

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Jul-2006 and 31-Jul-2006

Planning Committee: 15 August, 2006

Item 4/01

Application Number: 04/4035 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 9 Lapstone Gardens, Harrow, HA3 0EB
Proposal:

Retention of a single-storey rear UPVC conservatory to dwellinghouse

Application Number: 05/2475 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 26 Eversley Avenue, Wembley, HA9 9JZ
Proposal:

Retention of replacement roof-tiles and one front rooflight to the dwellinghouse (Article 4 Direction) (as described in letter dated 22nd August 2005)

Application Number: 05/2649 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 1-12 Inc, Thanet Lodge, Mapesbury Road, London, NW2
Proposal:

Demolition of detached garages and conversion of basement level of building to provide 6 self-contained flats (2 x 3 bed and 4 x 2 bed), with provision for 20 parking bays, a cycle storage shed, new bin enclosure and associated landscaping (as accompanied by photographs and as revised by plans received on 14 October 2005, 19 December 2005 and 8 February 2006)

Application Number: 05/2778 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 215A Edgware Road, London, NW9 6LP
Proposal:

Erection of single storey rear extension to first floor flat

Application Number: 05/2807 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 84A Wrentham Avenue, London, NW10 3HG
Proposal:

Retention of replacement UPVC windows (as accompanied by photographs)

Application Number: 05/2997 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 39 Newfield Rise, London, NW2 6YG
Proposal:

Erection of first floor front extension to dwellinghouse

Application Number: 05/3014 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 157 Maybank Avenue, Wembley, HA0 2TB
Proposal:

Formation of a vehicular crossover to a classified road and provision of parking in the front garden of the property

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Application Number: 05/3222 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Flats 1-9 inc, Lechmere Road, London, NW2 5DA
Proposal:
Erection of third-floor extension to form 2 self-contained flats

Application Number: 05/3298 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 14 Fulwood Avenue, Wembley, HA0 1LT
Proposal:
Erection of first-floor rear extension, and alterations and extension to convert hipped roof to gable end with rear dormer window extension and installation of two front rooflights and two side elevation windows to dwellinghouse

Application Number: 05/3317 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 3 East Hill, Wembley, HA9 9PT
Proposal:
Retention of single storey side extension to dwellinghouse.

Application Number: 05/3422 **Team:** Western Team **Application Type** S78 VAR
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 196 Ealing Road, Wembley, HA0 4QG
Proposal:
Variation of condition 9 of Full Planning Permission 04/3377 (to allow fruits and vegetables to be displayed on the shop forecourt)

Application Number: 05/3680 **Team:** Western Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 2 Woodheyes Road, London, NW10 9DD
Proposal:
Erection of two storey side extension to provide a 3 bedroom house with integral garage and 2 frontage car parking spaces and single storey rear extension to dwellinghouse as accompanied by Design Statement and coloured photograph of the front of the house and neighbouring houses on North Circular Road

Application Number: 06/0357 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 179B Brondesbury Park, London, NW2 5JN
Proposal:
Conversion of a three-bedroom maisonette into 1 two-bedroom flat on the first floor and 1 studio flat on the second floor

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Application Number: 06/0359 **Team:** Southern Team **Application Type** S78 VAR
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: St Andrews Church Hall, High Road, London, NW10 2SJ
Proposal:

Variation of condition 17 of Full Planning Permission reference 04/2046 dated 29 September 2004 (for Demolition of scout-hut building and outbuilding adjacent to St Andrews Church and partial demolition of hall and erection of new church hall, new access road off St Andrews Road with new vehicular crossover to vicarage, new access road off High Road adjacent to St Andrews Church including new vehicular crossover, erection of 5 three-bedroom dwellinghouses (including 5 affordable units, one being a wheelchair-accessible dwellinghouse with carport) with private gardens, rear outbuildings and off-street parking, erection of 2.5-storey building with internal open courtyard including 2 one-bedroom and 10 two-bedroom, self-contained flats (12 affordable units), doctors' surgery with ancillary facilities on ground-floor and first-floor level, communal amenity space, provision of 15 vehicular parking spaces, bicycle store and bin store adjacent to 6 St Andrews Road and associated landscaping (car-free agreement), to allow the use of the proposed doctors surgery for any purpose within Use Class D1, s accompanied by letter from agent dated 8 February 2006.

Application Number: 06/0361 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: St Andrews Church Hall, High Road, London, NW10 2SJ
Proposal:

Change of use of building to office use (class B1), as accompanied by letter from agent dated 8 February 2006.

Application Number: 06/0587 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 8 Deerpark Road, London, NW2 4DE
Proposal:

Erection of single-storey side and rear extension and conversion into 4 self-contained flats

Application Number: 06/0655 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 115 Dollis Hill Lane, London, NW2 6HS
Proposal:

Erection of of a single storey rear extension to dwellinghouse

Application Number: 06/0689 **Team:** Northern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Car Park R/O 84-94, Beverley Gardens, Wembley, HA9
Proposal:

Erection of 2 single-storey dwellinghouses, 3 parking bays and new replacement vehicular and pedestrian access to the rear of 84-94 Beverley Gardens

Application Number: 06/0865 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 65 Hiley Road, London, NW10 5PT
Proposal:

Erection of first-floor rear extension to dwellinghouse

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Application Number: 06/0900 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Flats 1-8, 67 Priory Park Road, London, NW6
Proposal:

Proposed erection of rear dormer window and conversion into 3 self contained flats and retention of detached garage and roof alterations to outrigger

Application Number: 06/1028 **Team:** Southern Team **Application Type** S78 FUL
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: Willesden Court House, St Marys Road, London, NW10
Proposal:

Erection of a part 7-storey, part 6-storey building comprising 56 flats, with commercial use on the ground floor (as accompanied by Transport Assessment Scoping Study March 2006, Ecological Assessment March 2006, Townscape & Visual Assessment 5 April 2006, and Design Report)

Application Number: 06/1032 **Team:** Western Team **Application Type** Other ADV
Appeal Received: 10/12/2004 **Appeal Against:** Refusal of planning permission
Location: 8 The Junction Wembley Retail Park, Engineers Way, Wembley, HA9
Proposal:

Installation of 2 internally illuminated signs, 3 non illuminated aluminium panels and 2 non illuminated poster boxes attached to the walls of the East and North elevations of the Wickes premises at Wembley Retail Park

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ENFORCEMENT Appeals RECEIVED between 1-Jul-2006 and 31-Jul-2006

Planning Committee: 15 August, 2006

Item 4/07

Application Number: E/04/0122 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Started: 21/07/2006
Location: 26 Byron Road, Wembley, HA0 3NU
Description:-
 Conversion of integral garage into habitable room and conversion of premises into two self-contained

Application Number: E/05/0325 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Started: 17/07/2006
Location: Unit A, Genesis Business Park, Rainsford Road, London, NW10 7RG
Description:
 The breach of condition 4 of planning permission 04/0550 dated 19/04/2004, which states that no

Application Number: E/05/0664 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Started: 25/07/2006
Location: 76 Maybank Avenue, Wembley, HA0 2TJ
Description:
 The erection of outbuilding and timber framed extension to rear premises

Application Number: E/05/0775 **Appeal Against:** Enforcement Appeal **Team:** Northern Team
Appeal Started: 20/07/2006
Location: 76 & 78, Draycott Avenue, Harrow, HA3
Description:
 The erection of a 3-storey building comprising 10 self-contained flats

Application Number: E/05/0812 **Appeal Against:** Enforcement Appeal **Team:** Southern Team
Appeal Started: 25/07/2006
Location: 103A & B, Chapter Road, London, NW2
Description:
 Without planning permission, the erection of a outbuilding and boundary wall

Application Number: E/05/0831 **Appeal Against:** Enforcement Appeal **Team:** Southern Team
Appeal Started: 17/07/2006
Location: 212-214 Church Road, London, NW10 9NP
Description:
 Erection of an extension and external staircase to community centre

Application Number: E/05/0880 **Appeal Against:** Enforcement Appeal **Team:** Northern Team
Appeal Started: 20/07/2006
Location: 29 Dartmouth Road, London, NW2 4ET
Description:
 The formation of a hardstanding to the front of the premises and the demolition of the front boundary

Application Number: E/06/0046 **Appeal Against:** Enforcement Appeal **Team:** Western Team
Appeal Started: 19/07/2006
Location: 41 Carlton Avenue East, Wembley, HA9 8LZ
Description:
 The erection of an outbuilding in rear garden of the premises and change of use to house in multiple

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PLANNING Appeal DECISIONS between 1-Jul-2006 and 31-Jul-2006

Planning Sub-Committee: 15 August, 2006

Item 403

Application Number: 05/0252 **Team:** Northern Team
Appeal Decision: Appeal Allowed **Appeal Decision Date:** 12/07/2006
Location: 189 Edgware Road, London, NW9 6LP
Proposal:

Removal of condition 3 of planning permission 93/1864 dated 23 feb 1994 (Notwithstanding the provision of any music or other extended licence that may be granted by the Licensing Authority the premises shall not trade after 2300 on any night and shall be cleared not later than 30 minutes after the time of closing).

Application Number: 05/0319 **Team:** Western Team
Appeal Decision: Appeal Allowed **Appeal Decision Date:** 12/07/2006
Location: BARISH, 13 The Broadway, Wembley, HA9 8JU
Proposal:

Removal of condition 3 (restricting opening hours to between 0800 & 2300, Sundays-Thursdays and 0800 & midnight, Fridays-Saturdays) of planning permission reference 03/3005 dated 21 January 2004 for change of use from restaurant (Use Class A3) to private members' club (As accompanied by supporting document dated 7th Feb 2005).

Application Number: 05/0432 **Team:** Northern Team
Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 12/07/2006
Location: Finsbar, 225-227 Edgware Road, London, NW9 6LU
Proposal:

Removal of Condition 10 (stipulated opening hours - that the premises shall not remain open after 23.00 on any night and the premises shall be cleared by 23.20) of Planning Permission Ref: 96/0692, dated 4th September 1996 and accompanied by statement from Prospect Planning dated 8/2/05 with reference L05011/A

Application Number: 05/0467 **Team:** Southern Team
Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 12/07/2006
Location: Ceili On The Green, 88 Walm Lane, London, NW2 4QY
Proposal:

Removal of condition 3 (restricted opening hours) of Appeal Decision on planning reference 96/0821 dated 22/08/1997 for change of use of ground floor to an unspecified A3 Use Class (Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises), first floor to a function room and use of the second floor for ancillary residential purpose (as amended by plans and letter received 22/07/96) and as per letter dated 25 January 2005

Application Number: 05/1774 **Team:** Northern Team
Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 14/07/2006
Location: 1 Vincent Gardens, London, NW2 7RJ
Proposal:

Retention of single storey rear and side conservatory to dwellinghouse

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PLANNING Appeal DECISIONS between 1-Jul-2006 and 31-Jul-2006

Planning Sub-Committee: 15 August, 2006

Item 4/03

Application Number: 05/2157 **Team:** Western Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 24/07/2006

Location: 52 Tokyngton Avenue, Wembley, HA9 6HL

Proposal:

Retention of part single and two storey side and rear extension to dwellinghouse

Application Number: 05/2181 **Team:** Northern Team

Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 13/07/2006

Location: 110 Geary Road, London, NW10 1HR

Proposal:

Removal of condition 5 (amended guttering without parapet wall) of planning permission ref. 05/0276 dated 17/03/2005 (for erection of two-storey side extension, single-storey rear extension and single-storey, first-floor rear extension to dwellinghouse), applying for retention of existing parapet and internal box gutter

Application Number: 05/2263 **Team:** Western Team

Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 27/07/2006

Location: 1-99 Inc, Ada Lewis House, Empire Way, Wembley, HA9

Proposal:

Outline application for the demolition of existing buildings and erection of 2 buildings with undercroft parking level and refuse stores, containing 90 residential units (33 one-bedroom flats, 49 two-bedroom flats and 8 three-bedroom flats) for private sale, shared ownership and social rental and formation of new access on to Empire Way (matters for determination: means of access and siting) (as accompanied by a Design Statement Revision A by AHA Architecture International and Transport Statement dated 12 September 2005)

Application Number: 05/2308 **Team:** Northern Team

Appeal Decision: Appeal Allowed **Appeal Decision Date:** 31/07/2006

Location: The Minister Centre, 17 Mapesbury Road, London, NW2 4HU

Proposal:

Subdivision of site and erection of a 2-bedroom, single-storey, detached house with planted roof and 1 parking space

Application Number: 05/2446 **Team:** Northern Team

Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 10/07/2006

Location: 25B & C, Bridge Road, Wembley, HA9

Proposal:

Change of use from Use Class A1 (barbers' shop) to Use Class A3 (cafeteria) with new shopfront

Application Number: 05/2742 **Team:** Northern Team

Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 25/07/2006

Location: 237 To 239, Neasden Lane, London, NW10

Proposal:

Change of from retail (use class A1) to restaurant (use class A3)

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PLANNING Appeal DECISIONS between 1-Jul-2006 and 31-Jul-2006

Planning Sub-Committee: 15 August, 2006

Item 4/03

Application Number: 05/2948 **Team:** Northern Team
Appeal Decision: Appeal Dismissed **Appeal Decision Date:** 31/07/2006
Location: 15 Buck Lane, London, NW9 0AP
Proposal:
Erection of single storey rear extension to dwellinghouse

Application Number: 05/2964 **Team:** Western Team
Appeal Decision: Appeal Allowed **Appeal Decision Date:** 12/07/2006
Location: 427A High Road, Wembley, HA9 7AB
Proposal:
Removal of condition 4 (restricting opening hours) of full planning permission 01/0180 for change of use of the first floor to food and drink (Use Class A3), (As accompanied by letter dated 14th December 2005)



Appeal Decision

Site visit made on 6 June 2006

by **Rebecca Phillips** BA (hons) MSc DipM MRTPI MCIM

an Inspector appointed by the Secretary of State for
Communities and Local Government

ITEM 4/04

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Date: 24 July 2006

Appeal Ref: APP/T5150/A/06/2011523

52 Tokyngton Avenue, Wembley, London, HA9 6HL

- 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 Shoaib Afzal Sheikh against the decision of the Council of the London Borough of Brent.
- The application Ref 05/2157, dated 20 July 2005, was refused by notice dated 14 September 2005.
- The development proposed is a two-storey rear and side extension (retrospective).

Procedural Matters

1. The two-storey rear and side extension has already been built and I hereby treat the appeal on the basis of what has been constructed. I have considered the argument put forward by the Council that the extension, as built, does not conform to the submitted plans. However, I do not consider the difference to be material and as such, treat the appeal on the basis of what has been built.

Decision

2. I allow the appeal and grant planning permission for a two-storey rear and side extension (retrospective) at 52 Tokyngton Avenue, Wembley, London HA9 6HL in accordance with the terms of the application Ref 05/2157 dated 20 July 2005 and the plans submitted therewith.

Main Issue

3. I consider the main issue to be the effect of the development on the street scene.

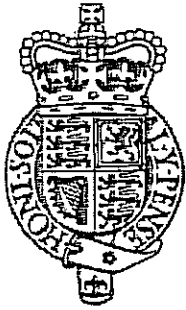
Reasons

4. No 52 Tokyngton Avenue is a two-storey semi-detached house located at the periphery of a residential area, bounded by a road adjacent to which lies a car park and multi-storey office block. Stonebridge Park rail station is a short distance away with an elevated platform visible from the property. In my opinion, when seen in context with the various developments in the immediate vicinity, it is not incongruous with the character and appearance of the street scene. The materials used in the construction of the external surfaces of the extension match those of the existing building, thereby ensuring that it blends with the property and with other neighbouring properties. Accordingly, I find that the extension is in keeping with and further enhances the appearance of the original dwelling house.

5. In my view there is a clear visual distinction between the roof of the original dwelling house and the roof of the extension. Also, the materials used to tile both the original roof and the roof of the extension are the same which gives a uniform appearance to the whole roof. Because of this, I consider that the extension harmonises with the appearance of the original dwelling, other neighbouring houses and with that of the street scene.
6. I acknowledged that there is a difference between the angle of the pitch of the roof of the extension with that of the original roof and a differing angle of the pitch of the roof along the length of the extension. However, I consider that this is not an overly prominent visual feature and does not have an unacceptable impact on the street scene.
7. In my assessment, the appeal site is not particularly prominent or visible from Derek Avenue, the approach to and from Stonebridge Park Station, the pedestrian route between Tokyngton Avenue and Point Place or the view from the platform of Stonebridge Park Station. The adjacent car park and nearby multi-storey office block are more visually prominent features.
8. As the development relates well to its surroundings and respects the existing characteristics of local buildings, it does not conflict with Policies BE2, BE3, BE7 and BE9 of the London Borough of Brent Unitary Development Plan (UDP) 2004. The proposal does not meet the detailed guidance in the Council's Supplementary Planning Guidance Note 5 'Altering and Extending Your Home.' However, this is not a sufficient reason for dismissing the appeal as it meets the objectives of this guidance in creating an extension that is of "a size, shape and height which complements rather than dominates" the original house and accords with the UDP.
9. No conditions have been suggested and as the development is already built, the standard time limit is unnecessary.
10. I have considered all other matters raised but find nothing to alter my overall conclusion.

Rebecca Phillips

INSPECTOR



Appeal Decision

Hearing held on 4 July 2006

by **Anthony J Wharton** BArch RIBA MRTPI RIAS

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date

12 JUL 2006

Appeal Ref: APP/T5150/A/06/1198100

Club Chaska, 427A High Road, Wembley, Middlesex HA9 7AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a decision to grant planning permission subject to conditions (in effect refusal of planning permission to carry out development without complying with one of the conditions subject to which a previous permission was granted).
- The appeal is made by Mr T Ahmad against a decision (dated 30 March 2005) made by The Council of the London Borough of Brent.
- The application was made under section 73 of the Town and Country Planning Act 1990 (Ref 05/2964) and is dated 11 October 2005.
- The condition in question is Condition No 4 attached to Planning Permission 01/0180 and dated 9 April 2001. This states: *The premises shall not be used by customers before 0800hours or after 2300hours on Sundays to Thursdays inclusive, nor before 0800hours or after midnight on Fridays and Saturdays.*

Decision : The appeal is allowed subject to new conditions

Main Issue

1. The main under-lying issue is, the effect that the continuation of the use of the appeal premises, without complying with Condition No 4, would have on residential amenity on this part of High Road, Wembley.
2. However, the main thrust of the appellant's case is that the powers available to the authority, under the Licensing Act 2003, are more comprehensive and up-to-date than those available under planning legislation; that Licensing legislation is now the lead legislation; that 'opening hours' conditions should be linked to Licensing; that such planning conditions are unnecessary and unreasonable and that, in refusing to 'remove' the condition, the authority is acting contrary to Government advice set out in Planning Policy Statement No 1 (paragraph 30) and Circular 11/95. (paragraph 22).
3. The Council granted permission and agreed to 'remove' the Condition No 4. However it was subject only to a temporary removal of the condition and subject to three additional conditions relating to times of goods delivery; the use and a clearing period and the display of the Licensing details. The appellant's case is that all of the conditions are unnecessary and unreasonable.
4. I have dealt with this appeal on the basis of the initial application under S73 of The Town and Country Planning Act 1990, for the effective 'removal' of Condition 4.

Licensing Control and Planning Policy

5. The Licensing Authority needs to consider the main aims of the Act: These are, *'the prevention of crime and disorder'*; *'the maintenance of public safety'*; *'the protection of children from harm'* and *'the prevention of public nuisance'*.
6. On behalf of the appellant it is argued that 'opening hours' conditions should be imposed by the Licensing Authority under the aim of preventing 'public nuisance'. It is further argued that the imposition of other planning conditions, (or a decision not to remove such a condition), do not meet the tests in Circular 11/95 and are unlawful.
7. The LPA, however, contends that the 'licensing objectives' do not fully equate with 'planning objectives'; that the protection of residential amenity goes much further than simply the 'prevention of public nuisance' and that, although noise and disturbance can constitute 'public nuisance', the effects of a use can be far more wide-ranging in relation to the impact on living conditions. These include simple 'comings and goings'; congregating on forecourts; car doors banging and people talking outside of residents' windows late into the night.
8. Having considered these arguments, I share the Council's view that the effects of a use on residential amenity and how these are protected by planning conditions, can be significantly different to what might be protected by the Licensing Act under the 'prevention of public nuisance'. In fact, something which might harm living conditions may fall well-short of constituting a 'public nuisance' even when the term is used in its simplest common-sense form (as intended by the Act). Obversely, something that constitutes a 'public nuisance' within a busy street, may not necessarily impact directly on peoples' living conditions.
9. In relation to this particular appeal, therefore, I do not consider that the Council is acting in a manner which is contrary to government advice in relation to the principles of the imposing a temporary planning condition. Nor do I agree that the Licensing Act 2003 should predominate over planning legislation in relation to opening hours. The Licensing and Planning sections of the authority should, however, liaise very closely with each other. Each public house, club or similar location is different and, each needs to be assessed on its merits in relation to both the land-use planning issues and the main aims of the Licensing Act 2003 by the relevant 'authorities' of the Council. There should then be a consistent method of balancing the planning considerations against the licensing objectives to ensure that there is no conflict.

Reasons

10. I now turn to the merits of this case. The relevant planning policies are SH10, SH11 and EP2 of the adopted UDP. The first two relate to the protection of residential amenity and the imposition of conditions in relation to A3 or similar uses. Policy EP2 seeks to ensure that noise levels above acceptable levels are not created or worsened in sensitive areas.
11. The appeal premises, now known as 'Divà Lounge' occupies the first floor of this three storey property. There are commercial bank premises on the ground floor and offices on the second floor. The club is at the north west end of Wembley High Road in a very busy and central location. There are other late night uses including public houses and restaurants and on the opposite side of the road there are some residential flats at first and second floor levels. To the rear there is an access road and this runs along the backs of gardens to the houses in Rosemead Avenue.

12. The Council accepts that this is a central location in Wembley where the Licensing hours would be expected to be flexible and that opening times into the early hours are appropriate if not significantly detrimental to residential amenity. Having regard to the developments in this part of Wembley, the planning authority, therefore considers that it is appropriate to 'remove' the appeal condition on a temporary basis in order to test the effect of later opening hours. On behalf of the appellant it is argued that this is unreasonable and that for the reasons set out above (under Licensing Control and Planning Policy) neither a temporary permission condition, nor the other three conditions should be imposed.
13. All four conditions were discussed in detail during the hearing. Turning to the temporary condition, I consider that this is appropriate in this particular set of circumstances. There are flats and houses relatively close by and residents have referred to late night noise and disturbance. In my view, the situation needs to be monitored before allowing unrestricted opening hours. A temporary planning permission will allow the two 'authorities' to liaise carefully in order to assess whether or not a planning condition relating to opening hours is necessary in order to protect living conditions. In my view a period of 15 months from the date of this decision is not unreasonable.
14. I do not consider that the second condition imposed by the authority is necessary. The use is already established by the original planning permission and all other operating matters would be covered by the License. I also consider the same to be the case for the fourth condition. Unlike other situations this is a case where this particular condition does not meet the tests of Circular 11/95 and is, indeed, unlawful in replicating what is clearly a matter for Licensing.
15. With regard to the 'delivery times' condition, however, I consider this to be necessary, reasonable and appropriate. The route to the rear of the premises would take delivery vehicles close to the houses and gardens of Rosemead Avenue and the restricted space would involve manoeuvring and reversing of vehicles. If allowed outside of the working hours of 0900 to 1800, I consider that this would be unreasonable and would be detrimental to living conditions by reason of noise and disturbance and vehicle fumes, particularly adjacent to the rear gardens.
16. I intend, therefore, to allow the appeal by removing Condition No 4 (but only on a temporary basis) and adding a condition to restrict delivery times. Without these conditions I do not consider that the use ought to be allowed to continue.

Other Matters

17. I have considered all other matters in support of this appeal including the full planning and licensing history of the site; all of the arguments on the basis that the Licensing regime should predominate; that the 'planners have been left behind'; that the premises has seemingly been operating on occasion to the hours (0330) granted under the Licensing Act and the points made in relation to Section 182 of the Licensing Act 2003 and 'terminal hours'.
18. However, none of these carries sufficient weight to alter my conclusion that permission for this use should only be allowed to continue on the basis of the temporary removal of the appeal condition and the imposition of a 'delivery time' condition.

Formal Decision

19. For the reasons set out above and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for change of use of first floor to food and drink (Use Class A3) at 427A High Road Wembley, without compliance with Condition No4, previously imposed on planning permission 01/0180, dated 9 April 2001 but subject to the other conditions imposed therein, (so far as the same are still subsisting and capable of taking effect) **and** subject to the following **new conditions**:

1. the permission shall be valid for a limited period of 15 months from the date of this decision and unless a further application has been submitted to and approved by the Local Planning Authority by that time, the opening hours of the premises will revert to those set out in condition No 4 in permission 01/0180 dated 9 April 2001.

2. No commercial vehicles may arrive, depart, be loaded or unloaded at the premises except between the hours of 0800 and 1800 Mondays to Saturdays and at no time on Sundays.

AJWharton

Anthony J Wharton
Inspector.

PERSONS PRESENT AT THE HEARING

FOR THE APPELLANT

Mr Martin Ledger MRICS

Prospect Planning
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Stevenage Hertfordshire
SG1 3DW

FOR THE LOCAL PLANNING AUTHORITY

Miss Jane Jin

Mrs Lenrie Sowah

Mr Ian Hyde

Principal Planning Officer
Principal Planning Officer
Senior Planning Officer
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The Planning Service
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HA9 6BZ

LIST OF DOCUMENTS

Document 1

List of Persons attending the Hearing - As Above

Document 2

Copy of notification letter.

Document 3

Letters in response to notification letter

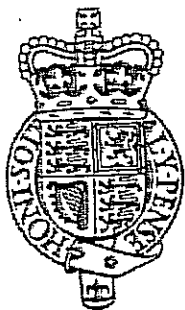
PLAN

Plan A

Location Plan submitted with Appeal

Plan B

Licensing Plan 09/05/HODD/01



Appeal Decision

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Temple Quay House
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Hearing held on 4 July 2006

by **Anthony J Wharton** BArch RIBA
MRTPI RIAS
an Inspector appointed by the Secretary of State for
Communities and Local Government

Date 12 JUL 2006

Appeal Ref: APP/T5150/A/05/1180760

189 Edgware Road, London, NW9 6LP.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission to carry out development without complying with one of the conditions subject to which a previous permission was granted.
- The appeal is made by J Flaherty against a decision (dated 30 March 2005) made by The Council of the London Borough of Brent.
- The application was made under section 73 of the Town and Country Planning Act 1990 (Ref 05/0252) and is dated 1 February 2005.
- The condition in question is Condition No 3 attached to Planning Permission 93/1864 and dated 23 February 1994. This states: *Notwithstanding the provision of any music or other extended licence that may be granted by the Licensing Authority the premises shall not trade after 2300 on any night and shall be cleared of customers not later than 30 minutes after the time of closing.*

Decision : The appeal is allowed subject to a new condition.

Main Issue

1. The main under-lying issue is, the effect that the continuation of the use of the appeal premises, without complying with Condition no 3, would have on the living conditions of those living above, behind and close to this public house.
2. However, the main thrust of the appellant's case is that the powers available to the authority, under the Licensing Act 2003, are more comprehensive and up-to-date than those available under planning legislation; that Licensing legislation is now the lead legislation; that 'opening hours' conditions should be linked to licensing rather than planning; that such planning conditions are unnecessary and unreasonable and that, in refusing to 'remove' the condition, the authority is acting contrary to Government advice in Planning Policy Statement No 1 (paragraph 30) and Circular 11/95 (paragraph 22).

Licensing Control and Planning Policy

3. There is no dispute that the Licensing Authority needs to consider the main aims of the Act: These are, *'the prevention of crime and disorder'*; *'the maintenance of public safety'*; *'the protection of children from harm'* and *'the prevention of public nuisance'*.

4. On behalf of the appellant it is argued that an 'opening hours' condition, should be imposed by the Licensing Authority, primarily under the aim of preventing 'public nuisance'. It is further argued that the imposition of similar planning conditions, or a decision not to remove such a condition, does not meet the tests in Circular 11/95 and is, therefore, unlawful.
5. The Council, however, contends that the 'licensing objectives' do not fully equate with 'planning objectives'; that the protection of residential amenity goes much further than simply the 'prevention of public nuisance' and that, although noise and disturbance can constitute 'public nuisance', the effects of a use can be far more wide-ranging in relation to the impact on living conditions. These include simple 'comings and goings'; congregating on forecourts and nearby streets; car doors banging; light pollution; noise reverberation and people talking outside of residents' windows late into the early hours.
6. Having considered these arguments, I share the Council's view that the effects of a use on residential amenity and how these are protected by planning conditions, can be significantly different to what might be protected by the Licensing Act 2003 under the aim of 'prevention of public nuisance' or any other aim. In fact, something which might harm living conditions may fall well-short of constituting a 'public nuisance' even when the term is used in its simplest common-sense form (as intended by the Act). Obversely, something that could constitute a 'public nuisance' may not necessarily impact directly or be harmful to peoples' living conditions.
7. In relation to this particular appeal, I do not consider that the Council is acting in a manner which is contrary to government advice. Nor do I agree that the Licensing Act 2003 should predominate over planning legislation in relation to opening hours. The Licensing and Planning sections of the authority should, however, liaise very closely with each other. Unfortunately the Council does not appear to have co-ordinated the two functions in a consistent manner. But, each public house, club or similar location is different and, each needs to be assessed on its merits in relation to both the land-use planning issues and the main aims of the Licensing Act 2003 by the relevant 'authorities' of the Council. There should then be a consistent method of balancing the planning considerations against the licensing objectives to ensure that there is no conflict. I am not empowered to deal with any Licensing condition but now turn to the specific planning merits of this appeal.

Reasons

8. My starting point in relation to this decision is the Development Plan and the most relevant planning policies are SH10, SH11 and EP2 of the adopted Brent UDP. The first two relate to the protection of residential amenity and the imposition of conditions in relation to A3 or similar uses. Policy EP2 seeks to ensure that noise levels above acceptable levels are controlled.
9. 'Erin's Hope' public house is centrally positioned within a mixed use parade of shops and other premises. There are other nearby public house and restaurant uses and that is also the case on the opposite side of this part of Edgware Road. The public house use is restricted to the ground floor area and comprises a long and narrow rectilinear space with toilets, servicing and office facilities to the rear and to one side. A rear staircase leads up to an external flat roof on which there is a large roof light which provides daylight to the bar space below. On the first and second floors, which extend over the front half of the main bar space, there are residential flats. There is also a small residential unit at first floor level to the rear of the flat roofed area with an entrance door close to the roof light.

10. Given the nature and location of the premises, I consider that the complete 'removal' of Condition No3 would result in harm to the living conditions of those living above and to the rear of 'Erin's Hope' public house, as well as those living in the vicinity of Wakeman's Hill Avenue, Springfield Mount and, albeit to a lesser extent, parts of Springfield Estate.
11. Having viewed the premises, other similar premises in the locality and the surrounding area, it is evident to me that there will already be some noise and disturbance during whatever opening hours operated. I accept that not all patrons will arrive or leave at the same time and that the new licensing culture aims to be flexible in relation to closing times so as to avoid large numbers of individuals leaving premises at the same time. However, I consider that smaller groups, or even individuals, leaving premises over a prolonged timescale, will already have some impact on living conditions in this location. Much later closing hours would, in my view, exacerbate the overall situation particularly for those living within the parade and in close proximity to it.
12. Whilst acknowledging that residents living above and near to such busy locations must accept that some level of noise is inevitable, they should still be able to expect reasonable controls to be imposed in order to protect their living conditions very late at night or in the early morning. I do not consider therefore that the appeal condition should be 'removed'.
13. However, the question of the appeal condition being varied was discussed at the hearing. At present the closing time is restricted to 2300 hrs on any night. In my view this is slightly restrictive, especially when considered in relation to other nearby premises (Function Room at 225/227 Edgware Road) and its position within the parade. I consider it appropriate, therefore, to vary the condition and to allow later opening hours (until 2330 Sunday to Thursday and until midnight on Fridays and Saturdays plus 30 minutes for clearing the premises). In the overall situation and in this locality, I do not consider that this minor extension in opening hours will make a significant difference to residential amenity and is not, therefore, contrary to the relevant development plan policies. The appeal succeeds, therefore to this limited degree.

Other Matters

14. I have considered all other matters in support of this appeal including the full planning and licensing history of the site; the details of Section 182 of the Licensing Act and 'terminal hours'; all of the arguments on the basis that the Licensing philosophy has changed; that Licensing should now predominate; that the 'planners have been left behind'; that the public house has been operating to different hours without significant complaint; that there appears to have been only one complaint to Environmental Health and that a License has been applied for in relation to a closing time of 0230 hours. However, none of these carries sufficient weight to alter my decision.

Formal Decision

15. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for change of use from retail use to wine bar (A3) at 189 Edgware Road NW9 6LP (original permission) in accordance with the application 05/0252, made on 1 February 2005 (subject to this appeal), without compliance with Condition No3 previously imposed on planning permission 93/1864, dated 23 February

1994 but subject to the other conditions imposed therein, (so far as the same are still subsisting and capable of taking effect) and subject to the following **new condition**:

1. The premises shall not be open to customers outside the hours of 0900 and 2330 Sunday to Thursday and 0900 to 2400 (midnight) Friday and Saturday. On each night the premises shall be cleared of customers no later than 30 minutes after closing time.

AJWharton

Anthony J Wharton. Inspector

PERSONS PRESENT AT THE HEARING

FOR THE APPELLANT

Mr Martin Ledger MRICS

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SG1 3DW

Mr David Martin

Prospect Planning
Address as above

Mr J Flaherty (Appellant)

Address c/o above

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Mrs Lenrie Sowah
Mr Ian Hyde

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Principal Planning Officer
Senior Planning Officer
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The Planning Service
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349 High Road
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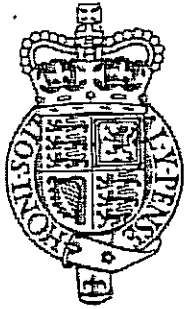
Document 3

E-mail response from Diane Bennett.

PLAN

Plan A.

Location Plan submitted with Appeal



Appeal Decision

Hearing held on 5 July 2006

by **Anthony J Wharton** BArch RIBA MRTPI RIAS

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date 14 JUL 2006

Appeal Ref: APP/T5150/A/05/1180761

13 The Broadway, East Lane, Wembley HA9 8JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission for removal of a condition attached to a previous permission.
- The appeal is made by Mr S Harji against a decision (dated 4 April 2005) made by The Council of the London Borough of Brent.
- The application was made under section 73 of the Town and Country Planning Act 1990 (Ref 05/0319) and is dated 7 February 2005.
- The condition in question is Condition No 3 attached to Planning Permission 03/3005 and dated 21 January 1994. This states: *The premises shall only be used for use between the following hours: 0800 to 2300 Sunday to Thursday – 0800 to midnight Friday to Saturday.*

Decision : The appeal is allowed subject to a new condition

Main Issue

1. The main under-lying issue is, the effect that the continuation of the use of the appeal premises, without complying with Condition No 3, would have on residential amenity.
2. However, the main thrust of the appellant's case is that the powers available to the authority, under the Licensing Act 2003, are more comprehensive and up-to-date than those available under planning legislation; that Licensing legislation is now the lead legislation; that 'opening hours' conditions should be linked to Licensing; that such planning conditions are unnecessary and unreasonable and that, in refusing to 'remove' the condition, the authority is acting contrary to Government advice set out in Planning Policy Statement No 1 (paragraph 30) and Circular 11/95 (paragraph 22).

Licensing Control and Planning Policy

3. The Licensing Authority needs to consider the main aims of the Act: These are, *'the prevention of crime and disorder'*; *'the maintenance of public safety'*; *'the protection of children from harm'* and *'the prevention of public nuisance'*.
4. On behalf of the appellant it is argued that an 'opening hours' condition, should be imposed by the Licensing Authority under the aim of preventing 'public nuisance'. It is further argued that the imposition of similar planning conditions or a decision not to remove such a condition does not meet the tests in Circular 11/95 and is unlawful.
5. The LPA, however, contends that the 'licensing objectives' do not fully equate with 'planning objectives'; that the protection of residential amenity goes much further than simply the 'prevention of public nuisance' and that, although noise and disturbance can constitute 'public nuisance', the effects of a use can be far more wide-ranging in relation to the impact on living conditions. These include simple 'comings and goings'; congregating on forecourts; car doors banging and people talking outside of residents' windows late into the night.

6. Having considered these arguments, I share the Council's view that the effects of a use on residential amenity and how these are protected by planning conditions, can be significantly different to what might be protected by the Licensing Act under the 'prevention of public nuisance'. In fact, something which might harm living conditions may fall well-short of constituting a 'public nuisance' even when the term is used in its simplest common-sense form (as intended by the Act). Obversely, something that constitutes a 'public nuisance' within a busy street, may not necessarily impact directly on peoples' living conditions.
7. In relation to this particular appeal, therefore, I do not consider that the Council is acting in a manner which is contrary to government advice. Nor do I agree that the Licensing Act 2003 should predominate over planning legislation in relation to opening hours. The Licensing and Planning 'authorities' should, however, liaise very closely with each other to ensure that living conditions are protected and 'public nuisance' avoided.

Reasons

8. I now turn to the merits of this case. The relevant planning policies are SH10, SH11 and EP2 of the adopted UDP. The first two relate to the protection of residential amenity and the imposition of conditions in relation to A3 or similar uses. Policy EP2 seeks to ensure that noise levels above acceptable levels are controlled.
9. This private members' club is centrally located within a curved parade of premises and fronts eastwards from the northwest side of The Broadway. There are retail, A3 and similar uses within the parade including other restaurant/cafes and a public house, 'The Copper Jug'. The appeal building is 3 stories and the club occupies the ground floor only. Above the club there are residential flats on two floors. These can be accessed via an alleyway and stairs from The Broadway and from an access road at the rear. The premises were formally in retail use and the current change of use was permitted in January 2004. There were 7 conditions attached to the permission including the appeal condition. To the north, along Preston Road the area is residential.
10. It was confirmed at the hearing that 'The Copper Jug', just a few doors away and closer to the houses in Preston Road had been granted a license from 1000hrs to 2400hrs (midnight) Monday to Thursday and from 1000hrs to 0100hrs Friday to Sunday and all days are allowed 30 minutes for clearing the premises. These hours are now in operation.
11. I acknowledging the Council's concerns about the effect of late or early morning opening hours and I have taken into account the representations from those living in Preston Road (including those at The Martins) and Forty Avenue. There is clearly already a certain amount of noise and disturbance caused by the public house, club and restaurant uses. In my view, to grant unrestricted opening times for 'Barish' would exacerbate the present situation and cause further disturbance into the early hours. I do not consider, therefore that the condition in question should be 'removed' to allow opening times beyond 0100 hours.
12. However, taking into account the operating hours of 'The Copper Jug' and the different operational controls which can apply to a 'private members' club' as opposed to a public house, it is my view that to allow 'Barish' to open until the same times as 'The Copper Jug' would not in itself lead to any significant change in living conditions for those living nearby. It would appear that the Planning Authority has liaised more closely with the Licensing Authority in this case and thus, to allow this extension to the 'Barish' opening hours is more appropriate than in other situations where there has been less coordination. I intend, therefore, to allow the appeal by removing the appeal condition

but then imposing a new condition to allow opening hours in accordance with those at the neighbouring public house.

Other Matters

13. I have considered all other matters in relation to this appeal, including the full planning and Licensing history of the site and other nearby properties; all of the other Licensing and Planning comments made on behalf of the appellant and the Council; the matters raised in relation to S182 of the Licensing Act and 'terminal hours'; the representations of those living near to the site and my own observations during my unaccompanied and accompanied site visits. However none of these carries sufficient weight to alter my conclusion and I am satisfied that with the imposition of the new condition (in addition to those applied at the time of the original application) then this particular use will not be contrary to the relevant UDP policies.

Formal Decision

14. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for change of use from restaurant (Use Class A3) to private members' club at 13 The Broadway, East Lane, London HA9 8JU (original permission) in accordance with the application 05/0319, made on 7 February 2005 (subject to this appeal), without compliance with Condition No3 previously imposed on planning permission 03/3005 dated 21 January 2004, but subject to the other conditions imposed therein, (so far as the same are still subsisting and capable of taking effect) and subject to the following **new condition**:

1. the premises shall not be open to customers outside the hours of 0800 and 2400 (midnight) Sunday to Thursday and 0800 to 0100 the next morning) Fridays and Saturdays. On each night the premises shall be cleared of customers no later than 30 minutes after the time of closing.

AJWharton

Anthony J Wharton
Inspector

PERSONS PRESENT AT THE HEARING

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Mrs Lenrie Sowah

Principal Planning Officer

Mr Ian Hyde

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Wembley Middlesex

HA9 6BZ

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Copy of notification letter.

Document 3

Letters in response to notification letter

Document 4

Copy of decision notice 90/1963

PLAN

Plan A

Location Plan submitted with Appeal



Appeal Decision

Site visit made on 11 July 2006

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 31 July 2006

Appeal Ref: APP/T5150/A/06/2011620

17 Mapesbury Road, Kilburn, London, NW2 4HU.

- 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 Ms Helen Davis against the decision of the Council of the London Borough of Brent.
- The application ref: 05/2308, dated 30 July 2005, was refused by notice dated 30 September 2005.
- The development proposed is construction of a new 2 bedroom, single storey house with planted roof on land adjacent to 17 Mapesbury Road, with parking in approved service area.

Decision

1. I allow this appeal and grant planning permission for the construction of a new 2 bedroom, single storey house with planted roof on land adjacent to 17 Mapesbury Road, with parking in approved service area, 17 Mapesbury Road, Kilburn, London, NW2 4HU in accordance with the terms of the application Ref: 05/2308, dated 30 July 2005, and plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No development shall take place until detail drawings have been submitted to and approved by the local planning authority indicating the finished site and ground floor levels intended at completion of the development in relation to the existing site levels and the levels of adjoining land. The development shall be carried out and completed in accordance with the approved levels.
 - 4) No development shall take place until full details of both hard and soft landscape works, including the planted roof, have been submitted to and approved in writing by the local planning authority. These details shall include means of enclosure; and hard surfacing materials. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities and where appropriate an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried and completed during the first available planting season following completion of the development hereby approved or in accordance with the

programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work). If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 6) The dwelling shall not be occupied until the parking space shown on the approved plans has been provided. Thereafter that space shall be used or kept available for the parking of cars.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the position, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the dwelling hereby permitted shall not be extended nor shall any alteration affecting its external appearance, including the provision of hard surfacing, be made.
- 9) Before the development hereby permitted begins, a soil survey of the site shall be undertaken and the results submitted in writing to the local planning authority. The survey shall be taken at such points and to such depth as the local planning authority may stipulate. A scheme for decontamination of the site shall be submitted to and approved in writing by the local planning authority and the scheme as approved shall be fully implemented and completed before the residential unit hereby permitted is first occupied.
- 10) No development shall take place until there has been submitted to and approved in writing by the local planning authority detailed proposals, including connection to public sewerage system, for the works of the disposal of foul and surface water from the development hereby permitted.

Inspector's Reasons

2. The appeal site is located in part of the original garden of 17 Mapesbury Road, an imposing semi-detached property at the junction of Dartmouth and Mapesbury Roads. This former training centre is currently being converted to five self-contained flats and retains a large rear and side garden similar to those of near by properties. The site, which fronts on to Mapesbury Road, is situated within the Mapesbury Conservation Area which is characterised by substantial Victorian/Edwardian villas, set in a mature verdant landscape accessed from tree-lined streets.
3. A contemporary style two bedroom single storey planted flat roofed dwelling is proposed. Due to the topography of the site it would be set down below road level. Vehicular access would be from the entrance that serves number 17 and therefore no additional openings are proposed in the eastern boundary to the road.
4. The garden plot is well planted with mature and semi-mature trees along the road frontage. The boundary to the road, as well as the railway embankment to the south, is defined by a utilitarian close boarded timber fence. The western boundary of the property on the opposite side of the road is similarly defined. Accordingly I found the character of the immediate area to be more enclosed and less open than areas away from the railway line. The proposed dwelling would be set back from the pavement, well behind the existing fence and, more particularly, the existing mature screen planting.
5. Although of no special individual merit, the trees to the road frontage make a significant contribution as a group to the attractiveness of the conservation area. It is proposed to retain all but two trees and in this respect I consider that the proposal would preserve the character and appearance of the conservation area.
6. From what I saw on site I believe only the copper roof of the living room would be significantly visible above the fence line. This, I consider, would appear as no more visually intrusive than might the roof of a small detached garden pavilion. Views into the site would, in my opinion, be limited due to the re-use of the existing site access, retention of the existing fence, and mature screen planting. The appellant proposes a planted roof which, if well detailed, would reduce further the visual impact of the proposed building. This is a matter that could be dealt with by way of a condition.
7. The design of the proposed building does not seek to replicate or copy the form or detailing of adjacent properties. In my opinion therefore and due to its simple contemporary design it would not compete with, or detract from, neighbouring buildings.
8. My attention has been drawn to an earlier appeal in respect of a proposal for five flats over three floors on this site as well as a number of residential infill proposals within the conservation area. I have considered these carefully but I do not find any that are directly comparable with this modest proposal which is of an unusually high standard of design, reflecting a sound understanding of the site and the surrounding area.
9. For the reasons given I conclude that the proposal would not impact to any great extent on the open and spacious appearance of the conservation area or upon either the architectural quality or setting of neighbouring buildings. It would therefore accord with Policies BE2, BE7, BE9 and BE25 of the London Borough of Brent Unitary Development Plan 2004 (UDP), as they relate to the quality of development and the preservation or enhancement of the character and appearance of conservation areas.
10. I now turn to consider the proposal in relation to the private garden space of number 17

Mapesbury Road in terms of the potential for the loss of daylight, sunlight or an overbearing effect.

11. I note that the western wall of the proposed dwelling would be some 3.4 metres high and only approximately 0.3 metres in from the boundary line. I appreciate that the wall would be some 1.1 metres taller than the advice for garden walls set out in SPG17 and could lead to some overshadowing of the private garden. I consider however that the width of the appeal site, and the presence of mature trees to the eastern boundary, would have more bearing on the potential for loss of morning sun to the garden than the proposed height of the wall. Further, as the wall only extends for approximately 50% of the length of the boundary, and then only at the furthest end of the garden, I do not believe it would be overbearing or have any significant impact in respect of loss of light.
12. Having regard to these considerations I do not consider that the wall would have the overbearing effect envisaged by the Council. The proposal would therefore accord with UDP Policies BE2 and BE9, as they relate to the amenity of the occupiers of neighbouring residential properties.
13. In relation to the possibility of setting a precedent, I have concluded that on the basis on which I have considered the case the scheme would comply with the objectives of planning policy. Although all sites are different, and all cases fall in the first instance to be considered by the local planning authority, proposals which fall within the terms of planning policy would not lead to the creation of an unacceptable precedent.
14. Concerns have been raised by third parties in respect of the provision of on site parking. The Council however has raised no issues in this respect. I am therefore satisfied that parking provision would be adequate if the proposal were to be allowed.
15. For the reasons given I have decided to allow the appeal and grant planning permission. In accordance with the Council's suggestions and to ensure a high quality of development I have included a condition about materials. To protect neighbours' living conditions, I have incorporated a condition in respect of on-site parking. However, having regard to the scale of the development, the location of the site and other legislation, I do not consider that conditions are appropriate in respect of construction activities and working hours. I have removed permitted development rights to allow the Council to retain control over future alterations and enlargements, and included conditions in respect of levels, landscaping and means of enclosure. In order to ensure adequate provision I require details of drainage to be submitted and approved. Although I have noted the appellant's concerns, given this urban location and the Council's local knowledge, I consider it appropriate to require a contamination investigation.

Philip Willmer

INSPECTOR