The Planning Inspectorate

Appeal Decision

Site visit made on 15 October 2013

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 4 November 2013

Appeal Ref: APP/T5150/A/12/2181027
Thanet Lodge Garages, Thanet Lodge 10 Mapesbury Road, London NW2 4JA

- 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 Ashraf Borghol against the decision of the London Borough of Brent.
- The application Ref 12/1294, dated 16 May 2012, was refused by notice dated 11 July 2012.
- The development proposed is: Conversion of the four garages under the eastern corner of the Thanet Lodge block into a 1 bed flat.

Costs Application

An application for costs has been made by Mr Ashraf Borghol against the London Borough of Brent. This is the subject of a separate decision.

Decision

1. The appeal is allowed subject to conditions (see formal agreement below).

Background information and matters of clarification

2. In the appellant's final comments attention is brought to the fact that the Council has only latterly introduced the policies of the National Planning Policy Framework (NPPF) in relation to their case. However, I must consider the appeal on the basis of the relevant development plan and national policy at the time of my decision. I have taken into account policies H12 (Residential Layout); BE9 (Architectural Quality); TRN3 (Environmental Impact of Traffic); TRN4 (Measures to make Transport Impact Acceptable): TRN23 (Parking Standards) and TRN24 (On-Street Parking) of the Brent Unitary Development Plan 2004 (UDP)

3. I have also considered the relevant policies in the NPPF, including those set out in Section 1 (Building a strong and competitive economy); Section 4 (Promoting sustainable transport); Section 6 (Delivering a wide choice of quality homes) and Section 7 (Requiring good design). In particular I have taken into account the fact that the NPPF sets out a presumption in favour of sustainable development. Because the appeal site lies within the Brondnesbury Conservation Area, I have also paid special attention to the requirements of Section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990.*

4. Thanet Lodge comprises a large four storeys, (plus penthouse level), brick-built, block of mid 20C flats, located at the corner of Mapesbury Road and Mowbray Road in Kilburn. The four garages, proposed to be converted, are located at the eastern end of the block and are within the main structure of the building underneath the ground floor flat at this end of the block. The four garages are opposite to a free standing block of six lock-up garages and the adjacent access, from Mowbray Road, forms the main vehicular access to the Thanet Lodge grounds. Immediately to the north of the garages there is one 'disabled' marked parking space and five others. To the north of the block of six garages there are another four spaces. There is a large communal garden of around 1500m^2.

5. The four garages are not used as such because the gradient down to them and the junction with the level part of the access road currently precludes a reasonable access. For this reason the appellant has confirmed that they are currently used for storage purposes only. At the time of my visit all four garages were being used for the storage of what appeared to be household items including furniture and some heating radiators. Of the 6 lock-up garages the appellant (who lives elsewhere) has indicated that he uses the two most northerly ones for the keeping and maintaining of classic cars and that the other four are let out separately.

6. The appellant owns the freehold of the Thanet Lodge site and retains control of all of the garages on the land as well as the land used for parking spaces. He manages the garages and parking spaces separately and, as indicated above, uses some of them for his own purposes and rents others out. Residents of Thanet Lodge (with only one exception it seems) do not appear to have any rightful use of the garages and/or the parking spaces associated with the flats.

Reasons

7. The main issues in this case are: firstly the effect on the living conditions of the occupiers of the proposed development and, secondly, the effect on car parking in the locality having regard to the Council's third reason for refusal relating to the 'car-free' agreement and the CIL regulations.

Effect on the living conditions of the occupants of the proposed flat

8. On the first issue the Council contends that, although the required minimum space standards are met (52m² of floor space provided – 50m² minimum and external useable amenity space 45m² provided – 20m² minimum), the single aspect proposal does not comply with the Supplementary Planning Guidance (Design Guide for New Development) Policy, SPG17, because it only provides around a 5m separation from its own boundary wall, rather than the 10m required by the policy.

9. However, having seen the proposed drawings, it is evident that the boundary wall facing the windows to the proposed flat would be around 1.7m in height leaving more than adequate views of open sky from the single aspect flat. It would also be around 8.5m from the existing 6 block garages and I do not consider that this would result in any overbearing effect for those occupying the proposed flat. I also consider that, in terms of daylight and sunlight, the living conditions of the occupants of the proposed flat would be satisfactory. In effect the flat would be a 'semi-basement flat' and these are quite common in blocks such as these.

10. With regard to the Council's concerns about noise and disturbance being caused by use of the access, the effect will be no different, in my view, to the effect for the existing occupants of the flat above. With adequate insulation and double glazing noise transmission could be kept to perfectly reasonable levels. In any case the proposal will have to comply with current Building Regulation standards.

11. On the first issue, therefore, I find in favour of the appellant. The principle of residential development is acceptable; the relevant space standards are met and there are no design issues. Both local and national policies support the provision of delivering a wide choice of quality homes and there is no substantial evidence provided by the Council to suggest that services and infrastructure cannot cope with an additional flat unit at semi-basement level within the block. I deal with the Council's parking evidence below. I find that the proposal complies with policies BE9 and H12 of the UDP as well as to the relevant NPPF policies relating to housing and design. I am also satisfied that the character and appearance of the Brondnesbury Conservation Area would be preserved by the simple design of the scheme.

The effect on parking and on pedestrian and highway safety

12. At the time of my site visit (around midday) I noted the car parking restriction signs on the streets (10am to 3pm: Permit Holders or Pay and Display; 4 hour max) and the fact that the surrounding streets were very lightly parked. However, having been referred to the parking signage during the course of the site visit, I carried out an unaccompanied evening visit and the opposite was the case. However, at that time there were still a few on-street parking spaces available.

13. The Council indicates that Thanet Lodge comprises forty flats and that, with garages and parking spaces, there are 20 off street parking spaces and that the U-shaped driveway fronting Mapesbury Road can potentially accommodate two more cars. With the loss of four garage spaces this would indicate that there would be 18 spaces. There are 8 shared use residents/parking pay and display bays on Mowbray Road and Mapesbury Road.

14. In effect there are only 18 on-site spaces at present, since the four garages are not able to be reasonably used as such and are used for storage. Because the other garages are let out or used by the appellant and the parking spaces are also within his control as freeholder, residents (with one exception) of Thanet Lodge do not appear to have any rightful on-site (off-street) parking facilities. This means that resident car owners are likely to park on-street and this has implications generally within the locality. The site has a good Public Transport Accessibility Level (PTAL of 4) with two underground stations and seven bus routes within 8 minutes walk.

15. The relevant car-parking standards (PS14 in the UDP) is the reduced one of 0.7 spaces for a 1 bedroom flat and the Council indicates that this would increase the parking standard of the building from 28 spaces to 28.7. The Council's evidence also indicates that car ownership in the locality average 0.6 cars per household and that this would equate to 24 cars for the flats at Thanet Lodge.

16. From all of the evidence, it is clear that hardly any residents at Thanet Lodge have the benefit of on-site parking. However, there is no condition or policy which requires that Thanet Lodge's on-site parking should be retained for the use of residents and the Council cannot seek to remedy (through this proposal) what is clearly a shortage of parking spaces for the whole site. Despite this the matters relating to on-site parking are significant material considerations since any new development on the site is bound to have some effect on parking in the area. If residents are unable to use the garages or spaces they will park on street. Thus any new development will have a cumulative effect on on-street parking.

17. This proposal is for just one flat and only 0.7, or 1 space, in reality would be required. Any decision to grant planning permission for a proposal must be made in the public interest and that the overall implications relating to on and off-street parking need to be taken into account. In relation to proposals for any development, a decision should be made in accordance with the development plan, unless material considerations indicate otherwise.

18. I accept that with the number of flats on the site (even if car ownership was lower than the Council's suggested figure), the overall situation and lack of available off-road parking must place pressure on the on-street parking spaces and particularly in the evenings. One additional dwelling will add to this pressure. However, I do not consider that this proposal will significantly exacerbate the position to the extent that it would unacceptably harm the on-street parking situation in the locality.

19. I now turn to whether or not a legal agreement is required. I accept the Council's contention that the provision of a 'car-free' agreement would not be

unlawful in the overall circumstances of this case and that such an agreement could accord with Policy TRN23 of the UDP. I also agree that, on the facts of the case, this proposal cannot be directly compared to the *Westminster v SSCLG and Mrs Marilyn Acons (2013) EWHC 690* case. Policy TRN23 is different to Policy TRANS 23 of the Westminster UDP which does not include the same 'exceptional' criterion. Policy TRN23 indicates that the Transportation Service will accept 'car-free' development '*in exceptional circumstances in areas where occupation is restricted by condition to those who have signed binding agreements not to be car owners*'. I also consider that an agreement could meet the statutory tests in Regulation 122 of CIL Regulations (Para 23).

20. However, I do not consider that such an agreement is necessary in this case in order to mitigate the impact of just one additional dwelling on the site. Irrespective of the fact that it would be adding one more flat, resulting in a likely increase in on-street parking, I find that the proposal is acceptable and conclude that this particular scheme for 1 flat should be granted planning permission.

Other Matters

21. In reaching my conclusions I have taken into account all of the other matters raised by the Council and on behalf of the appellant. These include the full planning history of the site; the Committee Report; all references to UDP policies and the SPG17 (Design Guide for New Development); the detailed statements of the parties and the final comments. However, none of these carries sufficient weight to alter my conclusions and nor is any other matter of such significance so as to change my decision that the appeal must fail.

Conditions

22. As well as the need for the unilateral agreement relating to a financial contribution and commencement, I consider that conditions relating to commencement; approved drawings; materials; landscaping and refuse, recycling and bicycle storage are all necessary and appropriate.

Formal Decision

23. The appeal is allowed and planning permission is granted for the Conversion of the four garages under the eastern corner of the Thanet Lodge block into a 1 bed flat at Thanet Lodge Garages, Thanet Lodge, 10 Mapesbury Road, London NW2 in accordance with the terms of the application, Ref 12/1294 dated 16 May 2012, and the plans submitted with it, subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings: TP15; TP11; TP09; TP10; TP14; TP13; TP12; TP08; TP06; TP04; TP03; TP05; TP02; TP07 and TP01.
3. Details of all materials for external work, including samples, shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced. The work shall be carried out in accordance with the approved details.
4. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels; means of enclosure; hard surfacing materials; proposed and existing functional services above and below ground. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.

All hard and soft landscape works shall be carried out in accordance with the approved details. Any trees and shrubs planted in accordance with the landscaping scheme which, within 5 years of planting are removed, dying or seriously damaged or become diseased shall be replaced in similar positions by trees and shrubs of similar species and size to those originally planted unless otherwise agreed in writing by the local planning authority.

5. Prior to the commencement of any works on site details of refuse, recycling and bicycle storage shall be submitted to and agreed in writing with the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Anthony J Wharton

Inspector

The Planning Inspectorate

Costs Decision

Site visit made on 15 October 2013

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 4 November 2013

Costs application in relation to Appeal Ref: APP/T5150/A/12/2181027
Thanet Lodge Garages, Thanet Lodge 10 Mapesbury Road, London NW2 4JA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Ashraf Borghol (Java Properties International) against the London Borough of Brent.
- The appeal was in relation to a failure to a refusal of planning permission for the conversion of four garages under the eastern corner of Thanet Lodge block into a 1 bed flat.

Decision

1. The application for an award of Costs is refused.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and, thereby caused another party to incur unnecessary or wasted expense.

The case for the appellant

3. In the application for Costs, dated 1 May 20013, the appellant refers to the following paragraphs of Circular 2009: A3, B4, B15, B16, B27 and B29. The reasons for the claim are that the Council failed to stick to the appeal timetable; that its reasons for refusal do not stand up to scrutiny; that it did not consider the imposition of conditions and did not notify the appellant from the outset that the application required a s106 agreement. It is contended that the Council behaved unreasonably in many aspects of the case and that a full award of costs is justified.

4. The Council's supporting documents and Questionnaire were 5 weeks late and thus the appellant did not have an immediately accessible view of the material that the Council relied upon. Failure to produce the Questionnaire material until after the 6 week statement had been submitted required the appellant to *'research this material from scratch'* thereby increasing his costs. It is claimed that the Council fails to understand the purpose of the questionnaire which is to allow an appellant to prepare the 6 week statement from a common base. If there is no questionnaire an appellant has to guess what it might refer to as supporting material for a refusal and to *'that the 6 week statement can be comprehensive'.*

5. The appellant indicates that the Council failed to deal with the National Planning Policy Framework (NPPF) in making its decision and only dealt with it in a cursory way in its appeal statement. It did not assess the case against the presumption in favour of sustainable development. The appellant believes that the proposal is clearly consistent with the NPPF and the Council failed to assess it against this central material consideration. The single reference to the NPPF is not reasonable.

The policies the Council refers to were prepared on the basis of earlier guidance which was found to be *'unfit for purpose'.*

6. The Council accepts that the application meets the relevant space standards. It has misapplied the 10m garden standard in the Supplementary Planning Guidance 17 document (SPG17) in relation to a proposed 1 bedroom flat. There is ample communal space on the Thanet Lodge site. Its concerns about overlooking are also ill-founded and in any case could have been overcome by a condition. So too are the concerns raised about 'stacking' since any issues relating to noise transmission between flats would be resolved by the requirements of the building regulations. SPG17 was produced in 2001. The NPPF was introduced in 2012. The London Plan Housing SPD has replaced SPG17. To apply SPG17 as a rule book is unreasonable.

7. With regard to car parking it is claimed that the Council's material is hard to follow. It accepts that the PTAL rating is good (4). It has misapplied its parking standards in UDP Policy PS14. The policy identifies the standards as a 'maxima' whereas the Council has applied them as though they are a minimum standard. It has judged this proposal differently to the 2002 application for penthouse flats and the 2004 application to demolish garages. Neither required parking to the full standard. Furthermore the Council has failed to have regard to the fact that the garages are currently not available to Thanet Lodge residents. Opposing the loss of garages in the overall circumstances (less than 1 extra space; standards are maxima; no policy to preclude loss of spaces; local streets not heavily parked and in CPZs with vacant spaces; no conditions requiring use by Thanet Lodge residents) is unreasonable.

8. The Council's assessment of on-street parking fails to recognise that surrounding streets are not identified as being heavily parked in Policy TRN3 of the UDP. There are many on-street parking spaces available within a short distance from the proposed site. The Council does not deny many of the points raised by the appellant. The Council is also wrong about the condition No 6 of the 2002 permission which requires that the width of the access between the front edge of Thanet Lodge and the front property boundary to be increased to 4.1m in width and not that the space between the other garages and the appeal site be increased in width.

9. The Council did not initially indicate that a s106 agreement was necessary and did not later substantiate the requirement. In any case the requirements are inconsistent with the CIL Regulation 122. The request for a 'car-free' agreement has not been explained and is not required. A 1 bed flat will not result in any children and no education contribution should be required. The Council's justification for open space and other contributions is too vague to meet the relevant statutory standards. The case officer did not indicate that such an agreement was required.

10. Relatively little of the Council's response to the application deals with whether it has been unreasonable. This reinforces the unreasonableness of its approach. It is also unreasonable that the Council relies on the officer report relating to the width of the access; the application to replace 6 garages with 10 parking spaces; the notion that no more parking should be allowed in Mowbray Road and the misapplication of policy which require spaces to be in front of application sites. The lengthy costs application reinforces the Council's unreasoned and muddled consideration of the case and there is nothing in it which erodes the appellant's opinion that a full award of costs should be made against the Council.

The Council's response

11. In response the Council indicates that the information in the Questioner (Questionnaire) had either been previously issued (that is in the Decision Notice, Delegated Report etc) and had been in the public domain since the date of refusal. In any case, it is contended that irrespective of the timing of any information, once an appeal had been made the necessary work on behalf of the appellant would have had to have been carried out. It is not accepted that this constitutes a ground for costs being awarded against the Council.

12. The Council's indicates that its statement makes specific reference to the NPPF and gives due consideration to its requirements. It is factually incorrect to say that the Council has not considered the NPPF (see Council's appeal statement). The same degree of consideration has been given to other appeals defended by the Council and its approach has always been found to be a sound approach.

13. The Council has not raised an objection in relation to sunlight and daylight and is perplexed by this comment. Nor has the Council misapplied the SPG17 guidance. There is no other 'guidance' for conversion schemes; SPG17 went through a consultation process and was duly adopted as a guidance note and should be awarded due weight in any decision.

14. It is disputed that the question of overlooking could be overcome by condition. Any screening method would be over dominant and the matter of the access width has not been resolved. Nor is it accepted that the existing use causes more harm to residential amenity. There will be noise and disturbance for residents of the proposal from the flat above. The 2004 Building Regulations have been superseded and the Council requires robust details and sound testing. Without a sound test the appellant is not in apposition to assume that the proposal will comply with the Regulations.

15. On Car parking the Council denies misapplying the PS14 standards. Policy PS2 of the UDP explains that standards are *'maxima'* but that *'minimal operational parking is required...'*. The 2002 and 2004 applications were dealt with on their merits and all applications have been suitably considered. On the question of the surrounding streets not being heavily parked Mowbray Road is not indicated as such but Mapesbury Road is 'the road frontage' and this is a Local Distributor road where it is not appropriate to allow an increase in on-street parking. The Mowbray Road frontage would allow 8 cars but this is far below the requirements of Thanet Lodge.

16. The Council has had numerous enforcement issues relating to the use of the garages, which in the Council's opinion, should be used by residents in order to alleviate on-street parking. There are no permissions in place for any change of use relating to the garages. In any case the provision of another dwelling where there is already a critical lack of car parking at the site will exacerbate overspill car parking problems.

17. With regard to the s106 matters the Council again refers to the fact that the area is an *'area of parking strain'*. It is stressed that in relation to s106 agreements, the Council enters into negotiations if the application is to be allowed. If the application is to be refused the Council does not enter into negotiations, primarily to ensure that an applicant does not incur legal fees. With regard to charges, the Council has provided a SPD on s106 agreements. This is in the public domain. It clearly explains the educational, open space and other reasons for the requirements. The SPD 106 (page 11) relates specifically to the educational facilities for different site units which include 1 – bedroom units. It is common for

young couples to live in a 1 bedroom flat with a child and even if this is of a temporary nature young children require crèche and school facilities.

Assessment and conclusions

18. In relation to the Council's delays in the process of the appeal and the fact that their references to the NPPF were initially minimal, I consider that their actions constituted unreasonable behaviour. Once an appeal has been made it is critical that parties adhere to the programmes fixed by the Planning Inspectorate. It cannot be a defence to plead that staffing levels are low or over-stretched. The Questionnaire is a critical starting point and it is essential that Council's provide the information in a full and timely manner.

19. However, it is not clear to me how this unreasonable behaviour resulted in unnecessary expense for the appellant. Irrespective of the Council's delays in the process, once the appeal was made the appellant was going to incur costs. Whether these costs were sooner or later they were going to be incurred and although the appellant refers to *'having to trawl widely'* it seems to me that with the delegated report and the reasons for refusal (6 August 2012) the necessary 'trawling' should have been obvious and whilst accepting that the Council had been unreasonable in relation to *'administrative efficiency'*, from my reading of the documentation prior to the questionnaire I cannot envisage that the appellant could have been subject to *'ambush'* by the authority as suggested.

20. With regard to the NPPF, the Council's statement under 'Planning Policy Context' deals sufficiently, in my view, with the matters relating to design and amenity and also reference is made to the presumption in favour of sustainable development. It then links the NPPF with the UDP policies and it is entitled to consider that the latter is consistent with the former. Again it is not clear to me how these references led to any unnecessary expense.

21. On the merits of the case, again the Council set out its three reasons for refusal and substantiated those reasons. I did not agree with their conclusions on the quality of accommodation issues, amenity or parking, but this does not alter the fact that they were entitled to take this stance. In any case, having read the relevant comments and the specific guidance, I do not consider that the Council misapplied the SPG17 guidance; they merely placed too much weight upon it in reaching their decision. Again, that is a matter for them but it does not, in my view, conclusively show that the appellant suffered additional expense in the appeal process due to this.

22. The Council's third reason for refusal clearly sets out their view that the lack of a 'car-free' agreement was contrary to policy. Their evidence in relation to parking in the locality is dealt with in my decision on the appeal. Having read the Council's parking standards and PS2 of the UDP I do not consider that these were misapplied and I agree with their view relating to the question of 'consistency' with the previous applications. Each must be considered on its merits. Any proposal for development of additional residential accommodation on this site is bound to have a knock-on effect for on-street parking. This is due to the fact that the residents are precluded from the use of the garages and on-site spaces.

23. With regard to the 'car free' agreement the Council clearly took the view that neither the imposition of conditions nor a s106 agreement would overcome the harm that they considered the proposal would cause. Whilst the timing and some details of this could be considered 'unreasonable behaviour', again I do not consider that it has been shown how this led to unnecessary loss and expense in

the appeal process. In section 5 of the application form it is indicated that no assistance or pre-application advice was sought by the appellant from the Council.

24. With regard to charges, the Council has provided a SPD on s106 agreements. And it explains the educational, open space and other reasons for the requirements. The SPD 106 (page 11) relates specifically to the educational facilities for different site units which include 1 – bedroom units. I do not consider, therefore that the Council acted unreasonably in relation to this matter.

25. In conclusion, although I find some of the Council's actions to have been unreasonable I do not consider that it has been shown by the appellant how these unreasonable actions led to unnecessary loss and expense. The application for an award of costs is, therefore, refused.

Anthony J Wharton

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 29 October 2013

by S M Holden BSc MSc CEng TPP MICE MRTPI FCIHT

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

Decision date: 28 November 2013

Appeal Ref: APP/T5150/A/13/2197086
44 Staverton Road, London NW2 5HL

- 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 Jonathan Kustow against the decision of the Council of the London Borough of Brent.
- The application Ref 12/2773, dated 11 October 2012, was refused by notice dated 11 December 2012.
- The development proposed is extension and alteration of existing house converted into 2 No self contained flats into 3 No self contained flats, consisting of 2 No 3 bedroom flats and 1 No 1 bedroom flat formed in the loft space.

Procedural matter

1. The Council's decision notice and the appeal form describe the development as: 'creation of new self-contained one bedroom flat in loft space above two existing self-contained flats, infilling of existing valley between the two side projecting hipped roofs, erection of side dormer window, erection of rear dormer window and two front rooflights, one first floor flank wall window, two new bin stores and two new cycle stands to front garden of flats.' With the exception of the reference to the cycle stands I have determined the appeal using this more accurate description of the development.

Decision

2. The appeal is allowed and planning permission is granted for creation of a new self-contained one bedroom flat in loft space above two existing self-contained flats, infilling of existing valley between the two side projecting hipped roofs, erection of side dormer window, erection of rear dormer window and two front rooflights, one first floor flank wall window and two new bin stores at 44 Staverton Road, London NW2 5HL in accordance with the application, Ref: 12/2773, dated 11 October 2012, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The materials to be used in the external surfaces of the development hereby permitted shall match those in the existing building.

3) Otherwise than as set out in Condition (4) the development shall not be carried out other than in complete accordance with the following approved plans: Job No 12002, Drawing Nos. E-100 and P-100, Rev B.

4) Prior to the commencement of the development hereby permitted details of secure cycle storage shall be submitted to and approved in writing by the local planning authority. The cycle storage shall be implemented as approved prior to first occupation of the development hereby permitted and retained thereafter as approved.

5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

   a. the proposed hours of working on the site;
   b. measures to be employed to minimise emission of noise from the site;
   c. arrangements for on-site storage of vehicles, plant, machinery and materials associated with the development;
   d. measures to control the emission of dust and dirt during construction;
   e. a scheme for recycling/disposing of waste resulting from construction works.

Main Issues

3. Since this application was determined the Council has adopted the Community Infrastructure Levy. A legal agreement to contribute towards investment in local transport infrastructure is therefore no longer required and this reason for refusal is not relevant to my deliberations. The main issues are therefore the effects of the proposal on:

   a) the character and appearance of the host property and the surrounding area;

   b) highway and pedestrian safety;

Reasons

Character and appearance

4. Staverton Road is characterised by large detached and semi-detached houses in well-proportioned plots. No 44 is a substantial semi that has already been sub-divided into two three bedroom flats, both of which have sizeable rooms. To the rear is a good-sized garden, which is solely used by the occupants of the ground floor flat. The proposal seeks to insert a dormer window in the side roof slope in order to enable an additional one-bedroom flat to be provided in the roof space. The resultant accommodation would comply with the minimum space standards set out in the London Plan.

5. The Brent Unitary Development Plan (UDP) recognises that conversions of existing buildings provide an important means of increasing the number of dwellings and the range of accommodation available in the Borough. Saved

Policy H18 sets out a series of criteria which flat conversions are required to meet if they are to be acceptable. One of the over-arching objectives is to prevent over-intensification of development in relation to the number of units, but the policy does not specifically suggest how this will be assessed. Criterion (j) seeks to ensure that excessively large extensions are not added to existing dwellings with the sole purpose of increasing the number of units within a conversion. Such situations can result in over-intensive use of sites and unacceptable changes to the character of an area.

6. I note that the appellant suggests that the proposal would result in a residential density of 185 habitable rooms per hectare. However, density is not a measure of the design quality of a scheme and should not be the determining factor in relation to its acceptability. The critical issue is whether the proposed roof alterations can be accommodated without harm to the host property and the character and appearance of the surrounding area.

7. The houses in Staverton Road have long side elevations that are generally well concealed from public view, partly because of the modest gaps between them. No 44 currently has a double pitched roof with a valley between the front and rear elements, which can be glimpsed from the opposite side of the street. The proposal would introduce a large dormer window to infill this valley. In addition there would be a good-sized dormer on the rear roof slope and two rooflights on the front roof slope.

8. In the context of a substantial house that is well proportioned and with a long flank elevation, in my view the insertion of the proposed side dormer window would not appear excessive. It would not be prominent in the street scene as it would be well set back from the front elevation and would be partially screened by the presence of the front chimney, which would be retained. Views of the side elevation of the proposed dormer would also be obscured by the proximity of No 46. Neither would the side dormer window appear to dominate the roof when viewed from the garden as this is at a lower level than the house. The rear-facing gable with its pitched and hipped roof would remain as the distinguishing and dominant feature at the rear of the dwelling.

9. Furthermore, on my site visit I saw that side dormer windows of varying shapes and sizes were a feature of a number of the properties in Staverton Road. In most instances these were proportionate and well integrated into the host property. They did not dominate the buildings or appear out of place in the context of this mature residential street characterised by its mix of dwellings and street trees.

10. I therefore conclude that the proposal would not be harmful to the character and appearance of the host property or the surrounding area. It would therefore comply with saved Policies H18, BE2 and BE9 of the UDP, which require development to be well designed having regard to the local context.

Highway and pedestrian safety

11. Most of the houses in Staverton Road have off-street parking available within the front gardens. However, the area is also subject to parking regulations and a residents' parking scheme is in operation. At the time of my site visit there was no evidence of parking stress and the Council define the street as 'not heavily parked'.

12. No 44 has space for two vehicles to park off-street. The Council's parking standards indicate the current two flats have a requirement for 3.2 spaces. I do not know if any of the existing occupants have a resident's parking permit. The proposed development would increase the requirement for car parking spaces to 4.2. As this could not be provided on-site there would be an entitlement to a resident's parking permit.

13. However, the Council contend that the development should be 'car-free' to reduce the risk of increasing pressure on the area's supply of on-street parking. No detailed or substantive evidence was presented to suggest that the Council is not prepared to issue additional permits for this area or that an extra vehicle could not be satisfactorily accommodated within the existing residents' parking scheme. Any vehicle that was parked illegally would be liable to incur the appropriate sanction for so doing. I am therefore not persuaded that the proposal would result in unacceptable pressure on parking or be prejudicial to highway safety.

14. In any event I understand that Staverton Road is in an area that has been given a PTAL rating of 3 (moderate). It is already a bus route and just a short walk from Willesden High Road and Willesden Lane, which also have regular bus services. It is about 15 minutes walk to Willesden Green Station on the Jubilee Line. It therefore seems to me that the area is well served by public transport and residents would have a reasonable choice as to whether or not to own a car.

15. Notwithstanding these factors, the appellant submitted a Unilateral Undertaking that seeks to restrict the rights of owners and residents of the proposed flats from applying for a Resident's Parking Permit. The Council is not satisfied that this obligation would address its concerns, particularly as it would fail to remove the parking permit rights of future owners. Having studied the agreement I consider that the obligation would not meet the requirements of S106 of the Town and Country Planning Act, 1990. A promise not to apply for a parking permit, as the drafting suggests, is little more than a personal undertaking and provides an insufficient restriction on the use of the land to be effective.

16. In coming to this view I am mindful of the recent court case involving Westminster City Council v Secretary of State for Communities and Local Government and Acons (2013), where a similar obligation was found not to meet the requirements of S106. However, as I consider there is every possibility that the demand for additional parking could, should it arise, be accommodated within the current Controlled Parking Zone, I consider that the obligation is neither necessary nor justified in this case.

17. I note that the appellant has offered to provide secure cycle storage on the site and this is to be welcomed. However, I am not persuaded that the two cycle stands shown on the plan would be adequate, since they would not provide protection from the elements and would not offer sufficient security. Nevertheless, it seems to me that there is sufficient space on the site to design a scheme to provide suitable facilities for secure cycle storage. This could be secured through the imposition of an appropriate condition requiring details to be agreed with the Council prior to the commencement of the development.

18. I therefore conclude that the proposed development would not adversely affect highway or pedestrian safety and, subject to the imposition of a suitable condition to secure adequate cycle storage on the site, the proposal would be acceptable. It would comply with saved Policies TRN3, TRN23 and TRN24, which requires development to provide appropriately for the likely traffic and parking demand it will generate.

Conditions

19. In addition to the standard time limit and a condition to provide secure cycle parking, the Council has suggested other conditions that it considers to be required in the event that the appeal is allowed. I have also had regard to the appellant's comments on these proposed conditions, which I have considered alongside the provisions of Circular 11/95: *The Use of Conditions in Planning Permissions.* A materials condition is required in the interests of the appearance of the development. It is necessary that the development shall be carried out in accordance with the approved plans and a condition to this effect is justified for the avoidance of doubt and in the interests of proper planning.

20. I have amended the condition suggested by the Council in relation to the construction period to provide for the preparation of a construction method statement to be agreed prior to the commencement of the development. I have included within this condition only those elements that I consider necessary having regard to the nature of the development.

21. The Council suggested conditions relating to highways works and landscaping. However, none are associated with the appeal proposal and I concur with the appellant that they are not required. The Council also suggested a condition restricting the use of the roof that the appellant would be willing to accept. However, the scheme would not create any window, door or staircase that would provide direct access to an area that could be used as a balcony. I am therefore not persuaded that such a condition is necessary or justified.

Conclusions

22. The Government is seeking to significantly boost the supply of housing and requires applications for housing development to be considered in the context of the presumption in favour of sustainable development. The proposed loft conversion at No 44 would provide an additional one bedroom flat, which would meet the space standards for new accommodation set out by the Mayor. In addition I have found that the proposal would not be harmful to the character and appearance of the area, would not lead to highway safety problems or give rise to unacceptable pressure on parking provision in the vicinity. The need for investment in local infrastructure would be met through a CIL contribution.

23. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2013

by D Cramond BSc MRTPI

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

Decision date: 28 November 2013

Appeal Ref: APP/T5150/D/13/2205094
13 Coniston Gardens, Kingsbury, London, NW9 0BA

- 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 Dariusz Walczak against the decision of the Council of the London Borough of Brent.
- The application Ref 13/1019 was refused by notice dated 25 June 2013.
- The development proposed is a rear single storey extension to the dwelling house.

Decision

1. The appeal is allowed and planning permission is granted for a rear single storey extension to the dwelling house at 13 Coniston Gardens, Kingsbury, London, NW9 0BA in accordance with the terms of the application, Ref 13/1019, subject to the following conditions:

    1. The development hereby permitted shall begin not later than three years from the date of this decision.

    2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

    3. The development hereby permitted shall be carried out in accordance with the following approved plans: P-02P1, P-03P1, P-04P1, P-05P1 & P-06P1.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of neighbours.

Reasons

3. The appeal property is a semi-detached two storey dwelling within an established mid density suburban area of pleasing appearance. The property sits on sloping ground which falls markedly away from its adjoined dwelling to the north east. The proposal is a flat roofed single storey extension across the whole of the rear of the subject property to offer an open plan enlargement to the existing kitchen and dining rooms.

4. The Council is concerned that the scheme would be unneighbourly to the attached unit by reason of its depth at about 4 metres from the rear wall, its height at about 3 metres on the boundary and its proximity to the adjoining rear window. However the neighbouring ground level is higher than the subject site and its main window is also set a little above that on the appeal

property. Furthermore it is a bay window and thus its main face is set out from the wall such that it is closer to the end of the proposed extension than the 4 metre measurement might suggest. Given ground levels, the appellant has set the flat roof close to its minimum to achieve a level floor; I notice that internally the ceiling height is planned to drop over the new floor area. There would be some degree of blinkering effect and change of outlook for the neighbours, as there would with any extension on the boundary, but I am satisfied that this would not be undue in extent and that these occupiers will continue to enjoy sufficient daylight and an aspect which will, for the most part, remain open.

5. I give some weight to the appellant's points raised in relation to the available scale of extension within 'permitted development' limits; I can appreciate the fall-back position here.

6. Saved Policy BE9 of the Council's Unitary Development Plan (2004) seeks, amongst other matters, to ensure protection of the residential amenities for people neighbouring new development. I conclude that the appeal scheme would not run contrary to this objective. I should add that I recognise the Council's Supplementary Planning Guidance No.5 generally seeks to limit single storey extensions on common boundaries to 3 metres in length at this height but on this occasion, as explained above, I am satisfied as to the merits of the case and the guidance document cannot be expected to cover every eventuality.

Conditions

7. The Council suggests the standard commencement condition along with the requirement for materials to match the existing building. I agree this latter condition would be appropriate in the interests of visual amenity. There should also be a condition that works are to be carried out in accordance with listed, approved, plans; for the avoidance of doubt and in the interests of proper planning.

Overall conclusion

8. For the reasons given above I conclude that the appeal proposal would not have unacceptable adverse effects on the living conditions of neighbours. Accordingly the appeal is allowed.

D Cramond

INSPECTOR

Appeal Decision

Site visit made on 11 November 2013

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 25 November 2013

Appeal Ref: APP/T5150/D/13/2206447
54 Brondesbury Park, London NW6 7AT

- 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 R M Pour against the decision of the Council of the London Borough of Brent.
- The application Ref 13/1240, dated 7 May 2013, was refused by notice dated 11 July 2013.
- The development proposed is the extension of the first floor front bedroom.

Decision

1. The appeal is allowed and planning permission is granted for the extension of the first floor front bedroom at 54 Brondesbury Park, London NW6 7AT in accordance with the terms of the application, Ref 13/1240, dated 7 May 2013, and the plans submitted with it, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: 13.746 PL-01, 13.746 PL-02, 13.746 03.

   3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main Issues

2. The issues in this case are whether the proposed extension would be harmful to the character and appearance of the area and whether it would adversely affect the living conditions of adjacent occupiers.

Reasons

Character and Appearance

3. Brondesbury Park is characterised by large detached dwellings of traditional design typically with front bay windows and hipped roofs. These are set back from the road frontage which is tree lined. The houses are built relatively close to each other. Although this type of development defines the character, there is some variation to the architecture with a number of larger properties and blocks of flats along the street.

4. The appeal property has rendered elevations with quoins and a hipped roof covered in plain tiles. This has previously been extended by the addition of single storey flat roofed side extensions, extensions to the rear and dormer extensions to the side and rear facing roof slopes. There is a porch on the front elevation incorporating a pitched roof and false pitch in front of a single storey flat roofed side extension. The proposed extension would be at first floor level and would infill the recess situated behind the false pitch and above the flat roofed extension.

5. Saved policy BE2 of the Brent Unitary Development Plan (UDP) (2004) requires proposals to be designed with regard to their local context and make a positive contribution to the character of the area including the need to respect or improve the quality of existing townscape. Saved policy BE9 of the UDP requires extensions to be of appropriate scale, massing and height and to respect local design characteristics and be consistent with them.

6. The Council's Supplementary Planning Guidance 5 (SPG5): Altering and Extending Your Home advises that first floor side extensions should be subordinate in appearance to the main house and should avoid the creation of a terracing effect. The roof should match the pitch angle and materials of the house and the ridge line should be set below that of the main house. Extensions should be set back from the main front wall of the house by 1.5 metres if there is a gap of 1 metre to the side boundary.

7. The proposed roof ridge would be below that of the main roof, set back from the front roof slope and using a similar pitch angle and materials as the main roof. This aspect would be in accordance with SPG5. The front wall of the proposed extension would be recessed by 0.3 metre from the front wall of the house, which in combination with the roof design would provide a subordinate appearance to the proposal.

8. The detached houses along the street although built relatively close together are clearly separated. A gap of approximately 2 metres would be maintained between the side of the house and the adjacent house. This gap would ensure that there would be no terracing effect. For this reason and that in the preceding paragraph I consider that a rigid adherence to the 1.5 metre set back recommended in SPG5 would not be necessary in this case.

9. The roof of the proposed extension would be of an appropriate scale in relation to the main roof and its design would match that of the main roof. Although it would add a further element to the roof form, it would harmonise with the existing design and would be visually acceptable in my view.

Living Conditions

10. The adjacent property at No 56 has a first floor front facing window recessed from its main front wall. The side wall of the proposed extension would be to the side of that window and separated by the gap between the houses. Given the relatively modest length of the extension and its distance from the window, the proposal would be unlikely to adversely affect the outlook from that window. On this basis the proposal would be in accordance with saved policy BE9 (e) of the UDP.

11. The 2:1 rule in SPG5 is used for assessing the impact of two storey rear extensions on ground floor habitable rooms in adjacent properties. Because

the proposed extension would be at the same level as the adjacent window, it would not be appropriate to apply the 2:1 rule in this case.

Conclusion and Conditions

12. I conclude that the proposed extension would not be harmful to the character and appearance of the area and that it would not adversely affect the living conditions of adjacent occupiers. The proposal would be in accordance with saved policies BE2 and BE9 of the UDP. On this basis I conclude that the appeal should succeed.

13. It is necessary that facing materials match those of the existing dwelling to ensure that the development is visually acceptable and I have imposed a condition in this respect.

Nick Palmer

INSPECTOR

Costs Decision

Site visit made on 26 November 2013

by Jonathan Hockley BA (Hons) DipTP MRTPI

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

Decision date: 11 December 2013

Costs application in relation to Appeal Ref: APP/T5150/D/13/2206792
9 Tudor Court South, Wembley, Middlesex HA9 6SQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Greg & Mary Moylette for a full award of costs against the Council of the London Borough of Brent.
- The appeal was against the refusal of planning permission for a loft conversion and two storey side extension.

Decision

1. The application for an award of costs is refused.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. Planning appeals often involve matters of judgement concerning the character and appearance of an area or a design issue. Paragraph B19 of the Circular states that where planning authorities rely on adopted supplementary planning guidance on design, an award of costs is unlikely to be made on the grounds on an unreasonable planning objection.

4. As set out in my appeal decision I have found that the appeal proposal conflicts with various guidance provided within the Brent Council "Altering and Extending Your Home" supplementary planning guidance but that overall the proposals did not conflict with the relevant policies contained within the Brent Core Strategy or Unitary Development Plan. The policies referred to in the Council's decision are adopted policy, remain valid policies and do not conflict with the National Planning Policy Framework.

5. The Council considered the local character and appearance of the area when deciding the application. Although I considered that some previous nearby conversions from hip to gable had been carried out and they were more prominent than the proposed scheme, the Council's Planning Officer took a different view in their delegated report. Whilst the nearby appeal reference was not specifically mentioned within the Officer's report, the address of the appeal decision and the effect of that appeal decision at 2 Tudor Court North in allowing a side extension to a previous hip to gable extension was considered. The weight attached to the character of the surrounding area (or size of that

surrounding area), and the actual effect of the previous appeal decision were therefore considered by the Council. These were subjective conclusions and did not mean that the Council behaved unreasonably.

6. The appellant considers that the Council acted unreasonably in providing information about possible alternative schemes, including a hip to gable extension, which could have achieved under permitted development powers. I do not consider this to be unreasonable – indeed it could be argued that the Council were fulfilling their function in ensuring constructive pre-application discussions and advice is provided to ensure all of the appellant's options were considered.

7. While I have come to a different view to the Council on the effect of the proposed development on the character and appearance of the area, the Council nevertheless provided realistic and specific evidence for the appeal. This provided a respectable basis for the authority's stance.

8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Jon Hockley

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2013

by Jonathan Hockley BA (Hons) DipTP MRTPI

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

Decision date: 6 December 2013

Appeal Ref: APP/T5150/D/13/2206792
9 Tudor Court South, Wembley, Middlesex HA9 6SQ

- 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 & Mrs Greg & Mary Moylette against the decision of the Council of the London Borough of Brent.
- The application Ref 13/1679, dated 7 June 2013, was refused by notice dated 12 August 2013.
- The development proposed is a loft conversion and two storey side extension.

Decision

1. The appeal is allowed and planning permission is granted for a loft conversion and two storey side extension at 9 Tudor Court South, Wembley, Middlesex HA9 6SQ in accordance with the terms of the application, Ref 13/1679, dated 7 June 2013, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

   3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL1.0 (A), PL2.1 (C), PL2.2 (E), PL 2.3 (D), PL2.4 (D), PL2.5 (E), PL2.6 (B).

Application for costs

2. An application for costs was made by Mr & Mrs Greg & Mary Moylette against the Council of the London Borough of Brent. This application will be the subject of a separate Decision.

Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of Nos 9 and 11 Tudor Court South and the surrounding area.

Reasons

4. The appeal property is set at the eastern edge of Tudor Court South, which forms part of an oval shaped street with Tudor Court North. Grand Avenue East lies just to the north of the appeal site, and the rear of the site backs on

to the rear of properties on Victoria Avenue. The area is characterised by quite large semi-detached dwellings set in reasonably sized plots. Many of the surrounding properties have been extended in varying forms. The predominant roof design of the area is hipped, some with front gables and some without, but there are several nearby examples of conversions to gable roofs, some of which are set in prominent locations.

5. The proposal seeks to extend 9 Tudor Court South on its north east elevation with a two storey extension and provide living accommodation in the roof of the property by remodelling to convert the hipped roof to a gable. A rear dormer window is also proposed. The appeal property is the last house on the southern side of the street, and as such the property marks the end of the row of houses on Tudor Court South. The dwelling is bordered to its north east by the rear of a property on Grand Avenue East. The western side gable of this Grand Avenue East property is set significantly closer to the Tudor Court South footway edge than the front of the appeal property.

6. The boundary between the appeal property and the neighbouring Grand Avenue East dwelling is formed of a fence, with substantial coniferous planting sited on the adjacent properties' land. This planting, estimated by the appellant to be 5.5 to 6.5 metres in height, together with the set back nature of the house frontage compared to the adjacent property has the effect of screening the north side of 9 Tudor Court South from views from the north.

7. The Brent Council "Altering and Extending Your Home" supplementary planning guidance (adopted September 2002) (the SPG) contains guidance as a basis for considering household extensions within the Borough. The SPG states that conversions from hipped roofs to gables will not normally be permitted, and considers that the effect is magnified if the property already has, or is proposed to have a side extension. This is to ensure that roof alterations complement existing street character.

8. I consider that in this one particular case, the combination of the setting of the appeal property on the end of the street, the set back location behind the gable end of the neighbouring dwelling to the north east, and the extensive screening on the north east boundary mean that the proposed change in roof form and extension would not look out of place and would complement rather than detract from the existing street character. Due to the end nature of the street and the limited visibility of the proposal the proposed extensions would also not significantly unbalance the pair of semi-detached dwellings within the wider streetscape. I am also mindful in this respect of other nearby properties in more prominent local locations which have converted hipped roofs to gables, including 2 Tudor Court North and several properties on Victoria Avenue directly facing the entrance to Grand Avenue East.

9. The SPG also states that the second storey of side extensions should be set back by 2.5 m, unless the extension is over 1m from the boundary, where a set back of 1.5m is a guideline. The purpose of this is so that two storey side extensions complement rather than dominate the host property. In this case the set back would be 1.7m, and would be built to within 20cm of the boundary, so the proposal would not fit this guideline overall. However I consider that the 1.7m set back and the lower ridge line of the proposed extension, when combined with the end street nature of the appeal property would ensure that the proposed extension would remain subordinate and

complement rather than dominate the original dwelling, thus meeting the aims of the SPG. I also note in this respect that the Council consider that this reduced setback is acceptable in this instance.

10. The proposal also contains a small flat front dormer as part of the two storey side extension, contrary to the SPG. This dormer is required to allow the stair access to the loft conversion. The dormer is small, would not in my view be significantly noticeable, and its inclusion allows the ridge line of the proposed extension to remain subordinate to the host property. I therefore consider the proposed front dormer to have a negligible effect on the overall design of the dwelling. The proposed rear dormer would also remain subordinate to the original dwelling.

11. I therefore conclude that the proposed development would not have an adverse effect on the character and appearance of Nos 9 and 11 Tudor Court South or the surrounding area. As such, the proposal would not be contrary to the aims of policies CP17 of the London Borough of Brent Local Development Framework Core Strategy (July 2010), or of policies BE2 and BE9 of the London Borough of Brent Unitary Development Plan 2004, which together seek to ensure that the design of new development respects the setting of existing dwellings, has regard to their local context and embody a creative and appropriate design solution specific to their sites shape, size and location. Nor do I consider that the proposed development would be contrary to the overall purpose of the SPG that extensions are well designed and complement the original home and neighbourhood.

Conditions

12. The Council have suggested conditions in the event of approval to cover implementation, and materials to match the existing building. I agree with all these suggested conditions and have also imposed a condition to ensure compliance with plans.

Conclusion

13. For the reasons given above I conclude that the appeal should be allowed.

Jon Hockley

INSPECTOR

Appeal Decision

Site visit made on 12 November 2013

by D Spencer BA (Hons) DipTP MRTPI

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

Decision date: 19 November 2013

Appeal Ref: APP/T5150/D/13/2206561
44 Manor Drive, Wembley, Middlesex HA9 8EF

- 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 W A Abbasi against the decision of the Council of the London Borough of Brent.
- The application Ref 13/1999 was refused by notice dated 9 September 2013.
- The development proposed is the erection of a single storey side extension.

Decision

1. The appeal is allowed and planning permission is granted for a single storey side extension at 44 Manor Drive, Wembley, Middlesex HA9 8EF in accordance with the terms of the application, ref 13/1999, dated 20 May 2013, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: SB/B36/1 and SB/B36/2

   3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main issue

2. The main issue is the effect of the proposed extension on the character and appearance of No 44 Manor Drive and its surroundings.

Reasons

3. Manor Drive is a residential street comprising typically of semi-detached houses, a number of which have been extended and altered. Whilst there is not a strong uniform appearance or degree of separation between properties, the front building line between Nos 36 and 54 Manor Drive, containing the appeal property, remains reasonably consistent. The line I have used follows the ground floor porches and bay windows which are set slightly forward of the front elevation. Between the houses there are typically garages of the same period, which again are generally set slightly forward to align with the projected front porches and bay windows.

4. A number of properties around the appeal site have been extended or altered to incorporate the garaging to create further accommodation. Where this has

occurred the alteration is typically flush to the building line described above and the garage opening has been filled in and generally a single window has been inserted. No 44 Manor Drive is unusual in that it is one of only a handful of properties that do not have a garage to the side of the property. In utilising this space, the proposed extension would provide for a consistent appearance with many surrounding properties, including the adjoining house at No 46 where the garage has been incorporated to create a two storey side extension flush to the front building line.

5. No 44 Manor Drive has already been significantly altered by way of a rear extension, a rear box dormer and a raised roof. There is no evidence before me that these amendments are unlawful. Therefore as a consequence of the significant degree of change that has already taken place at No 44 I am satisfied that the proposed single storey extension would not detract from the remaining original character of the dwelling. Moreover, a number of the original garages on Manor Drive have a small false pitched roof onto the street. The proposed similar arrangement on the extension would therefore reflect the local appearance.

6. The Council has submitted that the examples of comparable side extensions in Manor Drive provided by the appellant do not form the predominant character and pre-date changes to policy. In terms of the local character I disagree for the reasons set out above. I note that the Council's Supplementary Planning Guidance 5 'Altering and Extending Your Home' sets out at section 3.1 that side extensions should be set back from the front elevation by at least 250mm. However, I have found that not incorporating such a setback at No 44 Manor Drive would not result in an overdevelopment causing significant harm to the character and appearance of the property and the surrounding area. Accordingly, the proposals would not conflict with the design aims of policies BE2, BE7 and BE9 of the adopted London Borough of Brent Unitary Development Plan (2004). They would also accord with the objective of the National Planning Policy Framework to secure high standards of design.

7. Concerns were raised regarding the impact of the extension on the outlook from No 42 Manor Drive. This did not form one of the Council's reasons for refusal and from my observations on site I agree with the Council's assessment that there would be no significant harm in this respect.

Conclusions and Conditions

8. For the reasons set out above, I conclude that the appeal should succeed.

9. Other than the standard time limit condition, the Council has further suggested a condition controlling the external materials and finishes, which is considered necessary to ensure a satisfactory appearance. I have also imposed a condition requiring that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

David Spencer

INSPECTOR

The Planning Inspectorate

Appeal Decision

Hearing held on 29 October 2013
Site visit made on 29 October 2013

by Sara Morgan LLB (Hons) MA Solicitor (Non-practising)

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

Decision date: 11 November 2013

Appeal Ref: APP/T5150/C/13/2197578
2a Shaftesbury Avenue, Harrow HA3 0QX

- 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 Sam Tamam against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 26 March 2013.
- The breach of planning control as alleged in the notice is without planning permission, the installation of hard surface and the erection of gates and fences to the front of the premises.
- The requirements of the notice are:
  STEP 1 Demolish the front gates and fences to the front of the premises, remove all materials arising from that demolition and remove all materials associated with the unauthorised development from the premises.
  STEP 2 Remove the hard surface and dig it over so that it comprises soil.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is corrected as follows:

   In Schedule 2: delete "the installation of hard surface and the erection of gates and fences" and replace with "the erection of wooden fence panels and metal and polycarbonate fence panels on top of concrete walls, solid metal gates and a metal and polycarbonate sliding gate".

2. The appeal is allowed insofar as it relates to the erection of wooden fence panels on top of concrete walls and solid metal gates and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of wooden fence panels on top of concrete walls and solid metal gates at 2a Shaftesbury Avenue, Harrow HA3 0QX.

3. The enforcement notice is varied as follows:

   (a) In Schedule 4 delete "STEP 1 Demolish the front gates and fences to the front of the premises, remove all materials arising from that demolition and remove all materials associated with the unauthorised development from the premises" and replace it with "STEP 1 Demolish the metal and polycarbonate fence panels and the metal and polycarbonate sliding gate to the front of the premises, remove all

materials arising from that demolition and remove all materials associated with the unauthorised development from the premises."

(b) In Schedule 4 delete "AND STEP 2 Remove the hard surface and dig it over so that it comprises soil."

(c) In Schedule 5 substitute 9 months for 6 months as the period for compliance.

4. The appeal is dismissed and the enforcement notice is upheld as corrected and varied in respect of the metal and polycarbonate fence panels and the metal and polycarbonate sliding gate to the front of the premises, and planning permission is refused in respect of the metal and polycarbonate fence panels and the metal and polycarbonate sliding gate to the front of the premises, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary

5. In addition to the grounds of appeal set out in the heading above, an appeal on ground (e) was also made originally. The ground (e) appeal was withdrawn before the hearing.

6. At the hearing the Council indicated that policy H21 of the Brent Unitary Development Plan 2004 (UDP), referred to in the enforcement notice, had not been saved and was not relevant to the appeal.

7. The allegation refers in part to the erection of gates and fences to the front of the premises. However, what has been erected is wooden fence panels and metal and polycarbonate fence panels on top of concrete walls, solid metal gates and a metal and polycarbonate sliding gate. For clarity, the enforcement notice allegation should refer to these constituent parts of the development, and I shall correct the notice accordingly. The requirements will also need to be varied for this reason.

The appeal on ground (c)

The hard surface

8. The Council confirmed at the hearing that the enforcement notice was intended to attack the whole of the area of hard surface lying between the front elevation of the property and its boundary with the back of the footway of Shaftesbury Avenue, apart from the area of hardstanding lying between the appellant's office and the original gateway to the property.

9. The appellant argues that the hardstanding is permitted by virtue of Article 3 of, and Class F of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). This permits the provision within the curtilage of the dwelling house of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such.

10. But that is subject to the condition that where the hard surface is between the principal elevation of the dwelling and the highway and exceeds five square metres, either the hard surface must be made of porous materials, or provision must be made to direct runoff water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.

11. In this case, the hard surface is at the front of the property and does exceed five square metres. Consequently, the issue is whether what has been laid is porous or directs runoff water to a permeable or porous area within the curtilage.

12. Attached to the appellant's appeal statement is a drawing showing the areas of hardstanding within the curtilage of his property. This layout is consistent with what I saw on my site visit. It shows the hard surfacing at the front of the property comprising several areas of permeable gravel, an area between the house and the new sliding gate marked on the drawing as hardstanding, and a patio.

13. It was clear on the site visit that most of the gravelled areas had been formed by laying a cellular base mat on the ground, into which the gravel was placed. From what I could see on site, I am satisfied that these areas satisfy the GPDO requirement for porous materials. An area of planting near the front boundary and the area round a tree was covered with larger pebbles; I am also satisfied that these areas are porous.

14. The hardstanding leading from the front door to the sliding gate comprises slabs cemented together. These are not porous; but three drainage channels within the hard surface direct run-off from most of the slabbed area into the gravelled areas on either side of the slabs. A small part of this slabbed area closest to the sliding gate did not direct run-off into the drainage channels, but the guide rail for the sliding gate, which stands proud of the slabs, would direct run-off from this small area of slabs into the gravelled areas.

15. Because of the depth and construction of the drainage channels, taken with the effect of the guide rail on run-off, I am satisfied that this slabbed area provides for run-off to be directed to a permeable or porous area within the curtilage.

16. As to the patio, that comprises slabs, some of which are cemented (although the cement did not appear to be in particularly good condition in some places). This patio is surrounded by either the gravelled area or a channel filled with large pebbles, and which appeared to me to be porous or permeable. Although much of the patio itself is not porous, because of the surrounding materials it also satisfies the GPDO requirement for run-off to be directed to permeable or porous areas within the curtilage.

17. For these reasons I conclude that the hardstanding enforced against is permitted development under Class F, not requiring planning permission.

The gates and fences

18. The essence of the appellant's argument is that the gates and fences replaced a fence that was of the same or similar height, and that it too, therefore, amounted to permitted development - in this case by virtue of Article 3 of, and Part 2 Class A to, Schedule 2 to the GPDO.

19. The appellant says that originally there was a fence along the front boundary of the property comprising a concrete boundary wall with a wooden close-boarded fence on top, around 2m high. The fence and wall had been in place for some 30 years at least. At one end there was a drive and entry gates between two brick piers. Because of subsidence problems it was necessary to replace part of the concrete wall with a new concrete wall. The timber fence was replaced along much of the frontage. A sliding gate was also installed, some 4m in

length, where part of the wall and fence had been. The brick piers at one end were retained but painted grey, and new metal gates were installed between them, also in grey.

20. Photographs produced by the Council show the original fence and wall, gates and brick piers. The fence and wall appears to have comprised close boarded fence panels, very similar to what is now in place but stained a darker colour. The wall and gate piers appear to be painted a dark red, and the gates are dark stained probably timber (the photographs are somewhat unclear).

21. The gate piers are still in place, as I saw on site. The original fence appeared from the photographs to have been higher than the gate piers by a small amount; the replacement fence was measured on site as being some 6 - 8 inches above the height of the piers. My conclusion on the basis of the photographs and what I saw on site is that if there is any difference in height between the new fence and the original fence it is insignificant.

22. I take a similar view of any difference between the original gates and the new grey metal gates. In form and height they are very similar to the original gates. They are replacement gates between existing gate piers. The concrete wall where replaced entirely is very similar in height and appearance to the original wall apart from its colour, and to the wall still in place on the boundary of the neighbouring property.

23. Taking all these matters into account, I consider that the works to erect the new concrete walls, the fence and the gates between the existing brick piers amounted to works of maintenance, improvement or alteration.

24. However, the new sliding gate, which is around 4m wide according to the appellant's plan, clearly did not replace an existing gate, but took the place of an original stretch of fence. That is so different in form from what was there before that its erection did not amount to works of maintenance, improvement or alteration, and so would not be permitted development.

25. The works to the front boundary in all appear to have formed one building or engineering operation; if one element of the operation is not permitted development, then the whole operation is unlawful. Consequently, the erection of gates and fences at the front of the property, as alleged, did not amount to permitted development.

26. In reaching this conclusion I have taken account of the conversation the appellant had with an officer of the Council, in which according to his note of the conversation he was told there was no need to apply for permission for the new gate[1]. But there are two new gates and it is not clear whether the conversation related to one or both of them.

27. The e-mail produced by the appellant from a Council officer relates to the hardstanding and does not mention the gates or fences. In any event, even if the appellant had been advised that the sliding gate did not require planning permission, that would not alter the fact that the gate is not permitted development.

[1] His note reads "Spoke with Vict McD [a Council officer] no need to apply re new g."

Overall conclusions on ground (c)

28. I conclude that the hardstanding comprises permitted development. The fences and gates, however, do not comprise permitted development, and their erection amounted to a breach of planning control. The appeal on ground (c) therefore succeeds in part only, and I shall correct and vary the notice to exclude references to the hardstanding.

The ground (a) appeal

29. The ground (a) appeal relates to the allegation as corrected consequent upon the outcome of the appeal on ground (c), ie it does not relate to the hardstanding. The main issues are the effect of the fences and gates enforced against on the character and appearance of the dwelling, the surrounding area and the setting of the Mount Stewart Conservation Area.

30. A number of the panels comprising the fence are of close-boarded wood. The two panels on either side of the sliding gate, and the sliding gate itself, are of grey metal rails with pale-coloured opaque polycarbonate backing panels. The gates by the original driveway are of solid metal in a dark grey colour to match the adjoining brick piers.

31. The wooden fences and new concrete walls are very similar in form to what was in place before the works took place. Although the panels are stained in a paler brown than the original panels appear to have been, they are already weathering, and there are similar coloured fence panels nearby. They have the appearance of typical garden fence panels, they are similar to the fence panels around the boundary of the adjoining property and they are typical of the fence panels seen along the side boundaries of corner properties in the area, both within and outside the conservation area. In this context they do not look out of place.

32. The new concrete walls are very similar in appearance to the walls that have not been replaced, and to those at the neighbouring property. Neither the timber fence panels nor the concrete walls harm the character and appearance of either the dwelling itself or the surrounding area.

33. The site adjoins the Mount Stewart Conservation Area, whose character is largely if not wholly residential. The conservation area in the immediate vicinity of the appeal site comprises dwellings dating from the last century and of traditional design, with front gardens and in the main low walls or fences along their front boundaries. However, tall wooden fences, some on top of walls, can be seen in a number of corner locations in the conservation area.

34. Although the site forms part of the setting of the conservation area, the wooden fences and walls do not detract from that setting to any greater extent than the original fence and walls or the fence and wall around the neighbouring property. They preserve the setting of the conservation area.

35. The solid metal gates at the original access to the site do not appear to be materially different in height from the original gates. Although they are of a different material, their subdued colour means that they do not stand out or otherwise appear incongruous. They too do not cause unacceptable harm to the dwelling itself or its surroundings; and they also preserve the setting of the conservation area. Neither the wooden fences and the new concrete walls nor the solid metal gates conflict with relevant policies of the UDP or its

supplementary planning guidance. Planning permission should therefore be granted for them.

36. However, the sliding gate and the panels on either side are very different in character and appearance to anything else seen in the area. They are in stark contrast to the metal gates and the wooden fence panels. Because of the combination of metal railings and pale polycarbonate, and because of the height and width of the panels and gate combined, they stand out when seen from the footway and the carriageway, appearing highly incongruous and out of character.

37. Consequently they harm the character and appearance of the dwelling and the surrounding area. For the same reasons they also fail to preserve the setting of the conservation area. The advantages to the appellant of using long-lasting materials are significantly outweighed by the harm these materials have caused to the character and appearance of the area.

38. The metal and polycarbonate gate and fence panels therefore conflict with saved policies BE2, BE6, BE7, BE9 and BE25 of the UDP, which require development not to cause harm to the character and appearance of the area or to have an unacceptable visual impact on a conservation area, to provide high quality design for the street environment, to be appropriate to their setting and to pay special attention to the preservation or enhancement of the character or appearance of conservation areas. They also conflict with the advice in the Council's Supplementary Planning Guidance Note 5 *Altering and extending your home*, which requires boundaries to complement the character of the rest of the street.

39. The appellant has argued that, because of the unusual layout of his property, which was originally a doctor's surgery at the rear of the doctor's house at 228 Preston Hill, there is a need for a fence of the height of that being enforced against to provide privacy and security to the house and garden. I recognize that the layout of the dwelling and its garden does not reflect the layout of other dwellings in the surrounding area and that much of the private garden area is to the front and side of the dwelling.

40. However, I have concluded that planning permission should be granted in respect of the remainder of the front boundary fence other than the metal and polycarbonate gate and fence panels. That can form the basis for providing a significant degree of privacy and security to the property. Given the much shorter length of boundary treatment which I have found to be unacceptable, the appellant's need for security and privacy is not a sufficiently significant factor to outweigh the harm caused by that shorter length.

41. I therefore conclude that planning permission should not be granted for the metal and polycarbonate gate and fence panels, and I shall uphold the enforcement notice to this extent.

42. The Council has argued that, if planning permission is granted for the development, it should be subject to a condition requiring a landscaping scheme to be carried out. However, it would not normally be appropriate to require a landscaping scheme in the garden of a private dwelling.

43. Whilst the development appears to have led to the loss of planting along the boundary of the property (some of which had to be removed in order to

address the subsidence issues) the appellant has already carried out planting at the front of the property which can be seen from the street above the wooden fence. This is already having a softening effect on the appearance of the fence. In these circumstances, and given that further shrub or tree planting is unlikely to be appropriate in the area where the subsidence occurred, I conclude that it would not be reasonable to impose a landscaping condition as suggested.

The ground (f) appeal - the metal and polycarbonate gate and fence panels

44. The Council confirmed at the hearing that its object in issuing the enforcement notice was to remedy the breach of planning control by requiring the unauthorised development to be removed. The appellant has argued that the Council should have asked for the original means of enclosure to be re-instated, but the allegation does not allege the removal of the original fence and so it would exceed the matters alleged in the notice to ask for the original fence to be put back rather than what is there to be removed.

45. The appellant has also suggested a requirement to remove the small curved section of open railing on the gate, in order to bring the height of the gate down to 2 metres. But that would not remedy the breach of control, and nor would it overcome the harm to the character and appearance of the surrounding area.

46. I conclude that only a requirement to remove the metal and polycarbonate gate and fence panels would overcome the harm to the character and appearance of the surrounding area. However, no planning purpose would be achieved by requiring the concrete wall beneath the fence panels to be removed, as it is less than 1m high and does not contribute towards the harmful impact of the metal and polycarbonate elements.

The ground (g) appeal

47. The appellant has requested a period of 18 months with which to comply with the original requirements of the notice. He has long-term medical conditions, and I take full account of his need to recover from those. However, it would not be appropriate to extend the period for compliance to the extent he has suggested, given the harm being caused by the gate and fences.

48. Nonetheless, in view of the appellant's medical conditions it would be appropriate to extend the period for compliance to nine months. That would achieve an appropriate balance between the public interest in having this unauthorised and harmful development removed, and the appellant's current personal circumstances. It would also give the opportunity for the works to be carried out after the winter is over.

Overall conclusions

49. For the reasons given above I conclude that the appeal should succeed in part only. I will grant planning permission for parts of the matters the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other parts.

Sara Morgan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Sam Tamam	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks	Enforcement Services Ltd
Mr Michael Wood	Planning Enforcement Officer

DOCUMENTS

1 Council's letter of notification and list of persons notified
2 Map of Mount Stewart Conservation Area
3 Policy H21 Brent Unitary Development Plan

The Planning Inspectorate

Appeals Decisions

Site visit made on 30 October 2013

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 28 November 2013

Appeals Refs: APP/T5150/C/13/2196524 & APP/T5150/C/13/2196525
44 Lancelot Crescent, Wembley, Middlesex HA0 2AY

- The appeals are made by Miss Z A Ansari and Mr S H Ansari under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/10/0441) issued by the Council of the London Borough of Brent on 26 March 2013.
- The breach of planning control alleged in the notice is 'The erection of a building in rear garden of the premises'.
- The requirements of the notice are to 'Demolish the building in the rear garden of the premises and remove all items, materials and debris arising from the demolition'.
- The period for compliance with these requirements is three months.
- The appeals were made originally on the grounds set out in section 174(2)(a) and (b). Following the lapse of Mr Ansari's ground (a) appeal and the changes made in the appellants' appeal statement, Miss Ansari's appeal is now proceeding on the grounds set out in section 174(2)(a), (c) and (f) and Mr Ansari's appeal is proceeding on the grounds set out in section 174(2)(c) and (f).

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Reasons for the decisions

Ground (c)

2. The Town and Country Planning (General Permitted Development) Order 1995, Article 3(1) and Schedule 2, Part 1, Class E, grants planning permission for the building, provided it is within the limitations set out in E.1 and it is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'.

3. The Council have given two reasons relating to Class E for the issue of the notice. The first is that the height limit of 2.5m in E.1(d)(ii) has been exceeded because the height of the building is 3.05m. The second is that the Council consider the building not to be incidental to the dwellinghouse because it has its own independent access, shower and toilet facilities.

4. The building is not on level ground. Its height should therefore be measured from the level of the highest part of the surface of the ground adjacent to it (see Article 1(3)). The Council appear to have measured it from the lowest part. When it is measured in accordance with Article 1(3) its height does not exceed 2.5m. I find therefore, as a matter of fact, that the building is within the height limit specified in E.1(d)(ii).

5. My understanding of the principles that apply to the term 'required for a purpose incidental to the enjoyment of the dwellinghouse as such', as it is used in the Order, is as follows: -

   - The concept of Class E is broad and a wide range of incidental purposes is permitted.
   - The incidental purposes must be connected with the running of the house or the domestic or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building.
   - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. The size of the building in comparison to the size of the house is a relevant, but not a decisive, factor in this assessment. The comparison should be with the whole of the house as it exists at present, since this is the house in respect of which Class E permits development.
   - The issues are to be decided with an element of objective reasonableness, as a matter of fact and degree. This was the basis on which the appeal decision quoted by the Council was reached. In Peche d'or Investments v Secretary of State for the Environment [1995] J.P.L. B63, [1996] J.P.L.311 the High Court held that an inspector had been wrong to rule, as a matter of law, that a curtilage building containing a study or music room, a passage hall, and W.C. and shower facilities, was outside the class. The court stressed that it must be a matter of fact and degree in each case.

6. I do not consider that the building has 'its own independent access'. It is wholly within the curtilage of the house and its main entrance and windows face the rear of the house, clearly demonstrating that its intended use is closely linked with the house and its rear garden. The existence of a door in the building giving access to the alleyway is not significant; all the rear gardens in this area border rear alleyways, the estate having been laid out in this manner, and the door simply maintains a way through the building to and from the alleyway.

7. The size of the building is not disproportionate to the size of the house. The appellants indicate that it was erected by a previous owner and is required by the present occupiers of the house as a music/gym/rest/play room and for storage. The photographs taken by the Council, and what I saw at my visit, confirm that it is used for these purposes. These are incidental purposes connected with the running of the house and the domestic and leisure activities of the occupiers. The shower and toilet are useful adjuncts to the gym and play uses. In my opinion, they are facilities that are ancillary to these uses and do not, in this instance, constitute primary living accommodation in themselves or make the building primary living accommodation as a whole.

8. When the issues are examined with an element of objective reasonableness, I consider that the building is, as a matter of fact and degree, 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' within the meaning of Class E. Since it complies with all the limitations in E.1, planning permission has been granted for it by the Order and the appeals have therefore succeeded on ground (c).

Grounds (a) and (f)

9. As a result of the success of the appeals on ground (c), the notice has been quashed. No further action is being taken in connection with the appeals on grounds (a) and (f) or the planning application deemed to be made by section 177(5).

D.A.Hainsworth

INSPECTOR