87 Pasture Road, Wembley, HA0 3JW
Proposal:

Erection of a ground-floor front infill extension, first-floor and two-storey side extension and single-storey rear extension to the dwellinghouse

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Application Number: 05/2121 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Garage N/T 21, Spezia Road, London, NW10
Proposal:

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Demolition of existing garage and erection of two storey one bedroom dwellinghouse

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Application Number: 05/2204 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 5 Ancona Road, London, NW10 5YB
Proposal:

Retention of single storey rear extension to dwellinghouse

Item 4/02

LONDON BOROUGH OF BRENT

ENFORCEMENT Appeals RECEIVED between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Application Number: E/03/0278 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Received: 10/10/2005

Location: 74 Bowrons Avenue, Wembley, HA0 4QP
Description:
The erection of a dormer window roof extension to the rear of the property.

Application Number: E/05/0140 **Appeal Against:** Enforcement Appeal **Team:** Southern Team
Appeal Received: 13/10/2005

Location: 195 & Flats 1-8, Church Road, London, NW10
Description:
The erection of ground, first and second floor extensions and the material change of use of the premises to 8 self-contained flats.

Application Number: E/05/0626 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Received: 13/10/2005

Location: 252 Watford Road, Harrow, HA1 3TX
Description:
Erection of a single storey side and rear conservatory extension, a roof canopy and a porch extension to front of premises.

Item 4/03

LONDON BOROUGH OF BRENT

PLANNING Appeal DECISIONS between 1-Oct-2005 and 31-Oct-2005

Planning Sub-Committee: 30 November, 2005

Application Number: 04/0446 **Team:** Southern Team

Appeal Decision: Appeal withdrawn **Appeal Decision Date:** 31/10/2005

Location: 1 Chaplin Road, London, NW2 5PP

Proposal:

Conversion of single dwellinghouse into two self-contained flats (Applicant's description)

Application Number: 05/0080 **Team:** Western Team

Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 31/10/2005

Location: 1 Bengeworth Road, Harrow, HA1 3SF

Proposal:

Erection of a two-storey side extension and single-storey front and rear extension to the dwellinghouse

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Application Number: 05/0560 **Team:** Southern Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 18/10/2005

Location: Flat 1, 25 Peter Avenue, London, NW10 2DD

Proposal:

Erection of detached outbuilding in rear garden area of ground floor flat

Item 4/04

LONDON BOROUGH OF BRENT

ENFORCEMENT Appeal DECISIONS between 1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Application Number: E/04/0213 **Team:** Western Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 04/10/2005

Location: 629 Harrow Road, Wembley, HA0 2ET

Proposal:

Erection of a building to rear of dwelling house.

Application Number: E/04/0331 **Team:** Western Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 20/10/2005

Location: 75 London Road, Wembley, HA9 7ET

Proposal:

The erection of a single storey rear extension to flat.

Application Number: E/04/0418 **Team:** Western Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 20/10/2005

Location: 73 London Road, Wembley, HA9 7ET

Proposal:

Erection of a single storey rear extension.

Application Number: E/04/0463 **Team:** Southern Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 14/10/2005

Location: CHICKEN WONDER, 132 High Road, London, NW10 2PJ

Proposal:

The breach of conditions 2 and 4 of planning permission ref 03/0864.

Application Number: E/04/0608 **Team:** Western Team

Appeal Decision: Appeal partially allowed **Appeal Decision Date:** 31/10/2005

Location: 9 Chestnut Grove, Wembley, HA0 2LX

Proposal:

The erection of building in the rear garden.

Item 4/05

LONDON BOROUGH OF BRENT

PLANNING SELECTED appeal DECISIONS between 1-Oct-2005 and 31-Oct-2005 Planning Committee: 30 November, 2005

Introduction

In order to keep Members fully informed of Planning Appeal decisions, copies of Inspector's decision letters concerning those

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Our reference: 05/0560 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 18/10/2005
Team: Southern Team
Location: Flat 1, 25 Peter Avenue, London, NW10 2DD
Proposal:
Erection of detached outbuilding in rear garden area of ground floor flat

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Background Information

Any persons wishing to inspect appeal decision letters not set out in full on the agenda should contact Alissa Polkowski, The

Chris Walker

Director of the Planning Service

Item 4/06

Appeal Decision

Site visit made on 4 October 2005

by Colin Tyrrell MA (Oxon) CEng MICE FIHT

an Inspector appointed by the First Secretary of State

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Date
18 OCT 2005

Appeal Ref: APP/T5150/A/05/1184022
Flat 1, 25 Peter Avenue, London NW10 2DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr A Raczkowski against the decision of the Council of the London Borough of Brent.
- The application Ref 05/0560, dated 25 February 2005, was refused by notice dated 25 April 2005.
- The development proposed is a single-storey rear garden store and bicycle store.

Decision

1. For the reasons given below, I allow this appeal, and grant planning permission for a single-storey rear garden store and bicycle store at Flat 1, 25 Peter Avenue, London NW10 2DD in accordance with the terms of the application, Ref 05/0560, dated 25 February 2005, and the plans submitted therewith.

Procedural Matter

2. Before the appointed time for the site visit, I walked along Kings Road at the rear of the appeal site to acquaint myself with the view from the public highway. I was approached by Mrs M Robin of 21 Kings Road, who had written to the Planning Inspectorate on 30 August inviting the Inspector to view the appeal site from her garden. I explained briefly that I was unable to visit her property unless in the company of the appellant and the Council representative, but that she was welcome to meet all the parties at the appointed time and we could discuss her suggestion. She declined the offer, and I did not discuss the case or visit her garden.

Reasons

3. Some of the gardens of the semi-detached houses on the west side of Peter Avenue back directly onto the gardens of the terraced houses on Kings Road. Where this road turns through a right angle, the back gardens of 19 and 21 Kings Road are larger than elsewhere, and there is a triangular shaped piece of undeveloped land between.

4. The appeal site backs onto the Kings Road boundaries at this point, overlapping mostly with the boundary to the undeveloped land but partly with the boundary of No 21. There is a 1.8m close-boarded fence along the boundary set at the higher level of the Peter Street gardens. There is no other screening along the boundary with the undeveloped land, but there is a large tree and other shrubs close to the boundary in the back garden of No 21 which form an effective screen.

5. The proposed store, which is in an advanced state of construction, is shown on the drawings as 2650mm high, so protrudes some 850mm above the rear boundary fence. Although the drawings show that the rear and side elevations are to be rendered, this work has not yet been carried out. In its unfinished state, I agree that the store is somewhat unsightly when seen obliquely from the public highway of Kings Road.

6. During the accompanied site inspection, the appellant, the Council representative and I climbed onto the roof of the store to get a better view. The leaves were still on the tree at the date of the inspection, and I accept that the screening will reduce when the leaves fall. However, I consider that the visual impact of the store within the garden at 21 Kings Road even in the winter would be minor, and the visual impact when seen from the house would be less because of the unusually large side garden at No 21.

7. The store will be more visible from 19 Kings Road, which I noticed was currently unoccupied and under renovation. Even from this property, however, it seems to me that the store when completed would be a minor element in the outlook, would be mainly hidden by the 1.8m fence, and would be partially lost against the backs of the Peter Avenue houses beyond.

8. The elevation of the store facing the host property has been built in toning brickwork and in my opinion complies with the UDP Policies BE2 and BE9 in so far as it has due regard to its context and is not out of scale with the host building. There are no windows or doors in the other elevations, so there is no difficulty with privacy or overlooking. Overall, I consider that when completed the store would comply with the requirements of all the quoted UDP policies including Policy H21 that it should respect the amenity of adjoining properties. I conclude that the appeal should be allowed.

9. There were no conditions suggested by the Council in the event of the appeal succeeding, as the store is already almost complete. If it had been suggested by the Council, I would have been minded to apply a condition requiring that the work be finished within three months in order to improve that appearance when seen from the rear. I think that it is important that this should be done, but I am unable to apply a condition which has not been suggested by the parties to the appeal.

10. I have taken note of the concerns of one of the neighbours regarding noise from the store. Excessive noise is controlled by other legislation, and I do not consider it is a matter for the planning control in this instance.

C. R. Tyrrell

INSPECTOR

Item 4/07

LONDON BOROUGH OF BRENT

ENFORCEMENT SELECTED appeal DECISIONS between

1-Oct-2005 and 31-Oct-2005

Planning Committee: 30 November, 2005

Introduction

In order to keep Members fully informed of Enforcement Appeal

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Our reference: E/04/0213 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 04/10/2005
Team: Western Team
Location: 629 Harrow Road, Wembley, HA0 2ET
Proposal:
Erection of a building to rear of dwelling house.

Our reference: E/04/0331 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 20/10/2005
Team: Western Team
Location: 75 London Road, Wembley, HA9 7ET
Proposal:
The erection of a single storey rear extension to flat.

Our reference: E/04/0418 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 20/10/2005
Team: Western Team
Location: 73 London Road, Wembley, HA9 7ET
Proposal:
Erection of a single storey rear extension.

Our reference: E/04/0463 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 14/10/2005
Team: Southern Team
Location: CHICKEN WONDER, 132 High Road, London, NW10 2PJ
Proposal:
The breach of conditions 2 and 4 of planning permission ref 03/0864.

Background Information

Any persons wishing to inspect appeal decision letters not set out in full on the agenda should contact Alissa Polkowski, The

Chris Walker

Director of the Planning Service

Appeal Decision

Site visit made on 9 August 2005

by D N Donaldson

an Inspector appointed by the First Secretary of State

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Date
20 OCT 2005

Appeal Ref: APP/T5150/C/04/2000114
Site Address: 73 London Road, Wembley, HA9 7ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against Brent London Borough Council's enforcement notice.
- The appeal is made by Mr V J Sarkari.
- The Council's reference is E/04/0418.
- The notice was issued on 15 October 2004.
- The breach of planning control alleged in the notice is the erection of a single-storey rear extension.
- The requirements of the notice are:
  Remove the single-storey rear extension.
- The period for compliance with the requirements is three months after this notice takes effect.
- The appeal was submitted on grounds (a) and (f) in section 174(2) of the 1990 Act, as amended by the 1991 Act.

Summary of Decision: The enforcement notice is quashed and planning permission is granted for the development to which it relates.

Preliminary matters

1. Although the completed enforcement appeal form dated 19 November 2004 did not indicate the appellant's intention to appeal on ground (c) in section 174(2) of the 1990 Act, paragraphs 2.1 to 2.3 and 4.1 of the further appeal statement submitted on 16 March on the appellant's behalf seemed to me undoubtedly intended to constitute an appeal on that ground. Therefore, at my request, the Planning Inspectorate's letter of 18 August (also copied to the Council) to the appellant's then Agent invited the submission of further and better particulars which would enable the question of whether the alleged breach of control amounted to 'permitted development' of a single dwellinghouse to be formally determined.

2. The Council's response of 26 August to this request stated, among other matters, that they had not formerly addressed this issue (as there was no formal appeal on ground (c)); and, were that ground to be determined, a public inquiry should be held so that evidence about the order in which works had taken place to the appeal building could be given under oath. The Planning Inspectorate's request of 5 September for further information from the Council also asked them to confirm whether they still wished the issue of 'permitted development' to be canvassed at a public local inquiry. The Council's reply of 20 September accepted that a public inquiry was no longer necessary because, in their view, the premises were not being used as a dwellinghouse and, in any event, the extension (as built) was too big to come within the scope of 'permitted development.'

3. Having carefully considered both parties' written representations throughout the course of this appeal, I am satisfied that injustice would be caused to the appellant if I declined to determine his appeal on the additional ground (c); and that considering an implied appeal on

that ground will not cause injustice to the Council because, following the site inspection on 9 August, they have been given an adequate opportunity to submit factual evidence and legal argument in response to a ground (c) appeal.

The appeal site's recent planning history

4. Both appeal parties have provided some relevant facts and documentary evidence from which I have attempted to establish the appeal site's recent planning history. In the following summary, the information provided by the Council is identified by an asterisk:

(1) 30 September 1991: planning permission granted for conversion into two self-contained flats.* (There is no information about whether this permission was subsequently implemented and, if so, on what date).

(2) 14 April 2003: the Council granted a lawful development certificate (LDC) for a proposed single-storey rear extension to the dwellinghouse at 73 London Road (application No. 03/0449).* (The stated reason for this decision is that the proposed extension, as shown on numbered plans submitted with the application, complies with the relevant 'permitted development' requirements).

(3) 24 July 2003: the appellant entered into an assured shorthold tenancy agreement for one year for 'all those premises situated and known as 73 London Road, Wembley.' (I note that pages 2 to 7 of this agreement are missing from the copy supplied for my information).

[There is no information from the appellant about what happened immediately after this tenancy terminated on 23 July 2004].

(4) 15 October 2004: the Council issued the current enforcement notice (reference No. E/04/0418).

(5) 23 July 2005: the appellant entered into an assured shorthold tenancy agreement for one year for 73 London Road, Wembley. (Paragraph 3.11 of this agreement appears to preclude any sub-letting and paragraph 3.12 limits the property's use to that of a single private dwelling).

I also note that paragraph (4) of the Council's letter of 26 August 2005 to the Inspectorate states their belief that the property at 73 London Road 'is in use as flats/HMO,' as confirmed by an internal inspection last year, but no photographic evidence of that use is currently available. And the Council's letter of 20 September 2005 includes the following statement: 'I have no documentary evidence with regard to the use of 73 London Road. My colleague spoke to the tenants a year ago and she was satisfied that the premises was being used as an HMO as none of the tenants knew each other and they tend to lead separate lives. Each bedroom door also had a Yale lock on it – something you would not find in an ordinary dwelling.'

The implied appeal on ground (c)

6. The Council consider that the implied appeal on ground (c) must fail because the appeal property was not being used as a dwellinghouse; and, even if the property was so used, they consider that the volume of the extension to which the enforcement notice relates exceeds the volume to which the relevant 'permitted development' provisions apply.

7. The provisions in Article 3 of, and Class A (The enlargement, improvement or other alteration of a dwellinghouse) in Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 state that this category of development is permitted provided that the cubic content of the resulting building would not exceed that of the original dwellinghouse by more than 70 cu.m. or 15%, whichever is the greater.

8. Although specifically asked to do so, neither appeal party has produced documentary evidence showing the date on which the single-storey rear extension to the appeal property was completed. However, the appellant has submitted a copy of a letter dated 24 June 2004 from the Council's Building Control Consultancy Services stating that the submitted plans for a proposed single-storey rear extension to the property had been passed for Building Regulations purposes, following his application deposited on 14 April 2003. As recorded in paragraph 4(3) above, an assured shorthold tenancy of the appeal property as a whole appears to have been legally in operation from 24 July 2003 to 23 July 2004; and there is no reliable documentary or other evidence which would lead me to conclude that the property was sub-let during this one-year period. The Council's enforcement notice directed at the single-storey rear extension was issued on 15 October 2004, by which time it seems reasonable to conclude that the extension had been substantially, or wholly, completed. I find from the evidence of the assured shorthold tenancy agreement, on the balance of probability, that the appeal property was in use as a dwellinghouse during the currency of the agreement; and the notification of the passing of plans on 24 June 2004 seems to me to make it very likely that the appeal extension was built shortly after 23 July 2004, when the agreement had expired. I therefore conclude, for the purpose of the appeal on ground (c), that the property was in use as a dwellinghouse at the time when the extension was completed or shortly beforehand.

9. During the inspection I measured the external dimensions of the appeal extension and agreed the measurements with the appellant and the Council's representative. The dimensions, as measured, were: width – 3,950 mm; length – 5,800 mm; height – 2,900 mm., representing a volume of 66.44 cu.m. Therefore, in my opinion, the extension is within the scope of the relevant 'permitted development' volume of 70 cu.m. Accordingly, the implied appeal on ground (c) succeeds. However, in case my determination on ground (c) is found to be misconceived, I shall also consider the appeal on ground (a).

The appeal on ground (a) and deemed planning application

10. From my inspection of the appeal site and surroundings and my examination of the written representations, I consider that the main issues arising from the appeal on ground (a) are the effect of the development enforced against on:

    (1) the scale and character of the appeal property; and

    (2) the living conditions of residential neighbours, with particular reference to visual amenity and privacy.

    In dealing with these issues, the relevant statutory provisions require me, if regard is to be had to the development plan, to determine the appeal in accordance with the plan unless material considerations indicate otherwise.

11. The development plan comprises the adopted (2004) London Borough of Brent Unitary Development Plan (the UDP). The Council have drawn attention particularly to UDP Policies BE2, BE9 and H24 (subsequently re-numbered H21), which seem to me relevant in determining this appeal. I shall also have regard to relevant advice in the Council's SPG5 (September 2002) entitled 'Altering and extending your home.'

12. At the inspection I saw that the appeal property is the northern one of two very similar, two-storey, semi-detached dwellings. There was then no fenced boundary between its back garden and that of its immediate neighbour at No. 75. The property appeared to be in use as a single dwellinghouse.

13. In my view, the appeal property seemed not to possess any special architectural distinction. However, the single-storey rear extension is well-built, in materials of good quality, and (so far as I could see) is not visible from public vantage points in London Road. While I acknowledge that the extension's depth exceeds the maximum of 3m, advised for rear extensions to semi-detached houses in SPG5, it is nevertheless within the statutory limit for development of this type which is normally permissible in a semi-detached property. Overall, I consider it is not out of scale with the original building and does not detract from its appearance. For these reasons, I conclude on the first main issue that the appeal extension is broadly consistent with the Council's aims in Policies BE2 and BE9.

14. Turning to the second main issue, the design, appearance and volume of the appeal extension are clearly intended to complement the similar single-storey rear extension at No. 75 and it appeared to me to have no harmful visual impact on its neighbour. As to any possible loss of privacy, this could readily be remedied, in my opinion, by providing a suitable boundary fence between the back gardens of the two dwellings. While I acknowledge that the rear extension has resulted in some loss of amenity space in the property's back garden, this loss seemed to me not to be disproportionately great or unacceptable in relation to the dwelling's overall accommodation. For these reasons, I conclude on the second main issue that the appeal extension does not go against the Council's aims in UDP Policy H21.

15. As I have found in the appellant's favour on both main issues, the appeal succeeds on ground (a) and planning permission will be granted for the appeal extension, as built. I need not therefore consider the appeal on ground (f).

16. I have taken into account all the other matters raised in the representations. However, none of these matters outweighs the balance of considerations leading to my conclusions.

Formal decision

17. I hereby allow this appeal; direct that the enforcement notice issued on 15 October 2004 (reference No. E/04/0418) be quashed; and grant planning permission, on the deemed application under section 177(5) of the 1990 Act, for the development already carried out, namely the erection of a single-storey rear extension to the premises at 73 London Road, Wembley HA9 7ET.

DN Donaldson

INSPECTOR

Appeal Decision

Hearing held on 5th October 2005

by Clive Whitehouse BA(Hons) MCD MRTPI

an Inspector appointed by the First Secretary of State

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Date
14 OCT 2005

E/04/0463

Appeal Ref: APP/T5150/C/05/2001783
132 High Road, Willesden, London NW10 2PJ

- 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 appeal is made by Mohammad Anwar against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 23rd February 2005.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 and 4 of a planning permission Ref 03/0864 granted on 29th May 2003.
- The development to which the permission relates is the change of use from internet café to restaurant and installation of extractor duct on side elevation. The conditions in question are Nos 2 and 4, which state: *2. The development hereby approved shall be carried out and completed in all respects in accordance with the proposals contained in the application and any plans or other particulars submitted therewith. 4. There will be no "take-away" service included within the proposed A3 use.*
- The notice alleges that the conditions have not been complied with in that the premises are used as a hot food take-away, and the extractor flue is not built in accordance with planning permission 03/0864.
- The requirements of the notice are to cease use of the property as a take-away and to re-build the extractor flue to be in accordance with planning permission 03/0864.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

1. The period during which conditions may be enforced is 10 years, and not 4 years as indicated in paragraph 3 of the notice, although this does not affect the present case.

Ground (b)

2. The appeal on this ground is on the basis that the alleged development has not occurred as a matter of fact. In respect of the fume extraction flue, the appellant contends that he has complied with environmental health requirements. However, I consider that the appellant has mis-understood the purpose of ground (b) since it is evident that the flue has not been erected in the form shown on the drawing approved in 2003. The appeal on ground (b) fails.

Appeal on Ground (a)

Main Issues

3. I consider the main issues to be:

   (i) Whether it is reasonable and necessary to require compliance with condition 4, with particular regard to highway and parking considerations.

   (ii) Whether it is possible to construct the extract flue in accordance with the approved scheme, and if not, whether an alternative scheme is necessary in order to deal with cooking smells.

Planning Policy

4. The development plan for the area is the Brent Unitary Development Plan, adopted in 2004. Policies SH10 and SH11 recognise the possibility that in some locations, the traffic attracted by a hot food take-away would cause a hazard to other road users and may justify a condition requiring the use to be restricted. Other conditions seek to control smell and noise nuisances associated with food and drink businesses.

Highway and Parking Considerations

5. The premises trade as "Chicken Wonder", selling cooked chicken pieces and pizzas. There is a take-away counter and a small seating area where up to 8 customers can eat on the premises. The unit is located in a busy shopping and commercial area extending along High Road, which also serves also as a London distributor road and bus route. There is a bus stop outside the premises, and a pedestrian crossing nearby, so that parking is not permitted at any time in the immediate vicinity. The nearest on-street parking is on High Road about 45m to the east and on residential side streets. A short-stay pay and display scheme operates during the day for nearby parking spaces (30p for 20 minutes), whereas after 18:30 hours parking is more widely available on High Road.

6. The Council's concern is that take-away customers are likely to disregard the bus-stop and other parking restrictions for short periods in order to collect food. This concern is based on the Council's experience of hot-food take-aways in general, and there has been no specific monitoring of the appeal premises or complaints about parking on High Road. In the Council's experience restaurant customers, stopping for longer periods, are more likely to park properly and walk a short distance.

7. The appellant says that most customers are local residents who walk from nearby streets or come in from the bus stop. He claims that very few customers arrive by car; that parking restrictions are actively enforced and that unlawful parking is not a problem. A customer survey collected by the appellant indicates that the vast majority walk or use the bus. The appellant argues that there are many take-aways along High Road, including several chicken and pizza outlets and that there is no incentive for customers from the surrounding residential area to go further than to the nearest one.

8. I consider that the customer survey does give some indication that people arriving by car are not a major source of custom in this location. Of those that do drive to the premises I am sure, given human nature, that some take the risk of a fine by parking at the bus stop or on the zigzag lines for the pelican crossing for a few minutes. The judgement I must make is

whether the frequency of such incidents is such as to cause significant danger or obstruction to road traffic, busses or pedestrians. In the absence of any specific evidence of unlawful parking from the Council, I observed the premises for about half an hour between 18:00 and 18:30 hours on the evening before the hearing and again over a period of about half an hour during my accompanied visit at about mid-day. I saw no incidents of unlawful parking during those periods that could be attributed to take-away customers. I recognise that this does not amount to a comprehensive survey, but it is some indication of the typical situation at busy times.

9. I accept the appellant's statement that the business could not survive without the takeaway trade and that the consequence of the notice being upheld would be either closure or the difficult and uncertain process of finding alternative premises. In view of the serious consequences for the appellant, it is of concern to me that there is no evidence from the Council of the extent to which unlawful parking occurs in connection with the takeaway and no assessment of the traffic and pedestrian problems actually caused.

10. From what I have seen and from the appellant's evidence, I think it likely that drivers are a relatively small source of takeaway trade in this case. Whilst parking is quite limited during the day, it is my impression that it would not be difficult to park within 100m of the premises during the evening, and that the temptation for a driver to ignore the parking restrictions would not be great at that time. I conclude on the balance of probability and on the evidence available that the take-away aspect of the business does not result in significant highway safety hazards, as a result of unlawful parking.

11. The shop unit is quite small and there was discussion at the hearing as to whether it is large enough to be viable as a restaurant. The kitchen and store area is narrower than the front part of the unit, and the seating area could not therefore be enlarged to accommodate more than about 8 people. In the appellant's view the premises are not big enough to be viable as a restaurant, and I agree. Looking at the internal layout approved in 2003, it is obvious to me that it was primarily set up to be a take-away. It therefore seems to me that the Council was being unrealistic in granting permission for a restaurant with a "no take-away" condition.

12. I intend to allow the appeal and discharge the "no take-away" condition but, because this is a breach of condition case, the planning permission will remain in the terms as first granted for a "restaurant". Condition 3 of the 2003 permission also restricts the use to a restaurant only, although the Council has chosen not to cite that condition in the notice. At the time that the notice was issued, planning permission would not have been required to change from a restaurant to a hot food take-away unless there was a specific condition to the contrary. However, Statutory Instrument 2005/84 amended The Town and Country Planning (Use Classes) Order 1987 by splitting up the old A3 use class, with effect from April 2005. One of the consequences is that planning permission is now always required to change from a restaurant to premises where the primary purpose is the sale of hot food to take away. Therefore the removal of condition 4 only enables a notional restaurant in this case to sell hot food to take-away on an ancillary basis. It does not enable the appeal premises to become primarily a take-away, and a separate planning permission would be required for that purpose.

Fume Extraction Flue

13. The complaints that drew the Council's attention to the business were concerned with noise and cooking smells from the fume extraction flue. Action already taken by the Council's Environmental Health Department has resulted in the noise nuisance being reduced to the Council's satisfaction.

14. It was evident at the site inspection that the side elevation of the building is not accurately represented on the application drawing, although this was apparently not detected by either party at the application stage. The drawing shows the flue attached to a three-storey building, whereas the part to which the flue is attached is only two-storeys. Because of this error, it is not possible for the flue to comply with condition 2. In order to achieve proper fume dispersal, it is necessary to increase the height of the flue to a level above the eaves of the nearby three-storey buildings. There are a number of ways that this could be achieved and, at the hearing, the parties agreed that the best way forward would be for a scheme to be drawn up for the Council's consideration.

15. I conclude on the second main issue that it is not possible to re-build the flue to be in accordance with the planning permission, as required by the notice. I will allow the appeal on ground (a) subject to a new condition requiring an alternative fume extraction scheme to be prepared by the appellant and approved by the Council.

Conclusions

16. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the conditions the subject of the notice, and to grant planning permission, on the application deemed to have been made, for the change of use previously permitted without complying with the conditions enforced against, but to substitute another condition as indicated in paragraph 15 above.

Formal Decision

17. I allow the appeal, and direct that the enforcement notice be quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, I hereby discharge conditions Nos. 2 and 4 attached to the planning permission dated 29th May 2003, Ref 03/0864, granted by the Council, and substitute the following new condition. I also grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the change of use from internet café to restaurant and installation of extractor duct on side elevation without complying with the said conditions, but subject to the other conditions attached to that permission and to the following new condition:

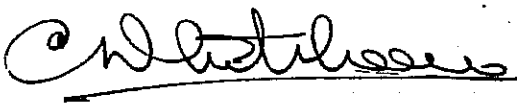
2. The use hereby permitted shall cease within two months of the date of failure to meet any one of the requirements set out in (i) to (iv), below.

(i) Within two months of the date of this permission, a scheme for the installation of a fume extraction system (the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) Within 10 months of the date of this decision, the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mohammad Anwar	Appellant.
Amjad Dar	Business associate.

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rolt	Enforcement Manager

DOCUMENTS

Document 1 List of persons present at the hearing.
Document 2 Copy of planning permission 03/0864 and approved drawings.

Item 4/08

Appeal Decision

Inquiry held on 27 September 2005

by Derek Thew DipGS MRICS

an Inspector appointed by the First Secretary of State

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Date

0 4 OCT 2005

Appeal Ref: APP/T5150/C/05/2001627-8
629 Harrow Road, Wembley E/04/0213

- 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 appeal is made by Mr D & Mrs P Kotecha against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is C/30/2/512/JK.
- The notice was issued on 11 February 2005.
- The breach of planning control as alleged in the notice is the erection of a building to rear of dwelling house.
- The requirements of the notice are remove the building and all associated materials.
- 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] and [f] of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended will be considered.

Summary of Decision: The appeal is allowed in the terms set out below in the Formal Decision.

Procedural Matters

1. The evidence was taken on oath.

The Appeal on Ground B

2. As a matter of fact a building has been erected to the rear of the dwelling house (as alleged in Schedule 2 of the notice) and consequently the appeal on ground [b] must fail.

The Appeal on Ground C

3. Part 1, Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995 [GPDO] grants planning permission for various classes of development within the curtilage of a dwelling house. The erection of a detached building, such as the appeal building, is capable of being permitted development under the provisions of either Class A or Class E. Class A relates to the enlargement, improvement or other alteration of a dwelling house. Class E relates to the provision of any building required for a purpose incidental to the enjoyment of the dwelling house as such.

4. The appeal building is some 7.36m long by 3.98m wide and is situated towards the rear of the garden. The undisputed evidence for the appellants is that the building was constructed for use by themselves, primarily as a gym/exercise room ancillary to their residential use of

no.629 Harrow Road. Internally the building contains a wc and shower, plus a small range of kitchen units and appliances. The Council expressed concern that, in view of the facilities within the building, it is capable of being used as a separate dwelling. I accept that is so. But simply because the building has the potential to be used as a dwelling does not necessarily mean that it either has been or will be so used. From the evidence before me I am satisfied that since the building was erected in 2004 it has only been used in association with no.629 Harrow Road and I see no reason to suppose that association would be likely to alter. Furthermore if the use were to change to that of a separate dwelling then such use could be controlled by the Council in the future. Having regard to the nature of the building and the use to which it has been put, I consider it to be required for a purpose incidental to the enjoyment of the dwelling house as such, and therefore capable of being permitted development under the provisions of Class E of Part 1, Schedule 2 to the GPDO.

5. There is no dispute that the appeal building complies with all of the criteria set out in Class E other than that contained in paragraph E.1(d). This sub-paragraph provides that development is not permitted by Class E if the height of the building would exceed 4 metres, in the case of a building with a ridged roof, or 3 metres in any other case. Part of the dispute in this appeal is whether the appeal building was constructed with a ridged roof. The building was constructed in 2004 with a mono-pitch roof. (Photographs taken in July 2004 show a substantially completed building, apparently in use). The evidence for the appellants is that all pitched roofs have ridges – which are simply the highest points of any roof – and that this was therefore a building with a ridged roof. But that is not a view with which I can concur. The words "ridged roof" are not defined in the GPDO and, in such circumstances, I think it appropriate to give the words the meaning they normally have in common usage. To my mind a ridge, as commonly understood, is a horizontal section at the top of a pitched roof where two opposite slopes meet. On this basis a ridged roof is a roof with two opposite slopes that meet at such a horizontal top section. I draw support for this view from the definitions of the word "ridge" in the Oxford English Dictionary and the Collins English Dictionary, as set out in a recent appeal decision (ref. APP/F5540/C/04/1162744) submitted by the Council. Accordingly, the roof of the appeal building as constructed in 2004 was not a ridged roof. In such circumstances, for the construction of that building to be permitted development under Class E it would need to have been no more than 3 metres in height. The building had a maximum height of 3.75 metres and therefore its construction was not development permitted by the GPDO. No planning permission had been granted by the Council for the development and hence the works were in breach of planning control.

6. I acknowledge that in early 2005 the mono-pitch was removed and a conventional dual-pitched roof with a ridge was installed in its place. Class E of Part 1, Schedule 2 to the GPDO permits the alteration of a building required for a purpose incidental to the enjoyment of the dwelling house as such, and I am mindful that the height of the resulting ridged roof building was less than 4 metres. But Article 3(5)(a) of the GPDO makes it clear that a "*permission granted by Schedule 2 shall not apply if –*

   (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful".

   I have concluded in the preceding paragraph that the construction of the building in 2004 was unlawful. As such, the permission that might otherwise be granted by Class E to alter the roof of that building does not apply, and those works of alteration were not permitted

development. No planning permission had been granted by the Council for those works and hence they too were carried out in breach of planning control.

7. For each of the above reasons the appeal on ground [c] fails.

The Deemed Planning Application

Main Issues

8. The main issues in this case are the effect of the unauthorised building upon, first, the character and appearance of the existing dwelling, and secondly, the amenity of neighbours.

Planning Policy

9. The development plan is the adopted Brent Unitary Development Plan [UDP]. Policies BE2, BE9 and H21 are relevant in the context of this appeal.

Reasons

10. Character and appearance of the existing dwelling: The Council's principal concerns relate to the bulk and mass of the appeal building in relation to the dwelling at no.629. I acknowledge that the appeal building is a sizeable structure and a prominent feature within the rear garden. But it stands at the end of the garden, well-removed from the house. As a result it cannot be viewed from within the site directly in relation to the house. The materials used on the external surfaces of the appeal building are different from those on the dwelling, but I do not find them to be visually discordant in this setting. In such circumstances I am satisfied that the building causes no material harm to either the character or the appearance of the existing dwelling.

11. Amenity of neighbours: The neighbouring property most likely to be adversely affected by the appeal scheme is the bungalow at no.2 Linthorpe Avenue, which is situated directly behind, and at a lower level than, the appeal building. One window in no.2 faces directly onto the rear of the building but I understand that window serves only a garden store room. The building is probably a prominent feature when viewed from the kitchen window of no.2. However that prominence could be appreciably reduced by appropriate shrub planting between the building and the common boundary, and such planting could be secured by planning condition. There is no substantial evidence before me to suggest that the building materially reduces levels of daylight received by that kitchen window or materially harms its outlook. For these reasons I consider that the building does not materially harm the amenity of the occupiers of no.2 Linthorpe Avenue. I draw support for this view from a letter signed on behalf of the owner of no.2 indicating that there is no objection to the building in its present form.

12. There is no substantial evidence to demonstrate that the appeal building has any adverse affect upon the amenity of adjoining properties at nos.627 and 631 Harrow Road, and again I note the letter signed by the occupiers of both properties indicating that there is no objection to the development.

Conclusions

13. For the reasons given above and having regard to all other matters raised, I conclude that the scheme is not contrary to the provisions of the UDP and that the appeal should succeed.

I will therefore grant planning permission, subject to conditions, in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended. In such circumstances there is no need to consider the appeal on ground [f].

Conditions

14. In order to safeguard the amenity of neighbouring residents I will impose two conditions as discussed at the inquiry. The first requires that the appeal building shall not be occupied at any time other than for purposes incidental to the residential use of the dwelling at no.629 Harrow Road; and the second requires the provision of soft landscaping within the area to the rear of the building (adjacent to no.2 Linthorpe Avenue).

Formal Decision

15. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a building to the rear of the dwelling house at no.629 Harrow Road, Wembley, subject to the following conditions:

    1) The building hereby permitted shall not be occupied at any time other than for purposes incidental to the residential use of the dwelling at no.629 Harrow Road, Wembley.

    2) Unless within 2 months of the date of this decision a scheme for the soft landscaping of the site to the rear of the appeal building is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, any use of the appeal building shall cease until such time as a scheme is approved and implemented; and if no scheme in accordance with this condition above is approved within 6 months of the date of this decision, the use of the appeal building shall cease until such time as a scheme approved by the local planning authority is implemented.

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks	Environmental Services Ltd, 7 Station Road, Winslow, Bucks
He called	
Mrs A Jones	Principal Enforcement Planner

FOR THE APPELLANT:

Mr N Hathi	Eleph Ltd, 14 Mersham Drive, NW9 9PN

DOCUMENTS

Document	1	List of persons present at the inquiry
Document	2	Letter of notification and list of persons notified
Document	3	Letter of response to notification
Document	4	Statements of common ground
Document	5	Opening statement of Mr Hathi
Document	6	Appellants' statement of case
Document	7	Appellants' written comments on Council's statement
Document	8	Signed letter of no objection to development from neighbours
Document	9	Appellants' bundle of similar buildings on the locality
Document	10	Council's statement of case and appendices thereto
Document	11	Questionnaire documents
Document	12	Brent UDP policy H15
Document	13	Appeal decision APP/F5540/C/04/1162744
Document	14	Secretary of State for the Environment – v – Sparkes [2000] transcript
Document	15	Uttlesford DC – v – Secretary of State for the Environment [1991] JPL171

PLANS

Plan A Enforcement notice plan

Appeal Decision

Site visit made on 9 August 2005

by D N Donaldson

an Inspector appointed by the First Secretary of State

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Date
20 OCT 2005

Appeal Ref: APP/T5150/C/04/2000117
Site Address: 75 London Road, Wembley, HA9 7ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against Brent London Borough Council's enforcement notice.
- The appeal is made by Mr V J Sarkari.
- The Council's reference is E/04/0331.
- The notice was issued on 14 October 2004.
- The breach of planning control alleged in the notice is the erection of a single-storey rear extension to flat.
- The requirements of the notice are:
  Remove the single-storey rear extension.
- The period for compliance with the requirements is three months after this notice takes effect.
- The appeal was submitted on grounds (a) and (f) in section 174(2) of the 1990 Act, as amended by the 1991 Act.

Summary of Decision: The enforcement notice is quashed and planning permission is granted for the development to which it relates.

Preliminary matters

1. Although the completed enforcement appeal form dated 19 November 2004 did not indicate the appellant's intention to appeal on ground (c) in section 174(2) of the 1990 Act, paragraphs 2.2, 2.3 and 4.1 of the further appeal statement submitted on 16 March 2005 on the appellant's behalf seemed to me undoubtedly intended to constitute an appeal on that ground. Therefore, at my request, the Planning Inspectorate's letter of 18 August (also copied to the Council) to the appellant's then Agent invited the submission of further and better particulars which would enable the question whether the alleged breach of control amounted to 'permitted development' of a single dwellinghouse to be formally determined.

2. The Council's response of 26 August to this request stated, among other matters, that they had not formerly addressed this issue (as there was no formal appeal on ground (c)); and, were that ground to be determined, a public inquiry should be held so that evidence about the order in which works had taken place to the appeal building could be given under oath. The Planning Inspectorate's request of 5 September for further information from the Council also asked them to confirm whether they still wished the issue of 'permitted development' to be canvassed at a public local inquiry. The Council's reply of 20 September accepted that a public inquiry was no longer necessary because, in their view, the premises were not being used as a dwellinghouse and, in any event, the extension (as built) was too big to come within the scope of 'permitted development.'

3. Having carefully considered both parties' written representations throughout the course of this appeal, I am satisfied that injustice would be caused to the appellant if I declined to

determine this appeal on the additional ground (c); and that considering an implied appeal on that ground will not cause injustice to the Council because, following the site inspection on 9 August, they have been given an adequate opportunity to submit factual evidence and legal argument in response to a ground (c) appeal.

The appeal site's recent planning history

4. Both appeal parties have provided some relevant facts and documentary evidence from which I have attempted to establish the appeal site's recent planning history. I note that some of the information provided by the Council relates to 'Flat A, 75 London Road' (rather than the dwellinghouse at that address). In the following summary of the relevant information submitted to the Inspectorate, information from the Council is identified by an asterisk:

    (1) 15 April 2004: the appellant entered into an assured shorthold tenancy agreement for 12 months for 75 London Road, Wembley. (Although the submitted copy of this agreement is incomplete, paragraph 3.11 appears to preclude any sub-letting and paragraph 3.12 limits the property's use to that of a single private dwelling).

    (2) 30 July 2004: the Council refused a lawful development certificate (LDC) for 'proposed erection of single-storey rear extension to dwellinghouse' at 'Flat A, 75 London Road' (application No. 04/1730).* (The stated reason for this decision is that 'The proposed single-storey rear extension is unlawful in that it has been [sic] carried out to a property which appears to have been converted into flats and is not used as a dwellinghouse').

    (3) 15 June 2004: an officer of the Council's Housing Department recorded a visit to 75b London Road, Wembley, at which the property [extent unspecified] was divided into studio flats; and trenches had been dug at the rear of the property to lay the foundation of a rear extension.*

    (4) 15 October 2004: the Council issued an enforcement notice (reference No. E/04/0442) alleging a material change of use of the premises at 75 London Road, Wembley, from a single family dwellinghouse into 4 self-contained flats. The notice required cessation of the use as flats and removal of all associated fixtures and fittings within a compliance period of six months from 24 November 2004.* (There is no record of an appeal to the Secretary of State against this notice. The appellant's letter of 30 September 2005 says that the Council have taken no further action since expiry of the compliance period on 24 May 2005).

    (5) 5 January 2005: the appellant entered into an assured shorthold tenancy agreement for 12 months for 75 London Road, Wembley. (Paragraph 3.11 appears to preclude any sub-letting and paragraph 3.12 limits the use to a single private dwelling).

5. I also note that the Council's letter of 20 September 2005 to the Inspectorate states that, when visited last year, 75 London Road was in use as bed-sit type accommodation, with two bed-sits on the upper floors and two on the ground floor. And when the Council's Planning Enforcement Manager visited the premises on 20 September 2005 the layout seemed to be the same as when the extension was being constructed.

The implied appeal on ground (c)

6. Although specifically asked to do so, neither appeal party has produced documentary evidence which would enable me reliably to establish the date on which the rear extension to the appeal property was substantially completed and whether the use of the premises at that date should be regarded, for planning purposes, as a dwellinghouse use. The provisions in Article 3 of, and Class A (The enlargement, improvement or other alteration of a dwellinghouse) in Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 state that this category of development is permitted provided that the cubic content of the resulting building would not exceed that of the original dwellinghouse by more than 70 cu.m. or 15%, whichever is the greater.

7. During the inspection I measured the external dimensions of the appeal extension and agreed the measurements with the appellant and the Council's representative. The dimensions, as measured, were: width – 4,100mm; length – 5,800mm; height – 3,000mm, representing a volume of 71.34cu.m. Thus, even if I assume for the purpose of the appeal on ground (c) that the appeal property was a dwellinghouse, for planning purposes, at the date when the rear extension was substantially completed, the volume would have exceeded the 'permitted development' limit of 70cu.m. Accordingly, I conclude that the implied appeal on ground (c) must fail.

The appeal on ground (a) and deemed planning application

8. From my inspection of the appeal site and surroundings and my examination of the written representations, I consider that the main issues arising from the appeal on ground (a) are the effect of the development enforced against on:

   (1) the scale and character of the appeal property; and

   (2) the living conditions of residential neighbours; with particular reference to visual amenity and privacy.

   In dealing with these issues, the relevant statutory provisions require me, if regard is to be had to the development plan, to determine the appeal in accordance with the plan unless material considerations indicate otherwise.

9. The development plan comprises the adopted (2004) London Borough of Brent Unitary Development Plan (the UDP). The Council have drawn attention particularly to UDP Policies BE2, BE9 and H24 (subsequently re-numbered H21), which seem to me relevant in determining this appeal. I shall also have regard to relevant advice in the Council's SPG5 (September 2002) entitled 'Altering and extending your home.'

10. At the inspection I saw that the appeal property is the southern one of two very similar, two-storey, semi-detached dwellings. There was then no fenced boundary between its back garden and that of its immediate neighbour at No. 73. The property appeared to be in use as a single dwellinghouse, so far I could establish from inspecting the entire premises.

11. In my view, the appeal property seemed not to possess any special architectural distinction. However, the single-storey rear extension is well-built, in materials of good quality, and (so far as I could see) is not obviously visible from public vantage points in London Road. While I acknowledge that the extension's depth exceeds the maximum of 3m. advised for rear extensions to semi-detached houses in SPG5, it seemed to me not to be out of scale with the original building and not to detract unacceptably from its appearance. For these

reasons, my overall conclusion on the first main issue is that the appeal extension is broadly consistent with the Council's aims in UDP Policies BE2 and BE9.

12. Turning to the second main issue, the design, appearance and volume of the appeal extension are clearly intended to complement the similar single-storey rear extension at No. 73 and it appeared to me to have no harmful visual impact on its neighbour. As to any possible loss of privacy, this could readily be remedied, in my opinion, by providing a suitable boundary fence between the back gardens of the two dwellings. While I acknowledge that the rear extension has resulted in some loss of amenity space in the property's back garden, this loss seemed to me not to be disproportionately great or unacceptable in relation to the dwelling's overall accommodation. For these reasons, I conclude on the second main issue that the appeal extension does not go against the Council's aims in UDP Policy H21.

13. As I have found in the appellant's favour on both main issues, the appeal succeeds on ground (a) and planning permission will be granted for the appeal extension, as built. In considering the precise terms of the permission, I have had regard to the description of the alleged breach (Schedule 2 to the notice) as a single-storey rear extension to flat. However, it seems to me that the legal effect of the separate notice (reference No. E/04/0442) issued on 15 October 2004 is, in the absence of any appeal against it, to render the use of 75 London Road as 4 self-contained flats subject to compliance with the notice's requirements after 24 May 2005. The use of the appeal property as a dwellinghouse therefore seems to me not to be unlawful for planning purposes and I shall grant planning permission for the rear extension on this basis. I need not now consider the appeal on ground (f).

14. I have taken into account all the other matters raised in the representations. However, none of these matters outweighs the balance of considerations leading to my conclusions.

Formal decision

15. I hereby allow this appeal; direct that the enforcement notice issued on 14 October 2004 (reference No. E/04/0331) be quashed; and grant planning permission, on the deemed application under section 177(5) of the 1990 Act, for the development already carried out; namely the erection of a single-storey rear extension to the premises at 75 London Road, Wembley HA9 7ET.

DN Donaldson

INSPECTOR