



Appeal Decision

Site visit made on 19 November 2009

by **John Whalley** CEng MICE

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
8 December 2009

Appeal Ref: APP/T5150/X/09/2100225

No. 82 Wakeman Road, Kensal Green, London NW10 5DH

Appeal by Tracy O’Riordan

- 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 Tracy O’Riordan against the decision of the London Borough of Brent Council.
- The application, No. 08/2535, dated 26 August 2008, was refused by a notice dated 30 October 2008.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is for the proposed erection of a single storey rear extension to the dwellinghouse.

Summary of Decision: The appeal succeeds. A Lawful Development Certificate is issued with this decision

The application

1. The 26 August 2008 LDC application made by Tracy O’Riordan was for the proposed erection of a single storey rear extension to the dwellinghouse at the rear of No. 82 Wakeman Road, Kensal Green. The application was accompanied by drawings EX01, EX02, EX04, EX05, GA01, GA02, GA04 and GA05.
2. Ms O’Riordan said that work was started on the appeal extension in August 2008. The proposed extension was then permissible by virtue of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995, (GPDO).
3. It was accepted that the extension would not have been permitted by the 2008 amended Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 which came into force on 1 October 2008.

The Council’s reason for refusal

4. The Council said the works carried out on the site of the appeal extension before the coming into force of the amended permitted development order, did not amount to a start of works. Those works, an excavation alongside the party wall with next door at No. 80, did not amount to a real and genuine attempt to make a material start to the development. They also pointed to the application form dated 26 August 2008, submitted as part of the planning application for this extension, which said the works had not started. The Council said it was unlikely

that works would have begun over the next month in a real attempt to build the extension.

Considerations

5. The work Ms O’Riordan said started the appeal extension was carried out in August 2008. That was a reference to the excavation, now infilled, alongside the party wall. The Council’s refusal was not based on a disagreement on when the excavation shown in the submitted photograph was carried out, but whether it was enough, and specific, to be a start of works to the extension shown on the plans attached to the appeal.
6. In the case of *Connaught Quarries v SSETR and East Hants DC; QBD 30.1.01 Elias J (s.289)*, it was decided that in considering whether the construction of an access had amounted to the start of an operation within the meaning of s.56(4)(d) of the Act, the Inspector had not misapplied the tests in *Malvern Hills DC v SSE [1982] JPL 439* and *Thayer v SSE [1992] JPL 264*. The correct approach was to consider whether the work related to the permission, rather than the extent or amount of the works; that could only be considered on a de minimis basis.
7. In the present case, the “permission”, as referred to in *Connaught*, applies to that which would have been granted by virtue of the General Permitted Development Order. The excavation, although small, seems to have been a reasonable exploration as to foundation requirements. Those foundations for the extension, as shown on the submitted drawings, would have required an excavation for foundations to run in that position, but along a length of the party wall boundary.
8. Particularly as the appeal extension was drawn up some time before the change to the Order, and a query about that specific scheme had been raised with the Council about the need for planning permission, this was a definite proposal which was prepared before the claimed start of works. So the appeal application does relate to excavation works to a previously drawn up scheme which Ms O’Riordan was genuinely pursuing. That being so, I consider it reasonable, following earlier decided cases, that the works, whilst modest, did relate to, and amounted to a start of, a development which would have been permitted by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995, at the time it began. It was not said the excavation otherwise related to any other scheme or activity.

Conclusion

9. I conclude that the refusal by the London Borough of Brent Council to issue a Certificate of Lawful Use for the development as applied for was not well founded and that the appeal succeeds. I exercise my powers transferred to me by s.195(2)a) of the 1990 Act as amended accordingly and issue a Certificate of Lawful Use for the development as applied for. That is attached to this decision.

John Whalley

INSPECTOR



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 (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

The Planning Inspectorate
Temple Quay House
4/11 Eagle Wing
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email:enquiries@pins.gsi.
gov.uk

IT IS HEREBY CERTIFIED that on 26 August 2008 the operational development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, would be lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of an extension to the rear of the house was commenced before 1 October 2008 and would at that time have been permitted by virtue of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995, (GPDO).

John Whalley

INSPECTOR

Date: 08 December 2009

Reference: **APP/T5150/X/09/2100225**

First Schedule

The erection of a single storey rear extension to the dwellinghouse as shown on drawings EX01, EX02, EX04, EX05, GA01, GA02, GA04, GA05, submitted with the application for a Certificate.

Second Schedule

At the rear of No. 82 Wakeman Road, Kensal Green, London NW10 5DH

IMPORTANT NOTES OVERLEAF

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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.
3. 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.



Appeal Decision

Hearing held on 1 October 2009

by **Michael Say BA DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 October 2009

Appeal Ref: APP/T5150/A/09/2107038

Land to rear of 41 and 43 Mallard Way, Kingsbury, London, NW9 8JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs E Dixon against the decision of the Council of the London Borough of Brent.
- The application Ref 08/3405, dated 16 December 2008, was refused by notice dated 8 April 2009.
- The development proposed is demolition of single detached garage to rear of back garden of 43 Mallard Way and erection of new detached house.

Decision

1. I allow the appeal, and grant planning permission for demolition of single detached garage to rear of back garden of 43 Mallard Way and erection of new detached house at land to rear of 41 and 43 Mallard Way, Kingsbury, London, NW9 8JJ in accordance with the terms of the application, Ref 08/3405, dated 16 December 2008, and the plans submitted with it, including drawings numbered D/43MW/1003, 1004, 1005 and 1006, submitted during the processing of the planning application, subject to the conditions listed in Annex A.

Preliminary Matter

2. A unilateral undertaking has been submitted by the appellants, which confirms their willingness to make a financial contribution to local services.

Main issue

3. Following the receipt of the unilateral undertaking, the main issue remaining in this case is whether the design and bulk of the proposed building would lead to a cramped form of development, out of character with the local area.

Reasons

4. The appeal site faces Alington Crescent and comprises the rear parts of the combined back gardens of Nos 41 and 43 Mallard Way. The surrounding area appears to have been developed for housing between the wars. It is a pleasant suburban area displaying a traditional style, incorporating the pitched roofs and bay windows characteristic of the era. Although it retains much of its original character, subsequent extensions and outbuildings now contribute to a street scene which is rather less spacious than would originally have been the case.
-

5. The Council's objection is based on the design and scale of the building, which it considers would conflict with the requirements of policies BE2, BE7 and BE9 of the Council's Unitary Development Plan (UDP), adopted in 2004. Policy BE2 requires that proposals should be designed with regard to their local context, making a positive contribution to the character of the area. Policy BE7(a) seeks to avoid the excessive infilling of space between buildings. Policy BE9 seeks creative and appropriate design solutions specific to the site's shape, size, location and development opportunities.
6. The proposal follows other attempts to gain planning permission, the last of which resulted in a dismissed appeal (Ref APP/T5150/A/08/2072274). That appeal is an important consideration in the determination of the current one. The appellants state that the previous Inspector's comments have "informed the design of this new planning application by reducing the massing, plan form and height of the new building, whilst still maintaining a contemporary design".
7. The resulting design would distinguish the building from the prevailing architectural style in the locality. Whilst this might appear incongruous if it were located within a row of frontage properties, the proposed location, separated from neighbouring houses by the length of their back gardens, provides an opportunity for the construction of a well designed house of distinctive appearance.
8. The dwelling would comprise 3 storeys, but would appear as a 2 storey building when viewed from the front. A lower ground floor would contain a guest bedroom receiving natural light via a sunken patio set into the rear garden which slopes down towards the east. The proposed reduction in the height and bulk of the dwelling compared with the previous scheme has resulted in a building which would fit comfortably within its setting. Its height would be significantly lower than the ridge heights of the neighbouring houses at 43 Mallard Way and 24 Alington Crescent. However, it would exceed the height of an outbuilding close by in the rear garden of the latter. This would allow it to retain an appropriate presence as a separate dwelling.
9. The striking geometrical shapes of the building's modern design would be softened by the curve of the roof. The roof style would reduce the bulk of the top floor. From the rear, the building would present an interesting array of inter-related shapes. The former rear-projecting stairwell, identified as a problem by the previous Inspector, would be replaced by a stairwell integrated within the main building. As a result of these changes, the proposal would achieve an exciting architectural solution in keeping with the scale and residential character of its surroundings.
10. It is not disputed that the scheme is in general compliance with standards relating to size, scale and distance from existing development in the Council's adopted Supplementary Planning Guidance (SPG 17) *Design Guide for New Development*, to which I attribute significant weight. The SPG aims to encourage high quality, carefully implemented contemporary design whilst protecting the character and amenities of existing areas. Compliance with measurable guidelines does not automatically guarantee a building's acceptability. Nevertheless, it lends support to a development which, in my judgement, meets the qualitative guidelines in the SPG.

11. I conclude that the design and bulk of the proposed building would not lead to a cramped form of development, out of character with the local area, and that the development would accord with the relevant requirements of UDP policies BE2, BE7 and BE9.

Other Matters

12. The Council's second reason for refusal referred to the absence of a legal agreement to control contributions towards sustainable transport improvements, school and nursery places, enhancement of open space and improvement of the environment. Notwithstanding this, the appellant had sought to enter into such an agreement and had also paid the full financial contribution sought by the Council by means of a cheque which I understand was cleared prior to the Hearing. This in itself may not guarantee that the payment has been properly secured. However, the appellant produced a unilateral undertaking at the Hearing, dated 14 September, which the Council has stated is acceptable.
13. The weight I have given to the unilateral undertaking in determining the appeal has been influenced by several factors, having particular regard to the tests contained in Circular 05/2005 *Planning Obligations*. The financial contributions sought by the Council are based on a standard charge for residential development of £3000 per bedroom provided. The basis for this is set out in the Council's Supplementary Planning Document (SPD) *S106 Obligations*, adopted in 2007 following public consultation, to which I attribute significant weight. The SPD states that each case is assessed individually, noting that "there may be particular reasons that may result in the level and obligations being reduced or increased".
14. I have seen no evidence of an individual assessment having been undertaken in this case. With regard to the policies and areas of obligation set out in the reason for refusal, the Council has produced no substantive evidence that the proposal would conflict with the requirements of UDP policy TRN3 relating to the environmental impact of traffic. Policy TRN4 provides for mitigation of unacceptable transport impact, including the opportunity to make a financial contribution, but, with no specific conflict identified, it is difficult to see how this policy could be strictly and proportionally applied in relation to the proposal, as required by UDP paragraph 6.6.9. In addition, no evidence has been provided to indicate the impact the proposal would have on the "walkable environment" (policy TRN10) or the London Cycle Network (TRN11) sufficient to require mitigation in these areas.
15. Policy CF6 requires a contribution towards new school classrooms and associated facilities. The SPD explains that this is a borough-wide requirement. However, the policy states that payments will apply to new housing developments of 10 or more units or at least 0.3 hectares site area. Neither of these criteria applies in this case.
16. At the Hearing the Council's representative confirmed that there is no local requirement for open space. In light of my findings on the main issue in this case, combined with the small size of the proposed development, it does not appear that a contribution would be needed to enhance the public realm in accordance with the requirements of policy BE7.

17. Finally, I note that the Council has treated the development as a 3 bedroom house on the basis that a proposed ground floor study has been shown by the appellant to be capable of future conversion into bedroom space for the purposes of demonstrating *Lifetime Homes* adaptability. I acknowledge the Council's need to prevent developers from avoiding payments by minimising the number of rooms allocated for sleeping purposes. However, in this case I am not convinced that it would be reasonable to include the study as a bedroom for the purposes of the calculation.
18. In light of the above I do not consider that the financial contribution required by the Council has been shown to meet the requirements of Circular 05/2005 that it should be directly related to the proposed development and be fair and reasonable in scale and kind. I have therefore attributed limited weight to the unilateral undertaking in the consideration of the appeal.
19. I turn to objections made by local residents on grounds not included in the Council's reasons for refusal. In terms of neighbours' privacy, the distances between the development and neighbours' houses and its orientation at a right angle to adjoining properties would prevent unacceptable overlooking of their windows. Whilst the occupants of the development would be able to overlook parts of the neighbouring rear gardens, this is a common feature of urban residential areas and would not be sufficient to justify the refusal of planning permission.
20. I have seen no evidence to suggest that the development would have a harmful effect on the level of natural light, including sunlight, reaching other properties. In my judgement the effect on the outlook currently enjoyed by the occupants of neighbouring dwellings would not be sufficient to warrant dismissal of the appeal. From what I have seen and heard I do not consider that the development would be likely to cause significant additional on street parking or traffic congestion in the area. The addition of a dwelling in the proposed location would not cause an unacceptable level of night-time light pollution.
21. The grant of permission for this development would not set a precedent for possible future proposals. These would be determined in accordance with the development plan policies and other material considerations applying at the time. An additional dwelling would not be expected to cause a harmful level of disturbance in a residential area. Concerns regarding possible effects on property values in the area would not justify the refusal of planning permission.

Conditions

22. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95. To safeguard the appearance of the area I shall impose conditions along the lines suggested to control materials, boundary treatments and landscaping. To ensure the development is carried out as approved I shall impose a condition to prevent deviation from the approved plans and particulars submitted therewith. Closure of the existing vehicular access can be addressed under conditions 2 and 5. It would not be reasonable to impose a condition requiring the appellant to undertake works outside the site for the reinstatement of the vehicle crossover leading to this access.

23. I shall restrict permitted development rights in the manner suggested to protect the area's character and neighbours' living conditions. To protect neighbours' living conditions during demolition and construction it is necessary to impose conditions prohibiting the burning of materials on site, requiring dust suppression and controlling noise, including a restriction on the hours when noisy machinery may be used. I have excluded the requested reference to "other nuisance-causing activities", which would not pass the test of precision in the Circular.
24. I have not attempted to regulate the use of the highway by construction vehicles since this is subject to separate legislation. As discussed at the Hearing, I have amended the suggested condition regarding the insertion of doors and windows so that it applies to the top storey rather than the western flank wall.

Conclusions

25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

M.A.Say

INSPECTOR

Annex A: Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out and completed in all respects in accordance with the proposals contained in the application, and any plans or other particulars submitted therewith including the Design and Access Statement, prior to occupation of the building.
- 3) No development shall take place until details and 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) Notwithstanding the provisions of Classes A, B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended, (or any order revoking and re-enacting that Order with or without modification) no extensions or buildings permitted by those Classes shall be constructed within the curtilage of the property subject to this permission without the grant of planning permission by the local planning authority.
- 5) Notwithstanding any details submitted with the planning application, no development shall take place until full details of both hard and soft

landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include species, plant sizes and planting densities, the identification and protection measures for existing trees and shrubs to be retained, proposed walls and fences, indicating materials and heights, and screen planting. All planting, turfing and seeding shall be completed prior to the occupation of the development or in accordance with a programme agreed in writing by the local planning authority. If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place unless the local planning authority gives its written consent to any variation.

- 6) During demolition and construction the best practical means available in accordance with British Standard Code of Practice BS 5228:1984 shall be employed at all times to minimise the emission of noise from the site, and the operation of site equipment generating noise audible at the site boundaries shall be carried out only between 08.00 -17.00hrs on Mondays to Fridays, 08.00 – 13.00hrs on Saturdays and at no time on Sundays and Bank Holidays.
- 7) During demolition and construction no waste or other material shall be burnt on the site and an effective means of suppressing dust must be provided and maintained.
- 8) Other than those shown in the approve plans, no windows or glazed doors shall be inserted in the top storey elevations of the building.

APPEARANCES

FOR THE APPELLANT:

Mr D Kann	David Kann Associates, Chartered Architects and Development Consultants
Mr & Mrs E Dixon	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Ms A Hirani	Planner, London Borough of Brent
Mr M Smith	Design and Regeneration Team Manager, London Borough of Brent

INTERESTED PERSONS:

Mrs R Amin	Local resident
Mr D Patel	Local resident
Mr J Mullen	Local resident
Mrs J Mullen	Local resident
Mr D Hoffman	Local resident
Mrs E Wilson	Local resident
Mr A Wyspianski	Local resident
Mr S Chita	Local resident
Mr E Kneafsey	Local resident
Mrs B McShane	Local resident
Mr J Wilson	Local resident

DOCUMENTS

- 1 Council's Supplementary Planning Guidance SPG17 *Design Guide for New Development* adopted 2001
- 2 Council's Supplementary Planning Document *S106 Planning Obligations* adopted 2007
- 3 Secretary of State's Direction and Schedule of Saved Policies in the Council's Unitary Development Plan
- 4 Copy of appellants' solicitor's letter of 3 August 2009 regarding S106 Unilateral Undertaking
- 5 Copy of email of signed Unilateral Undertaking and related electronic correspondence from appellants' agent dated 22 and 30 September 2009
- 6 Copies of letters from Council's Senior Planning Lawyer dated 24 August and 8 September 2009 regarding S106 Unilateral Undertaking

PLANS

- A Copy of drawings related to planning application Ref 08/0099, subject of appeal Ref APP/T5150/A/08/2072274



Appeal Decision

Hearing held on 16 September 2009

by **R C Shrimplin**
MA(Cantab) DipArch RIBA FRTPI FCI Arb MIL

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
21 October 2009

Appeal Reference: APP/T5150/A/09/2104688 Land at 1 The Leadings, Wembley, Middlesex HA9 9DT

- 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 and Mrs P Patel against the decision of Brent Council.
- The application (reference 09/0389, dated 16 February 2009) was refused by notice dated 30 April 2009
- The development proposed is the formation of a new block of flats containing one three-bedroom flat, three two-bedroom flats, one one-bedroom flat, one off-street car parking space, five secure cycle stores and five refuse stores.

Decision

1. I allow the appeal, and grant planning permission for the construction of a block of five flats, with provision for parking, cycle parking and refuse storage on land at 1 The Leadings, Wembley, Middlesex HA9 9DT, in accordance with the terms of the application, (reference 09/0389, dated 16 February 2009), and the drawings submitted therewith, subject to the following conditions.
 1. The development hereby permitted shall be permitted shall begin before the expiration of three years from the date of this decision.
 2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings and the hard surfaced areas hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details unless variation is otherwise agreed in writing by the local planning authority.
 3. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The hard landscaping details shall include means of enclosure; boundary treatment; gates; details of pedestrian and vehicular access and circulation areas; external lighting location, type and nature of operation; refuse and recycling storage areas. The soft landscaping works shall include details of all trees and shrubs to be retained together with details of the species, size, number and position of all new planting. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first occupation of any of the apartments hereby permitted or in accordance with the programme agreed in writing with the local planning authority. The soft landscape works shall thereafter be maintained for a period of 5 years, such maintenance to include

the replacement of plants which die or are removed.

4. No development shall take place until full details of existing and proposed finished ground levels and finished floor levels for the proposed building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details unless variation is otherwise agreed in writing by the local planning authority.
5. No development shall take place until a detailed scheme to provide a barrier railing at high level, to preclude access to the roof from the second floor balcony on the west elevation, has been submitted to and approved in writing by the local planning authority. The barrier railing shall be completed in accordance with the approved scheme, prior to the first occupation of any of the flats hereby permitted.

Procedural Points

2. At the Hearing, an application for an award of costs was made against the London Borough of Brent Council, by the Appellants. This application is the subject of a separate Decision.
3. Notwithstanding the description of the proposed development given in the planning application form, I am convinced that the appeal proposals should more succinctly be described as the construction of a block of five flats, with provision for parking, cycle parking and refuse storage.

Main issues

4. I have concluded that the main issue to be determined in this appeal is the effect of the proposed development on the townscape (including its effect on neighbours' outlook).

Reasons

5. The appeal site is situated in an area which is closely built up and predominantly residential in character. The locality exhibits a wide range of dwelling types and a diversity of styles, however, and while the buildings in The Leadings are rather modern in appearance, others in Chalkhill Road are more traditional in character. The surrounding area is not particularly sensitive in architectural terms and has evidently evolved over the years (and continues to do so).
6. The appeal site is an open plot, bounded by road frontages on three sides, with a modern terrace of dwellings on the fourth. Its principal frontage is to The Leadings and it is set at a somewhat lower level than Chalkhill Road, though it forms an important focal point in views along this road. Planning permission has previously been granted, on appeal, for the erection of a block of flats and some construction work has been carried out to form the foundations of that scheme. Not surprisingly, perhaps, the site has been generally cleared, to facilitate the construction project, but landscaping conditions have been imposed, to ensure that the completed scheme will be well finished.
7. An earlier design for new dwellings on the site proposed the creation of a block of flats designed to reflect the existing terrace frontage to The Leadings. The

scheme for which permission has been granted is much more modern in character, however, providing a distinct contrast to the older work. I have no doubt that the more contemporary approach to the design is desirable and sensible and I agree with the Inspector who previously granted planning permission on appeal that the scheme which has been allowed would make a positive contribution to the streetscene.

8. The scheme which is the subject of this appeal is very similar to that permitted scheme. Indeed, the majority of the differences between the permitted design and the appeal proposals, which were identified at the Hearing, relate to external works of very limited significance. The most important alteration to the permitted design has been the changed height of the proposed building, in relation to the height of the adjoining existing building, though the alignment of window cills was also identified at the Hearing as a matter requiring consideration.
9. I am conscious that the height of the proposed building could be reduced by adapting the construction and altering the internal storey heights of the flats within the building. Nevertheless, I am convinced that the change in height which distinguishes the appeal scheme does not cause material harm to the streetscene or the setting. It is true that the change in height would be noticeable in the streetscene but it would not be awkward or ungainly and would not upset the proportion or balance of buildings along the frontage to The Leadings or on the rear elevation. On the contrary, it could be said to reinforce the distinction drawn between the new and old elevations in a way which is architecturally justifiable. Likewise, variations in the alignment of cills and other features would not be harmful to the townscape, in my view.
10. Although the matter of residential amenity has been raised in the appeal, it is plain that the proposed development would not intrude on particular amenities of neighbours, by overlooking or overshadowing them, for example. Nor would it intrude in the outlook from nearby properties in an unacceptable way, or have an overbearing appearance, in this urban context.
11. National statements of planning policy and Policies set out in the Brent Unitary Development Plan are intended to encourage good design, especially Policies BE2 and BE9 in the Unitary Development Plan, which deal with the need to have regard to local context and the need to achieve high quality design solutions, respectively. In this case, I am convinced that the appeal proposals are worthy of their setting and that they ought to be permitted.
12. The design quality of the proposed block of flats and the contribution that would be made to the provision of residential accommodation in the area weigh in favour of the appeal. The fact that planning permission has already been granted for a development which is very similar to the current proposal (and, moreover, remains capable of implementation in practice) is, itself, an important material consideration in the case.
13. I have also considered all the other matters raised in the representations, including the traffic and drainage issues raised by local residents, for example, but I have found nothing to cause me to alter my decision.

14. I have, however, also considered the proposed conditions discussed at the Hearing in the usual way, without prejudice to the arguments of the main parties in the case, and I have reviewed the justification for the conditions. I have decided that conditions should be imposed, to ensure that good standards are achieved for the development.
15. Even though some work has been started, I believe that conditions imposed by the Inspector in allowing the previous appeal ought to be re-imposed, in consequence of this new decision, and this I have done in most cases, for the sake of consistency and continuity. I am convinced, however, that the layout for cycle storage is satisfactory as now presented and that a condition requiring a further submission in respect of this is no longer necessary, particularly bearing in mind the general landscaping conditions that have been imposed.
16. I have also taken account of the Deed of Covenant made by Mr Pintu Patel, in favour of the London Borough of Brent Council, dated 2 April 2009, which has dealt with the need for funds "to be utilised by the Council towards Education, Sports, Open Space and Sustainable Transport improvements in the local area". This matter was also relevant to the earlier case.
17. It was nevertheless accepted at the Hearing that a further condition is now necessary and proportionate, to require a barrier in a suitable form to be erected at the second floor balcony level, on the front elevation of the proposed building, to obstruct access to the roof by burglars or other trespassers.

RC Shrimplin

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mrs J Miller BAArch(Hons) MA MRTPI, NoP Limited

Mr P Patel, Appellant

Mr J McDonnell BAArch(Hons), Designer

FOR THE LOCAL PLANNING AUTHORITY

Mrs V McDonagh MCTP MRTPI, Senior Planner, North Area Team
Brent Borough Council

Miss S Crewe, Planning Officer
Brent Borough Council

INTERESTED PERSONS

Mr G Khatri, Local Resident

Mr N Bhukhan, Local Resident

Mr V Vaghela, Local Resident

Mr S Patel, Local Resident

Councillor Mr R Dunwell, Local Resident (Qara Group of Associations)

DOCUMENTS

A Location Plan date stamped 23 February 2009 (scale 1:1250)

B Front Elevation and Site Plan for Refused Scheme
(drawing numbers 3739-P-07-A and 3739-P-02-B)

C Project Drawing date stamped 28 January 2008,
(drawing number 125-121-C)

D Letter from Brent Council Chief Executive to Mrs Joss Miller MRTPI
dated 14 September 2009)

E Deed of Covenant made by Mr Pintu Patel, in favour of the
London Borough of Brent Council, dated 2 April 2009

F Costs Application submitted on behalf of the Appellants



Appeal Decision

Site visit made on 9 December 2009

by **Chris Gossop** BSc MA PhD MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
15 December 2009

Appeal Ref: APP/T5150/D/09/2115465 39 Hopefield Avenue, London NW6 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Terry Tanaka against the decision of the Council of the London Borough of Brent.
- The application Ref. 09/1247, dated 22 May 2009, was refused by notice dated 3 August 2009.
- The development proposed is single storey infill extension to dwellinghouse.

Decision

1. I allow the appeal, and grant planning permission for single storey infill extension to dwellinghouse at 39 Hopefield Avenue, London in accordance with the terms of the application, Ref. 09/1247, dated 22 May 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) With the exception of the glazing to the rear doors and sloping roof, which shall be triple glazed as indicated in appeal drawing No. TANAKA/02 Revision A, Sheet A1, the materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main issues

2. I consider there to be two main issues in this case. The first is whether the proposed extension would preserve or enhance the character of the Queen's Park Conservation Area. The second is its effect upon the living conditions of those occupying the adjoining property, in terms of any loss of outlook.

Reasons

3. Hopefield Avenue is one of a number of parallel streets built in the period 1895-1905. It is lined by terraced housing with two storey, 'outrigger' rear extensions. Under the proposed development, the space between the side of No.39's extension and the common boundary with No.41 would be filled by a single storey lean-to extension. This would replace the current extension built under previous permitted development rights, but it would be almost twice as long.

4. The development would be visible only in views from the rear of the existing properties; it would not be seen from the street. It would be subservient in height, width and bulk to the existing two storey extension and the original 'L' form of the present dwelling would be retained. With its glazed, monopitch roof, it would represent a contemporary approach to design, but not one that would be inappropriate in this context, in my view. I consider that this development would be in keeping with the general character of the rear elevations of this terrace.
5. Moreover, in policy terms, the extension would comply with the relevant policies of the Brent Unitary Development Plan 2004 (UDP). In particular, it would meet the aim of Policy BE26, through being sympathetic to the original design of the dwelling, and that of BE2, in terms of local context and character. The preamble to the latter policy makes it clear that the selective adoption of local design characteristics need not preclude the introduction of innovative designs that relate well to their surroundings; I consider that to be the case here. I **conclude** that the proposed extension would preserve the character of the Queen's Park Conservation Area.
6. On the second issue, according to the plans, the side parapet wall to the proposed development would be equivalent in height to the average height of the present extension. That side elevation would be visible from the rear facing ground floor windows to No.41; however, from most potential ground level viewpoints, I think that the sloping roof to the extension would be largely concealed by the new parapet.
7. I believe that the extension now proposed would have a limited impact on an outlook that is already restricted by the original building form and by the presence of the existing ground floor extension. Thus, the view from the rear of the main house is already closed in by the present side wall, and any further restriction of that view would be minimal, in my opinion. In so far as the side facing windows in No.41's rear extension are concerned, views are already severely limited by the opposing two storey wall, by the side wall to the single storey extension and by the boundary fence. My **conclusion** is that there would be minimal additional restriction of the present outlook; in that respect, the development would accord with the aims of UDP Policy BE9.
8. In deciding that this development is acceptable with conditions, I have taken into account all of the other matters raised. These include the Council's guidance set out in SPG5, *Altering and Extending Your Home*. While this non-statutory guidance states that single storey side or infill extensions to terraced houses will not be allowed, in this case there is an existing such extension and its presence has been a significant influence in my decision. In imposing conditions, I attach one on materials to ensure that they are in keeping with those used in the original building. This also provides for the intended use of triple glazing in the rear facing doors and the extension's roof.

Chris Gossop

Inspector



Appeal Decisions

Hearing held on 10 November 2009

Site visit made on 10 November 2009

by **Margaret Jones MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 December 2009

Appeal A: Ref APP/T5150/E/09/2110956

6 Heathfield Park, London NW2 5JD

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Nablodge Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 09/1293, dated 21 May 2009, was refused by notice dated 20 July 2009.
- The demolition proposed is of existing ruined house.

Appeal B: Ref APP/T5150/A/09/2110699

6 Heathfield Park, London NW2 5JD

- 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 Nablodge Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 09/1292, dated 21 May 2009, was refused by notice dated 20 July 2009.
- The development proposed is demolition of existing ruined house and erection of new building comprising 2 No 2 bedroom flats, 2 No 1 bedroom flats and 4 No studio flats with associated amenity space, bicycle and refuse stores.

Decisions

Appeal A: Ref APP/T5150/E/09/2110956

1. I allow the appeal, and grant conservation area consent for demolition of existing ruined house at 6 Heathfield Park, London NW2 5JD in accordance with the terms of the application Ref 09/1293, dated 21 May 2009, and the plans submitted subject to the following conditions:
 - 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
 - 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

Appeal B: Ref APP/T5150/A/09/2110699.

2. I allow the appeal, and grant planning permission for demolition of existing ruined house and erection of new building comprising 2 No 2 bedroom flats, 2 No 1 bedroom flats and 4 No studio flats with associated amenity space, bicycle
-

and refuse stores at 6 Heathfield Park, London NW2 5JD in accordance with the terms of the application, Ref 09/1292, dated 21 May 2009, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The works shall be carried out as approved prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of an obscure glazed privacy screen on the north elevation of balcony serving Flat 8 facing 8 Heathfield Park as shown on drawing No 08005 P[-]100 Revision D has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to first occupation of the building.

Procedural matters

3. A completed copy of an Agreement dated 9 November 2009 under S106 of the Town and Country Planning Act 1990 as amended, was provided at the Hearing to address the Council's refusal Reasons 2 and 3. It contains a number of provisions to make a financial contribution relating to educational facilities, sustainable transport and sport and/or open space and undertakings to ensure that the flats within the scheme would be car-free. I have taken it into account as a relevant material consideration.
4. The appeals relate to an application for conservation area consent to demolish the existing two-storey detached house and a planning application to redevelop the site for a part three, part four-storey building comprising 8 self-contained flats with associated landscaping. Although I have considered each proposal on its individual merits, to avoid duplication I have dealt with them together in this document, except as otherwise indicated.

Main issues

5. I consider the main issues are whether the proposals would preserve or enhance the character or appearance of the Willesden Conservation Area, and, in respect of Appeal B, the effect on those living at 8 Heathfield Park by reason of privacy and outlook and whether the flats would achieve an appropriate housing mix.
6. Other matters discussed at the Hearing were the parking provision in the light of the S106 Agreement and the justification for the financial provisions of the S106 in the light of the tests in Circular 05/2005. I return to these later.

Reasons

Character and appearance of the Conservation Area

7. The appeal site contains a derelict two-storey detached dwelling which has been unused for over 20 years and is screened by hoardings. The property is set within a generous side and rear garden which is very overgrown with vegetation invading the fabric of the house. The appeal site extends beyond the curtilage of the existing property by the addition of land to the rear of 10 Heathfield Park. The site lies within the Willesden Conservation Area which is focused on the adjacent Victorian commercial centre.
8. Heathfield Park is a crescent of predominantly semi-detached substantial two and three storey late Victorian and Edwardian houses. Originally they would have had a cohesive appearance, with a consistent style, scale and massing but many have undergone considerable change over the years. Nevertheless, they still retain some features, such as the paired swept gables and the overall massing, with the exception of the appeal property, which is in the arts and craft style on a triangular shaped site.
9. The Council argued that the open setting of the appeal site provides an important element of visual relief and introduces a sense of spaciousness in the street scene, which forms an integral part of the character of the Willesden Conservation Area. However, I saw that the existing site had been behind hoardings over 2m high for some years. Although the dense, overgrown trees and shrubs on the site were visible above the hoarding, the site did not have an open aspect. In my opinion the surrounding substantial two and three storey houses were more characteristic of the wider Conservation Area than the appeal property. Indeed, its suburban scale appeared at odds with the higher and denser pattern of development in the remainder of the street. The appeal property appears to me to be a historical accident of later infill development, rather than any planned development reflecting the existing massing or rhythm of buildings in the street.
10. The Council acknowledged that neither the site nor its open aspect was identified in any conservation area appraisal as a particular feature of the Conservation Area which should be retained. The garden to the east has remained free of outbuildings or other structures. The rampant growth of self seeded trees and shrubs has become established over the years that the building has remained vacant. The Council has confirmed that none of this existing vegetation is worthy of retention and can be cleared. I remain

unconvinced that the appeal site, especially in its current state, provides a functional or visually open setting in the street scene that is important to the character or appearance of the Conservation Area.

11. Accordingly I can see no reason why the existing dwelling cannot be demolished provided that an acceptable replacement scheme for development has been agreed. Such a position is consistent with saved Policy BE27 of the Brent Unitary Development Plan (UDP) 2004 and the advice in paragraph 4.27 of Planning Policy Guidance Note (PPG) 15: *Planning and the Historic Environment*. The latter states that where a building makes little or no positive contribution to the character and appearance of the Conservation Area full information is required about what is proposed for the site after demolition. This is to prevent gap sites occurring in conservation areas before planning permission has been granted for an acceptable alternative development.
12. Whilst the proposed part three-storey, and part four-storey building would be larger and higher than the existing derelict building on the site, it would be of a similar height to its immediate neighbour, although on higher ground. The two wings would give the building its dual aspect, similar to the existing house, with the eastern wing stepping down a storey as the site narrows towards the corner. Consequently the proposed building would appear proportionate in the street and its overall size and scale would sit comfortably with the neighbouring properties.
13. The building would step back from the front boundary maintaining the diagonal building line and retaining an open landscaped area to the eastern boundary. The frontage depth would also be comparable to other properties in the street. The building footprint would be greater but it would be proportionate to the increased site area.
14. Although a contemporary design, the proposal takes its design cues from existing buildings in the street. The two swept asymmetric gables would integrate the new building into the streetscape whilst their siting, at right angles to one another, echoes the design of the original dwelling and is an appropriate response to the diagonal site frontage. The choice of materials is in keeping with the character of the Conservation Area although the detailing is modern.
15. I do not agree that the front elevation lacks articulation. The proposed brick elevation to the eastern wing would be set back from the main four storey gable and would be acceptable within the context of the whole scheme. I consider the design of the proposed building is an appropriate response to the unique shape and character of the site whilst reflecting the scale and massing of other houses in the street and the wider Conservation Area.
16. Accordingly I conclude that the proposed demolition of the existing dwelling and the size, siting, scale, bulk and design of the proposed new building would preserve the character and appearance of the Willesden Conservation Area. Both appeal proposals would therefore comply with saved Policies BE2, BE9 BE25, BE27 and BE28 of the UDP. These seek, amongst other things, to ensure that new development in Conservation Areas is of high quality design, appropriate to its local context and protects landscape features where they

form an integral part of the character and appearance of the Conservation Area, and that premature demolition works do not create gap sites.

Living conditions

17. The Council has objected to the proximity and height of the eastern wing of the proposed building in relation to 8 Heathfield Park. However, the Council accepted at the Hearing that the appeal scheme would conform to the advice in adopted Supplementary Planning Guidance (SPG) 17: *Design Guide for New Development*. Paragraph 3.2 of the SPG relating to size and scale requires that where the proposed development adjoins a private amenity or garden area the height of the new development should normally be set below a line of 45 degrees at the garden edge, measured from a height of 2m. The proposal would meet this criteria and would not have an overdominant or overbearing impact on the neighbouring garden. The Council has also referred to the bulk of the roof when viewed from the rear garden of No 8. I do not consider that it would not appear unduly bulky, as the eaves level would be about 4.8m and the roof would be sloping away from anyone in the rear garden.
18. As regards potential overlooking, the proposed eastern wing would be off-set from the rear of No 8 and anyone standing on the second-floor balcony would only have an oblique view of the rear façade of No 8. SPG 17 encourages the provision of balconies and any potential overlooking of No 8's rear amenity area from this balcony could be addressed by an obscure glazed privacy screen, which could be secured by way of a condition.
19. Accordingly I conclude on this issue that the proposal would provide for a satisfactory level of amenity for those living at 8 Heathfield Park, in terms of privacy and outlook. As such the proposal would not conflict with saved Policy BE9 of the UDP and the advice in SPG17 which aim to ensure that the design of new development is appropriate to its setting and respects the amenity neighbouring properties.

Housing Mix

20. The proposal would not incorporate a replacement 3 bedroom family sized dwelling and half the flats would be studio units. The Council has referred to the emerging Core Strategy (CS) Development Plan Document which provides evidence of demand for family sized units and in particular to Policy CP21 which seeks to prioritise provision of accommodation with three or more bedrooms. This represents a change from adopted UDP policy where two bedroomed units are considered to be family sized accommodation. The CS policy only applies to suitable sites providing 10 or more homes and in house subdivisions or conversion schemes. Neither of these circumstances apply to the appeal site.
21. The appeal scheme includes a variety of accommodation sizes and accords with the adopted UDP with respect to family-sized accommodation. I do not agree with the Council's argument that the appeal proposal is akin to a conversion scheme because it would replace a single family dwelling. The proposal is a redevelopment of the site and it has been demonstrated that the existing dwelling is structurally unsound and beyond viable repair. I therefore do not accept that saved UDP Policy H18, which relates to the quality of flat conversions, or emerging Policy CP21 of the CS apply to the appeal scheme.

Accordingly, I conclude that no relevant evidence has been produced to demonstrate that the proposed housing mix would be unacceptable.

Other Material Considerations

Parking provision

22. The Council's refusal Reason 2 related to increased demand for on-street parking and the absence of a legal agreement to control the matter. It accepts that the appeal site is in a highly sustainable location and is located within an existing Controlled Parking Zone (CPZ) which restricts parking in Heathfield Park between 08.00 and 18.30 Monday to Saturday. The CPZ allows Brent Council to withhold residents parking permits from future occupiers of the development. I am satisfied that the completed S106 Agreement addresses this reason for refusal by incorporating undertakings to ensure that future owners and occupiers would not be entitled to a Residents Parking Permit, unless they are disabled, and accordingly I afford the Agreement significant weight.
23. I have noted the concerns of local residents regarding the demand for on-street parking spaces, the competition for spaces in Heathfield Park and the enforceability of the S106 Agreement. I am satisfied the car-free development provisions of the S106 Agreement would be enforceable and although an application can be made to discharge a planning obligation after 5 years, this is unlikely to be granted if it still serves a useful purpose. Accordingly, I conclude that the proposal would not conflict with saved UDP Policies TRN23 and TRN24 which permit car-free development in areas with good public transport and where increased on-street parking would give rise to highway safety issues.

S106 Financial contributions

24. The submitted S106 Agreement makes financial contributions to address the educational, sustainable transport and open space impacts of the proposed development in accordance with clear formulae set out in the Council's Supplementary Planning Development (SPD): *S106 Planning Obligations* adopted in October 2007. I am satisfied that the evidence relating to local community infrastructure and in particular education capacity, improvements to local public transport routes and local open space deficiency presented at the Hearing met the actual impacts of the proposed development and the tests set out in Circular 05/2005. Accordingly I consider the S106 Agreement would address refusal Reason 3 and accord it significant weight.
25. The proposal would not conflict with saved UDP policies CF6, TRN4, OS7 and the SPD. These seek, amongst other things, to ensure that contributions sought through planning obligations are necessary to make the development acceptable in planning terms. In particular they address the demand created for school places, open space in an open space deficiency area and public transport improvements which arise directly from the proposed development. I did not find that Saved Policy OS18 referred to in Reason 3 was relevant to the appeal scheme as it does not involve development over 15 units.

Conclusion

26. For the reasons given above and having regard to all other matters raised I conclude that both appeals should succeed.

Conditions

27. I have considered the need for conditions in the light of the advice in Circular 11/95: *The use of conditions in planning permissions*, and those put forward by the Council and the appellant. In the interests of the quality of the building and the appearance of the Conservation Area, I agree that the submission of samples of materials and details of landscaping and boundary treatment are required in Appeal B.

28. As stated above, and in the interests of residential amenity I have required the submission of details of an obscure glazed privacy screen on the northern elevation of the balcony to Flat 8 in Appeal B. I also consider that in Appeal A a condition restricting any demolition works until a contract has been let for the redevelopment scheme is necessary to prevent a gap site in the Conservation Area.

Margaret Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Suryakant Badiani	Nablodge Ltd
Mr David Inglis B Arch	Robert O'Hara Architects
Mr Robert O'Hara BA Hons, BA Arch Hons, RIBA	Robert O'Hara Architects
Mr S Badiani	Representing Nablodge Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ben Martin MSc, B Eng Hons	London Borough of Brent
Mr Zayd Al-Jawad	London Borough of Brent

INTERESTED PERSONS:

Mr Shaun Lamplough	Local Resident's representative
--------------------	---------------------------------

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed and completed S106 Agreement between Nablodge Limited and the Council of the London Borough of Brent.
- 2 Copy of Officer Report relating to appeal scheme LPA Ref 09/1292.
- 3 Copy of Highway observations dated 30/6/09 referred to in evidence.
- 4 Copy of Policy H18 of the Brent Unitary Development Plan relating to The Quality of Flat Conversions.
- 5 Copy of PS14 Car Parking Standard for Residential Development referred to in Policy TRN23 of the Brent Unitary Development Plan.
- 6 Copy of Map OS1 from Brent Unitary Development Plan showing Local Level Open Space and Open Space Deficiency.



Appeal Decisions

Hearing held on 10 November 2009

Site visit made on 10 November 2009

by **Margaret Jones MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 December 2009

Appeal A: Ref APP/T5150/E/09/2110956

6 Heathfield Park, London NW2 5JD

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Nablodge Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 09/1293, dated 21 May 2009, was refused by notice dated 20 July 2009.
- The demolition proposed is of existing ruined house.

Appeal B: Ref APP/T5150/A/09/2110699

6 Heathfield Park, London NW2 5JD

- 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 Nablodge Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 09/1292, dated 21 May 2009, was refused by notice dated 20 July 2009.
- The development proposed is demolition of existing ruined house and erection of new building comprising 2 No 2 bedroom flats, 2 No 1 bedroom flats and 4 No studio flats with associated amenity space, bicycle and refuse stores.

Decisions

Appeal A: Ref APP/T5150/E/09/2110956

1. I allow the appeal, and grant conservation area consent for demolition of existing ruined house at 6 Heathfield Park, London NW2 5JD in accordance with the terms of the application Ref 09/1293, dated 21 May 2009, and the plans submitted subject to the following conditions:
 - 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
 - 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

Appeal B: Ref APP/T5150/A/09/2110699.

2. I allow the appeal, and grant planning permission for demolition of existing ruined house and erection of new building comprising 2 No 2 bedroom flats, 2 No 1 bedroom flats and 4 No studio flats with associated amenity space, bicycle
-

and refuse stores at 6 Heathfield Park, London NW2 5JD in accordance with the terms of the application, Ref 09/1292, dated 21 May 2009, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The works shall be carried out as approved prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of an obscure glazed privacy screen on the north elevation of balcony serving Flat 8 facing 8 Heathfield Park as shown on drawing No 08005 P[-]100 Revision D has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to first occupation of the building.

Procedural matters

3. A completed copy of an Agreement dated 9 November 2009 under S106 of the Town and Country Planning Act 1990 as amended, was provided at the Hearing to address the Council's refusal Reasons 2 and 3. It contains a number of provisions to make a financial contribution relating to educational facilities, sustainable transport and sport and/or open space and undertakings to ensure that the flats within the scheme would be car-free. I have taken it into account as a relevant material consideration.
4. The appeals relate to an application for conservation area consent to demolish the existing two-storey detached house and a planning application to redevelop the site for a part three, part four-storey building comprising 8 self-contained flats with associated landscaping. Although I have considered each proposal on its individual merits, to avoid duplication I have dealt with them together in this document, except as otherwise indicated.

Main issues

5. I consider the main issues are whether the proposals would preserve or enhance the character or appearance of the Willesden Conservation Area, and, in respect of Appeal B, the effect on those living at 8 Heathfield Park by reason of privacy and outlook and whether the flats would achieve an appropriate housing mix.
6. Other matters discussed at the Hearing were the parking provision in the light of the S106 Agreement and the justification for the financial provisions of the S106 in the light of the tests in Circular 05/2005. I return to these later.

Reasons

Character and appearance of the Conservation Area

7. The appeal site contains a derelict two-storey detached dwelling which has been unused for over 20 years and is screened by hoardings. The property is set within a generous side and rear garden which is very overgrown with vegetation invading the fabric of the house. The appeal site extends beyond the curtilage of the existing property by the addition of land to the rear of 10 Heathfield Park. The site lies within the Willesden Conservation Area which is focused on the adjacent Victorian commercial centre.
8. Heathfield Park is a crescent of predominantly semi-detached substantial two and three storey late Victorian and Edwardian houses. Originally they would have had a cohesive appearance, with a consistent style, scale and massing but many have undergone considerable change over the years. Nevertheless, they still retain some features, such as the paired swept gables and the overall massing, with the exception of the appeal property, which is in the arts and craft style on a triangular shaped site.
9. The Council argued that the open setting of the appeal site provides an important element of visual relief and introduces a sense of spaciousness in the street scene, which forms an integral part of the character of the Willesden Conservation Area. However, I saw that the existing site had been behind hoardings over 2m high for some years. Although the dense, overgrown trees and shrubs on the site were visible above the hoarding, the site did not have an open aspect. In my opinion the surrounding substantial two and three storey houses were more characteristic of the wider Conservation Area than the appeal property. Indeed, its suburban scale appeared at odds with the higher and denser pattern of development in the remainder of the street. The appeal property appears to me to be a historical accident of later infill development, rather than any planned development reflecting the existing massing or rhythm of buildings in the street.
10. The Council acknowledged that neither the site nor its open aspect was identified in any conservation area appraisal as a particular feature of the Conservation Area which should be retained. The garden to the east has remained free of outbuildings or other structures. The rampant growth of self seeded trees and shrubs has become established over the years that the building has remained vacant. The Council has confirmed that none of this existing vegetation is worthy of retention and can be cleared. I remain

unconvinced that the appeal site, especially in its current state, provides a functional or visually open setting in the street scene that is important to the character or appearance of the Conservation Area.

11. Accordingly I can see no reason why the existing dwelling cannot be demolished provided that an acceptable replacement scheme for development has been agreed. Such a position is consistent with saved Policy BE27 of the Brent Unitary Development Plan (UDP) 2004 and the advice in paragraph 4.27 of Planning Policy Guidance Note (PPG) 15: *Planning and the Historic Environment*. The latter states that where a building makes little or no positive contribution to the character and appearance of the Conservation Area full information is required about what is proposed for the site after demolition. This is to prevent gap sites occurring in conservation areas before planning permission has been granted for an acceptable alternative development.
12. Whilst the proposed part three-storey, and part four-storey building would be larger and higher than the existing derelict building on the site, it would be of a similar height to its immediate neighbour, although on higher ground. The two wings would give the building its dual aspect, similar to the existing house, with the eastern wing stepping down a storey as the site narrows towards the corner. Consequently the proposed building would appear proportionate in the street and its overall size and scale would sit comfortably with the neighbouring properties.
13. The building would step back from the front boundary maintaining the diagonal building line and retaining an open landscaped area to the eastern boundary. The frontage depth would also be comparable to other properties in the street. The building footprint would be greater but it would be proportionate to the increased site area.
14. Although a contemporary design, the proposal takes its design cues from existing buildings in the street. The two swept asymmetric gables would integrate the new building into the streetscape whilst their siting, at right angles to one another, echoes the design of the original dwelling and is an appropriate response to the diagonal site frontage. The choice of materials is in keeping with the character of the Conservation Area although the detailing is modern.
15. I do not agree that the front elevation lacks articulation. The proposed brick elevation to the eastern wing would be set back from the main four storey gable and would be acceptable within the context of the whole scheme. I consider the design of the proposed building is an appropriate response to the unique shape and character of the site whilst reflecting the scale and massing of other houses in the street and the wider Conservation Area.
16. Accordingly I conclude that the proposed demolition of the existing dwelling and the size, siting, scale, bulk and design of the proposed new building would preserve the character and appearance of the Willesden Conservation Area. Both appeal proposals would therefore comply with saved Policies BE2, BE9 BE25, BE27 and BE28 of the UDP. These seek, amongst other things, to ensure that new development in Conservation Areas is of high quality design, appropriate to its local context and protects landscape features where they

form an integral part of the character and appearance of the Conservation Area, and that premature demolition works do not create gap sites.

Living conditions

17. The Council has objected to the proximity and height of the eastern wing of the proposed building in relation to 8 Heathfield Park. However, the Council accepted at the Hearing that the appeal scheme would conform to the advice in adopted Supplementary Planning Guidance (SPG) 17: *Design Guide for New Development*. Paragraph 3.2 of the SPG relating to size and scale requires that where the proposed development adjoins a private amenity or garden area the height of the new development should normally be set below a line of 45 degrees at the garden edge, measured from a height of 2m. The proposal would meet this criteria and would not have an overdominant or overbearing impact on the neighbouring garden. The Council has also referred to the bulk of the roof when viewed from the rear garden of No 8. I do not consider that it would not appear unduly bulky, as the eaves level would be about 4.8m and the roof would be sloping away from anyone in the rear garden.
18. As regards potential overlooking, the proposed eastern wing would be off-set from the rear of No 8 and anyone standing on the second-floor balcony would only have an oblique view of the rear façade of No 8. SPG 17 encourages the provision of balconies and any potential overlooking of No 8's rear amenity area from this balcony could be addressed by an obscure glazed privacy screen, which could be secured by way of a condition.
19. Accordingly I conclude on this issue that the proposal would provide for a satisfactory level of amenity for those living at 8 Heathfield Park, in terms of privacy and outlook. As such the proposal would not conflict with saved Policy BE9 of the UDP and the advice in SPG17 which aim to ensure that the design of new development is appropriate to its setting and respects the amenity neighbouring properties.

Housing Mix

20. The proposal would not incorporate a replacement 3 bedroom family sized dwelling and half the flats would be studio units. The Council has referred to the emerging Core Strategy (CS) Development Plan Document which provides evidence of demand for family sized units and in particular to Policy CP21 which seeks to prioritise provision of accommodation with three or more bedrooms. This represents a change from adopted UDP policy where two bedroomed units are considered to be family sized accommodation. The CS policy only applies to suitable sites providing 10 or more homes and in house subdivisions or conversion schemes. Neither of these circumstances apply to the appeal site.
21. The appeal scheme includes a variety of accommodation sizes and accords with the adopted UDP with respect to family-sized accommodation. I do not agree with the Council's argument that the appeal proposal is akin to a conversion scheme because it would replace a single family dwelling. The proposal is a redevelopment of the site and it has been demonstrated that the existing dwelling is structurally unsound and beyond viable repair. I therefore do not accept that saved UDP Policy H18, which relates to the quality of flat conversions, or emerging Policy CP21 of the CS apply to the appeal scheme.

Accordingly, I conclude that no relevant evidence has been produced to demonstrate that the proposed housing mix would be unacceptable.

Other Material Considerations

Parking provision

22. The Council's refusal Reason 2 related to increased demand for on-street parking and the absence of a legal agreement to control the matter. It accepts that the appeal site is in a highly sustainable location and is located within an existing Controlled Parking Zone (CPZ) which restricts parking in Heathfield Park between 08.00 and 18.30 Monday to Saturday. The CPZ allows Brent Council to withhold residents parking permits from future occupiers of the development. I am satisfied that the completed S106 Agreement addresses this reason for refusal by incorporating undertakings to ensure that future owners and occupiers would not be entitled to a Residents Parking Permit, unless they are disabled, and accordingly I afford the Agreement significant weight.
23. I have noted the concerns of local residents regarding the demand for on-street parking spaces, the competition for spaces in Heathfield Park and the enforceability of the S106 Agreement. I am satisfied the car-free development provisions of the S106 Agreement would be enforceable and although an application can be made to discharge a planning obligation after 5 years, this is unlikely to be granted if it still serves a useful purpose. Accordingly, I conclude that the proposal would not conflict with saved UDP Policies TRN23 and TRN24 which permit car-free development in areas with good public transport and where increased on-street parking would give rise to highway safety issues.

S106 Financial contributions

24. The submitted S106 Agreement makes financial contributions to address the educational, sustainable transport and open space impacts of the proposed development in accordance with clear formulae set out in the Council's Supplementary Planning Development (SPD): *S106 Planning Obligations* adopted in October 2007. I am satisfied that the evidence relating to local community infrastructure and in particular education capacity, improvements to local public transport routes and local open space deficiency presented at the Hearing met the actual impacts of the proposed development and the tests set out in Circular 05/2005. Accordingly I consider the S106 Agreement would address refusal Reason 3 and accord it significant weight.
25. The proposal would not conflict with saved UDP policies CF6, TRN4, OS7 and the SPD. These seek, amongst other things, to ensure that contributions sought through planning obligations are necessary to make the development acceptable in planning terms. In particular they address the demand created for school places, open space in an open space deficiency area and public transport improvements which arise directly from the proposed development. I did not find that Saved Policy OS18 referred to in Reason 3 was relevant to the appeal scheme as it does not involve development over 15 units.

Conclusion

26. For the reasons given above and having regard to all other matters raised I conclude that both appeals should succeed.

Conditions

27. I have considered the need for conditions in the light of the advice in Circular 11/95: *The use of conditions in planning permissions*, and those put forward by the Council and the appellant. In the interests of the quality of the building and the appearance of the Conservation Area, I agree that the submission of samples of materials and details of landscaping and boundary treatment are required in Appeal B.

28. As stated above, and in the interests of residential amenity I have required the submission of details of an obscure glazed privacy screen on the northern elevation of the balcony to Flat 8 in Appeal B. I also consider that in Appeal A a condition restricting any demolition works until a contract has been let for the redevelopment scheme is necessary to prevent a gap site in the Conservation Area.

Margaret Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Suryakant Badiani	Nablodge Ltd
Mr David Inglis B Arch	Robert O'Hara Architects
Mr Robert O'Hara BA Hons, BA Arch Hons, RIBA	Robert O'Hara Architects
Mr S Badiani	Representing Nablodge Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ben Martin MSc, B Eng Hons	London Borough of Brent
Mr Zayd Al-Jawad	London Borough of Brent

INTERESTED PERSONS:

Mr Shaun Lamplough	Local Resident's representative
--------------------	---------------------------------

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed and completed S106 Agreement between Nablodge Limited and the Council of the London Borough of Brent.
- 2 Copy of Officer Report relating to appeal scheme LPA Ref 09/1292.
- 3 Copy of Highway observations dated 30/6/09 referred to in evidence.
- 4 Copy of Policy H18 of the Brent Unitary Development Plan relating to The Quality of Flat Conversions.
- 5 Copy of PS14 Car Parking Standard for Residential Development referred to in Policy TRN23 of the Brent Unitary Development Plan.
- 6 Copy of Map OS1 from Brent Unitary Development Plan showing Local Level Open Space and Open Space Deficiency.



Appeal Decision

Hearing held on 3 November 2009
Associated site visit made on 3
November 2009

by **N P Freeman BA(Hons) Dip TP MRTPI**
DMS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
17 November 2009

Appeal Ref: APP/T5150/C/09/2098256 **21 Monson Road, London, NW10 5UR**

- 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 House & Homes Estates Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/07/0751 and the notice was issued on 14 January 2009.
- The breach of planning control as alleged in the notice is the change of use of the premises from 2 self-contained flats to 9 self-contained studio flats and the erection of a rear extension.
- The requirements of the notice are:
 - 1) Cease the use of the property as 9 self-contained studio flats, and remove all fixtures and fittings associated with this unlawful use;
 - 2) Demolish the rear extension, remove all materials arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance is 6 months after the notice takes effect.
- The appeal was lodged on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Ground (d) has been withdrawn and the appeal is proceeding on the remaining grounds.

Summary of Decision: The appeal is allowed in the terms set out below in the Formal Decision.

Background

1. The appeal property is in use as 9 self-contained (s/c) flats¹. Each flat has a main room used as a bed/living room, containing a kitchenette (with sink, cooker, fridge, washing machine and cupboards), and a separate WC/shower room. Wardrobes are provided and a small table and chairs in most units. The ground floor rear flat has access to, and sole use of, the rear garden.
2. The Council refer to a planning permission for the conversion of the property into 2 s/c flats granted on 25 August 1987 which they contend is the lawful use. I have not been provided with a copy of this decision although it is not disputed that it was granted. What is at issue is whether it was ever implemented. I have no documents to confirm that this happened. The appellant argues that there are no Building Regulation records pertaining to this conversion. I noted that there are two gas meter boxes attached to the front of the property. Only one of these now contains a meter². This may reflect a former use as 2 flats but this is far from conclusive.

¹ 4 on the ground floor, 4 on the first floor and 1 in the roofspace (attic conversion)

² Mr Bhatt - Director of the appellant company - said that only one meter exists now as he pays all the utility bills for the property with the tenants rent including an element for the services provided

3. A statutory declaration (SD) of Anil Kalra, dated 15 May 2003, has been supplied by the appellant who claims that this was required when the property was acquired by the appellant company in June 2003. The SD states that Mr Kalra purchased 21 Monson Road on 26 March 1999 "at which time the use of the Property by the Seller was as a house in multiple occupation" (HMO). He goes on to assert that, to the best of his knowledge it has been continuously used as a HMO having been let as an eight room house to various students of the Royal College of Art in Kensington. A number of documents (letters, tenancy agreements, rent demands and receipts) have been supplied to support the claim. A tenancy agreement dated 1 November 1999 shows Mr Kalra as the landlord and the Royal College of Art as the tenant. My understanding is that the college found students to occupy the property and collected rent and deposits from them which were then forwarded on with a receipt to Mr Kalra. The documents provided cover the period from October 1999 to January 2003.
4. The acquisition of the property by the appellant company was registered with the Land Registry on 27 June 2003. At this time the property was surveyed³ and copies of plans provided showing 6 s/c bedsits (each with its own cooking and washing facilities) and 2 non s/c bedsits with a shared shower/WC on the ground floor. A communal kitchen is shown at the rear of the ground floor behind which is a glazed room (with boiler cupboard in one corner), which is probably the conservatory referred to in the January 1999 sales particulars⁴.
5. An SD of Nokolay Tsanev, dated 14 March 2008, says that he resided at the appeal property from 2 August 2003 to 23 September 2007. Mr Bhatt said that he occupied one of the bedsits on the ground floor. Mr Tsanev says he was a tenant of the appellant company and rented the whole house subletting the parts he was not occupying to other people. He asserts that the property was set out as 8 studios, a shared toilet facility and a kitchen which was never used as "we all had our own facilities".
6. Correspondence from the Council's Housing Services reveal that the property was already registered as a HMO in October 2006 (under a previous local scheme) and a Licence as a HMO, dated 17 October 2006, was issued under the new licensing regime. The Licence is for a maximum of 6 households and 10 persons. However a letter dated 28 March 2008 from Housing Services states that this occupancy level referred to in a letter of 30 March 2006 was in fact incorrect and should have read 8 households and 16 persons. The March 2008 letter also refers to "much needed renovation" "following my recommendations for general upgrading of the facilities in March 2006" and new occupancy levels for a maximum of 9 households and 18 persons.
7. Mr Bhatt said that the conversion works to create 9 s/c flats, including the one in the attic, and the works to the extension at the rear commenced in about October/November 2007. Plans showing the claimed layout in 2007 compared with 2003 have been supplied and others dated February 2009 show the arrangement at that time. The latter plans are in general accordance with what I observed in terms of layout although the kitchenette in one of the first floor units is in a different position.

³ Surveyed by Dominic Boutall Associates (June 2003)

⁴ Homebuyer survey and valuation for Mr Kalra – Date of Inspection 21 January 1999 – (App 12 Appt.)

The Notice

8. Based on my assessment of the history above, I do not consider that there is clear evidence before me to show that the property had been converted into 2 flats and it was certainly not used as such when the notice was served. The 1999 sales particulars do mention 2 kitchens (one on the ground floor and one on the first floor) which may be indicative of 2 units of residential accommodation but I find it surprising that these particulars do not say there were 2 s/c flats existing if that were the case. An alternative explanation is that the house was in multiple occupation at that time and this would be consistent with Mr Kalra's SD.
9. The authority of *Ferris v SSE & Doncaster MBC [1988] JPL 777* is that neither the planning authority nor an inspector on appeal has to identify or state the "base use" for enforcement purposes at any stage. It is helpful to do so but if there is ambiguity, as I find in this case, it is better not to do so. The Council's representative urged me to delete the reference to 2 flats in the allegation and I consider that this is apt in the particular circumstances. I do not consider that this causes any injustice to the appellant as it is the claim that 9 studio flats are lawful which is under consideration having regard to the former use of the property. I will therefore use the powers vested in me under s176(1) of the Act to make the appropriate correction to the allegation.

Ground (c)

The use

10. There is no dispute that the use of the property as 9 s/c flats only came into being after the works started in the autumn of 2007 were completed. For this reason, any claim to lawfulness under ground (d) due to the use being in existence for 4 years (i.e. as 9 single dwelling houses) is not being pursued. The appellant contends that the property became lawful as a HMO under the '10 year rule' or, in the alternative, it has a lawful use as 6 s/c and 2 non s/c units of residential accommodation. It is then asserted that as the primary use was as 6 s/c units prior to the conversion works in 2007 that there has been no material change of use to 9 s/c studio flats.
11. For the Council the claim of lawfulness as a HMO is not accepted and even if it was it is argued that this would not assist the appellant as the creation of 9 studio flats, which amount to 9 separate planning units, is a material change of use for which no planning permission has been granted. Additionally the alternative claim that 6 s/c and 2 non s/c flats may be lawful instead does not assist the appellant as at most it would equate to 6 separate planning units and the present use is materially different.
12. I start with the claim that the use as a HMO may still be lawful notwithstanding the creation of 9 studio units. The evidence I have is sufficient to show that, on the balance of probability, the property was being occupied by students from 1999 to early 2003. However, it is not clear that their occupation amounted to a HMO in planning terms⁵. Mr Kalra said in his SD that it was "let as an eight room house to various students" during that period. This could

⁵ I am aware that the definition of an HMO in planning and housing terms is different and that registration for the latter can be required even when the use in planning terms would not qualify as an HMO

have been as a HMO in planning terms with each student living separately with some shared facilities or as persons living together as "single household" within a dwelling house (as defined by Class C3 of the Town and Country Planning (Use Classes) Order 1987. Paragraph 66 of Circular 03/05, regarding this Order, explains the concept of a single household and refers to persons living together as a family or by no more than 6 persons. However paragraph 76 of the same states "Although the control limit of six persons defines the scope of the C3 dwelling house classes, this does not imply that any excess of that number must constitute a breach of planning control". The question to answer is has the use intensified so as to become of a different character to those living together as a single household.

13. With these guidelines in mind and based on the evidence before me, I am satisfied that there were likely to be over 6 people living there on a normal day-to-day basis. Additionally the high turnover in the number of students during the 4 year period tends to suggest that this was not a group of students living as a single household with a few changing from time to time. On this basis, I am inclined to the view that the property was indeed being used as an HMO in planning terms during that period and not a single dwelling house.
14. Moving forward to period after the appellant company purchased the property, the plans and other evidence indicate 6 s/c and 2 non s/c units of accommodation in existence at that time. This could be argued as still amounting to a HMO with some shared facilities. Whilst 6 of the units were self-contained there was a communal kitchen, albeit said to be little or never used. The alternative scenario, based on the Council's argument, is that there were by then 6 planning units for the 6 s/c flats (and presumably another one for the non s/c parts of the property).
15. I have no details of the occupation prior to March 1999 only that according to Mr Kalra the house was in multiple occupation at that time. It is agreed that after autumn 2007 the use as 9 separate flats began. For a 10 year period to be made out for the HMO it would have had to go back to late 1997. Even if this were the case and there was a period of at least 10 years of use as a HMO, I do not find that this assists the appellant as this would be a materially different use to the 9 studio flats, which by applying the criteria set out in paragraph 71 of C03/05, are separate dwelling houses and planning units.
16. For completeness, I have also considered the alternative claim that the use as 6 s/c and 2 non s/c units has become lawful through the passage of time and that as the primary use is self-contained units there has been no material change of use. Firstly, there is insufficient evidence to conclude that this arrangement existed for the requisite period for lawfulness to arise. Secondly, this argument seems to be at odds with the appellant's own evidence of claims concerning the use as a HMO. Thirdly, I consider 6 s/c units and 2 non s/c units to be materially different from 9 s/c units, the extra one having been added in the roofspace. Fourthly, there is the planning unit argument that what now exist are 9 separate planning units rather than something less.
17. Bringing these points together, I conclude that the use of the property as alleged, namely 9 s/c studio flats, amounts to a breach of planning control for which there is no planning permission. I do not find the appellant's reliance on what is the primary use to be persuasive as this only applies in circumstances

where there is one planning unit which does not change within which the mix of uses may alter. For the reasons given this is not the situation before me as new planning units have been formed. On this basis, the appeal does not succeed on ground (c) in respect of the use alleged.

The extension

18. Photographs have been supplied showing the extension when it was under construction. The appellant asserts that this was simply alterations to the pre-existing conservatory which occupied the same footprint and therefore not 'development' requiring planning permission. For the Council it is argued that the works carried out were extensive and amounted at least to rebuilding or reconstruction. Moreover, even if it were accepted as only amounting to alterations then there are no 'permitted development' rights for such works applying to properties converted to flats. I agree with the latter point on the basis of the definition of a "dwellinghouse" found at Article 1 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) which excludes a building containing one or more flats.
19. S55 of the 1990 Act states that building operations amount to development and include the demolition of buildings, rebuilding, or additions to buildings and other operations normally undertaken by a builder. S55(2)(a) indicates that operations that only affect the interior of a building or do not materially affect the external appearance of the building do not amount to development.
20. Turning to the facts, I don't have any photographs showing the former conservatory structure that existed but from the plans before me it appears to have contained significant amounts of glazing on two elevations. Mr Bhatt confirmed this and said that blockwork was used to replace the glazing with the rear wall being raised by one course to create a shallower pitch to the roof. The photographs during building works also show two types of brickwork. A lower red brick section with a buff stock brick section above. Mr Bhatt said that both pieces of wall were in situ and that the new blockwork was added above. I have my doubts on this as the stock brick section contains a number of white faced or painted bricks spread throughout which are typical of a situation where reclaimed bricks, which formed part of a demolished building, have been used to build a new wall. Also it appears that the brickwork is lacking pointing in some places. For these reasons, I am inclined to the view that the lower red brick wall may have been pre-existing but that new masonry walls (part brickwork, part blockwork) were likely to have been constructed as new work with a window and external door within them.
21. Coming back to s55, I find that the works undertaken would have involved some partial demolition and a significant amount of rebuilding or reconstruction in a different form and appearance to what previously existed. Moreover, I find that work of this nature would normally be undertaken by a builder. It certainly goes well beyond a repair given the material changes to the elevations that have taken place. Even the appellant accepts that it amounted to partial reconstruction. I also conclude that, notwithstanding the fact that the size of the extension has not increased in terms of footprint, it nevertheless has materially affected the external appearance of the building. For these reasons I consider that development has taken place for which there is no planning permission and the ground (c) appeal in this respect fails.

Ground (a)

Main issues

22. The Council's agent made it clear that no objections were raised to the extension on grounds of design or impact in terms of light and outlook for neighbouring occupiers. I am satisfied from my own observations that no material harm has arisen in these respects. The Council's concern with the extension is that it has added to the intensity of the use of the building. So the main issue to consider with both the change of use and the extension is:
- 1) Whether the flats are unacceptable in terms of the standard of living accommodation provided;
 - 2) Whether the number of units and intensity of use is detrimental to the living conditions of neighbouring residents.

Reasons

Standard of accommodation

23. The local policies referred to are Policies H17, H18 and BE9 of the Brent Unitary Development Plan (UDP)⁶. For the Council it was accepted that the requirements of Policy H17 relating to flat conversions in general are met. Their objection relates to claimed failure to meet the criteria concerning the quality of flat conversions in Policy H18, particularly in terms of flat sizes and 'stacking' arrangement, and the supporting advice in the adopted *Supplementary Planning Guidance (SPG) 17 – Design Guide for New Development*.
24. As regards size, SPG 17 includes a table which indicates that studio flats should normally have a minimum size of 33 sq.m. in floor area. The appellant accepted that all of the flats are below this floor area. From my assessment of the plans before me it appears that the smallest flats only have about half this floor area. In terms of 'stacking' it is clear that there are shared living/bedrooms above one another. However, this is to be expected were every unit is a studio or bedsit type flat. This is not a situation where there are separate living rooms and bedrooms in each unit. In terms of the other criteria I am satisfied from my observations that the units have adequate and safe circulation and storage space and that the front garden provides reasonable scope for cycle parking and bin storage. The rear garden has not been subdivided and can only practically be accessed from the rear ground floor flat.
25. The subdivision has not provided a range of unit sizes but given the history of the use of the property and the acceptance of the Council that there is a demand for small units of accommodation to meet housing need in the Borough, I do not consider that this weighs heavily against the development. I have considered the appellant's argument that the units are providing affordable housing but based on the definition contained in the UDP I am not convinced that this is so in the accepted sense⁷. Whilst it was argued that the rents charged would not exceed the level of benefit a resident was entitled to I do not know what proportion the rent would be. No registered social landlord

⁶ All 'saved' by virtue of the Direction of the Secretary of State dated 18 September 2007

⁷ Paras. 5.7.14 – 5.7.18 of the UDP

is involved and only 3 of the existing tenants are on housing benefit. The units appear therefore to be more akin open-market housing albeit aimed at vulnerable groups and ethnic minorities with limited means or incomes⁸.

26. I have had regard to the nature and characteristics of the units in question. I accept that some are small in floor area but the flats have a well-planned and usable arrangement with sufficient space for cooking, sleeping and eating and a well-equipped shower/WC within them. All units receive natural light and the levels of daylight penetrating appeared to be sufficient and particularly good for the front flats at ground and first floor levels (bay windows) and the attic unit.
27. In terms of the extension as this only replaced a former conservatory I do not consider that it can be argued as materially increasing the size of the accommodation.
28. Overall, my conclusion on this issue is that there is conflict with criterion (b) of Policy H18 and the supporting guidance in SPG 17 in terms of rooms sizes. As far as criterion (a) of the same is concerned it seems to me that this may actually be met as the type of room being stacked above another is a studio flat of bedsit which is the same. Set against this harm I consider that there are other material considerations which need to be taken into account. Firstly, the property has been used for many years as a HMO or some form of multiple or self-contained occupation and this has been acknowledged and accepted by the Council's Housing Services. Secondly, I consider that the accommodation provided is of a reasonable standard with adequate facilities for the occupiers. Thirdly, from the plans before me it would appear to be providing a better standard of accommodation than previously existed in some respects. Fourthly, it appears to be meeting the needs of certain vulnerable minority groups who would struggle to find alternative accommodation.

Living conditions of neighbours

29. The Council have cited conflict with Policy BE9 in the reasons for issuing the notice on the basis that the bulk, height and siting, of what I take to be the extension, is unacceptable and detrimental to the amenity of neighbouring residents. However, the Council's agent made it clear at the hearing that objections were not being pursued on this basis. Policy BE9 concerns architectural quality which was also not criticised by the Council. The only criterion that might apply is (e) but I consider that neither the layout of the flats nor the extension at the rear would cause harm in this respect. I therefore conclude that either Policy BE9 is not relevant or that the tests contained within it are satisfied.
30. I have considered the claim that the introduction of 9 flats has caused nuisance in terms of noise and disturbance due to the intensity of the use. Whilst I have received one anonymous letter of objection there are no other letters from local residents complaining on this basis. I am mindful that the house has been used for many years by a large number of occupants, including groups of students, and there is no objective evidence to show that the present

⁸ Letter from Horn Stars (an organisation which provides support services to members of the Black and Ethnic Minority Communities and Refugees – especially Somalians), dated 17 July 2009, refers to 2 residents at the appeal property who use their services and the assistance of the appellant company in providing accommodation for vulnerable service users

accommodation has or is giving rise to nuisance from noise and general activity. So I do not consider that the claim of harm to the living conditions of neighbouring residents is made out.

Conclusions on ground (a)

31. I am required to determine the deemed application in accordance with s38(6) of the 2004 Act⁹ and this requires determination to be made in accordance with the development plan unless material considerations indicate otherwise. I have found there to be some conflict with Policy H18 of the UDP but consider that the other material considerations I have described above are such that a departure is justified in this instance and that, applying the appropriate balancing exercise, planning permission should be granted. I have explained why I come to this view based on the particular circumstances and therefore do not see this as setting an unwelcome precedent.
32. I asked the Council's agent if there were any conditions that were recommended should permission be granted. He did not put any forward although, in response to the appellant's agent's comments and my prompting, he felt that conditions regarding the provision of refuse storage and cycle parking facilities might be appropriate. Based on my observation that the front garden is already used to store refuse bins and there is a significant amount of space left over to park bicycles, I do not consider it is necessary to impose a condition in these respects.

Overall conclusion

33. I will correct the allegation in the notice as described in paragraph 9 above in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
34. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The notice as corrected is quashed. On this basis there is no need to consider the ground (f) and (g) arguments.

Formal Decision

35. I direct that the enforcement notice be corrected at Schedule 2 - "The alleged breach of planning control" - by the deletion of the words "from 2 self-contained flats". Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, 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 change of use of the premises to 9 self-contained flats and the erection of a rear extension at 21 Monson Road, London, NW10 5UR.

N P Freeman

INSPECTOR

⁹ Planning And Compulsory Purchase Act 2004

APPEARANCES

FOR THE APPELLANT:

Mr N Bhatt	The appellant
Mr P Lucuta	Property manager for the appellant
Mr A S Kassim FRTPI	Ask Planning, agent for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks MRTPI	Planning consultant and director, Enforcement Services
------------------	--

DOCUMENTS SUBMITTED AT THE HEARING

- Doc 1 Extracts from the Brent UDP – pages 84-85 & 94-95
- Doc 2 SPG 17 – Design Guidance for New Development
- Doc 3 Letter dated 17 July 2009 from Horn Stars concerning tenants of the appeal property



Appeal Decision

Site visit made on 10 November 2009

by **David Pinner BSc (Hons) DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
20 November 2009

Appeal Ref: APP/T5150/C/09/2102763 and 2103161 9 Tudor Close, London NW9 8SU

- 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 T P Mirza and E Mirza against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 12 March 2009.
- The breach of planning control as alleged in the notice is the erection of a roof extension and installation of PVCu windows and PVCu front gable to the front elevation of the premises.
- The requirements of the notice are:
STEP 1 Remove the roof extension
STEP 2 Remove the PVCu windows and PVCu front gable
STEP 3 Restore the roof back to its original condition before the unauthorised development took place, as shown on the photograph attached to the enforcement notice
STEP 4 Reinstatement of the wooden windows and wooden "Mock Tudor" gable to the front of the premises so that the front elevation of the premises is restored back to its original condition as shown in the photograph attached to the enforcement notice
- The period for compliance with the requirements is 3 months after the notice takes effect.
- 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.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Decision

1. I allow the appeal on grounds (f) and (g), and direct that the enforcement notice be varied:
 - 1) by the insertion of the word "front" before "windows" in the alleged breach of control and in STEP 2 of the requirements;
 - 2) by the insertion of the words "cladding to the" before the words "front gable" in the alleged breach of control and in STEP 2 of the requirements;
 - 3) by the insertion of the word "Either" before "restore" and the words "or make the development comply with the terms of the planning permission reference 07/2075 for a rear dormer window with 1 side rooflight, granted by Brent Council on 3 October 2007" to the end of the requirements listed under STEP 3;
 - 4) by the deletion of 3 months and the substitution of 6 months as the period for compliance.
2. Subject to these variations I uphold the enforcement notice.

The notice

3. In response to points made by the appellant, I will vary the notice to make it clear that it refers only to the PVCu cladding to the front gable and not to the gable itself as a structural element of the building. I will also vary the notice to make it absolutely clear that it is only concerned with the PVCu windows on the front elevation of the property.

Ground (a) and the deemed application

4. There is a statutory requirement to have regard to the desirability of preserving or enhancing the character or appearance of conservation areas when considering development proposals within them. This is reflected in policies BE25 and BE26 of the Brent Unitary Development Plan 2004.
5. The appeal property lies in the St. Andrews Conservation Area. This is an area of suburban residential properties constructed in the 1920s and 1930s, typical of the architect designed garden suburbs that were being constructed during that period. The architectural character of the Conservation Area derives from the thought and detailing which has gone into the design of its various dwelling types.
6. Tudor Close comprises detached and semi-detached bungalows of the same basic architectural style. However, the unified character that would have existed when the properties were built has been eroded to some extent by unsympathetic alterations. Replacement windows in particular have had a harmful effect on the character and appearance of the Conservation Area and the Council has therefore made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). This has the effect of overriding the permitted development provisions of the GPDO with respect to various things, including alterations or improvements that affect the front elevation of the appeal property. The PVCu windows on the front elevation and the PVCu cladding to the gable represent alterations to the dwelling. Their installation involved building works and they are therefore development that requires an express grant of planning permission. In the absence of such permission, they represent a breach of planning control.
7. The PVCu cladding to the front gable of the property is an obvious change that distinguishes the appeal property from nearly every other property in Tudor Close. It is severely harmful to the character of the streetscene and further erodes the unity of design that was a strong feature of that character. I conclude that it is harmful to the character and appearance of the Conservation Area as a whole and is unacceptable.
8. I accept that most properties in Tudor Close have had their original wooden windows replaced. However, I do not consider that the replacement windows have now become part of the established character of the area that the Conservation Area designation seeks to preserve or enhance. Whilst it is often argued that PVCu windows of the same basic design as the wooden windows they replaced have no material effect on the appearance of a property, that is an argument with which I strongly disagree. It is obvious when looking from the street which windows are plastic or aluminium replacements. It is subtle differences such as the texture of finish, the method of jointing, the thickness of the frames and subdividers, the lack of putty and even in some cases the

reflections off the glass that all conspire to make significant and obvious differences in the appearance of the windows. The fact that most properties have been altered in this way does not justify perpetuating a situation whereby serious harm has been caused to the character of the Conservation Area. Even plastic and aluminium windows will eventually require replacement. Now that the Council has gained planning control over such matters, the likelihood is that the character and appearance of the Conservation Area will be enhanced as more and more replacements are fitted. I conclude that the PVCu front windows are harmful to the character and appearance of the Conservation Area and are unacceptable.

9. The alterations to the roof have had a significant effect on the appearance of the property. It now appears to have a gable-ended main roof that contrasts sharply with the hipped roofs of other properties in Tudor Close. I reject the argument that the roof alterations are insignificant. They cause serious harm to the character and appearance of the Conservation Area and are unacceptable.

Ground (f)

10. The Council has served the enforcement notice to remedy the breach of planning control, which can be achieved by the measures described in s173 (4)(a) of the Act. The breach can only be remedied by removing the unauthorised development and by reinstating the building to its former appearance, or by making it comply with the terms of any planning permission granted in respect of the land. I agree with the appellant that the notice ought to include as an alternative, the requirement to make the development comply with the terms of the planning permission granted in 2007 for the erection of a rear dormer. I shall vary the notice accordingly. I have covered the point made about the front gable already. No other lesser steps than those specified would remedy the breach of planning control.

Ground (g)

11. In making an appeal, the appellant is entitled to believe that their appeal might succeed. The argument that the delay caused by the appeal proceedings has given time for arrangements to be made for compliance with the notice is not one to which I attach much weight. The works involved in complying with the notice are extensive and will involve the use of contractors. I think that 6 months is a more realistic period for engaging contractors and undertaking the work. I have varied the notice accordingly.

David C Pinner
Inspector