The Planning Inspectorate

Appeal Decision

Site visit made on 13 December 2011

by John Bell-Williamson MA MRTPI

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

Decision date: 6 February 2012

Appeal Ref: APP/T5150/A/11/2161651
4 Sanellan Court, 1 Mapesbury Road, London NW2 4HX

- 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 Simon Power against the decision of the Council of the London Borough of Brent.
- The application Ref 11/0224, dated 29 January 2011, was refused by notice dated 28 March 2011.
- The development proposed is conversion of the existing two-bedroom first floor flat and associated garage into a self-contained one-bedroom maisonette, and a self-contained two-bedroom flat with associated extensions, installation of front rooflight and installation of front and rear doors.

Procedural Matters

1. A more accurate and concise description of the proposed development than that used in the planning application is 'conversion of the existing two-bedroom first floor flat and associated garage into a self-contained one-bedroom maisonette, and a self-contained two-bedroom first floor flat.' This description has been used in determining the appeal.

2. The address of the appeal property included in the planning application is '1 Sanellan Court, Mapesbury Road.' However, it is clear from subsequent statements and correspondence that the correct address is 4 Sanellan Court, 1 Mapesbury Road. Therefore, this address has been used in respect of this appeal.

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Decision

4. The appeal is allowed and planning permission is granted for conversion of the existing two-bedroom first floor flat and associated garage into a self-contained one-bedroom maisonette, and a self-contained two-bedroom first floor flat at 4 Sanellan Court, 1 Mapesbury Road, London NW2 4HX. The permission is granted in accordance with the terms of the application, Ref 11/0224, dated 29 January 2011, subject to the conditions included in the Schedule at Annex A.

Main Issues

5. The main issues are: the effect of the proposal on the provision of family accommodation; on the occupiers of Flat 4, with regard to provision of outdoor amenity space; whether the proposal would provide adequate living conditions for future occupiers of the maisonette, with regard to outlook and privacy; and the effect on the character and appearance of the appeal property and whether the proposal would preserve or enhance the character or appearance of the Brondesbury Conservation Area.

Reasons

Provision of family accommodation

6. The appeal property is situated within a large detached building in a residential area that comprises similar properties that are either single houses or sub-divided into flats. Policy CP21 of the London Borough of Brent Local Development Framework Core Strategy (the Core Strategy) seeks to maintain and provide a balanced housing stock. The policy requires provision of family sized accommodation in suitable new-build schemes and conversions, as in this case.

7. Flat 4 currently has two bedrooms but Policy CP21 defines family sized accommodation as flats or houses 'capable of providing three or more bedrooms.' Accordingly, reference has to be made to the size of the flat to determine whether it is capable of accommodating an additional bedroom. Guidance on minimum internal areas for flats and houses is included in Supplementary Planning Guidance, *Design Guide for New Development* (SPG17). This provides a minimum size for a three bedroom flat of 80m^2. The Council also refers to more recent guidance in The London Plan 2011 which gives a minimum size of 86m^2 for the same type of flat.

8. The parties differ on the internal measurement of the appeal property; the appellant's measurement is 79.5m^2 while the Council's is 93.5m^2. Taking into account this difference, and with particular regard to the appellant's measurement as the lower figure, there is no material divergence from the minimum guidelines in SPG17 and The London Plan to suggest that Flat 4 is not capable of accommodating three bedrooms. However, Policy CP21 must be read as a whole as it includes other requirements for accommodation to be considered suitable for families.

9. The supporting text to Policy CP21 (paragraph 5.76) indicates that family accommodation would not be required on sites where it is not possible to provide a satisfactory environment for young children. Lack of external amenity space is identified as an important requirement in this respect. SPG17 includes guidelines for the size of outside space and indicates that a minimum of 50m^2 will normally be provided for a ground floor flat or house suitable for a family. Despite the appeal property being a first floor flat, this standard provides an indication of the minimum space expected by the Council in relation to family accommodation.

10. At approximately 15m^2 the current garden to Flat 4 falls considerably short of this standard. The Council argues that the standard should be applied flexibly given the generous size of Flat 4 and the acute need for family accommodation.

While I acknowledge this, regard also has to be had to the suitability of the amenity space for its intended use. Access is gained to the space from Flat 4 by way of two flights of stairs, through the communal entrance of the main building, across the communal forecourt and through two large sets of garage doors. In these circumstances, it would be difficult for young children to gain easy and safe access to the outside space, to the extent that it could be said to provide a satisfactory environment in the terms required by Policy CP21.

11. Taken together, the size and suitability of the outside space would not make it appropriate for family use. Therefore, despite its overall size, Flat 4 is not capable of providing family accommodation on the basis of the requirements included in Policy CP21 of the Core Strategy.

12. Taking into account the overall floorspace of the existing Flat 4, even with the proposed loss of the current second bedroom to the proposed maisonette, I am satisfied that the size of the reconfigured flat would not depart from the standards set out in SPG17 and The London Plan for a two bedroom flat, to the extent that it would be harmful to the living conditions of future occupiers. In respect of this aspect of the proposal there would not, therefore, be any conflict with development plan policies or guidance in this regard.

Provision of outdoor amenity space

13. SPG17 provides guidance - in support of Policy H18 of Brent's Unitary Development Plan 2004 (the UDP) concerning the quality of flat conversions - that a minimum of 20m^2 of amenity space will normally be provided for each unit in a block of flats in any scheme. The Council has accepted that this requirement would be met for the new maisonette by its occupiers' use of the existing space currently associated with Flat 4. However, a new unit would be created with no commensurate provision of amenity space for that which is lost from the existing flat.

14. However, it is not unusual for flats in dense urban areas and particularly on upper storeys of buildings not to have dedicated amenity space or a garden. There is also some flexibility within the standards in SPG17 in respect of the relevant amount of amenity space which will 'normally' be provided for each flat. In this instance, having considered the character of the area and the type of resultant accommodation, which I have already concluded cannot be considered suitable for a family, I am satisfied that in these circumstances there is no need for outside amenity space. Therefore, there would be no conflict with Policy H18 of the UDP and SPG17 in this regard.

15. The appellant has submitted a Unilateral Undertaking to secure a contribution towards the provision and maintenance of public open space. However, the Undertaking exhibits a number of deficiencies in its drafting which render it in adequate in terms of delivery. In addition, it is unclear how the contribution has been calculated and how and where the sum proffered through the Undertaking would be used. Therefore, I consider that there is a tension with the policy in Circular 05/2005, and taking into account my above conclusion that outside amenity space would not be required, the Undertaking has been given no weight in the determining of this appeal.

Living conditions

16. With regard to outlook, the Council is concerned that views from the rear ground floor windows of the maisonette would be towards a high wall. Furthermore, the distance between the windows and wall would be less than half the minimum distance required in such circumstances according to guidelines in SPG17. However, the standards referred to in SPG17 relate mainly to privacy rather than outlook and, in addition, can be applied flexibly according to the circumstances.

17. In this case, the most direct view from the relevant windows would be towards the garden fence and side of a garden shed directly opposite the rear of the maisonette. This view is relatively open due to the limited height of the fence. While there would be oblique views of the high wall of the house to one side of the garden, this would not appear as overly dominant or overbearing. For these reasons, the outlook would not be harmful to the living conditions of occupiers of the maisonette.

18. The Council contends that because the proposed front door of the maisonette would open directly onto the communal forecourt, users of this space would be able to look directly into the habitable space. However, the existing garage is set to one side of the main building and, consequently, people entering the driveway on this side and walking to the main communal entrance would not be particularly close to the front door of the maisonette. Furthermore, the extent to which the front door would be open in general day-to-day use of the property would not lead a harmful loss of privacy from any views that might be gained. Indeed, many properties have direct access from habitable rooms onto a public footpath with no obvious loss of privacy. For these reasons, with regard to both outlook and privacy, there would be no harm to the living conditions of future occupiers and therefore no conflict with development plan policies or guidance.

Character and appearance

19. The front door of the proposed maisonette would change the appearance of the existing garage doors principally through the addition of glazed side windows. These would be similar to the existing glazing across the top of the garage doors and would be visible from public and private views on Mapesbury Road. The Council is concerned that the similarity of the proposed to the existing design with a pedestrian opening is not suitable for domestic use and there are no other examples of this type of door in the Conservation Area.

20. The Brondesbury Conservation Area is a small area encompassing large residential properties in Mapesbury Road and several other surrounding roads. While garages do exist in similar positions in some neighbouring properties, there is no uniform appearance or design to these. There are a range of different types of garages of various designs and in these circumstances the proposed entrance would not appear incongruous, particularly due to the limited changes to the appearance of the existing doors. The Council also expressed concern about the effect of the proposed rooflight in the maisonette. However, this would be the same as the existing feature and would not be incongruous or unduly visible from external views of the appeal property.

21. For these reasons, the proposal not be harmful to the character and appearance of the host building, and would preserve the character and appearance of the

Conservation Area. As a result, the proposal would not conflict with policies in the Brent UDP or *Planning Policy Statement 5: Planning for the Historic Environment* that are designed to ensure this important objective of preserving or enhancing heritage assets is met.

Conditions

22. The Council expressed concern about the lack of details provided with the application about refuse and recycling facilities. I agree that these are important considerations for the occupiers' living conditions and the wider residential environment and that they should be addressed through imposition of a condition, as suggested by the Council.

23. The other two conditions suggested by the Council have been imposed. These are the standard time condition and, to avoid doubt and in the interests of good planning, one which requires development to be carried out in accordance with the approved plans. As the appeal site is within a Conservation Area it is particularly important to ensure use of appropriate materials for any external finishes in the proposed development. Accordingly, I have imposed a condition to achieve this, as suggested by the appellant.

Conclusion

24. For the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be allowed.

John Bell-Williamson

INSPECTOR

Annex A

Schedule – 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: location plan, 0926_L_021 Revision B, 0926_L_022 Revision C, 0926_L_023 Revision B, 0926_L_024 Revision A and 0926_L_025 Revision A.

3) Details of the refuse and recycling storage facilities to be provided for both dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The facilities will be provided in accordance with the approved details, prior to occupation of the dwellings, and thereafter permanently retained.

4) No development shall take place until samples of the materials to be used for the external surfaces of the dwellings 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.

The Planning Inspectorate

Costs Decision

Site visit made on 13 December 2011

by John Bell-Williamson MA MRTPI

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

Decision date: 6 February 2012

Costs application in relation to Appeal Ref: APP/T5150/A/11/2161651
4 Sanellan Court, 1 Mapesbury Road, London NW2 4HX

- 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 Simon Power for a full or partial award of costs against the Council of the London Borough of Brent.
- The appeal was made against the refusal of planning permission for conversion of the existing two-bedroom first floor flat and associated garage into a self-contained one-bedroom maisonette, and a self-contained two-bedroom flat with associated extensions, installation of front rooflight and installation of front and rear doors.

Decision

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

Reasons

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

3. The appellant contends that the Council did not have proper regard to its own policy and guidance, to national policy in *Planning Policy Statement 3: Housing* (PPS3) and to emerging London-wide design guidance in its assessment of the suitability of Flat 4 as family accommodation. This was particularly the case, in the appellant's opinion, with regard to the inadequate size of the garden area and the indirect access to it. While the Council did not make explicit reference to PPS3 and the emerging London-wide guidance, it did rely on Policy CP21 in its recently adopted Core Strategy. This policy addresses the matters raised by the appellant in relation to the suitability of the residential environment for families, including provision of outdoor amenity space.

4. The Council argued that in this instance the policy and guidance in respect of amenity space should be applied flexibly, because of its desire to meet the important policy objective of providing family accommodation, which is clearly set out in the Core Strategy. The approach it took, relying on development plan policy and reaching a decision based on this in the particular circumstances of the case, informed by judgement, does not amount to unreasonable behaviour by the Council.

5. In the appellant's view, the Council failed to provide evidence of historic use of Flat 4 as a family-sized dwelling within the terms of Policy CP21. The focus of much of the debate between the parties on this point was whether the appeal property had had three bedrooms in the past. However, the Council substantiated its case on this issue by reference to Policy CP21 and the space standards set out in SPG17 to demonstrate, in its opinion, that the flat was capable of meeting the requirements for family accommodation. Despite the fact that the parties did not agree on this matter, in the circumstances I find no unreasonable behaviour on the Council's part.

6. With regard to the living conditions of future occupiers, the appellant states that the Council adopted an inconsistent approach to privacy standards and took no account of the proposed entrance screen. In addition, the appellant asserts that the Council's refusal on the basis of outlook is inconsistent with its acceptance of the appellant's technical report on this matter. On privacy, while reference was made to a number of other decisions, each case should be determined on its individual merits and it is not always possible or appropriate to make direct comparisons. This Council's response reinforces this view, as a number of the decisions referred to were taken some considerable time ago or are not directly comparable to the current appeal. As such, there was no unreasonable behaviour on the Council's part.

7. The Council contends that while it did not explicitly refer to the entrance screen, this does not mean that it did not have regard to it. In particular, it was not clear how the screen would be used and how effective it would be. While I accept that the Council could have sought further information in this regard, no evidence has been provided by the appellant of unnecessary or wasted expense in relation to this matter, which was one of a number of reasons for refusal that the appellant had to address as part of the appeal. For these reasons, I consider that the Council's behaviour was not unreasonable. The appellant's technical report concerned levels of daylight and sunlight in the maisonette, not outlook from the building, which is a separate matter. Therefore, there was no unreasonable behaviour in this regard.

8. The appellant asserts that the Council did not have proper regard to its own guidance in SPG17 on amenity space by not seeking a financial contribution towards off-site open space to compensate for that which would be lost. This resulted in the appellant providing a Unilateral Undertaking. The Council responds that it objected to the loss of family accommodation, including the amenity space, and had it requested a financial contribution and continued to oppose the application, this would have been unreasonable to the appellant. I accept that while the Council could have indicated that in the event of the appeal being successful it would have required a financial contribution to off-set the loss of space in accordance with SPG17, in the circumstances, for the reasons it gives, the Council did not behave unreasonably.

9. On the Council's concerns about the design matters in respect of the maisonette, the appellant contends that the view taken was arbitrary and unsupported. However, the Council referred to specific reasons as to why it considered the proposed rooflight was, in its view, inappropriate. In relation to the proposed doors, it compared these to the existing garage doors and gave the specific reason that they were not considered appropriate in a domestic setting. While I accept that these arguments could have been developed

further to substantiate the reason for refusal, the position the Council took does not amount to unreasonable behaviour.

10. The final ground of the appellant's claim relates to the lack of details about waste and recycling facilities. The appellant asserts that this was not a ground for refusal in a similar circumstance in relation to a previous application and that the Council could have suggested a condition to overcome this concern. I accept the Council's view that had this been the only or main reason for refusal, the approach taken would have been unreasonable. This issue was included in a wider reason for refusal related to future occupiers' living conditions and the Council did subsequently, in its appeal statement, suggest the wording of a condition to address its concern. Taken together with the fact that the appellant has not referred to any specific unnecessary or wasted expense incurred, for these reasons I find no unreasonable behaviour on the Council's part that warrants an award of costs.

11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and an award of costs is not justified.

John Bell-Williamson

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 13 February 2012

by Ray Yorke BA(Hons) Dip TP MRTPI

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

Decision date: 27 February 2012

Appeal Ref: APP/T5150/A/11/2159347
1 Jubilee Heights, Shoot Up Hill, London NW2 3UQ

- 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 Redab Midtown Ltd and Redab Kilburn Ltd against the decision of the London Borough of Brent.
- The application Ref 11/1307, dated 20 May 2011, was refused by notice dated 15 July 2011.
- The development proposed is construction of a five storey residential building to provide 5 x 2 bed flats.

Decision

1. The appeal is allowed and planning permission is granted for the construction of a five storey residential building to provide 5 x 2 bed flats at 1 Jubilee Heights, Shoot Up Hill, London NW2 3UQ, in accordance with the terms of the application, reference 11/1307, dated 20 May 2011 and the plans submitted therewith, subject to the conditions set out in the Appendix to this Decision.

Main Issues

2. The main issues in this case are:

   (a) the effect of the development on amenity land within the Jubilee Heights and Cedar Lodge development.

   (b) the effect of the development on the living conditions of neighbouring residents with particular regard to outlook, sunlighting and daylighting.

   (c) the need for contributions towards community infrastructure.

Reasons for the Decision

3. The appeal site is within a residential area containing mostly large flatted developments and is visually separated from the commercial uses of Kilburn High Road by the railway embankment and the bridge that carries the railway across the main road. Minor commercial uses adjoin the northern side of the railway embankment opposite the appeal site.

4. 1 Jubilee Heights is a modern building of 8 storeys which has been converted to residential use and extended in recent years. It is associated with the

modern 5 storey building at Cedar Lodge which was built as residential flats. I have noted the extensive planning history of the site.

Effect on amenity land

5. The proposal would construct a building of 5 storeys attached to the Jubilee Heights building at its south eastern corner and projecting forward of the existing building on the Shoot Up Hill and Exeter Road frontages. It would be built on part of a landscaped amenity area and partly on an area occupied by a pedestrian ramp.

6. The appeal site is within an Area of Open Space Deficiency but I note the appellants' reference to existing open spaces within a reasonable distance of the appeal site. Saved Policy H12 of the Council's Unitary Development Plan 2004 (UDP) says that developments should have an amount and quality of open landscaped areas appropriate to the local availability of open space and the needs of prospective residents. Policy H13 seeks to balance the efficient use of land and the amenity needs of residents, with the most dense developments being appropriate in areas with good transport accessibility. The appeal site is in such an area. Policy BE9 expects development to be laid out in a way which promotes the amenity of users.

7. The Council's Supplementary Planning Guidance *Design Guide for New Development* adopted 2001 (*Design Guide SPG 17),* to which I give some weight, says at paragraph 5.1 that external open space is a very important part of any scheme providing for circulation as well as residential amenity.

8. Design Guide SPG 17 says that a minimum of 20 sq.m. will normally be provided for each unit in a block of flats. However it also says that if the quantity and quality of amenity space provided fails to meet these standards, this underprovision will be expected to be offset through a number of measures, including increased unit floor sizes, more generous balconies or roof terraces and S.106 payments towards improvements to the local public realm and open space. The proposal includes balconies for the proposed flats and a rooftop communal garden.

9. I have noted the Council's concern that the total amount of external communal open space at the existing Jubilee Heights/Cedar Lodge development is below the 20 sq.m. per flat of external amenity space required for the existing 121 flats at Jubilee Heights and Cedar Lodge. However, it seems to me that the appeal proposal would provide sufficient amenity space to meet the needs of the occupants of the 5 proposed flats and would provide a small surplus to help reduce the shortfall elsewhere in the Jubilee Heights/Cedar Lodge development referred to by the Council. I consider that the appeal proposal would enable better amenity use of the hard paved areas to either side of the main entrance to the existing building.

10. The Council is also concerned that the development would result in the loss of an area of external open space which has high amenity value because of its orientation and which currently receives good daylight and sunlight throughout most of the day, and that the proposed development would adversely affect the remaining external open space through the removal and screening of sunlight for the majority of the day to this space.

11. The front elevation of the Jubilee Heights building faces north eastwards and the amenity land along the Shoot Up Hill frontage is mostly situated to the north east of the 8 storey building. The amenity land is already overshadowed by the existing building for much of the day. However, the Daylight and Sunlight Assessment submitted by the appellants demonstrates that only a small part of the amenity area would be in permanent shadow. Guidance relating to gardens and amenity areas is set out in *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice (Second Edition)* published by the BRE Trust (the BRE Guidelines). The Guidelines recommend that at least half of amenity areas should receive at least two hours of sunlight on 21 March. It seems to me that this would continue to be the case in relation to the greater part of the remaining amenity land area fronting Shoot Up Hill.

12. I have also taken into account that the proposed communal roof garden would be available to all residents and would be in a location which would receive good levels of daylight and sunlight. In my opinion this would compensate for the small part of the existing amenity area which would be in permanent shadow as a result of the development. I consider therefore that the proposal would not significantly adversely affect the quality of the amenity land along the Shoot Up Hill frontage.

13. I conclude on this issue that the proposal would provide sufficient amenity land for the development proposed and that it would not significantly adversely affect the quality of the existing amenity land fronting Shoot Up Hill which would remain. The proposal would therefore not be contrary to UDP Policies BE9, H12 and HE13 or to the guidance in Design Guide SPG17.

Effect on living conditions

14. The second ground of the Council's decision sets out the Council's concerns regarding the effect of the proposal on the kitchen windows of the existing adjoining flats at the first, second and third floors of the Jubilee Heights building. These concerns relate to restrictions of outlook and overbearing nature and loss of morning sunlight to these windows. These flats are numbered 108, 208 and 308 and the windows concerned face north eastwards. Saved UDP Policy BE9 expects among other things that extensions and alterations to buildings should be laid out to provide satisfactory levels of sunlighting, daylighting and outlook for existing and proposed residents.

15. The Daylight and Sunlight Assessment submitted by the appellants points out that the windows of concern to the Council are facing within 90 degrees of due north, and that there is therefore no requirement for sunlight assessments. This opinion is consistent with paragraph 3.2.3 of the BRE Guidelines.

16. The Daylight and Sunlight Assessment demonstrates that, although there would be some impact on daylight to these windows, the daylight received would still be above the recommended Vertical Sky Component set out in the BRE Guidelines.

17. I was able to see the outlook from the kitchen windows of two of the existing flats referred to above and to assess the impact of the proposed development on that outlook. Looking out to the right from the windows there is a view at present to the railway bridge. The proposed development would result in the loss of that view. However, it seems to me that there would still be an

adequate outlook from the kitchen windows towards Shoot Up Hill and that the proposed development would not be overbearing in relation to these flats.

18. The Council has referred to SPG5 – *Altering and Extending Your Home* adopted 2002. There is no information to indicate whether this document was the subject of public consultation prior to its adoption by the Council. Moreover, it seems to me that SPG5 relates primarily to domestic extensions rather than to a development such as the appeal proposal. This limits the weight I can attach to this document in this case.

19. I conclude on this issue that the proposed development would not result in significant loss of daylight to the kitchen windows assessed. I also conclude that whilst there would be some loss of view from these kitchen windows, an adequate outlook would remain and the development could not be regarded as overbearing.

20. I therefore find that the appeal proposal would not significantly adversely affect the living conditions of neighbouring residents with regard to outlook and daylighting. The proposal would not therefore be contrary to UDP Policy BE9 in this respect.

Contributions towards community infrastructure.

21. The third and fourth grounds of the Council's decision relate to the additional pressure on transport infrastructure and education and increased pressure for the use of existing open space resulting from the development. They also say that the proposed development would not make sufficient provision for affordable housing on site or make satisfactory provision to compensate for this off site.

22. Policy CP2 of the Council's Core Strategy (adopted 2010) sets out the Council's aim that 50% of new homes should be affordable. Policy CP18 says that contributions will be sought from developments to help provide new or improved open space facilities in areas of deficiency. UDP Policy CF6 seeks contributions from housing development to build new school classrooms and associated facilities. UDP Policy TRN11 expects major developments to contribute to improvements in the cycle network. The Council has also referred to its adopted S.106 Planning Obligations SPD to which I give appropriate weight. I consider that the contributions towards infrastructure sought by the Council are justifiable and consistent with these policies and the SPD.

23. Subsequently to the Council's decision on the planning application, the appellants have submitted a completed Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990, which provides for financial contributions to be paid to the Council in respect of the above matters. I regard these contributions as reasonably necessary in the interests of proper planning and consistent with the Policies and the Planning Obligations SPD referred to above.

24. In the light of the completed Unilateral Undertaking, I regard grounds 3 and 4 of the Council's decision as having been satisfied. I note that the Council takes a similar view.

Other Considerations

25. I have noted the other matters raised by local residents set out in letters and a petition, including the size, design and prominence of the proposed development, increased pressure on parking and noise and disruption from building works. The Council in its decision notice has not raised objection to the proposal on these grounds. I consider that the size, design and siting of the proposed development would be acceptable. Bearing in mind the location of the development, which is adjacent to the Jubilee Line station and is well served by bus routes, I do not consider that additional parking facilities are necessary at the site. Noise and disruption from building works would be a temporary phenomenon and would not be adequate reason to refuse development which would otherwise be acceptable. These other considerations are not of such weight as to lead me to a different conclusion in this appeal.

Conclusion

26. For the reasons set out above and having considered all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Conditions

27. In framing conditions, I have had regard to Circular 11/95: *The Use of Conditions in Planning Permissions,* and to the conditions suggested without prejudice by the Council. In addition to the normal time condition for the start of development, a condition to require the development to be carried out in accordance with the approved plans is necessary for the avoidance of doubt and in the interests of proper planning.

28. A condition to require details and samples of external materials is necessary to achieve a satisfactory appearance for the development. Conditions to require a bedroom window and the roof lights of the proposed rooftop garden to be obscure glazed are appropriate to maintain privacy. Conditions to require further details of the communal roof top garden and the landscaping and future maintenance of this facility and the external communal amenity areas of the site are necessary in the interests of appearance and amenity.

29. A condition to require the provision of refuse and recycling storage facilities is necessary to ensure a satisfactory development and to protect amenity. A condition to require provision of bicycle parking facilities is necessary to encourage sustainable transport. Details of car parking management facilities for the proposed and existing residential units are necessary to minimise overspill parking on the surrounding road network.

R J Yorke

INSPECTOR

APPENDIX - APPEAL DECISION: APP/T5150/A/11/2159347

1 Jubilee Heights, Shoot Up Hill, London NW2 3UQ

Conditions to which the Decision is subject

1. The development to which this permission relates shall be begun before the expiration of three years from the date of this permission.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:

   PL/266/1000; PL/266/1001; PL/266/1002; PL/266/1003; PL/266/1004; PL/266/1005; PL266/1006; PL/266/1007; PL/266/1008; PL/266/1009; PL/266/1010; PL/266/1011; PL/266/1012; PL/266/1013 and PL/266/1014.

3. No development shall take place until details including samples 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.

4. The window to bedroom 2 of the ground floor flat hereby approved shall be constructed with obscure glazing up to 1.8m above internal floor level and shall be so maintained thereafter unless the prior written consent of the Local Planning Authority is obtained to any variation.

5. The roof lights within the communal roof top garden hereby approved shall be constructed to be obscure glazed and non-opening and shall be so maintained thereafter unless the prior written consent of the Local Planning Authority is obtained to any variation.

6. Notwithstanding the submitted plans otherwise approved, further details of the communal roof top garden shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The proposed garden shall thereafter be constructed in full accordance with the approved details prior to the first occupation of any of the flats hereby permitted. Such details shall include:

   a. Details of the roof construction including drainage and hard landscaping; and

   b. Details of proposed plant species and substrate.

   Any landscaping planted in accordance with the landscaping scheme which, within 5 years of planting is removed, dead or dying, seriously damaged or becomes diseased shall be replaced in similar positions with soft landscaping of similar species and size to those originally planted unless otherwise agreed in writing by the Local Planning Authority.

7. Full details of the landscaping works and treatment of the remaining communal amenity spaces shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any demolition/construction works on the site. Any approved planting, turfing or

seeding included in such details shall be completed in strict accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed in writing by the Local Planning Authority. Such a scheme shall include:

(a) the identification and protection of existing trees and shrubs not directly affected by the building works and which are to be retained;

(b) details of proposed planting including species, plant sizes and planting densities;

(c) areas of hard landscape works and proposed materials;

(d) a buffer between the remaining communal amenity space and the ground floor flat within the proposed development;

(e) details of the proposed arrangements for the maintenance of the landscape works;

(f) details of any exterior lighting to be provided on the site.

Any trees, shrubs and other plants planted in accordance with the landscaping scheme which, within 5 years of planting, are removed, dead or dying, seriously damaged or become diseased shall be replaced to the satisfaction of the Local Planning Authority in writing by trees, shrubs and other plants of similar species and in similar locations unless the Local Planning Authority agrees in writing to any variation.

8. Details of the location and nature of refuse and recycling storage facilities meeting the required capacity as outlined within "Brent's Waste and Recycling Storage and Collection Guidance for Residential Properties" for existing and proposed units within Jubilee Heights shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The approved facilities shall thereafter be constructed prior to the first occupation of any of the flats hereby permitted and thereafter retained.

9. Details of cycle parking facilities to accommodate 16 bicycles including details of the location and design of the cycle store shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The cycle parking facilities and cycle store shall thereafter be constructed in full accordance with the approved details prior to the first occupation of any of the flats hereby permitted.

10. Details of the management arrangements showing how the car parking spaces within the Jubilee Heights/Cedar Lodge site will be allocated for each unit within Jubilee Heights and Cedar Lodge, including the additional five units hereby approved, shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The approved management arrangements shall be implemented prior to the first occupation of any of the flats hereby permitted and thereafter retained.

R J Yorke INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2012

by B Barnett BA MCD MRTPI

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

Decision date: 15 February 2012

Appeal Ref: APP/T5150/X/11/2160959
25 Berkeley Road, London, NW9 9DH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr S Sharif against the decision of the Council of the London Borough of Brent.
- The application Ref 11/1486, dated 7 June 2011, was refused by notice dated 2 August 2011.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a new garage/outbuilding at rear.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Reasons

2. The building would be about 8m wide and 6.75m deep. The Council accept that it would meet all the requirements of Class E of Part 1 of the Schedule to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) in relation to size and location and I have no reason to disagree. The only matter in dispute is whether it is 'required for a purpose incidental to the enjoyment of the dwelling house as such'. If it is not, it would fall outside Class E and the planning permission granted by Article 3 of the GPDO would not apply.

3. The appellant has four children. He indicates that the building would be used for the parking of a car and for incidental storage and leisure use and that its design is consistent with that use. He considers the amount of floorspace reasonable having regard to the need for his family to store such items as bikes, garden implements, paddling pools, outdoor furniture, spare indoor domestic paraphernalia and other general household storage such as books.

4. The Council point out that the building, at about 53 sq m, is about 5 sq m larger than the ground floor area of the original house. Because of this and the limited area of garden which the property would retain, they consider that there is insufficient evidence to show that a building of the size proposed is reasonably required for the stated purpose.

5. There is no absolute limit on the floorspace which can be built under Class E permitted development. However, the onus is on the appellant to prove, on the balance of probability, that the building is reasonably required for the intended purpose. 'Reasonably required' does not mean essential, and there is no need to show that the use could not be accommodated in a smaller building. However it must be shown that the use of the building, when considered in the context of the planning unit, is intended and is likely to remain ancillary or subordinate to the main use of the property as a dwelling house. Size of the building relative to the house may be relevant but it is not determinative.[1]

6. I have no reason to doubt that the building is likely to be used in the manner indicated by the appellant. Parking of a car, storage of various domestic items and use for hobbies or leisure is no more than one would expect to see in a domestic out-building. The structure would clearly be capable of such use and the Council has not suggested any other use to which it might be put. There is nothing to suggest that it is likely to be used as an extension to the basic living accommodation provided by the house and in this context I disagree with my colleague who determined an appeal referred to by the Council[2]. In my opinion the storage of personal goods or items (which might include for example DIY tools, unused items of furniture, suit cases or children's play equipment) is capable of being incidental to the enjoyment of a dwelling house.

7. The building would be split into two sections. One would provide generously for a car leaving room for domestic storage around it. The other section would be slightly larger. It would undoubtedly provide a lot of space for use by the appellant and his family. I have no reason however, to believe that the nature, scale or intensity of such use would exceed what one might reasonably expect to find associated with a house of the size I saw at my visit. It was in the course of being altered to extend the accommodation with a side and rear single storey extension and a loft conversion providing a bedroom in the roof. These alterations were clearly in the appellant's mind[3] when proposing the development the subject of this appeal and for this reason I attach little significance to the size of the original dwelling.

8. On the evidence before me and on the balance of probability, when the application was made the building was intended for a use which was, and was likely to remain, ancillary or subordinate to the main use of the property as a dwelling house. Its erection at that time would have fallen within Class E and would have been permitted by the GPDO.

9. For this reason I conclude that the Council's refusal to grant a certificate of lawful development in respect of the proposed erection of a new garage/outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B Barnett

INSPECTOR

[1] EMIN v SSE AND MID-SUSSEX DC (1989) JPL909. The judgement found that use of a building for indoor archery was capable of being incidental to the enjoyment of a dwelling house.
[2] APP/R5510/X/10/2122954
[3] Permission for extensions and an LDC in respect of works to the roof were granted in March 2011.

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 7 June 2011 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It would have been permitted by Article 3 and Class E of Part 1 of the Schedule to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Signed

B Barnett

INSPECTOR

Date 15.02.2012

Reference: **APP/T5150/X/11/2160959**

First Schedule

The erection of a new garage/outbuilding at the rear of the property in accordance with submitted drawings 10068-BerkeleyRoad-25 – 110, 111 and 112

Second Schedule

Land at 25 Berkeley Road, London, NW9 9DH

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15.02.2012

by B Barnett BA MCD MRTPI

Land at: 25 Berkeley Road, London, NW9 9DH

Reference: APP/T5150/X/11/2160959

Not to Scale

The Planning Inspectorate

Appeal Decision

Site Visit made on 6 February 2012

by E C Grace DipTP FRTPI FBEng PPIAAS

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

Decision date: 17 February 2012

Appeal Ref: APP/T5150/D/11/2165749
9 Ashridge Close, Harrow HA3 0JE

- 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 Anil Chauhan against the decision of the Council of the London Borough of Brent.
- The application Ref 11/1595, dated 20/6/11, was refused by notice dated 5/9/11.
- The development proposed is demolition of existing side extension, erection of a new two storey side extension, single storey rear extension and installation of 1 rear roof light to dwelling house.

Decision

1. The appeal is allowed and planning permission is granted for erection of a new two storey side extension, single storey rear extension and installation of 1 rear roof light to the dwelling house at 9 Ashridge Close, Harrow in accordance with the terms of the application, Ref 11/1595, dated 20/6/11, subject to the schedule of conditions set out at the end of this decision:

Main Issues

2. The main issues in this case are whether the proposed development would: a) result in harm to the character and appearance of the host dwelling and street scene and/or b) give rise to inadequate parking provision.

Reasons

3. The appeal property is a semi-detached house dating from the inter-war period and is located towards the end of a short cul-de-sac, within a wider residential locality that forms the designated Northwick Circle Conservation Area. I have noted the appellant's questioning of the appropriateness of having included Ashridge Close in that designation as it appears to be the only road which does not lead onto one of the roads radiating from Northwick Circle, but rather, from a road outside the Conservation Area. Nevertheless, I have to have regard to the statutory designation and I consider the 1920/1930s architecture and layout of the dwellings here is typical of the wider Conservation Area.

4. The dwellings in the cul-de-sac have been subject to alteration and extension over time and the appeal property is no exception, albeit that these have been mainly to the rear. The current proposal involves demolition of the garage and rebuilding it wider to align with the later single storey extension to the rear. A first floor would then be constructed above, with the pitched roof continued over it but with a lower ridgeline than the main house. A further single storey extension to the rear is also proposed, but no objection has been raised to this.

5. Hence, it is evident that the Council are mainly concerned that the front façade of the extension would be flush with the main front wall of the house at both ground and first floor level. They regard this to be insufficiently subservient to the original dwelling.

6. The appellant points out that many other properties in the cul-de-sac have had comparable lateral extensions and all have been set flush with the front façade of the original house. Indeed, the attached house (No 11) has a very similar extension to that being proposed by the appellant, but the Council indicate this was approved in 1987, prior to the designation of the Conservation Area and adoption of current planning guidance and should not therefore be regarded as a precedent. Nevertheless, I saw that only the appeal property and just one other (No 5) on this side of the road have not been subject to such extensions. Whilst I acknowledge the Council's desire to strive for higher standards of design in connection with extensions to dwellings, I consider that, in this instance, the proposal would serve to re-establish the symmetry of the pair of houses and be compatible with others in the road. Moreover, I consider the lowering of the ridgeline over the extension provides an appropriate degree of subservience to the main dwelling. I therefore find that the character and appearance of the host dwelling and street scene in this part of the Northwick Circle Conservation Area would be preserved.

7. Turning to the second issue, the existing garage is unduly narrow and whilst it would undoubtedly have sufficed for an Austin 7 or similar vehicle of the period it is unsuitable for many of the wider car models of the present day. However, although the proposal would provide a garage of wider dimensions, it is shown to measure only 3m in depth due to the inclusion of a shower room/WC at its far end and thus it would be incapable of accommodating a car. The appellant indicates he is not objecting to the second refusal reason as he would be prepared to omit the shower room, thereby enlarging the garage, which he is prepared to retain as such. Although the appellant states he will confirm this in a revised drawing, I have not been provided with an amended plan showing that. However, I am content that I can impose conditions to address these matters, which I consider would suitably address the Council's objection on this count.

8. Being minded to allow the appeal, I have considered the conditions advanced by the Council and accept the need for the standard time limit and requirement for matching materials, in the interest of visual amenities. The Council's suggested condition relating to landscaping of the front garden is redundant in view of the appellant's indications relating to the garage. I shall however attach two further conditions to amend the detailed plan to delete the shower room/WC, in the interest of certainty, and require the garage to be retained as such, to reflect the appellant's declared intent.

9. For the reasons given above I conclude that the appeal should be allowed and permission granted subject to the conditions set out in the schedule below.

Edward Grace

Inspector

Schedule of 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 plan: 06/11/AC/01 Rev B, except in respect of the ground floor shower room/WC which shall be deleted and the area it occupied incorporated within the garage.

4) The garage hereby permitted shall be kept available for the parking of motor vehicles at all times.

The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2012

by B Barnett BA MCD MRTPI

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

Decision date: 15 February 2012

Appeal Ref: APP/T5150/D/11/2167192
41 Fryent Way, Kingsbury, London, NW9 9SL

- 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 Paramjot Singh against the decision of the Council of the London Borough of Brent.
- The application Ref 11/2390, dated 12 September 2011, was refused by notice dated 4 November 2011.
- The development proposed is retention of single storey detached building.

Decision

1. The appeal is allowed and planning permission is granted for the development which has taken place namely the erection of a single storey detached building at 41 Fryent Way, Kingsbury, London, NW9 9SL in accordance with the terms of the application, Ref 11/2390, dated 12 September 2011.

Reasons

2. Approaching the site from the north, Fryent Way is a wide avenue with service roads on either side separated from the main carriageway by tree lined verges. The houses are on the outside of the service roads set to well defined building lines behind short front gardens. Immediately past the house at No 41 the avenue character disappears and the road reduces in width to a single carriageway with adjoining footways where it crosses the railway.

3. Reflecting this change in character, No 41 has a side and front garden which extends around the end of the service road. The building addressed by the notice has been built here. From the north, it provides what I consider to be a very satisfactory termination to views down the service road. As one walks past, or views it from across the road or from the south, it looks like a high boundary wall but its brickwork is reasonably attractive and it does not appear oppressive or over dominant.

4. It is not characteristic of this area to have a building of this size forward of the building line. However, the circumstances here are exceptional because of the narrowing of the road and the unusual shape of the garden. In my opinion the building which has been erected takes account of these circumstances and does no harm to the character or appearance of the area. It does not make it a less pleasant locality in which to live or through which to pass. Its erection was consistent with the aims of Policies BE2 and BE9 of the Brent UDP.

B Barnett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2012

by B.S.Rogers BA(Hons), DipTP, MRTPI

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

Decision date: 2 March 2012

Appeal Ref: APP/T5150/X/11/2161665
24 Cairnfield Avenue, London, NW2 7PE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Bazaar Investments limited against the decision of the Council of the London Borough of Brent.
- The application Ref: 11/1337, dated 7 July 2011, was refused by notice dated 1 September 2011.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a garage at the back of the rear garden.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Reasons

2. The issue to be determined in this case is whether the outbuilding in question in question is permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO).

3. It is not in dispute that the outbuilding is within the domestic curtilage of no.24 Cairnfield Avenue and that it conforms to all the criteria of Class E of the GPDO, save for E.(a) as to whether it is *required for a purpose incidental to the enjoyment of the dwellinghouse as such*. The Council submits that it fails this test because its size is excessive in relation to that of the original dwellinghouse and because it is not required, as the house already has 2 parking spaces at the front.

4. The appellants state that the proposed use is as a double garage for the use of the occupants of no.24 Cairnfield Avenue. Such a use is normally regarded as incidental to the enjoyment of the dwellinghouse as such; it is one of the examples listed in the Technical Guidance: *Permitted Development For Householders*. The proposed building is designed as a garage, with vehicular access to be taken from the rear service road, along which there are several other similar garages. There would be a pedestrian door giving access to the rear garden of no.24.

5. Whilst the size of a proposed outbuilding can be material to the question of whether it would be *incidental*, the Council's comparison of the floorspace of the proposed garage with the footprint of the dwellinghouse (whether original or extended) appears to me to be misplaced in a case such as this. The proposed garage needs to be sufficiently large to fulfil its intended purpose of housing vehicles and at around 5m square internally, it would be neither excessively deep nor wide to operate as a functional double garage.

6. I saw that there is a parking space on the frontage to Cairnfield Avenue, which could accommodate one, or possibly two, cars. The Council has used its adopted parking standards, which would require a maximum of 2 off-street spaces for a dwelling with 4 or more bedrooms, as a guide to indicate that the development is not required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Courts have held that the term *required* should be interpreted to mean *reasonably required*. The appellants' need for covered, secure parking does not appear to me to be unreasonable. It would be a common provision to make at a dwelling of this size and type and would clearly not be unusual in this locality, where several similar examples occur.

7. I note the previous history of enforcement action at this site but I have to determine the lawfulness of the proposed development on the basis of the application and the plans submitted. Should there be any material variation from the details indicated in the plans or should a material change of use occur without planning permission, the Council would be in a position to consider whether it was expedient to take enforcement action.

8. In the present case, I find that the appellant has shown, on the balance of probability, that the outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, I conclude that the proposed development, as stated to be used, would be permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the GPDO. The Council's decision to refuse the application was not well founded.

Formal Decision

9. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

B.S.Rogers

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 7 July 2011 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed double garage would be permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended.

Signed

B.S.Rogers
Inspector

Date 02.03.2012
Reference: APP/T5150X/2161665

First Schedule

A garage at the back of the rear garden, as depicted in drawing no.811(P)1251 Rev.A, dated 18.05.11.

Second Schedule

Land at 24 Cairnfield Avenue, London, NW2 7PE, as depicted in drawing no.811(P)1251 Rev.A, dated 18.05.11.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Costs Decision

Site visit made on 22 February 2012

by B.S.Rogers BA(Hons), DipTP, MRTPI

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

Decision date: 2 March 2012

Costs application in relation to Appeal Ref: APP/T5150/X/11/2161665
24 Cairnfield Avenue, London, NW2 7PE

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Bazaar Investments Ltd for a [partial] [full] award of costs against the Council of the London Borough of Brent.
- The appeal was against the [refusal of] [part refusal of] [failure of the Council to issue a notice of their decision within the prescribed period on an application for] a certificate of lawful use or development for [details of development or use].

Decision

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

Reasons

2. The appellants submit that the Council has introduced the consideration of planning merits into a case where purely legal issues should be involved in determining an application, contrary to the advice of Circular 10/97. They argue that the use of the building as a garage is clearly incidental to the use of the dwellinghouse as such and the building would comply with all the dimensional criteria of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO).

3. The Council's response is that it has determined the application on a factual basis; it has not used planning policies to determine the application but to provide guidance as to what scale of outbuilding might be considered to be incidental.

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

5. In this case, there are 2 main considerations in determining whether the proposed garage would be classed as permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended. Before going on to decide if its siting, form and dimensions would meet criteria E.1 (a) to (i), it is necessary first, to consider whether the building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.

6. It can not be assumed that, because a garage is normally regarded as incidental in this context, any size of garage that would meet criteria E.1(a) to

(i) would be permitted development. The appellants acknowledge as much in stating *"Whilst it might be reasonable for any council to query if somebody endeavoured to achieve perhaps an outbuilding to contain four parking spaces for a two or three bedroom house …."*. The Council quite rightly conducted such an appraisal based on the relationship of the garage to the size of the dwelling and its view as to what level of parking provision would be reasonably required for such a dwelling. To my mind, the Council used its own parking standards as a guide on this issue, rather than to assess the planning merits of the case, which are clearly irrelevant to a decision on the lawfulness of a proposed development. In the event, I found in the appellants' favour. However, in my view the Council did not act unreasonably in determining the application and the application for costs accordingly fails.

B.S.Rogers

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 24 February 2012

by D Cramond BSc MRTPI

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

Decision date: 14 March 2012

Appeal Ref: APP/T5150/D/12/2168781
65 Chevening Road, London NW6 6DB

- 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 Dr K Sahota against the decision of the Council of the London Borough of Brent.
- The application Ref 11/1669, dated 20 June 2011, was refused by notice dated 24 October 2011.
- The development proposed is the formation of a vehicular access with new front boundary wall and hard and soft landscaping to the front garden of the dwellinghouse.

Decision

1. The appeal is allowed and planning permission is granted for the formation of a vehicular access with new front boundary wall and hard and soft landscaping to the front garden of the dwellinghouse at 65 Chevening Road, London NW6 6DB in accordance with the terms of the application, Ref 11/1669, dated 20 June 2011, 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: 65/003 Revised & 65/005 Revised3.

    3. Notwithstanding the plans hereby submitted and approved, details of the front garden layout and boundary treatment, including walling and hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority before any works commence on site. The approved boundary treatment and hard landscaping shall be completed prior to the first use of the parking area and retained thereafter. The soft landscaping shall be completed at the latest within the first planting season following first parking use of the development hereby approved. If, within 5 years of planting, any trees or shrubs die, are removed or become seriously damaged or diseased, in the first planting season thereafter they shall be replaced with others of the same species and size and in the same position.

Procedural matter

2. I use the Council's description of development which is more extensive than on the application forms.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the host property and the locality.

Reasons

4. The appeal property is a two storey terraced house with a pleasing front elevation to the north west side of Chevening Road in an established residential area of broadly homogenous well proportioned homes leading to a defined character area and a pleasant appearance for this locality. Front garden areas are more generous on the appeal site's side of the road than on the south east. Many of these larger gardens include hardstandings for cars, some do this relatively comfortably and others, regrettably, are of a size or style that detracts from the streetscene.

5. The site lies within the Queens Park Conservation Area. There is a duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area. The Brent Unitary Development Plan 2004 (UDP) includes policies BE2 and BE9. Amongst other matters, these policies seek to protect local distinctiveness and ensure that the design of new development is appropriate in scale, siting and appearance. The Council's *Queen's Park Conservation Area Design Guide* (CADG) seeks to protect the visual and character related qualities of this area. It advises that hardstandings in front gardens, where they are deemed acceptable, should maintain over 50% of soft landscaping.

6. The poor condition front garden wall would be replaced and one of the two existing gateways would be sealed up ensuring that overall enclosure is not greatly affected. The plans show good scope for soft landscape and the concrete pathway to the front door would be restored to a more original Victorian form. The other pathway would be removed and this would be around the same extent of hard surfacing as the proposed parking place. Due to spacing the parked car would neither be in front of the main door or jammed up to a principal window. Whether a car was in situ or not, the appearance would remain of a front garden faced by a pleasant and visible front elevation and enclosed to a reasonable degree by a front garden wall. The proposal would readily provide for over 50% of soft landscape.

7. I note that in this instance there are personal medical circumstances that are due a degree of weight and I do acknowledge that off-site charging of electric vehicles is not easy at the present time. Notwithstanding any personal circumstances, the Council is right to be cautious over allowing front garden hardstandings as the character of an area can change in a detrimental way through this. However, in my opinion due to the pattern of the immediate surroundings and the precise nature of the scheme before me the appeal property is, exceptionally, one which could satisfactorily accommodate a small hardstanding area without detriment to the visual qualities of the house or locality.

8. In the situation before me there would be no conflict with S72(1) of the Act; there would be preservation of the character and appearance of the Conservation area. For the reasons I have given I conclude that this scheme

would also accord with the UDP policies and the CADG cited in paragraph 5 above.

9. I note that other matters are raised including increased flood risk and safety to users of the footpath by reason of manoeuvring of the relevant vehicle. On the former I am satisfied that the judicious use of permeable materials and the proposed removal of an existing pathway would prevent an overall increase in water run off. I am also satisfied that due to the space available between roadside parked cars, the position of the proposed drop kerb, and the alignment of the opening for the parking area, there would be sufficient space for an average or small car commensurate with the length of parking bay to undertake egress and exit without any particularly unusual or additional manoeuvres beyond the normal act of a single crossing. The slight off-set between crossing and entrance will not make a material difference. I see no conflict with the safety and aesthetic aims of the Council's SPG3 – *Forming an Access onto a Road*. I have carefully considered all other points raised by the Council and interested parties and none outweigh my conclusion on the main issue.

Conditions

10. In addition to the standard three year commencement condition suggested by the Council I shall, for the avoidance of doubt and in the interests of proper planning, include a condition requiring that the development would be carried out in accordance with listed, approved, plans. The plans are not precise on hard and soft landscape form, the Council's report touches on the ability to call for more detail on this, and in my view a condition seeking greater definition on this issue would be reasonable and is necessary. The appellant underlines the intent to complete the whole scheme as a beneficial re-plan and thus an implementation and retention element to the condition would not be unreasonable.

Overall conclusion

11. For the reasons given above I conclude that the appeal proposal would not have an unacceptable adverse effect on the character and appearance of the host property or the locality. Accordingly the appeal is allowed.

D Cramond

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2012

by B.S.Rogers BA(Hons), DipTP, MRTPI

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

Decision date: 2 March 2012

Appeal Ref: APP/T5150/X/11/2162386
25 Dobree Avenue, London, NW10 2AD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Z.Usman against the decision of the Council of the London Borough of Brent.
- The application Ref: 11/1791, dated 8 July 2011, was refused by notice dated 1 September 2011.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is retention of detached outbuilding to be used as ancillary use to the dwelling (games room).

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Reasons

1. The issue to be determined in this case is whether the outbuilding in question is permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO).

2. It is not in dispute that the outbuilding, which is within the domestic curtilage of no.25, Dobree Avenue, conforms to all the criteria of Class E of the GPDO, save for E.(a) as to whether it is *required for a purpose incidental to the enjoyment of the dwellinghouse as such*. The Courts have held that the term *required* should be interpreted to mean *reasonably required*. The Council submits that it fails this test because its size is excessive both for its stated purpose and in relation to the size of the original dwellinghouse.

3. Whether the development meets the above test is a matter of fact and degree in each case. For a use to be incidental, it must not be for a primary residential purpose i.e. for an essential basic domestic requirement, such as a living room, a bedroom or a kitchen. Here, the appellants state that the proposed use is as a games room/gym for the personal enjoyment of the 7 occupants of the dwellinghouse. To my mind, such a use could quite properly be regarded as incidental to the use of the dwellinghouse as such. The outbuilding has been designed to accommodate a full sized snooker table plus 2 items of gym equipment and a w.c.. It has a footprint of some 53 sq.m. and does not appear to me to be excessive in floor area to accommodate the above features, and to allow for a suitable amount of circulation space.

4. Whilst the size of the outbuilding relative to the dwellinghouse may give some guidance as to whether the use may be regarded as incidental, it is not in itself decisive. In any event, I regard the comparison made by the Council with the size of the original dwellinghouse to be inappropriate. The outbuilding has been built to meet the requirements of the occupants of the present dwellinghouse, whose enlarged form the Council must have deemed to be appropriate, when granting permission for the extensions. The present house has a footprint of some 148 sq.m. and contains 6 bedrooms. In this context, the outbuilding does not appear to be disproportionately large. Furthermore, a substantial and useable garden area is retained.

5. I have taken account of the other appeal decisions referred to me by the Council and consider that my approach to this case is consistent with those in the other cases.

6. In the present case, I find that the appellant has shown, on the balance of probability, that the outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, I conclude that the development as built, and as stated to be used, is permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the GPDO. The Council's decision to refuse the application was not well founded.

7. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

B.S.Rogers

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 8 July 2011 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The outbuilding in question is permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended.

Signed

B.S.Rogers
Inspector

Date 02.03.2012
Reference: APP/ T5150/X/2162386

First Schedule

Detached outbuilding to be used as ancillary use to the dwelling (games room) as depicted on drawing no.DOBA25/SH/2, dated 14.11.11.

Second Schedule

Land at 25 Dobree Avenue, London, NW10 2AD, as depicted on drawing no.DOBA25/SH/2, dated 14.11.11.

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Appeal Decision

Site visit made on 21 March 2012

by David Fitzsimon MRTPI

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

Decision date: 27 March 2012

Appeal Ref: APP/T5150/D/12/2170280
10 Bacon Lane, Kingsbury, London NW9 9AX

- 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 Mrs Maria Connell against the decision of the Council of the London Borough of Brent.
- The application Ref 11/2284, dated 3 September 2011, was refused by notice dated 21 November 2011.
- The development proposed is a single storey side extension and front porch.

Decision

1. The appeal insofar as it relates to the single storey side extension is dismissed. The appeal insofar as it relates to the front porch is allowed and planning permission is granted in accordance with the terms of the application, Ref 11/2284, dated 3 September 2011 and the plans submitted with it so far as relevant to that part of the development hereby permitted and 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 approved drawing references CHM/3079/A1 (Sheet 1) and CHM/3079/A1 (Sheet 2).

Main Issue

2. The main issue in this case is whether the development proposed would preserve or enhance the character or appearance of the Roe Green Village Conservation Area.

Reasons

Character and appearance

3. The appeal relates to a house which sits at one end of a terrace of three similar properties. Whilst this part of Bacon Lane is home to several different house types, the general uniformity of this terrace is a noticeable feature which contributes positively to the overall character and appearance of the Roe Green Conservation Area (CA).

4. The Council raises no objection to the proposed porch and I agree that it would at least preserve the character and appearance of the CA because it is well proportioned and its design would sit comfortably against the host dwelling.

5. The same, however, cannot be said about the proposed single storey side extension. Although appropriate external materials would be used, the footprint of the proposed extension would be considerable. It would span the full depth of the appeal property, including the existing rear extension, and its roof would be broadly flat. As a result, the side of the proposed extension would appear awkward when viewed against the predominantly tile hung side gable of the host dwelling, even accounting for the proposed vertical slate hung fascia detailing. The presence of mature landscaping to the side boundary with No. 8 Bacon Lane would not prevent this uncomfortable relationship from being readily visible from the public domain. Furthermore, when viewed from the front, the roof profile of the proposed extension would bear no resemblance whatsoever to that of the host dwelling. For these reasons, I find that the proposed single storey side extension would be an unsympathetic addition to the host dwelling, and its character and appearance would be damaged.

6. The appeal property has a generous side garden. The house at the other end of this terraced row, No. 14 Bacon Lane, does not enjoy such space and it is located very close to No. 16 Bacon Lane which is a dwelling of an entirely different design. Given this relationship, the space at the side of the host dwelling would remain greater than the space at the side of No. 14 if the side extension was added. Nevertheless, this does not alter the fact that the overall scale and form of the proposed addition would harmfully affect the general unity of this terrace of three dwellings. This, in turn, would degrade the quality of the street scene.

7. For these reasons, I conclude that although the proposed porch would at least preserve the character and appearance of the CA, the proposed single storey side extension would not. This harm could not be adequately mitigated by additional landscaping and as a consequence, the side extension would conflict with saved policies BE2, BE9, BE25 and BE26 of the adopted Brent Unitary Development Plan along with the guidance contained within the Council's Design Guide for Roe Green Village Conservation Area.

8. In addition to the standard conditions which limit the lifespan of the planning permission and seek to ensure that the development takes place in accordance with the approved plans, the Council has suggested a condition to secure a landscaping scheme for the front garden in the event that the appeal succeeds. I am able to issue a split decision in this instance as the porch and side extension are physically separate and functionally independent. Given that I am allowing the porch only, which is a minor addition, I consider that such a condition is not necessary. The Council has not suggested any conditions to control the external materials of the proposed additions. I am satisfied that such condition is not required for the porch, as the Application Form confirms that the existing finish of the host property would be appropriately matched.

Other matters

9. In reaching my decision, I am mindful that planning permission has been granted for a garage to be built at the side of the appeal dwelling. Whilst I

have not seen the approved plans, I understand that the garage would be detached. As a result, this building would not be read as part of the existing house and therefore it would not cause such an imbalance as the proposal before me.

10. I have also considered the fact that the extension would provide an additional bedroom which would be for the sole use of the appellant's son who has special needs, and that it might be more affordable than moving house. Whilst I sympathise with this position, it is likely that the proposed side extension would remain long after these cease to be material considerations. Accordingly, these factors do not outweigh the significant harm I have identified.

11. In addition, I accept that the proposed extension would not harm living conditions of the occupiers of neighbouring properties in any way given its limited height and generous distance from the rear and side boundaries of the appeal property. This factor does not, however, go to the heart of the matter before me.

12. Several examples of extensions to other dwellings within the local area have been brought to my attention by the appellant. Not all of these, however, are directly comparable to the proposed side extension in terms of their design, siting, scale and context and nor do I know the planning circumstances behind them. I do accept that the extension recently permitted at No. 2 Scudamore Lane, which was designed by the same agent, is similar. Nevertheless, this extension has been added to a house of a very different design which sits within a terrace of four houses rather than three. Furthermore, the Council has explained that planning permission was granted for this extension in order to address an imbalance to this row of properties which was caused by an earlier addition to the side of No. 8, which is highly visible from the street scene. In any event, I have considered the appeal proposal on its individual merits and within its particular context.

13. In light of the above, and having considered all other matters raised, the appeal relating to the front porch succeeds and the appeal relating to the single storey side extension fails.

David Fitzsimon

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 24 February 2012

by D Cramond BSc MRTPI

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

Decision date: 5 March 2012

Appeal Ref: APP/T5150/D/12/2168743
10 Dean Court, Wembley HA0 3PX

- 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 Ahmed Jabbar against the decision of the Council of the London Borough of Brent.
- The application Ref 11/2369, dated 9 September 2011, was refused by notice dated 4 November 2011.
- The development proposed is the removal of the existing garage and erection of a single storey side and rear pitched roof extension and construction of an additional parking space to the front of the house.

Decision

1. The appeal is allowed and planning permission is granted for the removal of the existing garage and erection of a single storey side and rear pitched roof extension and construction of an additional parking space to the front of the house at 10 Dean Court, Wembley HA0 3PX in accordance with the terms of the application, Ref 11/2369, dated 9 September 2011, subject to the following conditions:

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

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

    3. The development hereby permitted shall be carried out in accordance with the following approved plans: 10-04 (Elevations); 10-04 (Floor Plans);10-06 (Site Plan)

    4. Notwithstanding the plans hereby submitted and approved, details of the front garden layout, including soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority before any works commence on site. The approved soft landscaping shall be completed within the first planting season following first occupation of the development hereby approved. If, within 5 years of planting, any trees or shrubs die, are removed or become seriously damaged or diseased, in the first planting season thereafter they shall be replaced with others of the same species and size and in the same position.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the host property and the locality.

Reasons

3. The appeal property is a two storey semi-detached house with a pleasing front elevation in an established residential area of broadly homogenous properties with mid density character and pleasant appearance. The area is deemed one of Distinctive Residential Character (DRC) in the Brent Unitary Development Plan 2004 (UDP). The proposal is as described above and would primarily allow for a new playroom, store and extended kitchen.

4. The Council has two principal concerns in respect of the proposed extension; the lack of a set back and the false pitched roof design to the front elevation. I can entirely appreciate that in many, if not most, instances such an approach for a side extension would be inappropriate. However in this instance there is an unattractive garage which is only just detached from the house and lies slightly forward of the front elevation. There is an extension on the adjoining property sharing the relevant side boundary which effectively mirrors what is being sought. There is an existing mono-pitched roof over the porch which would tie in to the scheme. Furthermore, the immediate vicinity includes many not dissimilar extensions and even if some may be not recent or not authorised they do form part of the character of the area. Importantly, on this property the large bay which runs to two storeys and the existing form of the porch would help the front elevation visually absorb the proposal in this particular instance. In my opinion this extension would not unduly catch the eye or jar in the streetscene. It would not detract from the pleasant appearance of the front elevation of this home; it would not look out of character in this area.

5. The UDP includes policies BE2 and BE9. Amongst other matters, these policies seek to protect local distinctiveness and ensure that the design of new development is appropriate in scale, siting and appearance. This development would not run contrary to these policy objectives for the reasons I have given. I have also considered the Council's SPG5 *Altering and Extending Your Home* and would deem the advice within it generally well founded. However, it can not be expected to cover every eventuality and in this instance I am satisfied that the proposal meets the objective of the document, being to achieve good design appropriate to host properties and their settings. In this instance the scheme does this without having to follow the generic guidance to the letter.

6. The Council suggests the standard commencement condition along with the requirement for materials to match the existing building. I agree this latter condition would be appropriate in the interests of visual amenity. I consider that there should be a condition ensuring works are to be carried out in accordance with listed, approved, plans; for the avoidance of doubt and in the interests of proper planning. In the interests of visual amenity I agree with the Council that a landscape scheme should be required for the front garden. I shall modify the suggested implementation requirement for clarity and I consider that, in this instance, and taking into account UDP Policy BE7(d), seeking 50% of area to be soft landscape works would be unduly restrictive and not necessary to ensure an attractive scene or protect the character of the area. I am satisfied that a suitable good quality landscape scheme with adequate planting and reasonable useable hardstanding could be devised on a

different basis to protect visual amenity and street character. In this way the concerns expressed in the second reason for refusal would be overcome.

Overall conclusion

7. For the reasons given above I conclude that the appeal proposal would not have an unacceptable adverse effect on the character and appearance of the host property or the locality. Accordingly the appeal is allowed.

D Cramond

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 29 February 2012

by Christopher Gethin MA MTCP MRTPI

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

Decision date: 7 March 2012

Appeal Ref: APP/T5150/D/12/2168875
149 Chamberlayne Road, Brondesbury Park, London NW10 3NT

- 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 R A Macfarlane against the decision of the Council of the London Borough of Brent.
- The application ref. 11/2418 was refused by notice dated 2 December 2011.
- The development proposed is a rear conservatory.

Decision

1 The appeal is allowed and planning permission is granted for a rear conservatory at 149 Chamberlayne Road, London NW10 3NT in accordance with the terms of the application ref. 11/2418, subject to the following conditions:

1) The development hereby permitted shall begin before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the approved drawing no.GS1495:150E.

3) No development shall take place until details of the construction and finish of the external surfaces, doors and windows of the development hereby permitted, together with samples of the materials to be used in their construction, 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 until details of the proposed hedging along the boundary with no.151 has been submitted to and approved in writing by the Local Planning Authority. All planting comprised in the approved details shall be carried out in the first planting season following the completion of the development. Any trees or shrubs which within a period of five 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 first gives written consent for any variation.

Main Issue

2 The principal issue is the effect of the proposed development on the living conditions of the occupiers of the adjoining dwellings.

Reasons

3 The subject property is an end-of-terrace dwelling in a residential street. It is separated from the neighbouring end-of-terrace dwelling at no.151 by about 2.6m, being set about 1.3m from the side boundary. The houses in these terraces feature two-storey rear returns. Projecting out from the rear elevation of nos 147/149 is a wall which forms the first part of the common boundary between their rear gardens: it projects some 3.8m and is about 3m high.

4 The proposal is for a rear conservatory which would project 3.6m from the rear elevation of no.149. It would have an aluminium frame and would be almost 5m wide, projecting about 1m out from the existing side elevation of the rear return. It would leave a gap of about 2.3m to the side boundary with no.151, which is presently defined by open fencing.

5 The Council's Supplementary Planning Guidance (SPG) *Altering and Extending Your Home*, adopted in 2002, says that the maximum permitted depth for a rear conservatory to a terraced house should be 2.5m. However, following the 2008 amendments to the GPDO the Council now accepts a projection of 3m. I consider that the distinctive feature on the appeal site which makes a projection of 3.6m acceptable in this case is the existence of the boundary wall: this will prevent the proposed conservatory from appearing overbearing on no.147. I consider that the width is also acceptable in this case, bearing in mind the separation distance from the adjoining dwelling at no.151. The proposed planting of a hedge would reduce mutual overlooking between the properties to minimal and acceptable levels.

6 I conclude that the proposed development would not harm the living conditions of the occupiers of the adjoining dwellings. It would be acceptable by reference to 'saved' policy BE9 of the 2004 Brent Unitary Development Plan and the SPG.

Conclusion

7 For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed. The Council has not suggested any conditions. I consider that two standard conditions are necessary and justified by reference to Circular 11/95 *The Use of Conditions in Planning Permissions*. Details of the materials, fenestration and glazing are required in the interests of visual amenity (to be in keeping with the existing dwelling) and of residential amenity, to limit light pollution and overlooking. A condition requiring the planting of the proposed boundary hedging is justified in the interests of residential amenity, to minimise mutual overlooking. For the avoidance of doubt and in the interests of proper planning, it is necessary to include a condition requiring that the development be carried out in accordance with the approved drawing.

Christopher Gethin

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2012

by C A Newmarch BA(Hons) MRICS MRTPI

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

Decision date: 1 February 2012

Appeal Ref: APP/T5150/C/11/2161916
38-42 Meyrick Road, London NW10 2EJ

- 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 Tony McGovern (Limited) against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/07/0847.
- The notice was issued on 23 August 2011.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building containing five self-contained flats.
- The requirements of the notice are to demolish the building containing five self-contained flats, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development 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) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Background

1. Meyrick Road is characterised by predominantly residential development, although it is within a mixed area with an industrial site to the rear of the site. The Council granted planning permission (Ref 05/3051) for the demolition of existing buildings at Nos 38-42 and the erection of a 2 storey building consisting of 4 self-contained flats.

2. In January 2008, the Council granted consent for the details of the landscaping, samples of materials and refuse storage, pursuant to conditions 3, 6 and 7 of the above permission. Details relating to the contamination of the site were agreed in 2009.

3. The appellant has made an unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 as amended. It relates to car parking and financial contributions, and is discussed further below.

Ground (a)

4. The appeal on ground (a) is on the basis that planning permission should be granted. In considering this ground, the main issues are the effect on:

- the character and appearance of the area;

- the living conditions of the occupiers of Nos 38-42 Meyrick Road, in relation to floorspace and outdoor amenity space; and
- the living conditions of the occupiers of No 44 Meyrick Road, in relation to light and outlook.

Character and appearance

5. The receipt submitted by the appellant confirms that the yellow bricks, which have been used on the front elevation of the building, are those specified in the planning permission. However, they are a brighter colour than the yellow stock bricks on the older, adjoining buildings at No 44-46, and others within the locality. However, as the main front walls of several of the nearby buildings within Meyrick Road have been rendered and painted, or pebble-dashed, there is no uniformity among the facing materials within the street scene.

6. The 2 first floor windows between the front bays appear to be wider than those at the adjoining dwellings at No 34-36, but the difference is marginal. The single entrance door with a side light window at the appeal premises also differs from the pairs of front entrance doors at Nos 34-36, but it is set within a similar position within its frontage and its overall height and width are not significantly different. In any event, the rhythm of the windows and doors has not been maintained throughout the street scene. The colour, profiles and appearance of the white coated aluminium window frames and door are not out of keeping with the range of materials visible elsewhere within Meyrick Road.

7. The materials, fenestration and the entrance door are not, therefore, materially harmful to the character and appearance of the area. Rather, the appearance of the front of the building respects and, to my mind, makes a positive contribution to its context. It does not conflict with policies BE2 or BE9 of Brent's Unitary Development Plan (UDP), 2004.

8. Despite the receipt mentioned above, the parties still disagree as to whether the approved bricks and window frames have been used. However, as I find their appearance to be acceptable, it is not a determinative matter.

Living conditions of the occupiers of Nos 38-42 Meyrick Road

9. Floorspace: The approved plans for the building include 4 flats, 2 of which would be 2 storey maisonettes. However, the completed internal arrangement provides 5 flats, with 2 flats on each of the ground and first floors and a single flat on the second floor. There is some discrepancy between the floor areas in the written submissions from the parties, with the Council's figures being lower than the appellant's. Although measuring was, to some extent, constrained by furniture and fittings, the following measurements were agreed between them at the site visit: Flat 1: 33.2sqm; Flat 2: 58.6sqm;
Flat 3: 46sqm; Flat 4: 52sqm; Flat 5: 63.8sqm.

10. The Council's 'Design Guide for New Development Supplementary Planning Guidance' (SPG17), 2001, provides guidance on minimum floor standards. These include 33sqm for a studio, 45sqm for a 1 bedroom flat, 55sqm for a 3-person, 2 bedroom flat, and 66sqm for a 4-person, 2 bedroom flat. On the basis of the agreed measurements, all but Flat 1, which has the characteristics of a 1 bedroom flat, accord with the recommended floor areas in SPG17. However, if Flat 1 were to be considered to be a studio, it would accord with the space standard in SPG17. Either way, it appears to provide satisfactory

accommodation and has the additional benefit of some outdoor private amenity space. I find, therefore, that the size and arrangement of rooms within all the flats accords with the advice in SPG17 by creating well-designed home environments, which are composed of attractive and usable spaces.

11. Amenity space: The private amenity areas at the rear of the building are entirely paved. While UDP policy H12 seeks to avoid excessive hard landscaping, the soft landscaped areas, which were approved in connection with condition 3 of the planning permission mentioned above, would be very small. There is no information before me relating to the prevailing character of rear gardens in the area, and it has not been demonstrated that soft landscaping would be appropriate to the character of the area. By contrast, the modest rear patio gardens are acceptable as they provide scope for drying laundry, sitting out and the potential for container planting.

12. The development does not, therefore, have a seriously harmful effect on the living conditions of its occupiers, in relation to floor space or outdoor amenity space, and does not conflict with UDP policy H12 or H18 or SPG17.

Living conditions of the occupiers of No 44 Meyrick Road

13. The large rear projection included in the planning permission is a material consideration. The Council concedes that, due to an error on the submitted plans, its effect on the rear facing first floor windows at No 44 was not properly considered. I agree with the Council that it causes harm with respect to light and outlook, but I must also take into account any additional harm arising from the building as it has been constructed.

14. The rear section of the roof and the rear projection at No 38-42 differ from the approved plans. The appellant concedes that the rear element is slightly wider and higher at the boundary than approved, but measurements have not been provided. The Council refers to No 44 as being to the north of the appeal premises, while the appellant considers it to be to the east. However, the north point on the approved plans indicates that it is in between the 2 compass points. On this basis, the additional bulk marginally increases the overshadowing of the rear first floor windows at No 44 in the afternoons. However, the additional impact, though undesirable, is limited and does not amount to significant harm.

15. I have approached the question of outlook on the basis of any harm which could be caused by an overbearing development rather than in the sense of a loss of view. The flank wall of the rear projection is closer to the common boundary with No 44 than permitted, but given that the rear projection is no deeper than permitted, I am not persuaded that it is significantly more overbearing than the permitted scheme would have been. As such, it is not seriously harmful to the living conditions of the occupiers of No 44, in relation to outlook or light, and does not conflict with UDP policies BE2 or BE9.

Unilateral undertaking

16. Car parking: The existing planning permission is for car-free housing within a controlled parking zone. The additional flat could increase the demand for on street parking. An undertaking within the completed S 106 deed removes the occupiers' entitlement to apply for residents' or visitors' parking permits within the controlled parking zone. It further provides a sum of £5,000 towards non-car access/highway safety improvements and/or parking controls within the

vicinity. I accept that this precludes any additional parking stress arising from the additional flat within the development, and accords with UDP policies TRN 23 and TRN 24 and SPG 17.

17. The deed also includes an undertaking to pay a financial contribution of £24,000 which the Council could utilise for sustainable transport improvements, school or nursery places, the improvement of existing open space or environmental improvements. This accords with the thrust of policies CP15 and CP18 of the Brent Local Development Framework Core Strategy, 2010, and the details in the Council's 'S106 Planning Obligations Supplementary Planning Document,' 2007. As such, it accords with the tests in Circular 05/2005, and I have taken the obligations in the unilateral undertaking into account.

Conclusion

18. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) do not, therefore, need to be considered.

Formal Decision

19. 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 1990 Act as amended for the development already carried out, namely the erection of a building containing five self-contained flats on land at 38-42 Meyrick Road, London NW10 2EJ.

C A Newmarch

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2012

by Andrew Jeyes **BSc DipTP MRTPI**

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

Decision date: 22 March 2012

Appeal Ref: APP/T5150/C/11/2165347
29 Chelmsford Square, London NW10 3AP

- 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 M Setti against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0504.
- The notice was issued on 20 October 2011.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension onto another extension to the premises.
- The requirements of the notice are:
  STEP 1 Demolish the single storey rear extension to the rear of the premises, which has been built onto another extension, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development 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)(a) and (f) 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 1990 Act as amended for the development already carried out, namely the erection of a single storey rear extension onto another extension to the premises on land at 29 Chelmsford Square, London NW10 3AP referred to in the notice.

Ground (a)

2. The ground of appeal is that planning permission should be granted. The property is one of a pair of semi-detached houses situated around the green of Chelmsford Square. Planning permission was granted and implemented for a two-storey side extension with a single storey extension behind. To this has been added a further single storey extension alongside the boundary with the adjacent property, No 31. This is the extension the subject of the Notice.

Main Issues

3. The main issues relating to the unauthorised extension are the effect of the extension on the character and appearance of the host property and the effect on the living conditions of the residents of No 31 having regard to visual amenity, including outlook and enclosure.

Character and Appearance

4. The permitted single storey extension replaced a garage in the rear garden and extends back a similar distance; a similar garage is retained in the adjacent garden of No 31. The extension has a simple flat-roofed design, which reflects that of the

permitted extension, but is of smaller scale, being 2.56 metres high and with a depth and width of 2.39 metres by 3.02 metres. It has a low-level link, around a metre high, to the main extension so giving the appearance of a separate building whilst being physically linked. The extension, used for domestic storage, has been rendered and finished to match the permitted extension, other than the wall facing No 31, which is in plain brickwork that reflects the adjacent garden wall.

5. The Council is concerned that the extension does not maintain symmetry with the width and height of the permitted extension and that its freestanding appearance gives an ungainly visual relationship. Supplementary Planning Guidance No 5: *Altering and Extending Your Home* [SPG5] indicates that rear extensions should reflect the size and character of the existing house and that extensions to extensions are usually not acceptable, except where no material harm arises; SPG5 has been adopted following public consultation and carries substantial weight.

6. The extension cannot be seen from any public viewpoint. The adjoining garden walls range between 1.2 and 1.5 metres in height, so that neighbours see the extension from their gardens and, in more limited views, from windows. Whilst extending further back than existing structures in neighbouring gardens, the extension is of a design and appearance that reflects that of the permitted extension, with its reduced size acknowledging its subsidiary role, which does not detract from the host building. Outbuildings in rear gardens exist at other houses within the area.

7. For these reasons, the extension does not harm the character or appearance of the existing host property and meets the intentions of Saved Policies BE2 and BE9 of the Brent Unitary Development Plan 2004 [UDP] and SPG5. These aim for extensions to embody a creative and appropriate design solution that is of a scale, design and relationship that does not adversely effect character and appearance, and which satisfactorily relates to the design characteristics of adjoining development.

Living Conditions

8. To protect the living conditions of adjoining residents, SPG5 advises a maximum depth of three metres for a rear extension. This has already been exceeded by the permitted single storey extension, which has a depth of 5.65 metres, reflecting the original garage in this position. The unauthorised extension projects beyond the rear of the garage of No 31.

9. The extension is not visible, because of the existing garage in the garden, in views from the ground floor rooms of No 31 and is only partially visible from first floor bedroom windows and that part of the garden closest to the house. It is however directly visible from the rear of the garden. Rear garden aspect is dominated by the higher existing garage and the flank two-storey wall of 23 Irwin Gardens. The extension does not have an unacceptable impact on outlook or the sense of enclosure of the garden and does not otherwise harm visual amenity.

10. Whilst not mentioned in the reasons for serving the Notice, the Council indicate in their statement that overshadowing occurs to No 31 from the extension. The extension is sited on the northern side of the garden of No 31 and it is hard to see how an unacceptable level of overshadowing could occur.

11. The extension does not cause unacceptable harm to the living conditions of the residents of No 31 and therefore meets the aims of saved UDP Policy BE9 and SPG5. These require extensions to embody a creative and appropriate design solution that is of a scale, design and relationship that provides a satisfactory level of privacy and outlook for existing residents.

Other Matters

12. The appellant has indicated two possible fall-back positions. The first would allow the erection of an outbuilding of similar size in this position as permitted development, if it

were not physically connected to the permitted extension. However, Part E of the GPDO[1] indicates that such an outbuilding would need to be less than 2.5 metres in height as the extension is within two metres of the boundary; this is not the position here. It is of course, also physically connected to the dwellinghouse.

13. The second fall-back position is that an outbuilding incidental to the residential use could be built in the back garden in any case. The Council has not accepted this position as it has not been demonstrated that 50% of the original medium sized rear garden would be retained. I agree that insufficient information has been submitted in respect of the size and position of such a building and its relationship to the overall garden area, to demonstrate that such an outbuilding could be erected.

Conclusions on Ground (a)

14. In conclusion, the extension does not harm the character or appearance of the existing host property and nor does it harm the living conditions of the residents of No 31 through an unacceptable level of visual amenity, including outlook and sense of enclosure. There are, therefore, no reasons why planning permission should not be granted. No conditions have been suggested as appropriate for the development.

Ground (f)

15. As the enforcement notice succeeds on Ground (a) the appeal on ground (f) has not been considered.

Conclusions

16. For the reasons given, and taking account of local representations and all other matters, the appeal should succeed on Ground (a) and planning permission will be granted.

Andrew Jeyes

INSPECTOR

[1] Town and Country Planning (General Permitted Development Order) 1995 (as amended)