The Planning Inspectorate

Appeal Decision

Site visit made on 14 October 2010

by Julie Dale Clark BA (Hons) MCD DMS MRTPI

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

Decision date: 10 November 2010

Appeal Ref: APP/T5150/A/10/2130931
106 Chamberlayne Road, London NW10 3JN

- 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 Kish Popet, Harris & Company against the decision of the London Borough of Brent Council.
- The application Ref 10/0139, dated 20 January 2010, was refused by notice dated 7 April 2010.
- The development proposed is the erection and extension of a single storey rear extension to estate agents, and the refurbishment / re-configuration of the flat in 1 Pine Mews.

Application for Costs

1. An application for costs was made by Mr Kish Poppet, Harris & Company against the London Borough of Brent Council. This application is the subject of a separate decision.

Procedural Matter

2. The address of the appeal site is referred to as Chamberlayne Road in some documents and Chamberlyne Road in others. Chamberlayne Road seems to be the accurate spelling so I have referred to the road thus.

Decision

3. I allow the appeal, and grant planning permission for the erection and extension of a single storey rear extension to estate agents, and the refurbishment / re-configuration of the flat in 1 Pine Mews at 106 Chamberlayne Road, London N10 3JN in accordance with the terms of the application, Ref 10/0139, dated 20 January 2010, subject to the following conditions:

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

    2 No development shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local

planning authority. Development shall be carried out in accordance with the approved details.

3 The upper level window in the single storey rear extension overlooking the residential courtyard shall be fitted with obscure glazing and retained in that condition.

4 The development hereby permitted shall be carried out in accordance with the following approved plans:

- Plans dated 10.2009 – EX.00; EX.01;
- Plans dated 01.10 – S.00; EX.02; EX.03; GS.00; GE.01;
- Plans dated 03.2010 – GA.00; GA.01; GA.02; GE.00;

Main Issue

4. I consider that the main issue is the effect of the proposal on the living conditions of the occupiers of the basement flats at Nos 104 and 106 Chamberlayne Road, No 1 Pine Mews and Mews Cottage.

Reasons

5. This is a very closely built urban environment and the extension could potentially result in a loss of daylight, sunlight and outlook to the flats at Nos 104 and 106 Chamberlayne Road, No 1 Pine Mews and Mews Cottage together with their courtyard areas. However, the appellant has produced reports based on Building Research Establishment (BRE) guidance addressing the impact of the proposal on daylight and sunlight to No 106 Chamberlayne Road, Mews Cottage and No 1 Pine Mews. Overall these indicate very minor losses of daylight / sunlight. No 104 Chamberlayne Road is not included in the studies but given the position of this flat and the results of the studies I see no reason why this flat would be any more affected than the other properties.

6. Policy BE9 of the London Borough of Brent Unitary Development Plan 2004 (UDP) establishes that new buildings, extensions and alterations to existing buildings, should embody a creative and appropriate design solution and meet a set of criteria. Amongst other things a satisfactory level of sunlight, daylight, privacy and outlook for existing and proposed residents should be provided. Reference is also made to Supplementary Planning Guidance *Design Guide for New Development* (SPG 17). Although the document itself gives little indication of the level of consultation prior to adoption, the Council confirm that it was subject to widespread consultation and subsequently adopted. Accordingly, I consider it to carry significant weight. Amongst other things SPG 17 aims to avoid unnecessary loss of sunlight / daylight and advises that studies for the winter and summer months may be necessary to assist in assessing the impact of new schemes.

7. Whilst the loss of daylight and sunlight may be within the BRE tolerance levels and therefore acceptable, I am mindful that these properties already experience limited light, especially the basement flats at Nos 104 and 106 and the lower level of Mews Cottage. The Council has also expressed concern about outlook and due to the height of the extension it would have some impact. However, from the evidence submitted I am satisfied that, on balance, the

effect of the extension would not result in a significant harmful effect in terms of loss of daylight, sunlight or outlook.

8. The existing flat, No 1 Pine Mews, would be altered as a result of building the extension above it. Most particularly its main source of natural light from roof lights would be lost. The proposal addresses this by reducing the size of the flat, creating an enlarged courtyard area and putting in new windows facing the courtyard. The flat would also have a new window in the elevation facing Pine Mews, a narrow passage way which provides access to the flat. The character of this flat would be changed by the proposed works but I am satisfied that the occupiers of this property would not experience inadequate daylight, sunlight or an unduly adverse loss of outlook.

9. SPG 17 provides guidance on the size of dwellings in terms of floor area and the internal space would be slightly less than the standard for a two bedroom four person flat. However, I do not consider that the resulting flat would be of a size that would create a substandard level of accommodation and the enlarged courtyard, although narrow and surrounded by walls, would make up for the loss of internal space at least to some degree.

10. In this close urban environment I am satisfied that the living conditions of the occupiers of the flats at Nos 104 and 106 Chamberlayne Road, No 1 Pine Mews and Mews Cottage would not be harmed by the proposal and no conflict with UDP policy BE9 or the aims of SPG 17 would occur.

11. I have considered the Council's suggested conditions in the light of Circular 11/95 *The use of conditions in planning permissions.* Two conditions relating to materials are suggested. These would be met by a single condition as set out in the model condition for the submission and approval of materials in the Circular. I consider such a condition necessary to ensure a satisfactory external appearance. A condition requiring obscure glazing to the window to the extension to the estate agents that would overlook the inner residential courtyard would help ensure an actual and perceived level of privacy.

12. Also, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning and I impose a condition accordingly. However, two of the plans were revised during the course of the application although no revision had been identified on the drawing numbers but the plans are dated differently and I refer to this in the condition. Dates and drawing numbers are referred to as they do on the plans.

J D Clark

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 14 October 2010

by Julie Dale Clark BA (Hons) MCD DMS MRTPI

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

Decision date: 10 November 2010

Costs application in relation to Appeal Ref: APP/T5150/A/10/2130931
106 Chamberlayne Road, London NW10 3JN

- 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 Kish Popet, Harris & Company for a full award of costs against the London Borough of Brent Council.
- The appeal was made against the refusal of planning permission for the erection and extension of a single storey rear extension to estate agents, and the refurbishment / re-configuration of the flat in 1 Pine Mews.

Decision

1. I refuse the application for an award of costs.

Reason

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 or wasted expense in the appeal process.

3. The appellant has relied heavily on the BRE reports to demonstrate that the proposal would not have a harmful effect on the living conditions of the occupiers of the basement flats at No 106 Chamberlayne Road, Mews Cottage and No 1 Pine Mews. These provide useful technical information for a decision on the proposal to be made. However, I do not agree that the Council must disprove the calculations or conclusions of the reports. The Council has substantiated its reasons for refusal in its statement and whilst I do not agree with the Council, it did not have to accept the BRE reports as the sole determining factor in assessing harm.

4. Notwithstanding that I came to a different view of the proposal to that of the Council, with regard to No 1 Pine Mews, the Council fully explained why it considered the loss of the roof lights and the alterations and new window openings unacceptable. With regard to the basement flats at Nos 104 and 106 Chamberlayne Road and Mews Cottage, the Council also explained why it considered the extension to have a harmful effect. I am satisfied that the

Council qualified its views by reference to an appropriate development plan policy and SPG.

5. I note that the appellant forewarned the Council that costs would be applied for if it was necessary to proceed with the appeal. However, the appellant lodged the appeal as is his right and the Council defended its decision in accordance with the appeal procedure.

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

J D Clark

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2010

by Julie Dale Clark BA (Hons) MCD DMS MRTPI

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

Decision date: 10 November 2010

Appeal Ref: APP/T5150/A/10/2131375
72 Lancaster Road, London NW10 1HA

- 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 IFDC Properties Ltd against the decision of the London Borough of Brent Council.
- The application Ref 10/0251, dated 5 February 2010, was refused by notice dated 1 April 2010.
- The development proposed is two storey side extension.

Decision

1. I allow the appeal, and grant planning permission for a two storey side extension at 72 Lancaster Road, London NW10 1HA in accordance with the terms of the application, Ref 10/0251, dated 5 February 2010, 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: E'x'01; E'x'02; E'x'03; P'X'01; P'X'02; P'01; P'02; E'01; E'02; and E'03.

Reasons

2. Nos 70 and 72 Lancaster Road are a pair of semi-detached properties; No 70 is a dwelling house and No 72 provides bed and breakfast accommodation. Both properties have been previously extended and No 70's extension runs flush with the front wall of the house. The two properties sit on a triangular plot on a turn in the road. I consider that the main issue is the effect of the extension on the character and appearance of the area.

3. Policy BE9 of the London Borough of Brent Unitary Development Plan 2004 (UDP) sets out broad principles of architectural quality for new buildings,

extensions and alterations to existing buildings. Amongst other things extensions should be of a scale, massing and height appropriate to their setting and have attractive front elevations. The Council refer to Supplementary Planning Guidance *Altering and Extending Your Home* (SPG5). This has been adopted and the Council state that it was subject to widespread consultation although there is nothing in the document itself that states this. Whilst SPG5 is not strictly relevant as the appeal site provides bed and breakfast accommodation and is not a dwelling, the area is a residential one and the property has the appearance of a dwelling. I have therefore given it modest weight.

4. SPG5 provides guidance on the width of a two-storey extension and advises that they should be set back from the front wall of the house to prevent filling in gaps between buildings and creating the appearance of a row of terraced houses. The ground floor of the proposed extension would be slightly set back and the first floor more so although not as much as suggested in SPG5. The resulting extensions, taking into account the previous one and that proposed, would also be wider than advised in SPG5.

5. However, due to the position of this semi-detached pair of properties in relation to other properties in the road, the turns in the road and the presence of a footbridge over the railway line close by, the extension would not close in a gap between properties and would not create the appearance of terraced houses. The scale, massing and height of the extension would not be out of place in this setting.

6. Although No 72 would be wider than No 70, the proposed extension would be set back in a similar fashion to the extension to No 70 and although the difference in widths affects the symmetry of the pair I do not consider that they would appear unduly unbalanced and the character and appearance of the area would not be harmed. As such no conflict with the aims of UDP policy BE9 or SPG5 would arise.

7. I have considered the conditions suggested by the Council in the light of Circular 11/95 *The use of conditions in planning permissions.* Other than the standard time limit, a condition requiring the materials of the extension to match the existing building would be required in order to ensure a satisfactory appearance. Also, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning and I impose a condition accordingly.

J D Clark

INSPECTOR

Appeal Decision

Site visit made on 25 October 2010

by Sue Glover BA (Hons) MCD MRTPI

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

The Planning Inspectorate
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Decision date:
11 November 2010

Appeal Ref: APP/T5150/A/10/2134298
92A Wrentham Avenue, London NW10 3HG

- 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 Michele Lonergan against the decision of the Council of the London Borough of Brent.
- The application Ref 10/1404, dated 3 June 2010, was refused by notice dated 23 July 2010.
- The development proposed is the insertion of a dormer inside the rear flank elevation.

Decision

1. I allow the appeal, and grant planning permission for the insertion of a dormer inside the rear flank elevation at 92A Wrentham Avenue, London NW10 3HG in accordance with the terms of the application, Ref 10/1404, dated 3 June 2010, subject to the following conditions:

   1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: the site plan and drawing nos. E'01, E'02, P'02, E'x'01, E'x'02, P'x'01 and P'x'02.

   3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development 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.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

3. No. 92A is an upper flat in one of a pair of buildings centrally positioned between 2 other pairs of a similar appearance with steeply pitched roofs. The roofs of the buildings are largely unchanged except for the installation of roof lights at the front and rear. Whilst not part of a conservation area or having any special designation, the buildings make a positive contribution to the character and appearance of the area because of their distinctive roofs and largely uniform character.

4. The proposal is a roof dormer positioned within a flank elevation on the lower part of an inner facing roof at the rear of the building. The proposed position is unusual and it is not covered in detail in the guidance set out in *Altering and Extending Your Home, SPG 5*. The proposed dormer would not be visible from public viewpoints at the front of the building on Wrentham Avenue, and the appearance of the roof from these vantage points would remain unchanged.

5. The dormer would be visible from limited viewpoints close to the railway bridge on Tiverton Road where there is a gap between the high bridge wall, an intervening garage and boundary screening. However, all 3 building pairs cannot be seen together from this viewpoint. At this point, the proposed dormer would be set back some 45m distance from Tiverton Road. It would appear small and discrete on the lower part of the roof, appropriate to its setting and not unduly prominent. There would be no significant impact on the distinctive shape of the roof sufficient to cause harm to the character and appearance of the area.

6. In this respect, there is no conflict with saved Policies BE2 and BE9 of the *London Borough of Brent Unitary Development Plan 2004*, and to the guidance contained within SPG 5. To ensure a satisfactory finished appearance, I have imposed a condition requiring details of external materials.

Sue Glover

INSPECTOR

Appeal Decision

Site visit made on 25 October 2010

by Sue Glover BA (Hons) MCD MRTPI

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

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Decision date:
9 November 2010

Appeal Ref: APP/T5150/D/10/2137350
4 Tintern Avenue, Kingsbury, London NW9 0RJ

- 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 Ramniklal Chudasama against the decision of the Council of the London Borough of Brent.
- The application Ref 10/1511, dated 10 June 2010, was refused by notice dated 13 August 2010.
- The development proposed is an open sided canopy to the side of the rear of an outbuilding as shown on the submitted plan.

Decision

1. I allow the appeal, and grant planning permission for an open sided canopy to the side of the rear of an outbuilding as shown on the submitted plan at 4 Tintern Avenue, Kingsbury, London NW9 0RJ in accordance with the terms of the application, Ref 10/1511, dated 10 June 2010, subject to the following conditions:

   1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: the location plan and drawing nos. TP 1, TP 2, drawing titled "present outbuilding" and an untitled drawing stamped received by the Council on 14 June 2010.

   3) No development shall take place until details of the materials to be used in the construction of the canopy roof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Procedural Matter

2. Although the description on the application to the Council is a canopy extension to an outbuilding / garage, the outbuilding is not a garage and there is no vehicular access to it. The application indicates that no new access from the public highway is proposed. For the purposes of clarity I have therefore omitted the term "garage" from the description of the proposal.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area, and on the living conditions of nearby residents in respect of outlook.

Reasons

Character and appearance

4. The existing detached outbuilding is set back from the street in the rear garden close to the side boundary with no. 6. The proposed open sided canopy extension would be forward of the outbuilding and closer to the street but with a similar building line to the house and garage at no. 6.

5. The rear and side gardens to the appeal dwelling are entirely enclosed by a hedge and /or a fence with a wall and gate at the front of the house. The proposed canopy with its low flat roof would therefore be barely visible from the street scene. At most the roof of the building would be visible from only limited public viewpoints.

6. Given the large garden of this corner plot and the substantive boundary screening, the enlarged outbuilding would not appear unduly obtrusive. It would be satisfactorily assimilated into the suburban setting without material harm to the character and appearance of the area. In this respect the proposal does not conflict with saved Policies BE2 and BE9 of the *London Borough of Brent Unitary Development Plan 2004* (UDP) and to *Core Strategy* (CS) Policy CS 17.

Outlook

7. The canopy extension would be sited close to the side of no. 6's garage, but there is a high wall separating the garage and driveway at the front of no. 6 from the appeal site. The 2 flank wall first floor windows of no. 6 overlooking no. 4 are both glazed in obscure glass, but in any event the canopy roof would be positioned at a much lower level and would not therefore appear obtrusive or overbearing.

8. There would be a significant separation distance from the canopy extension to the attached house at no. 2, which is set back and bounded by a high wall. The proposed canopy extension would be visible from no. 2's windows and from dwellings on the opposite side of the street. However, views would be from a distance, so that the proposed canopy would not appear unduly obtrusive.

9. I conclude that the proposal would not harm the living conditions of nearby residents in respect of outlook. It is therefore in accordance with UDP Policies BE2 and BE9, and to CS Policy CS 17 in this respect. As the external finish of the plastic roof covering is unclear from the information provided, I have imposed a condition requiring details to ensure a satisfactory finished appearance to the development.

Sue Glover

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 26 October 2010

by Andrew Jeyes **BSc DipTP MRTPI**

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

Decision date: 4 November 2010

Appeal Ref: APP/T5150/D/10/2137436
17 Winston Avenue, Kingsbury, London NW9 7LA

- 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 Francesca Severn against the decision of the Council of the London Borough of Brent.
- The application Ref 10/1548, dated 14 June 2010, was refused by notice dated 6 August 2010.
- The development proposed is a single storey side and rear extension.

Decision

1. I dismiss the appeal insofar as it relates to the rear extension to bedroom 3. I allow the appeal insofar as it relates to the side extension and I grant planning permission for a single storey side extension at 17 Winston Avenue, Kingsbury, London NW9 7LA in accordance with the terms of the application, Ref 10/1548, dated 14 June 2010, so far as relevant to that part of the development hereby permitted and subject to the following conditions:-

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

    2) The side extension hereby permitted shall be carried out in accordance with the following approved plans: CHM/3006/1/A1 SHEET 1 and CHM/3006/1/A1 SHEET 2.

Main Issue

2. I consider the main issue to be the effect of the rear extension on the living conditions of the residents of 19 Winston Avenue by reason of loss of light, overshadowing and overbearing appearance.

Reasons

3. The property is, with 19 Winston Avenue, one of a pair of semi-detached bungalows and is situated at the corner of Winston Avenue and Rannock Avenue. The land slopes down to the north so that the rear garden of No 19 is considerably lower than the garden of No 17, although the floor levels of the bungalows are the same. A rear extension is proposed to infill the gap between an existing rear wing of the bungalow and the boundary with No 19.

4. The proposed flat-roofed rear extension, which has been constructed to DPC level, would extend some 2.8m along the boundary and would have a height of around 3.7m above the garden level of No 19. At present, there is no fencing or landscaping adjacent to the extension. The extension would appear in the outlook

from the rear living room of No 19, but would not unacceptably harm living conditions, as the floor level of No 19 is the same as that of No 17, with the floor level of the extension set at a lower level using internal steps.

5. However, the outlook from the garden immediately outside of the bungalow would be severely compromised through the overbearing appearance of the high blank wall along the boundary. In addition, the extension lies to the south of the garden and living room window of No 19 and would overshadow and reduce the amount of light reaching the garden area.

6. The appellant has pointed to a number of properties in the area that have rear extensions along common boundaries. However, each case must be decided on its individual merits taking account of specific site circumstances and these extensions do not therefore provide a precedent for this proposal.

7. For the reasons given, I conclude that the proposed rear bedroom extension would harm the living conditions of the residents of No 19 as it would have an overbearing appearance and lead to overshadowing and loss of light to the rear garden. This would be contrary to saved Policy BE9 of the London Borough of Brent Unitary Development Plan 2004 [UDP] and conflict with guidance within SPG5: *Altering and Extending Your Home* [SPG] that has been adopted following public consultation and which carries substantial weight. These aim to ensure that extensions are of a scale, massing and height appropriate to their location and provide satisfactory levels of light and outlook to existing residents.

8. A side extension is also proposed, and has largely been completed, at the south end of the bungalow to which the Council raise no objections. This extension is of a design that complements the character of the existing bungalow and does not have any adverse effect on the living conditions of adjoining residents. As such, I conclude that the side extension meets the requirements of both saved UDP Policy BE9 and SPG.

9. I consider that the rear extension and the side extension are both physically and functionally independent. I therefore propose to issue a split decision in this case. For the reasons given, I conclude that the appeal should be allowed in respect of the side extension and dismissed in respect of the rear bedroom 3 extension.

10. I have considered the conditions submitted by the Council having regard to the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. A condition is necessary relating to materials to ensure a suitable matching external appearance to complement the existing bungalow. A condition in relation to the plans approved is attached because, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

Andrew Jeyes

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 November 2010

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 24 November 2010

Appeal Ref: APP/T5150/C/10/2125137
96 and 98 Beverley Gardens, Wembley, London HA9 9RA

- 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 Ms M V Dwek against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0094.
- The notice was issued on 8 February 2010.
- The breach of planning control as alleged in the notice is the erection of two, single storey dwellinghouse which do not comply with the plans submitted and approved under ref 06/0689 granted by the Planning Inspectorate under ref: APP/T5150/A/06/2022467 dated 11 December 2006.
- The requirements of the notice are:
    i) STEP 1: remove the container and associated building materials from the premises.
    ii) STEP 2: alter the layout to reflect that is shown on the plan DS/479 attached to the notice.
- 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) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal and direct that the enforcement notice be quashed.

The Notice

2. In a letter from the Planning Inspectorate dated 5 November 2010, my concerns about the way the notice had been drafted were drawn to the attention of the Council. The Council was also invited to consider whether it might be better in the circumstances to withdraw the notice and re-issue it specifying both the alleged breach of planning control and the steps to remedy it more precisely. In a response dated 8 November 2010 the Council explained why it did not consider this to be necessary and I have taken account of the views expressed. I have also had regard to the appellant's letter dated 15 November 2010.

3. The court has established that a notice must tell the person on whom it is served fairly what he has done wrong and what he must do to remedy it[1]. On its face, the allegation and step 2 are apparently clear. However, it is difficult to see how step 1 relates to the allegation since this would appear to be a remedy for an unauthorised storage use that is not alleged. I am satisfied

[1] *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

that, had the notice been upheld, I could have corrected it using the powers available under s176(1) of the Act since there would have been no injustice to either party in doing so. In any event, the container has now been removed from the land.

4. Otherwise, I consider the notice to be clear in that the requirements relate to the allegation which itself is comprehensible. However, when the reasons for issuing the notice are studied, it is clear that neither address the matter of concern to the Council. This is even more obvious from the evidence but I deal with this when considering the appeal on ground (c).

The appeal on ground (c)

5. The gist of the appellant's case is that:
   (a) There is little or no linkage between the alleged breach of planning control and the reasons for issuing the notice;
   (b) Step 2 does not suggest any alteration to the dwellings is required;
   (c) In the absence of any planning condition to require the implementation of specific features shown indicatively on plan DS/479 the omission of them cannot constitute a breach of planning control.

6. In summary the Council's case is that:
   (a) A dwellinghouse amounts to more than just a building-it includes the driveways, gardens and boundary treatments which form part of that dwelling;
   (b) These elements cannot be separated out and the enforcement regime must allow local planning authorities to require developers to comply with a set of approved plans irrespective of whether conditions to that effect have been imposed;
   (c) It is not just a case of the developer not yet fully implementing the permission since other works, such as a hardstanding and kerbs, have been laid out where the approved plan shows 'garden'.

7. The court has held that where a full planning permission is clear on its face it is unnecessary to go outside the permission itself and the approved plans when interpreting its meaning[2]. Where permission is granted following an appeal to the Secretary of State it is the formal decision of the Inspector that forms the planning permission, not the decision letter as a whole.

8. In this case, planning permission was granted on appeal on 11 December 2006 (ref:APP/T5150/A/06/2022467) for 'the erection of two, single-storey dwelling houses, 3 parking bays and new replacement vehicular and pedestrian access' in accordance with the terms of the application, Ref 06/0689, and the plans (not specified) submitted with it. The permission, which is set out in paragraph 12 of the decision letter, is subject to two conditions in addition to that imposing the standard time limit of three years. One required prior approval of the materials to be used and the other removes the permitted development rights available to alter or enlarge the roofs. Neither party has supplied a copy of the application nor the approved plans other than the one attached to the notice.

[2] *Barnett v Secretary of State for Communities and Local Government and East Hants DC* [2009] EWCA Civ 476

9. In my view the permission is perfectly clear both in terms of the development permitted and the conditions that need to be met. One of these is a pre-commencement condition and the other has continuing effect. The allegation does not attack the whole development; it refers only to the two dwellinghouses and alleges that these do not comply with the approved plans. The remedy for this alleged breach is set out in step 2 and requires the layout to be altered to reflect that shown on the numbered approved plan. This plan is the approved site layout and the only detail shown of the dwellings is their position within the development site. The only reasonable conclusion (in the *Miller-Mead* sense) that can be drawn from the notice therefore is that the dwellings are alleged to have been built in a materially different place to that approved.

10. However, on the Council's own evidence, this is not the case. In fact, the Council raises no issue with regard to the construction of the dwellings themselves. Therefore, the matters alleged do not constitute a breach of planning control and the appeal on ground (c) must succeed.

11. Even if my analysis of the meaning of the notice is wrong and the Council's interpretation (for which no case law is cited) is correct, the appeal would still succeed on ground (c). There is no condition attached to the permission linking the implementation of the features shown on plan DS/479 to any event (such as occupation of the dwellings) or any date (say, within a number of months of the substantial completion of the dwellings). Moreover, even if those features shown on the plan, such as the parking bays, planting and boundary treatments, had been laid out in accordance with it, there is no condition requiring their retention thereafter. The claimed absence of these elements of the approved development cannot therefore amount to a breach of planning control.

12. I saw during my site inspection that, in places, the development on the ground is different to that shown on plan DS/479. While the provision of certain of the works now present may, depending on the evidence, amount to a breach of planning control that is a separate matter and in any event is not the breach of planning control alleged in the notice.

Conclusions

13. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Brian Cook

Inspector

The Planning Inspectorate

Appeal Decision

Inquiry held on 16 November 2010
Site visit made on 16 November 2010

by G P Bailey MRICS

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

Decision date: 30 November 2010

Appeal Reference: APP/T5150/C/10/2127390
22 Kinch Grove, Wembley, HA9 9TF

- 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 Mrs I V Birmingham against an enforcement notice issued by the Brent London Borough Council.
- The Council's reference is E/09/0675.
- The notice was issued on 15 March 2010.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a rear extension to the existing garage and the change of use of the garage into a self-contained studio.
- The requirements of the notice are (i) to cease the use of the former garage as a self-contained studio, remove the extension to the former garage and remove all associated items, materials and debris associated with the unauthorised use from the premises; and (ii) to restore the former garage back to its original condition before the unauthorised development took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended). The application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) also falls to be considered.

Summary of Decision: The appeal is allowed following correction and variation of the enforcement notice in the terms set out below in the Formal Decision.

Procedural Matters

1. Oral evidence at the inquiry was given on oath or by sworn affirmation.

The Enforcement Notice

2. At the start of the inquiry, the Council indicated that it no longer wished to pursue that part of the allegation in the notice that pertains to a change of use of the land to which the notice is directed and, in essence, seeks to withdraw that part of the allegation. Accordingly, I am able to correct the notice by deleting reference to the change of use and to vary the requirements of the notice commensurately. I can do so without causing injustice to the appellant.

Background

3. The appeal site comprises one of a pair of inter-war semi-detached houses (Nos.20/22) that stands in a rectangular plot on the north side and towards the end of a residential cul-de-sac. Other pairs of semi-detached houses lie

adjacent and opposite. The appellant and one of her daughters also own No.24 adjacent.

4. Astride the boundary with No.24 stands a semi-detached, pitched-roof garage structure of long-standing, each separate "half" served by contiguous driveways passing alongside the flank walls of the adjoining houses. A single-storey flat-roofed side extension at No.22, permitted in 2008, now occupies the site of the former driveway of that house, thereby removing the vehicular access to the garage; the former garage doors have been replaced by a window and the garage is now used for other domestic purposes, served by a side access door from the rear garden. Although the boundary fence between the rear of this extension and the garage structure is pierced by a gate, wide enough for pedestrians, bicycle or motorcycle, access to it from the road can be obtained only from across the driveway of No.24.

5. The allegation in the notice (as I intend to correct and vary) is directed at another, flat-roofed extension situated wholly within the curtilage of No.22 that forms a rearward projection of the pitched-roof garage structure. That extension is of the same width as that part of the garage within the curtilage of No.22 and undisputed measurements undertaken by the Council in October 2009 indicate that it has a height of about 2.35m and it projects 4.6m beyond the garage structure.

The Appeal on Ground (b)

6. The appeal on this ground is that the extension to which the notice (as I intend to correct and vary) is directed has not been built as a matter of fact. There is a dispute about the length of time that this extension at the rear of the garage structure has existed, but that is a matter for the appeal made on ground (d).

7. There are also disputes about whether this extension comprises a pre-existing building that has been subject to repairs; or whether the pre-existing building has been repaired and incorporated into a larger, extended structure; or whether the pre-existing building has been wholly replaced by another larger structure. These are matters pertinent to the appeal made on ground (c).

8. But, indubitably, an extension to the rear of the garage exists, as a matter of fact, and the appeal made on ground (b) will fail.

The Appeal on Ground (c)

9. In any of the legal grounds of appeal[1], the Courts have held that the onus is placed firmly on the appellant to provide the evidence necessary to refute the allegation in the notice (as I intend to correct and vary)[2]. The test of the evidence is that of the "balance of probability".

10. However, paragraph 8.12 of Annex 8 to Circular 10/97 points out that, in many cases, an appellant will be best placed to produce information about the present and any previous activities on the land and acknowledges that some information, especially about the history of any alleged unauthorised activity on the land, will be peculiarly within the appellant's knowledge.

11. Furthermore, paragraph 8.15 of the same Annex adds that the appellant's own evidence does not need to be corroborated by "independent" evidence in order

[1] That is, appeals made on the grounds contained in s.174(2)(b), (c), (d) and (e) of the 1990 Act (as amended).
[2] See *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404. See *"Enforcing Planning Control: Good Practice Guide for Local Planning Authorities"* (1997) – Chapter 6, paragraph 6.18.

to be accepted[3]; if the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to turn away the appeal, providing the appellant's evidence alone is sufficiently precise and unambiguous to justify allowing an appeal made on legal grounds, on the balance of probability.

12. The pitched-roofed garage is finished in pebbledashed render. The evidence available indicates that prior to the appellant's acquisition of the appeal property in or about 1986, the garage had power and water and contained a WC compartment.

13. A letter from Mrs E Lane, a former neighbour, avers that "*…the brick shed build* (sic) *on to the end of the garage … existed when we moved into (No.24 adjoining) in 1962…"*. No doubt it is that same structure whose presence is attested by the appellant to have existed when she purchased the appeal site. And Mrs P Champness states in her letter, from her knowledge of staying at No.22 weekly for 24 years, that "*…originally there was a garden shed…attached to the end of the garage..."*.

14. Hence, there is no dispute that, in addition to the garage, for very many years, a brick-built structure of some description has stood attached to, or at the very least, abutting the rear wall of the garage. It is also said by those with first hand knowledge of the appeal site that that structure, which has been referred in oral and written evidence variously and as a "garden shed", "an attached area" and "an extension", contained two doors in its end (northern) elevation (facing towards the rear boundary wall of the rear garden).

15. In addition, the evidence indicates the presence at one time of a separate structure accommodating coal. This stood in an area between the end (northern) wall of the "extension" and the rear boundary of the site. Descriptions vary of its form, but, from the evidence of its remnants, now laid to form a pathway in the rear garden, it was comprised of pre-cast concrete sides, ends and roof that would be best described as a free-standing pre-fabricated coal bunker.

16. The appellant, supported by her two adult daughters, her brother and a family friend, all who gave evidence at the inquiry, recollects that the extension was used to accommodate more coal, together with a kennel and a rabbit hutch; Ms Champness refers to two hens having once been kept there. There had been an internal connection between the garage and the extension, blocked by a wooden board which Miss F Birmingham recalled was easily removed, but against which, Mr Braithwaite recalled, the coal was stored.

17. All the witnesses attesting in support of the appellant's case aver to the state of disrepair of the extension. In particular, the roof leaked such that it was necessary to apply corrugated-plastic sheeting on to its surface and to tape plastic bags or other sheeting to the underside. Witnesses recalled pieces of plasterboard falling down inside.

18. It is the appellant's belief that an aerial photograph, taken in 2006 or 2007 by Google Maps when such were first available from this source, shows what is said to be the present extension. It is her further evidence that she has only improved the condition of both the garage and the extension, both of which have been refurbished to provide accommodation used by herself, her adult

[3] See *F W Gabbitas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630.

daughters (who live elsewhere and visit from time-to-time) and her three other children presently aged sixteen, fourteen and eight.

19. It is the appellant's belief that the extension to which the notice (as I intend to correct and vary) is directed has merely been maintained as such, including the application of pebbledashed render to the external brickwork of its original construction. The appellant's photograph, taken in 2003 or 2004 shows the endmost part of the side elevation of the pebbledashed-rendered garage and, at the least, part of the side elevation of the brick-built extension.

20. In answer to my questions, the appellant averred that no walls had been taken down and that they were the same height and length as those before – a like-for-like replacement. However, the appellant's photograph of the structures shows, albeit not conclusively, but on the balance of probabilities, that the height of the brickwork of the extension was formerly lower, by several courses of brickwork, than that of the flank wall of the garage up to its eaves; the present structure is about the same height as that of the eaves of the garage. The appellant maintained that the heights were always about the same, but, in cross-examination by Mr Wicks, she was unable to explain the apparent discrepancy in heights of the two structures that appears to be the case in the photograph.

21. Moreover, neither she nor any of the witnesses appearing in support of her case were able to be precise about what has occurred here. In answer to questions put to her by Professor Wilkin, the appellant stated that the ground area of the extension was exactly the same area *"…as far as I am aware…"*. That adds uncertainty about what her builder had undertaken on her behalf. Although Miss Z Birmingham expressed her belief in cross-examination by Mr Wicks that the size and height of the extension were, *"…or seemed to be…"*, the same as those of the previous structure, she accepted that she had not see the works under construction and *"…didn't get involved…"*.

22. In evidence-in-chief, Mr Braithwaite sought to respond to the questions arising about the apparent discrepancy in the heights of the garage and its extension in the *circa*-2003 photograph, but then singularly failed to do so; indeed, he added to the uncertainties arising by maintaining that it *"…looked bigger after the roof had been replaced…"*.

23. Mr J Andrews visits the appeal site two or three times a week. He did not understand the accusations that the extension had been made bigger, but opined that it was *"…the same size, pretty much…"* and recalled the builder trying to make good the brickwork; in cross-examination by Mr Wicks he further described the deteriorating state of the original brickwork and in answer to my questions, he averred that although the extension had been the same height as that of the garage, the roof was made good and now *"…looks a bit higher…"*, but was unable to give any further explanation.

24. From the rear garden and upper floor windows of an adjoining property, Professor Wilkin has views across the rear garden of the appeal site, partly interrupted by small trees and shrubs in and adjoining these rear gardens. In contrast to the uncertainties arising from the evidence of the appellant's case, it is his written evidence that, in 2009, *"…a significant extension … was made at the back of the garage where previously there had been a small and low coal shed…"* and in sworn evidence to the inquiry, he averred that the *"..small brick shed was taken down…"* and that *"… another larger building (was erected) in its place…"*. In answer to my questions, it is his estimate that the previous

structure projected up to about 1.5m beyond the garage and he was definite that it was less that the current projection which he estimates to be about 4.5m.

25. The Council has no evidence of its own that would throw further light on events surrounding the presence of the structure to which the notice is directed. Although Professor Wilkin is aggrieved about the perceived impact of the extension on his living conditions, nevertheless, the certainty of his evidence contrasts markedly with the uncertainties and vagueness of other evidence presented in support of the appellant's case and I am able to give Professor Wilkin's evidence substantial weight, which runs counter to that adduced by and on behalf of the appellant.

26. That is not to say that the appellant and those who gave evidence on her behalf have deliberately sought to disguise what has happened in this case. The crux of the appellant's difficulties is the imprecision of the evidence adduced for and on her behalf and therefore less weight can be ascribed to it. For example, no documentary evidence, such as invoices for materials and labour, has been produced in evidence that would assist in demonstrating the extent and nature of the works undertaken. There are no plans. Moreover, although it was said at the inquiry that her builder spends the winters in the Caribbean, nevertheless, it is surprising that, on a matter so critical to her case, evidence of the nature and extent of the works has not been obtained from him, whether by letter, or by sworn affidavit. Nor was he called by the appellant to give evidence at this inquiry.

27. Planning permission is required for the carrying-out of any "development" of land[4]. The meaning of the term "development" includes the carrying out of building operations in, on, over or under land, including structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder, but excluding, among other matters, the carrying out for the maintenance, improvement or other alteration of any building or works which do not materially affect the external appearance of the building[5].

28. In the light of the test described in paragraph 8.15 of Annex 8 to Circular 10/97, the case made by the appellant is insufficiently precise and unambiguous to demonstrate, as a matter of fact and degree and on the balance of probability, that the works undertaken to the extension to the garage would be those solely comprising maintenance, improvement or other alteration which would not materially affect the external appearance of the building, hence would be excluded from the definition of "development". Rather, I have found that those works, whether they comprise a completely new building, or the incorporation of the former building into an extended structure, would comprise the carrying out of building operations and comprise "development" requiring planning permission.

29. Accordingly, it remains to be considered whether, in law, the development to which the notice (as I intend to correct and vary) is directed would amount to a breach of planning control.

[4] S.57(1) Town and Country Planning Act 1990 (as amended).
[5] S.55(1), (1A) amd (2) Town and Country Planning Act 1990 (as amended).

30. By Article 3(1) and Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended)[6] (the 'GPDO'), planning permission is granted for certain development, referred to as "permitted development", within the curtilage of a dwellinghouse.

31. By Class E of Part 1 of Schedule 2 to the GPDO, "permitted development" includes:-

> "the provision within the curtilage of a dwellinghouse of – (a) any building…required for a purpose incidental to the enjoyment of the dwellinghouse as such, or for the maintenance, improvement or other alteration of such a building; or (b)…"

32. There is no dispute in this case that the land to which the notice is directed includes a dwellinghouse within its limited meaning as defined in the GPDO and that the development in question lies within its curtilage. However, such permission is governed by the limitations set out in paragraph E.1(a)-(i) of Class E and others contained in paragraphs E.2 and E.3. The Council is satisfied that the development to which the notice is directed would not breach any of those limitations and I see no reason to disagree. Nevertheless, the Council is of the view that the use made of the combined garage and its extension is not one that would be *"…required for a purpose incidental to the enjoyment of the dwellinghouse as such…"* and, as a consequence, would not fall within the ambit of Class E.

33. For the purposes of Class E, paragraph E.4 of Class E defines *"purpose incidental to the enjoyment of the dwellinghouse as such…"* as:-

> "includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse".

That is an inclusive definition which, as such, not only would have embraced, in earlier years, the keeping of hens and rabbits and the accommodation of a kennel as referred to in evidence, but it would not have excluded the storage of coal and other items of domestic use.

34. The appeal site includes a semi-detached house, originally of two storeys, but with additional accommodation provided in the roof space and which, together with the side extension, now contains six bedrooms, occupied by the appellant and three of her children all of school age. She is a school teacher by profession. The works undertaken to the former garage and its extension included converting it, internally, into a single composite area and fitting it out with the intention of improving the standard of accommodation, described by the appellant as making it *"… more user friendly…"*.

35. It is the appellant's evidence that the garage and its extension, both before and after the works undertaken in 2009, has not and does not contain a bed and is not used as additional sleeping accommodation. The garage and its extension had contained a sink or a kitchen unit, described as being "broken" and which has been replaced. The appellant's witnesses recall using the facilities in the garage for cooking and eating temporarily when No.22 was first acquired in or about 1986 and whilst the house was being refurbished, but the cooker has been removed. It had also once contained a freezer and washing machine and

[6] Substantial amendments were made to Part 1 of Schedule 2 of the GPDO by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (SI 2008/2362) with effect from 1 October 2008. As the development in question commenced in 2009, it is to be considered in the light of these amendments to the GPDO.

had been used for storing tools. The toilet was replaced by another. Heating controls and an electricity meter have always remained in the main house.

36. It is the appellant's evidence that the garage and its extension had been used by all members of her family for leisure purposes. Before the Council commenced enforcement action, the appellant avers that the garage and its extension, inasmuch as parts were useable, were used as a children's play area and as a utility room; an exercise bike was kept there. Miss Z Birmingham used it at times as an "escape" from the younger children.

37. Since the enforcement notice was issued, such use has been curtailed; currently domestic items are stored, including papers associated with the appellant's profession. There remains a small sofa/easy chair, a few other chairs, cupboards, sink, television (said to be non-working) and the WC compartment. No replacement cooker, or alternative microwave oven has been installed.

38. It is no longer the Council's case that a separate dwellinghouse has been formed from the combined outbuildings, but rather, the Council argues that their use is for purposes that would be regarded as adding to the normal day-to-day living accommodation as part-and-parcel of the use of the main dwellinghouse, hence would not be regarded as being "incidental".

39. However, as a matter of fact and degree, this combined structure is not one that contains one or more bedrooms or other facilities that would extend the living accommodation of the main house as such. Whilst it might be utilised from time-to-time as a useful adjunct to the main house for household activities, nevertheless, the extent of the uses described would be no more than those which would be dependant on the continuing presence of, and entirely parasitic upon, the continuing use of the main dwellinghouse as a dwellinghouse. Such activities would be those which would be reasonably regarded as connected with the leisure and domestic activities of the householder which would be incidental to and distinguishable as such from those primary residential uses comprising an integral part of ordinary residential use, such as that as a bedroom or kitchen.

40. Furthermore, the building must be "required" for purposes incidental. The test is that of being "reasonably required" for purposes incidental to the enjoyment of No.22. As a matter of fact and degree, there would be nothing extraordinary or unusual about the nature of the use made of the garage and its extension; given also the size and facilities provided by the main house, the garage and its extension would not be so large, commodious or disproportionate in scale, or separated from it by some considerable distance, such that it would be beyond all sense of reasonableness as one that is required for incidental purposes. Moreover, case law indicates that a building within the curtilage including a study or music room and WC and shower facilities would not be outside the provisions of Class E.

41. Class E would not include a building designed at the outset for the provision of primary residential accommodation. However, drawing matters together, in the present case, it is concluded that the purpose of undertaking the works to which the notice (as I intend to correct and vary) is directed is designed to accommodate activities that would be incidental to the enjoyment of the dwellinghouse as such. Accordingly, planning permission is granted for the development by the provisions of Class E of Part 1 of Schedule 2 to the GPDO. The appeal will succeed on ground (c).

Conclusions

42. From the evidence to the inquiry and for the reasons given above, I conclude that the part of the allegation in the notice that refers to a change of use of the garage into a self-contained studio is no longer correct, in that the Council seeks to withdraw that part of the allegation. Accordingly, I shall exercise the powers transferred to me and I shall correct the allegation in the notice and vary its requirements.

43. As to the appeal on ground (c), I am satisfied on the evidence that no breach of planning control has arisen and the appeal on this ground should succeed in respect of those matters which, following correction and variation of the notice, are stated in it as constituting the breach of planning control. In view of the success on ground (c), the appeal on ground (d) and the application for planning permission deemed to have been made under s.177(5) of the 1990 Act (as amended), do not fall to be considered.

Decision

Appeal Reference: APP/T5150/C/10/2127390

44. I direct that the enforcement notice be:-

(A) corrected by, in Schedule 2 of the notice, after the word *"garage"* (where it first occurs), the deletion of the whole of the following text up to and including the word *"studio"* without replacement thereof; and

(B) varied by, in Schedule 4 of the notice, without replacement thereof:-

(a) in "STEP 1", the deletion of the words:-

(i) *"cease the use of the former garage as a self-contained studio,"*; and

(ii) *"and remove all associated items, materials and debris associated with the unauthorised change of use from the premises"*;

and

(b) the deletion of the heading "STEP 1"; and

(c) the deletion of the whole of the text in "STEP 2", including its heading.

Subject to this correction and this variation, I allow the appeal, and direct that the enforcement notice, as corrected and varied, be quashed.

G P Bailey
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs I V Birmingham	the appellant.
She called:	
Miss Z Birmingham	the appellant's eldest daughter;
Miss F Birmingham	the appellant's second eldest daughter;
Mr P Braithwaite	the appellant's brother;
Mr J Andrews	a friend of the appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks	of Enforcement Services Ltd., consultants to Brent LBC.
He called:	
Mr M Wood BSc	Planning Enforcement Officer, of the same Council.

INTERESTED PERSONS:

Professor C Wilkin	local resident.

PLANS VERIFIED AT THE INQUIRY
A with the enforcement notice.

ADDITIONAL PHOTOGRAPHS PUT IN AT THE INQUIRY
1 aerial photograph of appeal site, 2008, and cover sheet, put in for the Council;
2 aerial photograph of appeal site, 2007/2008, put in for the Council;
3 aerial photograph of appeal site, 2010, put in for the Council;
4-9 internal taken through windows and external, taken by Council 8.10.09, put in for the Council.

The Planning Inspectorate

Appeal Decision

Inquiry held on 9 November 2010
Site visit made on 9 November 2010

by Sara Morgan LLB (Hons) MA Solicitor

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

Decision date: 29 November 2010

Appeal Ref: APP/T5150/C/10/2128308
22 Harlesden Gardens London NW10 4EX

- 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 Phillip Harvey against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0014.
- The notice was issued on 31 March 2010.
- The breach of planning control as alleged in the notice is the change of use of the premises from a single family dwelling house to eight self-contained flats.
- The requirements of the notice are to cease the use of the premises as eight self-contained flats and remove all items, materials and debris associated with the unauthorised use, including all kitchens, except ONE, and bathrooms, except ONE, from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. I allow the appeal and direct that the enforcement notice be quashed.

Application for costs

2. At the Inquiry an application for costs was made by Brent Council against Phillip Harvey. This application is the subject of a separate Decision.

Preliminary

3. All oral evidence to the Inquiry was given on oath. Mrs Kablak's evidence was translated into English by her son Yuriy Vyshnivskyy and by Magdalena Kotyza of MZA Associates Ltd (agents for the appellant).

The ground (d) appeal

4. The main issue is whether the change of use alleged took place more than four years before the date when the enforcement notice was issued (ie by 31 March 2006) and has continued since that date, so as to be immune from enforcement action. The burden of proof is on the appellant, and the relevant test of the evidence is the balance of probability.

5. The appeal property is a semi-detached building which now comprises 8 separate units of accommodation, each containing its own bathroom and cooking facilities. All of the flats are accessed mainly through the front door of the building, and the common parts comprise hall, stairs and landings.

6. The Council has referred to the Court of Appeal decision in *Doncaster Borough Council v SOSE and Dunnill and Van Dyck v SOSE and Southend Borough Council*[1] in which Lord Justice Simon Brown commented that a material change of use comprising the use as two or more separate dwelling houses of any building previously used as a single dwelling house occurs not when the physical conversion has taken place but when the separate dwelling houses actually come to be used as such.

7. Mr Harvey told the Inquiry that he and his wife had purchased the appeal property on 2 December 2005, and immediately the purchase had been completed he began to convert the property into eight flats. The works that were carried out included the installation of central heating, replacement of electrics, building of partitions for showers in each room, redecorating and the installation of Velux windows in the roof. He had employed a builder, now deceased, to carry out the work. He had no invoices from the builder for his work, as payments had been made in cash. However, he produced a number of invoices for the purchase of materials from various builders' merchants and other suppliers, and dated between 5 December 2005 and 27 February 2006, which he said had been given to him by the builder and which related to the conversion works at the appeal site.

8. According to Mr Harvey, the building works took approximately 2 months. He said that everything was completed by 11 February, apart from a bit of painting, and that it was completely finished by the beginning of March. He said that the first tenant moved in on 28 February 2006 at the top of the house, before works had been completed on lower floors. He produced tenancy agreements for all eight flats. The first, relating to a room on the second floor, was dated 28 February 2006, and the last was dated 31 March 2006. Mr Harvey said that the dates on the agreements were the dates on which the tenants had moved in. Subsequently, he said, the building had been fully occupied throughout the four year period up to the date when the enforcement notice was served. He thought the longest void he had ever had was one week.

9. Miss Metcalfe said that when the first tenant moved in they were very much at the end of the project and that the only works remaining to be carried out were a few bits and pieces such as painting the hallway. She said they were anxious to get tenants and have the property occupied as soon as possible. She also said that the date on the tenancy agreement for the beginning of the tenancy was the date on which the tenant moved in, because that was the day on which the tenancy started.

10. Mr Floume said that he had visited the property in early February 2006 and looked at all of the flats, although three had already been let. He said all of them at that time had kitchens and bathrooms, but some needed some work to be carried out. When he moved in to his flat on 10 March 2006, the day after he had signed the tenancy agreement, there were two other flats already occupied. He thought the remainder of the flats were occupied during March,

[1] Court of Appeal 21 December 1992

although he accepted in cross-examination that he could not remember exactly when the whole house was occupied.

11. Mrs Kablak's tenancy agreement was dated 29 March 2006. She said twice, when asked when she had moved to the property, that it was 29 April, but corrected this when shown her tenancy agreement. She could not remember whether she had signed the tenancy agreement the same day that she had moved in, as she had been on anti-depressants at the time. A friend, Phindile Matsebula, (the first occupier of a flat at the property according to the other witnesses and her tenancy agreement), had recommended it to her. Mrs Kablak said that Phindile had moved into her flat probably not long before she herself had moved in.

12. Mrs Kablak clearly spoke very little English. I am satisfied that she was trying her best to give honest and accurate evidence, but my impression of her evidence is that her recollection of events was not good, because of her circumstances at the time. In addition, the need for questions and answers to be translated introduced an element of confusion into her evidence. For these reasons, I attach only limited weight to what she told the Inquiry. Although her evidence as to which flat Phindile occupied was very clear, it was contradicted not only by Mr Harvey but also by Mr Floume, as well as by Phindile's tenancy agreement, and I consider on balance that they are more likely to be correct on this point. I also consider, on the balance of probability, that she moved into her flat on the date when the tenancy agreement was signed ie 29 March 2006.

13. Mr Harvey was asked why one of the invoices, dated 27th February 2006, was for 60 m of sawn wood, when he said that all of the works apart from some painting were finished by 11 February. He suggested that this related to the construction of one of the shower rooms. Miss Metcalfe suggested that it could have related to fencing in the garden, the garden having been the last area to be dealt with. Given Mr Floume's evidence of the state of the property when he first visited in early February Mrs Metcalfe's explanation seems to me to be more probable.

14. The Council has acknowledged that the outcome of the ground (d) appeal is dependent on whether or not I believe the evidence of the appellant and his wife. It has no evidence of its own to indicate when the flats were occupied, or to contradict the evidence given by Mr Harvey and Miss Metcalfe. Whilst the evidence suggests that they had a somewhat cavalier approach to the business of converting properties into flats, it does not go as far as showing that they knowingly behaved in a fraudulent manner either in obtaining a residential mortgage for the property (where they acted on the advice of their mortgage broker) or in failing to obtain planning permission and to declare the conversion for Council tax purposes (both of which are sins of omission rather than commission). It suggests a careless disregard for rules and regulations, which does not reflect well on them. But it does not mean that their evidence under oath to the Inquiry should be disbelieved, particularly where there is no evidence to contradict it.

15. The invoices produced in support of the appellant's case are highly suggestive of works taking place at 22 Harlesden Gardens before 31 March 2006, but they do not shed any light on the date when the flats in the converted property became occupied. Of far more relevance are the tenancy agreements relating to each flat. These were produced in two stages, four at the date for

submission of evidence for the Inquiry, and four around a fortnight later. But there is no evidence that these documents are not genuine or that there is a sinister explanation for the late appearance of four of the documents. Indeed, of the four tenants named in the second batch of agreements three were remembered by Mr Floume or Mrs Kablak or both. The fourth agreement related to the room above Mr Floume, which he says was already occupied when he moved into the property, although he does not recall meeting the occupier.

16. Both Mr Harvey and Miss Metcalfe said in evidence that the dates on the tenancy agreements were the dates on which the tenants moved in. If this is correct then the last of the tenants would have moved in on 31 March 2006. That would be consistent with Mr Floume's impression. There is no evidence to contradict the evidence of Mr Harvey and Miss Metcalfe in respect of any of the tenants other than Mr Floume, who said he moved in the day after the first day of his tenancy. There is also nothing to contradict Mr Harvey's evidence that the flats have all been continuously occupied since then.

17. My conclusion, therefore, is that, on the balance of probability, all of the flats were occupied by 31 March 2006. Consequently the change of use of all of the flats to single dwelling houses occurred more than four years before the enforcement notice was issued, and has continued since that date, so as to be immune from enforcement action. Therefore the appeal on ground (d) succeeds and I shall quash the enforcement notice.

18. In view of my finding on the ground (d) appeal, there is no need for me to go on to consider the appeals on grounds (f) and (g).

Sara Morgan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

William Innes	Solicitor
He called	
Phillip Harvey	Appellant
Sarah Metcalfe	Wife of the appellant and co-owner of the appeal property
Timmy Floume	Former occupier of the appeal property
Liliya Kablak	Former occupier of the appeal property

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks MRTPI	Director, Environmental Services Ltd
He called	
Victor Unuigbe BSc(Hons) MSc	Planning Enforcement Officer

DOCUMENTS

1 Official copy of Land Register entries relating to 22 Harlesden Gardens

2 *Doncaster Borough Council v SOSE and Dunnill* and *Van Dyck v SOSE and Southend Borough Council* Court of Appeal 21 December 1992