Appeal Decision

Site visit made on 17 December 2009

by John Whalley **CEng MICE**

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

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Decision date: 18th January , 2010.

Appeal Ref: APP/T5150/X/09/2110659
No. 5 Compton Avenue, Wembley HA0 3FD
Appeal by Mrs P Sigamani

- 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 Mrs P Sigamani against the decision of the London Borough of Brent Council.
- The application, No. 09/0330 dated 12 February 2009, was refused by a notice dated 20 March 2009.
- The application was made under section 191(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 retention of an existing conservatory to the rear of the property and for the retention of a green house in the rear garden.

Summary of Decision: The appeal succeeds in part. A Lawful Development Certificate is issued in respect of the conservatory

The application

1. The application for a lawful development certificate, (LDC) was dated 12 February 2009. At that time, there were 2 appeal structures, described in the application as a conservatory and a green house. The conservatory was attached to the rear of the end of terrace house at No. 5 Compton Avenue, the green house was built immediately adjoining the conservatory, extending further to the rear. Since then, the green house has been demolished.

Appellant's case

2. For Mrs Sigamani, it was said that although the conservatory and green house had been built close together, they were separate structures. The green house was demolished in July 2009.

3. With the green house gone, the conservatory should be considered to be permitted development. The conservatory, described by the Council as a rear extension, had a volume of less than $50m^3$. That was within the permitted development limit, (Schedule 2, Part 1, Class A, A.1(a)(i)). Other parts of the Class A tests were met. Unfortunately, the originally submitted drawings showed the height of the conservatory as 3m. As built, however, the maximum height was 2.45m. The Council had decided the matter on a measurement of the drawings, not an on-site calculation. The actual volume should have been shown as $44.45m^3$, (drawing 2008-GF1-R1), not the $56.1m^3$ derived from the originally submitted drawing, (2008-LC1).

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

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Decision date:
11 January 2010

Appeal Ref: APP/T5150/A/09/2111687
20 Mardale Drive, London NW9 0RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr A Sidhpura against the decision of the Council of the London Borough of Brent.
- The application Ref.09/0505, dated 2 March 2009, was refused by notice dated 1 May 2009.
- The development proposed is rear extension and extension of rear dormer.

Decisions

1. I dismiss the appeal in so far as it relates to the ground floor rear extension.

2. I allow the appeal in respect solely of the rear dormer and grant planning permission for extension of rear dormer at 20 Mardale Drive, London in accordance with the terms of the application, Ref. 09/0505, dated 2 March 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) The materials to be used in the construction of the external surfaces of the dormer extension hereby permitted shall match those used in the existing rear dormer.

Procedural Matter

3. There are two distinct elements within this proposed development and I shall address them separately.

Main issue

4. The main issue in this case is the effect of the proposed development upon the character and appearance of the area.

Reasons

The rear extension

5. This is a hilly part of London and 20 Mardale Drive occupies a location that is elevated by comparison with many of its neighbours. This means that the rear of the dwelling is particularly prominent when viewed from the back of properties further down the hill along Mardale Drive. Moreover, as an end of terrace property, No.20 is conspicuously located at the intersection of Mardale

Drive with Springfield Gardens. The latter road follows a curving path with No.20 on its outside bend. This makes its flank and rear elevations especially noticeable when viewed from the east.

6. The proposed rear extension would be built above the existing raised patio, which is at the present ground floor level. Allowing for the patio's retaining wall and the extension's parapet, this would create a wall equivalent to some two storeys in height, albeit one that would have a step in it. This would become a dominating feature when viewed from the properties to the south. It would also be very prominent in the street scene of Springfield Gardens, although the lower part would be partially concealed from view by No.20's boundary wall.

7. With its flat roof and roof light and its vast expanse of windows that would be far wider in total than any of the other window openings, this extension would be out of keeping with the present rear elevation. It would fail to represent the good design that is called for in the relevant policies of the development plan, notably saved Policy BE9 of the London Borough of Brent Unitary Development Plan 2004, and in Government guidance, for example that of PPS1 *Delivering Sustainable Development*.

8. In **concluding** that the proposed rear extension would have an unacceptable effect upon the character and appearance of this area, I have taken all the other points raised into account. Regarding the effect on light levels in respect of the adjoining property No.18, I consider that the extension would cast considerable shade when the sun were in the east or the south east, making the living room to No.18 darker at these times. Moreover, the blank wall that it would present would provide a poor outlook from that room, especially for someone standing near the bay window. In my view, No.18's living conditions would be adversely affected and this finding reinforces my conclusion on the main issue.

The rear dormer

9. I reach a different conclusion in respect of the proposed widened roof dormer. While this would become a more prominent feature in the street scene, it would remain subservient visually to the rear roof slope. Like the Council I find it to be acceptable and I am granting planning permission for it with a condition that it should match the present structure.

Chris Gossop

Inspector

The Council's reasons for refusal

4. The Council's notice of refusal said the rear extension conservatory, built in 2007 according to the appellant, was unlawful because it did not comply with the requirements of Schedule 2, Part 1, Class A of the now replaced Town and Country Planning (General Permitted Development) Order 1995, (GPDO). They said the green house did not comply with the requirements of Schedule 2, Part 1, Class E of the 1995 Order.

5. In answer to the appellant's statement, the Council pointed to the enforcement notice served on 19 June 2009 which required removal of the rear extensions. No appeal was made against that notice. They said, irrespective of the appellant's assertions on the application of the 50m^3 rule to the remaining conservatory, an LDC could not be issued where it would contravene a requirement of an enforcement notice, (letter, 15 October 2009).

My considerations

6. Although the application for the LDC was made after the coming into effect of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 on 1 October 2008, the permitted development rights against which the development must be considered are derived from the GPDO in force at the date of start of works, *R J Williams Le Roi v SSE & Salisbury DC [1993] JPL 1033*. So the Council were right to apply the 1995 Order to the application.

7. It was also not entirely unreasonable for the Council to have relied on the drawings submitted with the LDC application in assessing the lawfulness of the 2 extensions. It was the responsibility of the appellant to get them right. Even so, a site measurement check would have been sensible when dealing with an application for an LDC for operational development already carried out.

8. The Council were wrong, however, to say that an LDC could not be issued because of the existence of their confirmed enforcement notice. For that to have been so, the enforcement notice would have had to come into effect before the date the LDC application was made. But here, at the time the LDC application was made, there was no enforcement notice extant to bite on the LDC. An LDC, after all, does no more than indicate lawfulness at the time the application was made.

9. S.193(4) of the Act allows a certificate to be granted for all or part of the site, and for one or more of the several uses or operations comprised in the application, i.e. a split decision, in respect of both s.191 and s.192 applications.

10. I need to consider how things were on the date of application for the LDC. Firstly, the conservatory. I note that the Council did not dispute the appellant's figure of 44.45m^3 for the on site measured volume of the conservatory. Schedule 2, Part 1, Class A of the 1995 GPDO allows for the enlargement of a terraced dwellinghouse of up to 50m^3 of the original dwellinghouse - condition A.1(a)(i). The appeal conservatory meets that condition and all the other conditions applied to Class A of the Order. That extension was therefore permitted development at the time the application for the LDC was made.

11. The appeal green house was said to have been built in 2007. It was demolished in July 2009. Photographs show it closely adjoining the conservatory extension, but not connected to the conservatory. It is usually possible to add Class A extensions, which in themselves exceed the relevant overall volume limitations, as permitted development, provided that the excess volume is subtracted elsewhere. But that was not done here. Instead, the green house was added on the end of the conservatory extension.

12. Where not attached, condition A.3(a) to Class A of the Order treats buildings of more than $10m^3$ volume which are within 5m of the dwellinghouse as an enlargement of the dwellinghouse for all purposes, including the calculation of cubic content. The depth of the conservatory was about 3.5m. So when the appeal application was made, the green house was in place, the extra volume of the green house took the enlargement of the original dwellinghouse at No. 5 to well over the $50m^3$ limit, indeed it was said to be of some $138.5m^3$. The green house extension was not permitted development at the time the LDC application was made.

13. The *Panton and Farmer v SSETR and Vale of White Horse DC [1999] JPL 461* judgment indicated that an Inspector is obliged to issue a certificate for any use of the planning unit which the evidence shows is lawful, and to modify or substitute the descriptions of the use and the land to which it relates if necessary. At the date of the application for an LDC for the conservatory and for the green house, the conservatory development was permitted by the General Permitted Development Order. But the green house was not permitted by the General Permitted Development Order.

Conclusion

14. I conclude that the refusal by the London Borough of Brent Council to issue a Certificate of Lawful Use for the green house development was well founded.

15. The refusal by the London Borough of Brent Council to issue a Certificate of Lawful Use for the conservatory development was not well founded. The appeal succeeds in relation to the conservatory. 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 conservatory development as applied for. That is attached to this decision

John Whalley

INSPECTOR

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

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 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the conservatory 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: 18th January ,2010.
Reference: **APP/T5150/X/09/2110659**

First Schedule

The construction of the conservatory rear extension to the dwellinghouse as shown on the Lawful Development Certificate Plan, (based upon drawing 2008-GF1-R1), attached to this Certificate.

Second Schedule

At the rear of No. 5 Compton Avenue, Wembley HA0 3FD

IMPORTANT NOTES OVERLEAF

NOTES

1. This certificate is issued solely for the purpose of Section 191 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.

Lawful Development Certificate Plan

Appeal reference
APP/T5150/X/09/2110659

Plan attached to the Lawful Development Certificate

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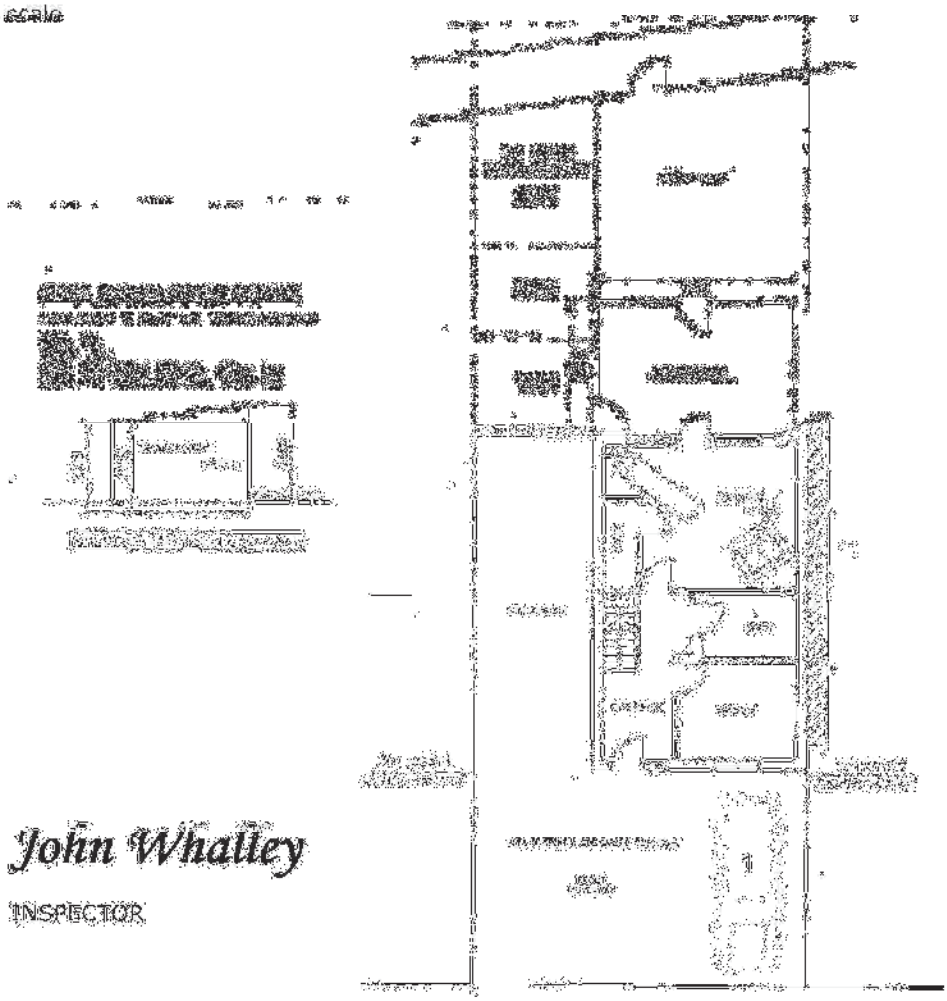
Decision date: 19 01 2010

Land at the rear of No. 5 Compton Avenue, Wembley HA0 3FD

No scale



John Whalley

INSPECTOR

Appeal Decision

Accompanied site visit made on 18 January 2010

by Felix Bourne **BA(Hons) LARTPI Solicitor**

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

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Decision date: 27 January 2010

Appeal Ref: APP/T5150/C/09/2113884
46 Oakington Manor Drive, Wembley, HA9 6LZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Iqbal Lalji against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/07/0459.
- The notice was issued on 21 August 2009.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a dwelling in the rear garden of the premises.
- The requirements of the notice are to demolish the dwelling and remove all associated materials and debris arising from that demolition from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed under ground (b) and the Notice is quashed.

THE GROUND (b) APPEAL

1. It is convenient to commence with the appeal under ground (b), which is the appropriate ground of appeal where an appellant seeks to argue that the matters alleged by the enforcement notice to constitute a breach of planning control have not occurred, as a matter of fact.

2. The Council have accepted that, if constructed for purposes incidental to the enjoyment of the dwellinghouse as such, the building would constitute permitted development. The appellant, for his part, argues that, in June 2006, the Council took exactly that view, writing to the nearby neighbour, on 19 June 2006 indicating that, having investigated the matter, the development did not appear to amount to a breach of planning control and enclosing a booklet explaining what could be built without (express) planning permission. However, I accord little weight to that argument because the conclusion reached by the Council appears to have been based on information, supplied by the appellant's architect, that the building, which was still under construction when he wrote to them on 13 June 2006, would be used as a summerhouse. This is, ironically, a use to which neither side claim the building was in fact put.

3. Looking at the Council's allegation, in *Gravesham BC v Secretary of State for the Environment (1984) 47 P & CR 143* McCullough J suggested that the

common feature of all premises which could ordinarily be described as dwellinghouses was that they were buildings which could ordinarily afford the facilities required for day to day private domestic existence. However, in *Gravesham*, the Court upheld the finding of the Secretary of State that a small holiday chalet (20 feet by 17 feet) comprising a living room, kitchen and bedroom did constitute a dwellinghouse, notwithstanding that there was no bathroom or W.C., because it could reasonably be said to provide for the main activities of day to day existence.

4. The appeal building comprises two rooms, one large and one small. At the time of my site inspection the large room contained such items as an office chair and desk with computer equipment, and along the back wall there were two tall cupboards, one of which was built as a wardrobe, and a fridge freezer. In one corner of the room, facing the house, there was a kitchen sink, but other kitchen equipment had been removed. The second, smaller, room to the rear contained a WC, wash hand basin, and bath. The appellant's Final Comments make it clear that he "is not denying that there was a kitchen (now removed) and a full bathroom at the site" but maintains that the development is for "the use of his family as a study and that it is ancillary to the main building".

5. In her letter of 31st January 2008 the Council's Enforcement Planner, having inspected the site on the 28th, expressed the view that the building appeared to have all the facilities needed for everyday living. Photographs taken at that time show that the kitchen area included, as well as the kitchen sink, a microwave and hob, with extractor, and cupboards to either side. The photographs also show a sofa in the main room, which had been removed by the time of my site inspection. On the other hand, no reference is made to the presence of clothes washing facilities and, more crucially, there is no bedroom and no evidence to counter the appellant's claim that the sofa was not one that you could reconfigure to form a bed. Accordingly, the building does not appear to have contained, even then, the normal facilities for cooking, eating *and* sleeping (my emphasis) associated with use as a dwellinghouse.

6. "Dwellinghouse" is a concept of both design and use: however, section 2.81 of Circular 10/97: Enforcing Planning Control, advises that it is important to distinguish the term "use as a single dwellinghouse", in section 171B(2), from what might be regarded as being a single dwellinghouse. The Circular makes the point that something which may be used as a "dwellinghouse" may not be a dwellinghouse. The paragraph also advises that the relevant criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use.

7. Paragraph 4.1.1 of the Council's statement goes so far as to say that "the Council is certain a breach has occurred as a matter of fact", suggesting that the photographs taken provide evidence that the building is being used as a dwellinghouse. However, they do not, in my view, provide evidence of use as a dwellinghouse for they take the matter no further than I have described above, with there being no evidence of facilities for sleeping or evidence of it being used for such purposes. It may be that the Council has evidence that it feels unable to use but I must make my decision on the evidence available to me.

8. Whilst it is for the appellant to prove his case, on the balance of probability, his evidence is that no-one has ever lived in the building and that it has been used exclusively as a study room for his family.

9. When considering that evidence I have borne in mind that the previous assertion, made by the appellant's architect, was that the building would be used as a summerhouse, and the possibility that this may have represented a deliberate attempt to mislead the Council. On the other hand there may be an entirely innocent explanation for this apparent inconsistency. For example, the architect may have confused this development with another, or the appellant may have simply have changed his mind. In the absence of evidence to contradict or otherwise make the appellant's version of events less than probable, I must accord his evidence weight.

10. I have had regard to the recent appeal decision cited by the Council concerning 5 Dobree Avenue (PINS ref: APP/T5150/C/08/2092976). However, whilst this touches upon issues relevant to the determination of this appeal, in particular the question of what may constitute an "incidental" use, it is not directly comparable. In particular, and importantly, the alleged breach of planning control was the erection of a building as opposed to the erection of a dwelling: indeed, at paragraph 10 of his decision, the Inspector makes the point that the Council is not alleging the establishment of a separate unit of accommodation within the appeal property.

11. Accordingly, whilst I fully accept that the appeal building contained more than you might anticipate finding in a study, it also lacked at least one important element that you would expect to find in a dwellinghouse and there is no firm evidence to counter the appellant's contention that the building has also never been used as a dwellinghouse. Thus I conclude, on the balance of probability, that the matter alleged by the Notice has not occurred as a matter of fact.

12. For the reasons given above I conclude that the appeal should succeed on ground (b). The enforcement notice will therefore be quashed. The appeal under grounds (c) and (f) does not therefore need to be considered.

Formal Decision

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

Felix Bourne
Inspector

Appeal Decision

Inquiry held on 15 December 2009

by Felix Bourne **BA(Hons) LARTPI Solicitor**

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

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Decision date:
15 January 2010

Appeal Ref: APP/T5150/C/09/2098417
Ground Floor Flat, 48 Windsor Crescent, Wembley, HA9 9AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr N Shirazi against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/07/0705.
- The notice was issued on 14 January 2009.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises from a single dwelling house to 3 self-contained flats.
- The requirements of the notice are to cease the use of the property as 3 self-contained flats and remove all associated materials and debris associated with the unauthorised use.
- The period for compliance with the requirements is 7 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. Schedule 1 of the enforcement notice, describes "THE LAND OR PREMISES AFFECTED" as "Ground Floor Flat, 48 Windsor Crescent, Wembley, HA9 9AW ("the premises" – shown hatched black on the attached plan)". The description given in Schedule 2, of "THE ALLEGED BREACH OF PLANNING CONTROL" is "Without planning permission, the material change of use of the premises from a single dwelling house to 3 self-contained flats", "the premises" having already been defined as the Ground Floor Flat. For the sake of completeness I should record that Schedule 4, headed "WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH", requires, as the only step, "Cease the use of the *property* (my italics) as 3 self-contained flats and remove all associated materials and debris associated with the unauthorised use".

2. The Council explained that the reference to the Ground Floor Flat in Schedule 1 had been a computer-generated error and that it should have referred to the whole property, with the Council's intention having been to allege a material change of use of the whole property to three flats. The Council cited the recent case of *Michael Howells v (1) Secretary of State for Communities & Local Government (2) Gloucestershire County Council (QBD(Admin)) decided on 12 October 2009*, as authority for the proposition that, under the powers granted

by section 176(1) of the Act, I could extend the area to which an enforcement applied provided that to do so would not cause injustice to the appellant.

3. The Council argued that the appellant would not be prejudiced as he was well aware, not least from a Planning Contravention Notice and a further letter from the Council, that the Council's concerns related to the whole property. The appellant, on the other hand, and as part of his evidence on oath, pointed out that the allegation clearly related to the ground floor and that he had prepared his case accordingly. There was at least the suggestion that he might have presented further evidence had he believed that the enforcement notice related to the whole premises.

4. The Council were reluctant to accept this argument, suggesting that the appellant's response was a tactical ploy to avoid the purpose of the enforcement notice. That may or may not be true: however, it is fair to say that, looking at the Notice alone, it does appear to relate specifically to the Ground Floor Flat at the premises and that what limited evidence the appellant intended to present to the Inquiry also related to the ground floor alone. Whilst this may itself have been part of such a "tactical ploy", I must also give weight to what the appellant told me on oath. In any event, and I do not mean this unkindly for such mistakes are easily made, the opportunity to take advantage of such a "tactical ploy", if that is what it was, could have been avoided by getting the Notice right, and the "second bite" provisions may allow the Council another chance of doing so. In the meanwhile, however, whilst I note the *Howells* case referred to, I believe that extending the area to which an enforcement notice relates will probably remain an exceptional action and in this case I cannot be sure, to the point of being "satisfied", (to employ the wording in section 176(1)), that to do so would not cause injustice to the appellant.

5. In the light of the above I must decline to correct the Notice in the manner sought by the Council and will therefore determine the appeal on the basis of the Notice as drafted.

The Ground (b) Appeal

6. Paragraph 8.15 of Circular 10/97, Enforcing Planning Control, indicates that, in appeals to the Secretary of State which raise "legal issues", for example enforcement appeals on grounds (b) to (e) in section 174(2), the burden of proof is again on the appellant, the Courts having held that the relevant test of the evidence on such matters is "the balance of probability".

7. Ground (b) arises where an appellant seeks to argue that the matters alleged by the Notice to constitute a breach of planning control have not occurred as a matter of fact. To further his case the appellant had submitted a communication from his former agent, who has also helped to let the property, indicating that he had let the ground floor flat to a Mrs Geni Khalif Karshe during 1998 and 1999, and a letter from Brent Council, dated 6 October 1999, relating to the payment of Housing Benefit in relation to this tenant but not specific as to what part of No. 48 Mrs Karshe was occupying. There was also confirmation from Mr Osman that he had been helping to rent No. 48 to various tenants since 1998 and that the property had not been changed, save for renovation, repair and the addition of central heating, since that time.

8. At the Inquiry the appellant indicated that he had owned the property for 20 years. He stated that there had always been a kitchen, and a toilet and bathroom/shower facility, on each floor. He had not installed any such facilities but had replaced them. When he purchased the property he took some time decorating it but then let out the second floor, or ground floor, or occasionally both, retaining the first floor for his own use, primarily in connection with his hobby of photography. However, in 2000, the Council had issued an enforcement notice in relation to the whole property alleging, without planning permission, the change of use from a dwellinghouse to a house in multiple occupation. The appellant had sought to lodge an appeal against the Notice but was out of time. Accordingly the Notice took effect and the appellant indicated that, following this, he had not let the property for some years and had allowed it to fall into disrepair. In 2007, however, he had let the property to Mr Osman on the basis that he could in turn let it to up to five people who would occupy the property as a dwellinghouse. The appellant said that he had a written contract to this effect but had not brought it with him.

9. As to the photographs taken by the Council, and which they indicated showed all three floors, the appellant doubted this. In particular he thought that doors which the Council said were on different floors were, in fact, the same door. From my study of the photographs they look different but it proved impossible to obtain access to the property and thus this point could not be checked. However, in that I have concluded that I should not extend the area to which the Notice relates, it is of little relevance in the determination of this appeal.

10. Whilst the appellant's evidence was of limited value there is, in fact, no contention on the part of the Council that the ground floor flat has been converted into three. Thus there is sufficient evidence to conclude that, on the balance of probabilities, the breach of planning control alleged by the Notice has not occurred as a matter of fact and the ground (b) appeal will therefore succeed and the enforcement notice will be quashed.

11. For the reasons given above I conclude that the appeal should succeed on ground (b). The appeal is allowed, and the enforcement notice is quashed.

Decision

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

Felix Bourne
Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Nasser Shirazi	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks DipTP	Director of Enforcement Services Ltd, acting for the Council
He called	
Mr Adrian Peggie BUPD, Grad. Dip. (Planning & Design)	Enforcement Officer with the Council

DOCUMENTS

1 List of persons attending the Inquiry
2 Lawtel Report of Michael Howells v (1) Secretary of State for Communities & Local Government (2) Gloucestershire County Council QBD (Admin) (Frances Patterson QC) 12/10/09
3 2 letters dated 6 August 2009 from the Council, one to Mr Shirazi and the other to Mr Osman

Appeal Decision

Site visit made on 14 December 2009

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

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

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Decision date:
14 January 2010

Appeal Ref: APP/T5150/C/09/2111798
3 & 3A Kenmere Gardens, Wembley, Middlesex HA0 1TD

- The appeal is made by Mr Waseem Khan under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice (ref: E/08/0830) was issued on 24 July 2009.
- The breach of planning control alleged in the notice is "the erection of a dwelling in rear garden area of premises".
- The requirements of the notice are to "demolish the unauthorised dwelling and remove all materials arising from that demolition and remove all materials associated with the unauthorised development from the premises".
- The period for compliance with these requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The notice is corrected. The appeal is allowed on ground (a) and planning permission is granted for the erection of an outbuilding, subject to a condition. The notice is quashed.

The breach of planning control

1. The description of the development in the parties' statements, and what I saw at the site visit, indicate that the breach should be described as the erection of an outbuilding rather than the erection of a dwelling. I have corrected the notice in the formal decision below.

Ground (a)

2. 3 & 3A Kenmere Gardens are purpose-built flats and the outbuilding has been erected in their shared rear garden. It is not disputed that it was fitted out and used for a time as self-contained living accommodation, but by the time of the site visit the fittings had been removed and it was being used for storage purposes. The appellant wishes to keep it as storage space for the occupiers of the flats. The main planning issue that arises is the effect of the outbuilding and its potential uses on the surrounding area and neighbours' amenities.

3. There are many outbuildings at the rear of houses in this area. This one is larger than most of them, but as an outbuilding serving the flats it would not be out of keeping with its surroundings or intrude significantly on neighbours' outlook, and a reasonable amount of garden space would remain for the occupiers of the flats. Policy BE9 of the Brent Unitary Development Plan would be complied with.

4. The use of the outbuilding as self-contained living accommodation or for other uses not incidental to the enjoyment of the flats would be harmful to the amenities of neighbours, including the occupiers of the flats, because of the impact on their privacy, the disturbance caused by the increased use of the narrow passage between Nos 3 & 3A and No 5 and by additional activity in the rear garden, which is needed as amenity space for the flats. Such uses would therefore be in conflict with criteria (b), (d) and (e) of Policy H15 of the Unitary Development Plan.

5. These matters do not, however, call for the demolition of the outbuilding, since its use as an outbuilding serving the flats is acceptable and this use can be controlled by a planning condition. The appeal succeeds on ground (a) and I will grant a conditional permission.

Ground (g)

6. Since the appeal has succeeded on ground (a), the notice will be quashed. Ground (g) no longer falls to be considered.

Formal decision

7. I direct that the enforcement notice be corrected by replacing "dwelling" in Schedule 2 with "outbuilding".

8. I allow the appeal and grant planning permission on the application deemed to have been made by section 177(5) of the Act as amended for the erection of an outbuilding in the rear garden of 3 & 3A Kenmere Gardens, Wembley, Middlesex HA0 1TD, subject to the condition that it shall not be used as self-contained living accommodation or for any other purpose that is not incidental to the enjoyment of the dwellings, 3 & 3A Kenmere Gardens, as such.

9. I direct that the corrected enforcement notice be quashed.

D.A.Hainsworth

INSPECTOR

Appeal Decision

Site visit made on 14 December 2009

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

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

The Planning Inspectorate
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Decision date:
14 January 2010

Appeal Ref: APP/T5150/C/09/2111690
Ground and First Floor Flats, 42 Lancelot Crescent, Wembley, Middlesex HA0 2AY

- The appeal is made by Platform Funding Limited under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice (ref: E/09/0053) was issued on 24 July 2009.
- The breach of planning control alleged in the notice is "the change of use from a single dwellinghouse to 2 self-contained flats and the erection of a single-storey rear extension".
- The requirements of the notice are as follows: -
  "STEP 1 Cease the use of the premises as 2 self-contained flats and its occupation by more than ONE household.
  STEP 2 Remove the bathroom on the ground floor and the kitchen on the first floor.
  STEP 3 Demolish the single-storey rear extension and remove all debris, material and items associated with that demolition from the premises.
  STEP 4 Restore the premises back to the condition before the unauthorised development took place."
- The period for compliance with these requirements is 1 year.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part and dismissed in part. Planning permission is granted for the single-storey rear extension and refused for the change of use from a single dwellinghouse to 2 self-contained flats. The notice is upheld with variations.

Procedural matters

1. The appeal was submitted by an agent acting for Platform Funding Limited, a mortgagee in possession of the ground-floor flat and the single-storey rear extension, but by mistake its sister company, Platform Home Loans Limited, was named as the appellant on the appeal form. I have treated the appeal as proceeding in the name of Platform Funding Limited, since this is the company entitled to appeal under section 174(1) of the 1990 Act.

2. The appellant has stated under ground (a) that the single-storey rear extension is permitted development. I have dealt with this as a ground (c) issue.

Whether the single-storey rear extension is permitted development

3. The Council's building control records show that the extension was built between November 2005 and February 2006. Land Registry entries show that

the lease of the ground-floor flat was granted on 29 March 2006 and that the term of the lease commenced on 29 September 2005.

4. Permitted development rights for house extensions apply to "dwellinghouses" as defined in the Town and Country Planning (General Permitted Development) Order 1995, and the definition in Article 1(2) of the Order excludes flats. The sequence of events indicates that, on the balance of probabilities, the extension was carried out as part of the works to convert the ground floor of the house into a flat and I conclude that it is not permitted development.

Ground (a)

5. The purpose of the ground (a) appeal is to maintain that planning permission should be granted for the change of use of the premises from a single dwellinghouse to 2 self-contained flats and for the erection of the single-storey rear extension. The main planning issues are (i) whether there has been an unacceptable loss of a small purpose-built family dwelling, (ii) whether the standard of accommodation is adequate and (iii) whether the effect of the extension on the amenities of neighbours is acceptable.

Has there been an unacceptable loss of a small purpose-built family dwelling?

6. Policy H17 of the Brent Unitary Development Plan (UDP) indicates that permission will not be given for the conversion into flats of dwellinghouses with an original (unextended) floor area of less than 110m². The objective of the policy is to prevent the loss of small purpose-built family dwellings which meet a specific housing need in a Borough with a disproportionately high number of larger families.

7. 42 Lancelot Crescent had an original (unextended) floor area of about 83m². It was a small purpose-built family dwelling, for which the Council indicate there is still an identified need in the Borough. The appellant states that similar properties in the Borough have been converted into flats, but has produced no details of these properties or shown that the conversions were approved as exceptions to Policy H17.

Is the standard of accommodation adequate?

8. The Council state that the use of the premises as two flats is overly intensive and results in substandard accommodation, but they have not identified any specific shortcomings. The premises, although small, have been converted into two reasonably-sized, one-bedroom flats. Their use is unlikely to be overly intensive compared to the use of the whole of the premises as one dwelling. The quality of the conversion work seems to be good and, on the limited information available to me, it appears that the criteria in UDP Policy H18 relating to flat conversions have been or could be met.

Is the effect of the extension on the amenities of neighbours acceptable?

9. UDP Policy BE9 indicates that house extensions should be designed so as to protect neighbours' amenities. The Council's revised standards for single-storey rear extensions to terrace houses state that they should have a maximum depth of 3m (SPG5, para 3.3). This extension has a depth of 3.15m at its rear

wall, which is a similar depth to the single-storey extension at No 48. The flat roof of the extension projects about 0.4m further. The level of the adjoining gardens is similar to the level of No 42's garden.

10. The failure to comply with the guidance in SPG5 has not made a significant difference. The extension does not unacceptably affect neighbours' outlook or result in a loss of light. Policy BE9 has been be complied with.

Conclusions on ground (a)

11. Although the standard of accommodation appears to be reasonable for one-bedroom flats, the change of use of this house into flats is contrary to Policy H17 in principle. If it were allowed, a small purpose-built family dwelling for which there is an identified need would be lost and the objectives of the policy would become more difficult to achieve. These are determining considerations and I conclude that permission for the change of use should be withheld. The appeal on ground (a) fails in this respect.

12. The impact of the extension on neighbours' amenities is acceptable and I conclude that the extension should be approved. The appeal on ground (a) therefore succeeds to this extent. No conditions have been suggested in this event and I do not consider that any are needed.

The requirements of the notice

13. Step 3 should be deleted, since it is no longer needed following the approval of the extension. No restoration work relating to the extension is needed and Step 4 should be limited to the change of use. I have varied the requirements in the formal decision below.

Ground (g)

14. The appellant seeks a six-month extension to the one-year compliance period, for reasons which relate to a survey of the premises, the preparation of a schedule of works, liaison and agreement with others having interests in the premises, its duty of care to the borrower, liaison with the Council and time to carry out the required works.

15. The notice will take effect on the date of this decision and the approval of the extension reduces the amount of work required. One year is a sufficiently long period for those involved to comply with the remaining requirements, notwithstanding the complexities the appellant refers to. Extending the period would add to the time before which the premises can again be made available as a small family dwelling and contribute to the specific housing need identified by Policy H17. The appeal on ground (g) fails.

Formal decision

16. I dismiss the appeal in so far as it relates to the change of use and refuse to grant planning permission on the application deemed to have been made by section 177(5) of the Act as amended for the change of use of 42 Lancelot Crescent, Wembley, Middlesex HA0 2AY from a single dwellinghouse to 2 self-contained flats.

17. I allow the appeal in so far as it relates to the extension and grant planning permission on the application deemed to have been made by section 177(5) of the Act as amended for the erection of a single-storey rear extension at 42 Lancelot Crescent, Wembley, Middlesex HA0 2AY.

18. I direct that the enforcement notice be varied by deleting Step 3 in Schedule 4 and replacing "development" with "use" in Step 4 in Schedule 4.

19. Subject to this direction, I uphold the enforcement notice as varied.

D.A.Hainsworth

INSPECTOR