



---

## Appeal Decision

Site visit made on 21 January 2014

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 12 February 2014

---

**Appeal Ref: APP/T5150/A/13/2209201**  
**24A Brondesbury Villas, London NW6 6AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Claire Schroeter against the decision of the Council of the London Borough of Brent.
  - The application Ref 13/2226, dated 26 July 2013, was refused by notice dated 4 October 2013.
  - The development proposed is the installation of a sustainable single storey timber building for ancillary residential purposes.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the installation of a sustainable single storey timber building for ancillary residential purposes at 24A Brondesbury Villas, London NW6 6AA in accordance with the terms of the application, Ref 13/2226, dated 26 July 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: Refs: 13.32/PL/01, Rev A, 13.32/PL/02, Rev A and 13.32/PL/03, Rev A.
  - 3) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include details of the roof planting and indications of all existing trees on the land, and details of any to be retained, together with measures for their protection in the course of development.
  - 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

## **Main Issues**

### **2. The main issues are:**

- i) the effect of the proposal on the character and appearance of the Kilburn Conservation Area, and
- ii) the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to outlook.

## **Reasons**

### *Character and appearance*

3. The appeal site consists of the basement flat and rear garden of a semi-detached villa which lies within the Kilburn Conservation Area. I have not been provided with a character appraisal of the conservation area, but from what I saw on my visit, I consider that the significance of the area as a heritage asset lies in the good quality design, materials and detailing of the villas.
4. These qualities are mostly found on the front elevations; the rear of the villas lacks the detail and variety of materials. The rear gardens are not large and whilst they are not important constituents of the significance of the buildings as heritage assets, they nevertheless provide an attractive part of their setting.
5. The appeal proposal is for a flat-roofed detached building of contemporary design, with a sedum roof, to be used as a home office. It would be sited at the rear of the garden and would fill almost its entire width. At 2.6m high, it would be about 0.8m above the height of the rear boundary wall, and somewhat more above the side boundary fences.
6. There are no similar outbuildings in the vicinity of the site. In terms of its contemporary design, I consider that its clean lines and low profile roof would offer a high quality building which would sit comfortably in a garden setting, and would not compete with, or jar against, the much larger scale and contrasting design and materials of the host building.
7. The garden is fairly small and the building would occupy just less than about one fifth of its area. The Council's Supplementary Planning Guidance (SPG) *Building in Gardens in Conservation Areas* advocates that where a garden is between 10-25m in length, structures should not exceed half of the total width of the garden, should not have a depth greater than 1/5 of the total garden depth and should not have a footprint greater than 15 sq.m.
8. The SPG does not carry the weight of the development plan. I have not been told of its date, whether it has been formally adopted or whether it was the subject of public consultation. This limits the weight that I can afford it. Moreover, it applies to all conservation areas, regardless of the characteristics which give an area its significance as a heritage asset, and therefore at best it is a blunt tool, which has to be weighed against the particular circumstances of each proposal.
9. The building would be clearly seen from higher windows of nearby properties, but the main characteristic would be the green roof, which is to be planted with a variety of organic sedums, herbs and succulents. I consider that this would assimilate well with planting elsewhere in the garden and in neighbouring gardens. From lower windows, the low profile of the building would ensure that

it would not project substantially above the existing boundary enclosures, and again, nearby trees would provide the dominant foreground or background feature.

10. Whilst a building of this size is not characteristic of the area, I consider that it would not be intrusive or out of keeping with the garden character, and would at least preserve the character and appearance of the conservation area. It would not conflict with saved Policies BE2, BE9 and BE25 of the adopted Brent Unitary Development Plan (UDP), which respectively deal with townscape, local character and context, architectural quality and development in conservation areas. Whilst it would conflict with some of the advice in the SPG, I do not find this conflict to be compelling, for the reasons I have explained.

#### *Outlook*

11. The building would exceed the height of boundary enclosures by less than a metre. It would be separated from the side boundaries by about 0.7m and whilst the separation distance would be slightly less to the rear boundary, there is a double boundary there, providing in total a bigger gap to the garden at the rear. The limited height of the building would be sufficient to ensure that it would not be overpowering when seen either from the gardens or the windows of neighbouring properties.
12. Although it is not a definitive point, the absence of objection from neighbours, coupled with the letter in support from one, strengthens my conclusion that the proposal would not result in material harm to the living conditions of neighbours, or conflict with any of the development plan policies to which I have been referred.

#### **Conditions**

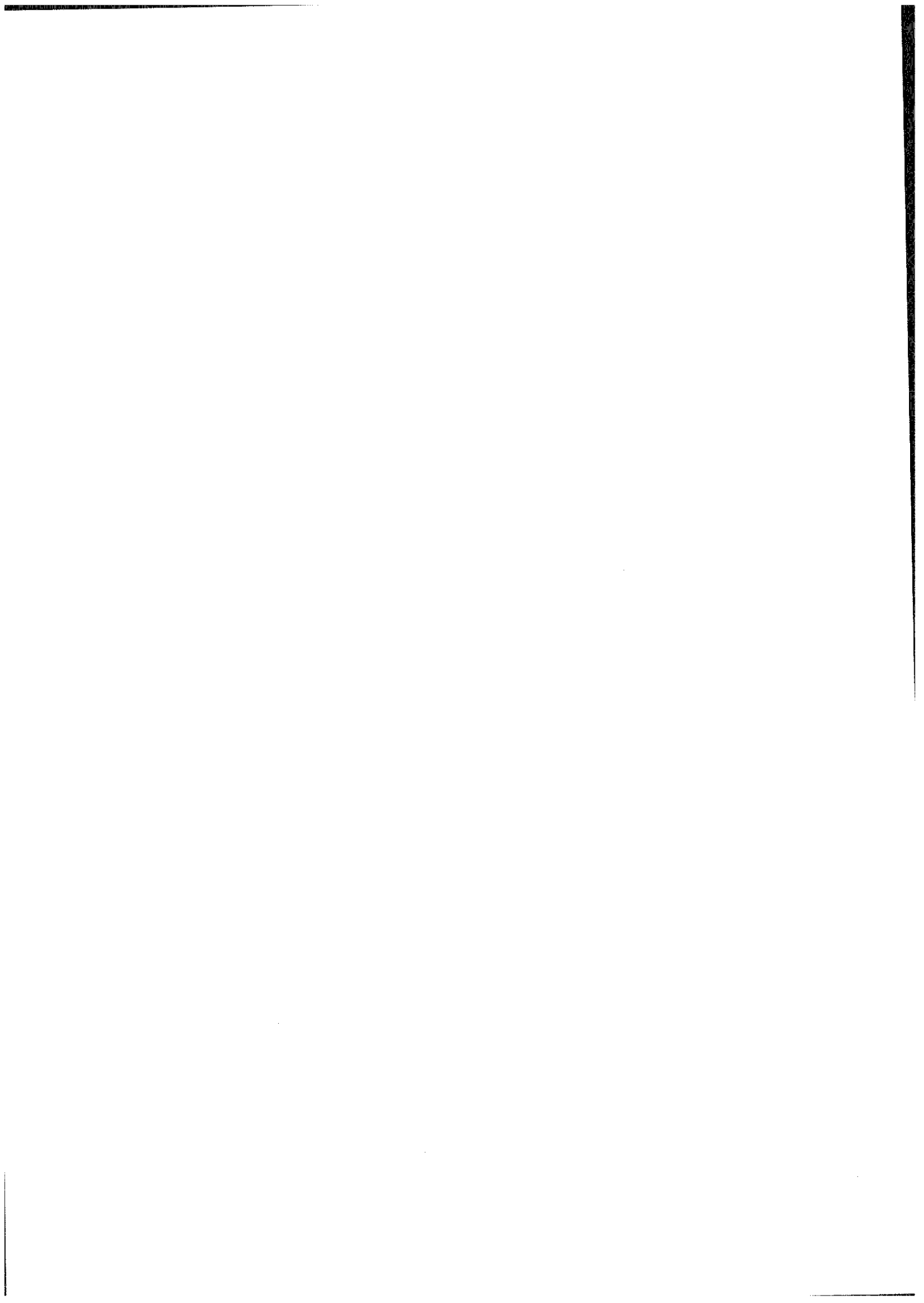
13. The Council has suggested a landscaping condition be imposed. I share the Council's reservations about the practicality of planting in the gap between the sides of the building and the boundaries, but it may be possible for some species to become established in such a location. In any event, planting along the boundary near to the front of the building would help to assimilate it, and further details of the roof planting are necessary in the interests of appearance. I shall also impose a condition to require the development to be carried out in accordance with the approved plans in the interests of good planning and for the avoidance of doubt.

#### **Conclusion**

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

*JP Roberts*

INSPECTOR





---

## Appeal Decision

Site visit made on 28 January 2014

**by Mr C J Tivey BSc (Hons) BPI MRTPI**

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

**Decision date: 26 February 2014**

---

**Appeal Ref: APP/T5150/A/13/2203425**  
**41A Peploe Road, London NW6**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Chris White against Brent Council.
  - The application Ref TPS/13/1179 is dated 2 May 2013.
  - The development proposed is for the demolition of two adjacent derelict garages and the construction of a single storey two bedroom house.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of two adjacent derelict garages and the construction of a single storey, two bedroom house at 41A Peploe Road, London NW6 in accordance with the terms of the application, Ref TPS/13/1179, dated 2 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: S001, S002, S002b, S003, S004, S005, S006, PA02 Rev 0.1, PA03, PA05, PA06 Rev 0.1, PA07, PA08 Rev 0.1, PA09, PA10 Rev 0.1 and PA11.
    - 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
    - 4) No development shall take place, including any works of demolition, until a Construction Method Statement detailing measures to control the emission of dust and dirt during construction has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.
-

### **Preliminary Matters**

2. The appellant submitted revised plans with his grounds of appeal that show a reduction in glazing along the south elevation of the room identified as bedroom 02 on the proposed ground floor plan. The plans before the Council at the time that the appeal was lodged showed this elevation to be glazed across its whole width, whereas the revised plans show a central section of brickwork within this elevation, with a vertical window to each side. These revisions seek to minimise the potential of the proposals to compromise the privacy of the occupants residing at 48 Kempe Road. I consider the changes to the design to be minor in nature and as they were submitted with the appellant's grounds of appeal, which has enabled all interested parties the opportunity to comment upon them, I find that no prejudice would be caused as a result of the amendments. I have therefore included these drawings (those annotated as Revision 0.1) within condition 2 above as forming part of the approved scheme.
3. The appeal is against the failure of the council to give notice within the prescribed period of a decision on the planning application, the subject of this appeal. Within its statement the Council sets out the reasons for refusal that it would have cited, had it been in a position to determine the application. These reasons focus predominantly upon living conditions as set out below.

### **Main Issues**

4. The main issues in this case are the effect of the appeal proposal on the living conditions of i) the occupants of neighbouring residential properties, with specific reference to outlook and privacy; and ii) the future occupants of the proposed dwelling, with specific reference to outlook and daylight/sunlight.

### **Reasons**

#### *Living Conditions - occupants of neighbouring residential properties*

5. The appeal site currently comprises 2no. garage buildings and an attached store which is situated to the rear of 41 Keslake Road to the north, and 46 and 48 Kempe Road to the south. The site is within an established residential area which is located within the Queens Park Conservation Area. The general character of the Conservation Area (CA) is predominantly of two storey, terraced housing with fine architectural detailing and fenestration. However, the section of Peploe Road within which the appeal site is situated, runs counter to the prevailing pattern of development, and predominantly comprises flank elevations of, and side garden walls to housing fronting Keslake and Kempe Roads, with garaging in between. A modern terrace of single storey garages is situated opposite the appeal site.
6. The buildings on the appeal site are in a poor state of repair with the northernmost garage opening being propped up by a steel support and with its brick work showing signs of serious deterioration. They are relatively imposing within the rear gardens of those residential properties backing onto the appeal site, although it is noted that there is currently mature climbing vegetation to the external walls which enclose the rear garden of 48 Kempe Road to its north and east sides. Notwithstanding this, the subject buildings are in a dilapidated state that require fundamental renovation. Following their demolition, it is proposed to erect a 1.8m garden wall to the northern boundary of No. 48 and a

new blank elevation of a similar height to the existing buildings would run along the eastern garden boundary of that property. This could enable the vegetation to re-establish over time; whilst I am sympathetic to the issues arising from its loss, such an impact could be relatively short lived and does not warrant withholding planning permission.

7. The Council make reference to their Supplementary Planning Guidance (SPG) 17 – Design Guide for New Development which was adopted in 2001. I have not been provided with evidence of any public consultation to which this document has been subjected to and which I note was published before the Brent Unitary Development Plan 2004 (UDP). I can therefore only give the contents therein limited weight. However, notwithstanding this, I note within paragraph 2 of Section 3.3 (Privacy) of the SPG that it states that normally there should be a minimum separation of 20m between directly facing habitable room windows on main rear elevations, unless it can be demonstrated that privacy can be maintained through design.
8. Whilst I acknowledge that the proposed garden wall would be lower than the existing building, it would be of a height that would prevent mutual overlooking at ground floor level between the proposed dwelling and its garden, and those dwellings that surround it. In addition, the amended fenestration details to bedroom 02 would further reduce the opportunities for mutual overlooking between the proposed dwelling and the windows to the rear of No. 48 that are above ground floor level, notwithstanding the 16m window to window distance. In addition, I consider that any views afforded from the proposed rear garden towards the above ground floor windows of No.48 would be oblique by virtue of their difference in height.
9. I note that paragraph 3 of Section 3.3 of the SPG states that the minimum direct distance between habitable rooms on the main rear elevation (not extensions) and the rear boundary, or flank wall of adjoining development should normally be 10m or more. However, I do not find this is directly relevant as the southern elevation of bedroom 02 does not constitute the main rear elevation, but an extension thereto, albeit that it would be constructed at the same time as the main range of the building. With regard to the effect of the proposal upon the occupants of 41 Keslake Road, the flank walls of the proposed dwelling would be in a similar position to the existing structures, with only a marginal increase in height that would cause no substantive harm.
10. The rear garden for the proposed dwelling would be adjacent to the ends of the rear gardens of 43 Keslake Road and 50 Kempe Road, as well as No.48. Taking into account the existing close relationship of these rear gardens I consider that the addition of the proposed garden would not have a materially greater impact upon the living conditions of the occupants of those properties, with noise generated from general living activity being limited.
11. Consequently, I consider that the proposed development, by virtue of its scale and mass, and the introduction of habitable room windows and external garden space to its rear, would not have a materially detrimental effect upon the living conditions of the occupants of adjoining residential properties. The proposals would ensure that the outlook and privacy enjoyed by residents of those surrounding dwellings is maintained. I therefore find that the proposal complies with UDP Policy BE9 which, amongst other things, requires buildings and spaces

to be of a scale, design and relationship to each other, which promotes the amenity of users, and provides satisfactory levels of privacy and outlook for existing residents.

*Living Conditions – Future Occupants of the Proposed Dwelling*

12. As I have found above, the guidance as set out within the SPG can only be given limited weight and its contents can only be taken as a guide. I note, however, that the Daylight Assessment Report submitted by the appellants demonstrates a high average daylight factor for all habitable rooms, including the kitchen area and I have no reason to doubt its content. All rooms apart from bedroom 01 would achieve a result of 100% of the working plane receiving light from the sky. Therefore, from this basis I conclude that the proposed dwelling would enjoy appropriate levels of daylight. Furthermore, with regard to its orientation, the dwelling and its garden would also receive a good level of sunlight for the duration of a typical sunny day.
13. In addition, the dwelling would be situated within the quite generous space formed by the rear gardens of properties within Keslake Road and Kempe Road. The 1.8m high rear boundary treatment would enable a private living environment to be created as well as a reasonable level of outlook afforded over it. The kitchen area would benefit from the wide high level window that is proposed to the front elevation of the dwelling, also allowing some, albeit limited outlook which I consider acceptable for a predominantly non-habitable space. Consequently, I also find that the living conditions created by the proposal would be in compliance with UDP Policy BE9, in that it would provide for satisfactory levels of sunlight, daylight, privacy and outlook for its future occupiers.

*Other Matters*

14. The proposed building would be of a contemporary appearance and taking into account the nature of the immediate street scene, which is of a transitory zone between two terraced streets, I consider that such a design approach is appropriate. I note that the Council have not raised any concerns with regard to the visual aspects of the scheme, and I find taking into account the existing dilapidated nature of the garage and store buildings, that the proposal would enhance the character and appearance of the Conservation Area.
15. I note the third party's concerns with regard to the environmental impact of the proposal and specifically the comment that there are nests within the foliage of the climbing hydrangea and ivy. All wild birds, their nests and eggs are protected by the Wildlife and Countryside Act 1981 whose provisions would be enforced by the appropriate authorities; this is not a determining factor in this appeal.
16. I have considered all other matters raised in relation to this appeal, including the content of the development plan and the National Planning Policy Framework against which I find no conflict. Nothing leads me to any other conclusion.



## **Conclusion and Conditions**

17. For the reasons as set out above, I conclude that the appeal should succeed and that planning permission be granted.
18. Other than the standard time limit condition, the Council has suggested a condition requiring details of materials for all external work to be submitted prior to the commencement of development. In the interests of the character and appearance of the surrounding area, this is an appropriate condition. In addition, for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans is also imposed.
19. The Council has suggested that a condition be imposed that requires the construction contractor to be a member of the Considerate Constructor's Scheme. I have not been provided with a policy basis for such a condition and therefore I do not consider it to be necessary. However, I note from the consultation response from the Council's Safer Streets Department, that measures to mitigate against the impacts of dust and fine particles generated from the development should be imposed. Taking into account the close proximity of the site to existing residential properties, I consider that this is an appropriate condition to impose, being in compliance with the tests set out within Circular 11/95.
20. In following the advice of the Local Highway Authority (LHA), the Council suggests that a condition be imposed that prevents future occupants of the dwelling from being entitled to residents or visitors parking permits in the interests of highway safety. I note from the submissions that it is acknowledged by all parties that the garages in question have not been used for the parking of motor vehicles for a considerable period of time, having been used for commercial purposes; and that it is unclear whether they ever provided parking facilities for the adjoining dwellings. Therefore their redevelopment would not give rise to a displacement of local resident's cars being parked on the public highway. It is also acknowledged by the LHA that through the removal of the existing garages it would negate the need for their vehicular crossovers and related dropped kerbs.
21. The Council sets out that there is a requirement for 0.7 car parking spaces for a two bedroom dwelling. UDP Policy TRN23 states that on local access roads outside heavily parked streets, parking may be provided on-street, for the frontage of the development only, providing this is safe and sufficient carriageway width remains. Taking into account the fact that this section of road is not recorded as being heavily parked and sufficient space would still enable vehicles to pass and re-pass, I find that the proposal would comply with the thrust of this policy. In this instance, particularly given the circumstances of the site and the minimal effect the new dwelling would likely have upon local parking I consider that it is unnecessary and unreasonable to impose the Council's suggested fourth condition.
22. The Council also suggests that a highway condition be imposed that requires the reinstatement of the two crossovers and amendments to on-street parking bays to be undertaken at the developer's expense prior to occupation of the development. I note that the parking restrictions immediately outside the site

prohibit on-street parking only during the hours of 8.30am to 6.30pm Monday to Friday. I consider such restrictions to be relatively commonplace within built-up areas and whilst it may be desirable to extend the resident permit parking bays, the evidence does not demonstrate that it is essential in the interests of highway safety. I therefore consider that in this instance such a condition would also be unreasonable and unnecessary.

*C J Tivey*

INSPECTOR

## Appeal Decision

Refs E/11/0624

Site visit made on 18 December 2013

by **Miss A Morgan**

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

Decision date: 20 February 2014

---

**Appeal Ref: APP/T5150/C/13/2202607**  
**38 Alexander Avenue. London, NW10 3QS**

- 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 Chris Ford against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 20 June 2013.
- The breach of planning control as alleged in the notice is without planning permission, the erection of boundary wall, piers and gates to the front and side of the premises.
- The requirements of the notice are demolish the boundary walls with railings and gates to the front and side of the premises, remove all materials arising from that demolition and remove all materials associated with the unauthorised development from premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

---

### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of boundary wall, piers and gates to the front and side of the premises at 38 Alexander Avenue. London, NW10 3QS referred to in the notice

### Ground (a) and deemed application

#### *Main Issues*

2. The main issues are the effect of the development on the character and appearance of the dwelling and the surrounding area and highway safety. There are two elements to this Enforcement Notice; the side boundary wall and the front boundary wall, piers and railings, which are considered below.

#### *Character and appearance*

3. 38 Alexander Avenue is a detached house on the corner of Bryan Avenue and Alexander Avenue on the Dobree Estate. The Dobree Estate consists of predominantly large detached dwellings. The majority of the houses are constructed of red brick however there are some white rendered properties similar to 38 Alexander Avenue.

4. Although low boundary features are present at the some of neighbouring properties, it is noted that this is by no means universal. Opposite the appeal site and further down Alexander Avenue the boundary treatments typically consist of brick walls and piers or brick walls and piers with railings. There is a large degree of front garden enclosure. This type of enclosure is also common in the surrounding streets, such as Dobree Avenue and Byran Avenue, where there is a greater degree of regularity and uniformity in the frontage development of houses and their boundaries. This type of boundary treatment is the predominantly character of this part of the estate, although they do vary in height.
5. As you move further away from the appeal property down Bryan Avenue towards Peter Avenue, past Rowden Avenue, the frontages become more open with low walls and planting.
6. The works to the front have resulted in a higher front wall with piers and railings, predominantly constructed from red brick and there is little by way of planting in the remaining garden, where previously on photographic evidence there was a grassed area and the walls were lower with no railings and were rendered to match the dwelling.
7. Unitary Development Plan (UDP) Policies BE2, BE6 and BE7 are design related policies that seek to ensure that proposals should have regard to the local context and make a positive contribution to the character of the locality by having regard to existing natural features, maintaining existing urban spaces, materials and townscape, and improving, where possible, areas of poor and/or dull appearance. UDP Policy BE9, amongst other things, requires new buildings to incorporate appropriate design solutions and respect their surroundings and be laid out to ensure that buildings and spaces are of a scale, design and relationship to each other, which promotes the amenity of users, both existing and proposed residents. More detailed guidance is set out in Supplementary Planning Guidance 5 – Altering and Extending your Home.
8. The Council have argued that the boundary treatment is not appropriately designed nor sensitive to the character of the locality. However I note from my site visit when viewed from Bryan Avenue up Alexander Avenue and from the opposite directed down Alexander Avenue the boundary treatment blends with the properties along Alexander Avenue. Given the way the front boundary wall, piers and railings reflect the design of many of the surrounding roads and properties, its relationship with the facing property and the wider visual context it is considered that the development has taken into account the character of the surrounding area and complies with the aforementioned policies.
9. The appeal property is located on a slope that rises up Byran Avenue from Donnington Road, towards Alexander Avenue. Due to levels changes some of the corner properties, whose rear gardens are side onto another street, are characterised by boundary treatments of approximately 1.8-2m in height and some have retaining walls as the levels change. Higher boundary treatments, where the need to protect privacy to corner plots rear gardens, are common place in the surrounding area. In this instance it is considered that the loss of trees along the boundary and that they are new bricks have contributed its stark appearance. However the trees could have been removed at any time by the occupier and the materials will weather over time.

10. With regards to the side boundary, it is considered that a reasonable balance has been struck with the need to protect privacy and the impact on the character and appearance of the street.

### **Highway Safety**

11. The Council have also identified a highway safety issues in their reasons for issuing the Enforcement Notice in relation to the height and location of the front and side boundary wall, railings and gates. The works to the front have resulted in a higher front wall with piers and railings than was there previously to the two retained accesses. The piers are also located directly on the back edge of the footpath whereas previously on photographic evidence they were set back, albeit not necessarily in accordance with the visibility splay requirements of Supplementary Planning Guidance 3- Forming an access onto a road (SPG3).
12. Unitary Development Plan Policy TRN15 and SPG3 seek to ensure adequate visibility is provided and to avoid development where public safety is put at risk. SPG3 indicates in the case of domestic accesses, drivers need to see pedestrians clearly over a defined triangle, with the width of the triangle being 2.4 metres either side of the access and the depth being 2.4 metres from the property boundary in the centre of the access. It is acknowledged by both parties that the development does not comply with that guidance. In addition, the taller piers either side of the accesses cause some visual obstruction. From what I saw at my visit, however, the blind spot for both drivers and pedestrians is minimal due to the gaps between the railings. The Appellant states that the accesses are 0.75m wider than the previous accesses and that the risk from the previous boundary treatment has not changed with the new treatments.
13. In light of the above it is considered that vehicles will be adequately seen by passing pedestrians and cyclists and the risk to their safety arising directly from this boundary wall, piers and railings is minimal. Therefore although the access arrangement conflicts with the specific design guidance in SPG3, it is considered that the development does not conflict with its overall aim in this instance.

### **Other Matters**

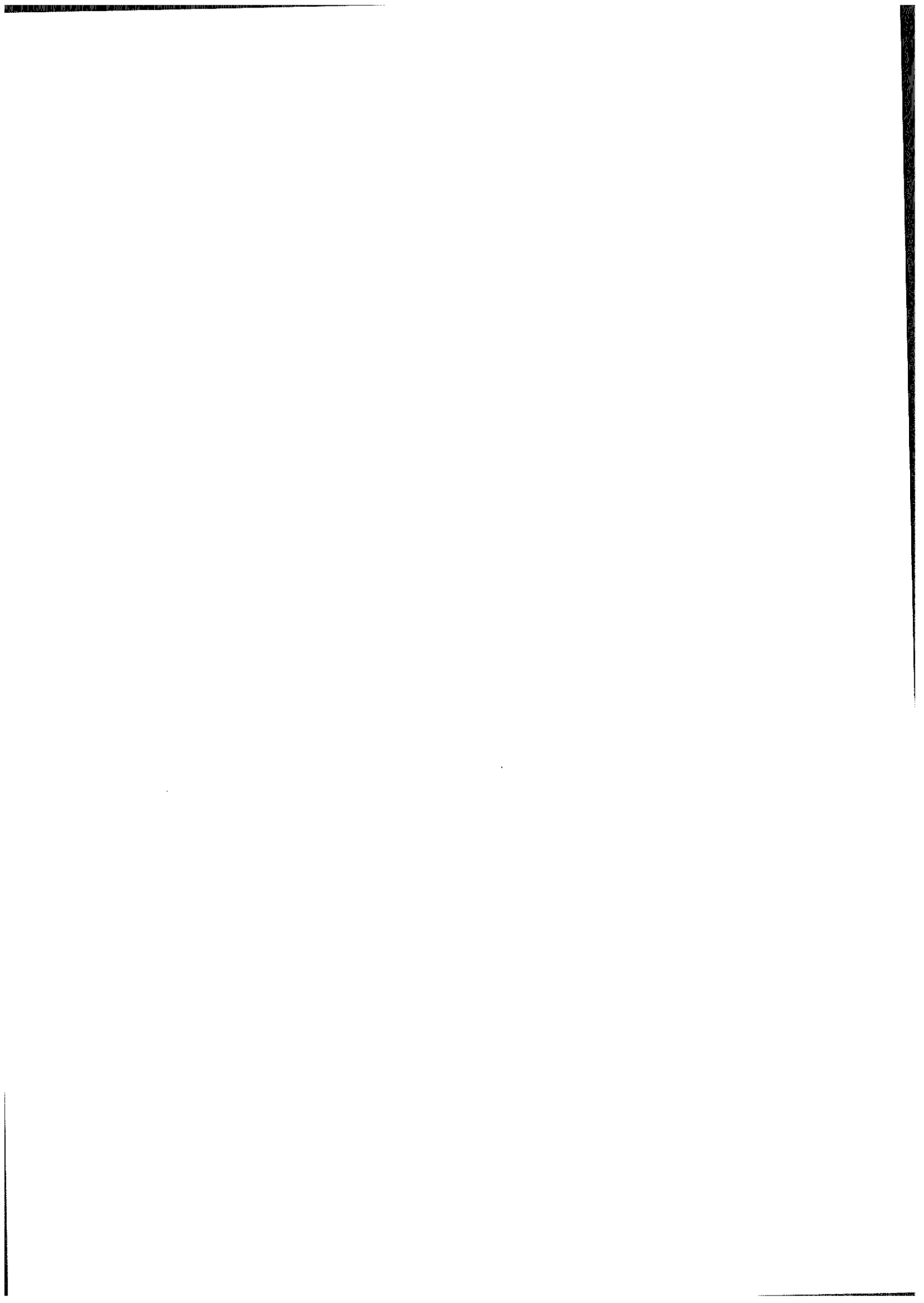
14. The appellant refers to the way the enforcement case was dealt with by the Council this is not a matter for consideration at appeal and is a matter between the appellant and the Council.
15. I have taken into account all other matters raised in the written representations, including a third party letter, received in addition to the main issues discussed above.

### **Conclusion on ground (a) and deemed application**

16. For the reasons given above I conclude that the appeal should succeed. I shall quash the enforcement notice and grant planning permission on the deemed application

*Miss A Morgan*

Inspector



---

## Appeal Decisions

Site visit made on 25 February 2014

by **P N Jarratt BA(Hons) Dip TP MRTPI**

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

Decision date: 28 February 2014

---

**Appeal Refs: APP/T5150/C/13/2199107, APP/T5150/C/13/2199336 and APP/T5150/C/13/2199338**  
**74 and 74A Chaplin Road, Wembley, HA0 4UL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr Satish Lakhani, Mr Hasmukh Lakhani and Mr Bharat Lakhani against an enforcement notice issued by the Council of the London Borough of Brent.
  - The Council's reference is E11310177.
  - The notice was issued on 24 April 2013.
  - The breach of planning control as alleged in the notice is the erection of a building used for residential purposes in rear garden of the premises.
  - The requirements of the notice are to demolish the building in the rear garden of the premises, remove all items and debris arising from the demolition and remove all materials associated with the unauthorised development from the premises.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
  - **Summary of Decisions: Appeals allowed and enforcement notice quashed.**
- 

### Reasons

1. An appeal on ground (d) is that, at the time the notice was issued, it was too late for action to be taken against the matters stated in the notice. In breaches of planning control involving operational development it is necessary for the development to have been substantially completed for a period of four years before the issue of the notice. As the notice was issued on 24 April 2013, the material date is therefore 24 April 2009.
2. The building subject to the allegation is in the rear garden of a dwelling. It is single storey, flat roofed and has a door and two windows facing the rear of the house at No 74/74A. The appellants state that the building was substantially built in 1999 except for the roof but was refused planning permission. The roof was put on the building in 2002 and it was originally used as a laundry and a store but it has been tenanted since 18 July 2005. The appellants have submitted considerable documentation in support of their claim including a copy of the Committee Report for planning application 99/2087 which makes reference to a single storey 4.8 x 7.0 x 3.3m high flat roofed building in the course of construction for use as a store and laundry room at the rear of the application site.

3. Tenancy agreements from 18 July 2005 to 19 May 2013 describe the accommodation as 'use of studio flat at rear of property' and these have been signed by successive tenants: Clement Fernandes (2005-06), Bharti Meggi (2007-2011) and Krzysztof Matejko (2012). The agreements clearly state that electricity, gas and water bills are included within the rent. It also states in the agreement that the landlord is responsible for paying Council Tax.
4. A letter from Capital Boiler Services relates to work carried out to the studio flat at the rear of the property in 2005. A letter from MNR Construction relates to work done to the property and the studio flat since 1997 but does not indicate the date when work was carried out relating to the studio flat.
5. Lake and Company, Chartered Accountants confirm that the studio flat has been rented out since July 2005 and copies of rent sheets provided.
6. Krzysztof Matejko has signed a Statutory Declaration that he resided in Room 3 of No 74 from mid 2005 until May 2012 when he moved into the studio flat previously occupied by another tenant. Clement Fernandes has signed a Statutory Declaration that he resided in the studio flat at the rear of No 74 from 18 July 2006 to 18 July 2007 although this contradicts the tenancy agreements and the statement of his brother, Mr Jose Fernandes, who has confirmed in writing that Clement rented the studio flat at the rear between July 2005-2007.
7. The Council considers that insufficient precise and unambiguous evidence has been submitted by the appellants. In particular, they do not consider that the tenancy agreements cover the relevant period and that they could relate to other flats on the premises. They consider that the tradesmen's letters add to the appellants' case. They draw attention to the property not having been registered for Council Tax, not being subject to 'naming and numbering', and that there are no electoral registration records, utility bills, rent books or tax returns showing income from the dwelling.
8. Where appeals are made on legal grounds, the burden of proof is on the appellant and the standard of proof is on the balance of probabilities. It is not necessary for the appellant's own evidence to be corroborated for it to be accepted<sup>1</sup> but if the Council has conflicting evidence this could indicate that the appellants' case is less than probable. The evidence submitted by the appellants is documented and convincing, notwithstanding the contradiction in Clement Fernandes' declaration. The Council's case is inadequate. It fails to set out the full relevant planning history of the property and the Council does not address or explain the relevance of the 1999 officer's report on the refused application and, in particular, whether the partly constructed single storey building at the rear is the building the subject of this appeal, which I consider it probably is. They have not advanced any substantive arguments why the appellants' case is less than probable. The tenancy agreements are specific, dated and signed; Statutory Declarations have been submitted; and written confirmation about the rent and tax arrangements have been provided by the appellants' chartered accountants.

## Conclusion

9. I consider on the balance of probabilities that the building the subject of these appeals was substantially completed sometime before May 2005 when it was first

---

<sup>1</sup> *Gabbitas v SSE and Newham LBC* [1985] JPL630



tenanted and due to the passage of time , in accordance with section 171B of the Act, it is too late to take enforcement action.

**Decisions**

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

*P N Jarratt*

INSPECTOR

