The Planning Inspectorate

Appeals Decisions

Hearing held on 17 September 2013
Site visits made on 16, and 17, September 2013

by C A Thompson DiplArch DipTP Reg Arch RIBA MRTPI IHBC

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

Decision date: 9 October 2013

Appeal (A) Ref: APP/T5150/X/13/2195266
2 Epcot Mews, Pember Road, LONDON, NW10 5LL

- This appeal is under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is by City and Suburb Properties Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 12/3114, dated 21/11/2012, was refused by notice dated 6/2/2013.
- The application was made under section 191(1)(a) of the Act.
- An LDC is sought for the use of the roof as a garden terrace.

Appeal (B) Ref: APP/T5150/ C/13/2195278
2 Epcot Mews, Pember Road, LONDON, NW10 5LL

- This appeal is under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Mr Matteo Galliani against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/12/0465.
- The notice was issued on 13/2/2013.
- The breach of planning control as alleged in the notice is the erection of balustrading, decking and hatch to stairway, to form roof terrace.
- The requirements of the notice are:
  Step 1, cease the use of the roof as a roof terrace /balcony or sitting out area, and;
  Step 2, remove the balustrading, decking, hatch and staircase and any other item associated with the use of the roof as a roof terrace /balcony or sitting out area from the premises.
- The period for compliance with the requirements is 3 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Act.

Decisions

Appeal (A)

1. The appeal is allowed and attached to this decision is an LDC describing the extent of the existing use which is considered to be lawful. (NB the corrected enforcement notice plan (see below) doubles-up as the relevant LDC Plan.)

Appeal (B)

2. I direct that the enforcement notice is corrected by replacing the plan as set out in my paragraph 9 below.

3. I make a split decision and further direct that the enforcement notice be varied under **SCHEDULE 2 THE ALLEGED BREACH OF PLANNING CONTROL**, in the sub paragraph below the heading, by the deletion of the words ...*and hatch to stairway*... the rest of the sub-paragraph to remain extant. Under **SCHEDULE 4 WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH OF PLANNING CONTROL – S173(4)(A)** the deletion of STEP ONE in its entirety and, under STEP TWO the deletion of everything after ...*Remove the balustrading (and) decking*...

4. Subject to this correction and these variations the appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the land shown edged and hatched black on the plan annexed to this decision and the balustrading and decking, and, planning permission is refused in respect of the balustrading and decking on the application deemed to have been made under section 177(5) of the Act as amended.

Procedural Matters

Appellants

5. There are two Apellants. This is because there has been a recent change of ownership. The long term original owners, City and Suburb Properties Ltd, are solely involved in the LDC application and appeal. The second Appellant, Mr M Galliani, purchased the property on 6 March 2013 and made the enforcement notice appeal.

Appeal Procedure

6. Despite the first Appellant's 2 Statutory Declarations, and my explanation of the penalties surrounding knowingly or wilfully making false statements in them (section 5 of the Perjury Act 1911), as well as the wider effect of section 194 of the Act on the evidence given for the LDC, the Local Planning Authority (LPA) maintained its objections to the Hearing procedure. Instead, the Council believed that the Appellants' evidence needed to be given under oath, and tested by cross examination, because this case involves complex legal issues. Such action is only possible at an Inquiry.

7. Notwithstanding this dispute it was agreed by the main parties that the Hearing should precede, using more formal questioning of the witnesses giving the SDs, and that the matter be reviewed after considering the oral evidence. Before adjourning to the site the Appellants maintained their supportive stance towards the informal proceedings but the LPA maintained its objections.

8. At the completion of the second accompanied site visit (ASV) I told the parties that I would review the matter of procedure. They would either get a decision, if I concluded it was appropriate, or, in the alternative, a notice that the Hearing is aborted for an Inquiry. The issue of this decision is confirmation that, after due reflection, I have decided that the informal procedure is indeed appropriate for this case. Relevant case-law is not especially complex and the

evidence, on the significant facts, is covered by the perjury laws. Indeed, I do not see what more would be likely to be achieved by a Public Local Inquiry in this instance.

The Notice Plan; Appeal (B)

9. The enforcement notice plan denoting, the appeal property, is slightly wrong. I will correct this as agreed by the main parties.

Appeal (A) LDC and Appeal (B) Ground (d); The Use

10. Although I will deliberate upon elements of both matters together, in regard to the ground (d) enforcement appeal I will just be considering the alleged garden terrace use jointly with the LDC appeal. The later decking and balustrading, operational development, element of this ground will be determined separately.

Reasons

11. An LDC is just a snap-shot in time. It is concerned simply with whether what is applied for would be lawful at the date when the application is made. A ground (d) enforcement appeal asserts that it is too late to take enforcement action and requires similar evidence.

12. In these kinds of legal cases concerns about planning policy, or the impact of the scheme on the environment, are not relevant. My decisions are concerned solely with an interpretation of planning law. Although it is for the Appellants to prove what they assert the evidential test involves just what is the most likely explanation of the facts; that is on the balance of probabilities. In other words is what is alleged more probable than less probable? Mathematically, this could mean that, if it is found that the asserted garden terrace use is 51% more likely to have been maintained for the requisite period then the appropriate test would have been satisfied and the Appellants would have proved their cases sufficiently. In such circumstances the appeals would succeed. Lawful can sometimes be awful.

13. The LDC is sought solely for the garden terrace use.

14. This is a breach of condition case because using the roof of the dwelling house, as a garden terrace, would not normally be development under the Act (it would be a use of the building for a purpose incidental to the enjoyment of the dwelling house as such (section 55(2)(d)).

15. The relevant condition is number 5 attached to planning permission reference 87/0135 (condition 5). It states that *...No access shall be provided to the roof of the extension by way of window, door or stairway, and the roof of the extension hereby approved shall not be used as a balcony or sitting area...* It is accepted by the Appellants that the word *extension* used in the condition, whether or not it is a misnomer, does apply to the appeal property. It follows that the 10 year rule, under section 171(B)(3) of the Act, applies. There are two relevant periods (RPs) starting with: 21/11/2002 (10 years after the original LDC application was made to the LPA) for Appeal (A), and; 13/2/2003 (10 years after the enforcement notice was issued) for Appeal (B).

16. There are two Statutory Declarations (SDs). One from Mr Mark Smith who is the Managing Director of the first Appellant company. The other is from Mr Shan Slavin who has been in the employ of the first Appellant company, as its Property Maintenance Builder, since 1996. Both stated, from their direct knowledge, that the roof of N° 2 has been used as a garden terrace following works carried out to the property in the latter part of 2000. As already noted SDs carry the risk of imprisonment and /or a significant fine, if the person involved knowingly or recklessly makes a false statement, so they are unlikely to be undertaken lightly. As a consequence SDs carry considerable weight. Section 194 of the Act, extends section 5 of the Perjury Act 1911 for LDCs, by making the withholding of any material information an offence as well.

17. There is little doubt in my mind that a staircase, and hatchway access, was provided onto the roof of appeal property during the latter part of 2000 (as set out in the: SDs; Estimates from McLouchlin and Sons dated 1 September 2000, and; the sales particulars from the Queens Park Partnership (dated 25 January 2001)). The staircase and access hatch provide a way of using the roof in direct breach of condition 5; works which took place more than 10 years before the beginning of either RP.

18. That the stairs were replaced, and the hatchway enlarged, during the summer of 2012 is not to my mind a new breach. It is instead a continuation of the earlier breach. This is because the replacement stairs are works which only affect the interior of the building, and the hatch alteration has not materially affected the external appearance of the building, so neither later operation is development under the Act (section 55(2)(a)(i) and (ii)).

19. I am not surprised that during Mr Smith's and Mr Slavin's visits to the property, over the years, it was seldom that tenants were seen actually using the roof. Not all visits were announced and most probably took place during the day when tenants could be at work. The weather in England is also a factor regarding any minimal nature of the roof's use. It is not often that there are periods of warm or dry weather, sufficiently calm and pleasant, to make outside use of a second floor roof in London appealing.

20. Neither am I surprised that not much physical evidence, of the roof being in garden terrace use, has shown-up either at the visits or in any aerial photographs. But even the recorded presence of just: the couple of deckchairs; ashtrays; a barbeque; a carpet (used as a temporary roof covering): plant pot, and; plastic furniture, observed over the years, is enough to give me a clear indication of appeal use having been active over the RP. These artefacts, together with the access arrangements, would have been sufficient to make it clear to any visitor, or Council enforcement officer, coming to the property after the end of 2000, that the garden terrace use was taking place.

21. During one of the more formal questioning sessions Mr Slavin, in particular, was asked some questions which were leading, and wrongly framed, resulting in a few answers which conflicted with his SD. But such matters were corrected and did not appear to me to damage either: the integrity of this witness; the main thrust of what he had to say, or; the overall impression

that he was being truthful about his recollections. It was simply a matter of some genuine confusion which was the principally the fault of the questioner.

22. The only significant contrary evidence, submitted by the Council, was in the form of some aerial photographs and an email from a neighbour living at 37 Kilburn Lane. That the former did not show much happening on the roof, apart from some shadows which could have been a roof hatch (in or around its present location), is not surprising. The active occupation of the roof was at best occasional and any items associated with its use were small and portable. The aerial photographs were taken from a high altitude, are fuzzy, and only capture one moment every year or so. However, even such a crude and incomplete record does show what could be items of garden furniture /plant pots on the roof (particularly the photos for 2003, 2005/6 and 2008, provided with the Appellants' LDC evidence).

23. Other concerns about loss of privacy and an absence of any formal planning permission are raised by Mrs Papaspyrou (in an email dated 16 September 2013). But her evidence does not take the case about the roof's historic use much further. Although Mrs Papaspyrou indicates that she cannot remember having seen anyone on the appeal roof before the railings went up she, very fairly, comments that during the week she usually spends 10 hours each day at work. Unfortunately this neighbour could not attend the Hearing because of work commitments.

Conclusion on this part of the Appeals

24. The main thrust of what I found to be the Appellants' compelling case, backed up by two SDs, was largely unchallenged by any significant contrary evidence. It follows that I find that a breach of condition 5 over the RPs has been proven as a matter of fact and degree, on the balance of probabilities, so the LDC appeal (Appeal (A)), and the usage part of ground (d) for the enforcement appeal (Appeal (B)), should be allowed.

Case Law

25. In forming this opinion I have taken into account the judgement tabled by the Council at the Hearing (*Ellis and the SSfCLG and Chiltern DC [2009] EWHC 634 (Admin)*). But the *Ellis* judgement refers to a residential use of a dwelling with an agricultural occupancy condition attached to it and is substantially different to the case before me. Clearly each time a non-agricultural use of the *Ellis* dwelling ceased a fresh breach occurred and the appropriate relevant period started again. As already noted I do not accept that the works done in 2012 (which included replacement stairs and hatchway) amounted to a fresh breach, or new chapter in the planning history of the site, sufficient to reset the 10 year "clock" to zero. The *Ellis* case does not impact on my decision.

26. Instead the judgement in *Basingstoke and Dean Borough Council v SSfCLG and Sir Thomas Stockdale [2009] EWHC 1012 (Admin)* is more relevant. Here it was found that...*continuous physical occupation is not required for there to be occupation in breach...* In *Thurrock* Schiemann LJ made the point that the Inspector should have asked himself ...*whether enforcement action could have been taken throughout the....clearly defined...period.* And in *Swale BC v FSS and Roger Lee [2005] EWCA Civ 1568*, Keen LJ similarly had no doubt that the

same question should have been asked, concluding ...*that this is a quite different question from whether the use had been abandoned*... Although he recognised that ...*it would be a question of fact and degree whether it could properly be said that the unlawful use was continuing*... To my mind the presence of the stairs and hatchway, supported by the more ephemeral presence of some "garden furniture", was sufficient to indicate to any visitors that the use was active throughout the RP.

Appeal (B) Ground (d); The Works

27. This ground is that it is too late to take enforcement action against the timber decking and balustrading.

Reasons

28. The Appellants accept these works were done during the summer of 2012. Neither operation was claimed to be permitted development. The relevant part of the Act is section 171B(1). Because it is agreed that the works were carried out less than 4 years ago they have not acquired immunity against enforcement action. Development, under the Act, requiring planning permission, has been undertaken without the necessary consents. This part of the Ground (d) appeal must fail and results in a split decision on Appeal (B).

Appeal (B), Ground (a); The Balustrading and Decking

29. This ground is that planning permission should be granted for what has been done. Because I have found that the use of the roof as a garden terrace is lawful this part of the Ground (a) appeal does not fall to be considered here because this use is lawful.

Main Issue

30. There is one. This is the effect of the later operational development (the balustrading and decking) on the privacy of residential neighbours.

Reasons

31. This is a high density urban area. Houses are packed closely together. The second Appellant confirms that during the recent hot weather a number of other neighbouring flat roofs were also used by residents for sitting out.

32. In this kind of densely built-up residential place some loss of privacy is inevitable. Distances between the overlooked windows of neighbouring dwellings are generally less than ideal. Indeed, I saw that it is possible to look into the rear upper, bathroom and bedroom, windows of some neighbours' houses from the inside of the appeal dwelling; even though the relevant overlooking windows are high level ones.

33. It is clearly already feasible, for the determined "Peeping Tom", to cause an unacceptable loss of privacy to neighbours even ignoring the use of the appeal roof garden terrace. But such a person would have, deliberately, to peer out of a high level window and actively seek to observe his or her neighbours. This is not usual behaviour and there is little the land use planning system can do to prevent such potential abuse retrospectively.

34. But visibility from the roof of N° 2, which is on the top of a 3 storey building, is of a different order. It is from an open, high, vantage point which offers a dominating position for overlooking. From here it is easy to see into surrounding properties; including the upper windows of some of the nearest neighbours' dwellings and what could normally be expected to be their private back gardens. No conscious effort is needed for there to be an unacceptable level of overlooking because just being on the roof inevitably results in a significant problem. As was noted, on the first ASV, it was difficult not to see what neighbours were doing in some of the more private parts of their homes; even when the observers tried consciously to look away.

35. Although I have found that the use of the roof garden terrace, without any decking or balustrading, is lawful, sitting out on an unimproved asphalt roof would not be a particularly pleasant experience; except in the most exceptional of good weather conditions. And even then the asphalt roof would not provide an ideal surface for such a use (it gets hot). But granting planning permission, to retain the balustrading, and timber decking, would make the roof garden terrace use eminently more practical and enjoyable. This would encourage, what in land use planning terms in this case, is a materially harmful activity and should not be countenanced.

36. Overall the works are not something which would contribute positively to making this part of London a better place for people, in general as opposed to the Appellant in particular, to live. Development would not therefore accord with: the relevant part of the National Planning Policy Framework; Policy BE9(e) of the 2004 adopted London Borough of Brent Unitary Development Plan, or; the relevant part of the Council's 2001 Supplementary Planning Guidance 17, on privacy. It follows that planning permission should be withheld for the retention of the balustrading and decking.

37. I have taken account of the intrinsically attractive design of the works and the fact that they are not very apparent from surrounding public view points. But this is not sufficient to countenance the likely increased loss of privacy which the unlawful works have facilitated. A condition moving the balustrade further back, from what appears to be the northern edge of the roof, would not reduce the resulting loss of privacy to neighbours sufficiently enough to overcome the significant land use planning objections to the development.

Colin A Thompson

APPEARANCES

FOR THE APPELLANTS:

Mr M Pender BA Hons DipTP MRTPI, PPM Planning Ltd	Agent
Mr M Smith	Witness for the first Appellant
Mr S Slavin	Witness for the first Appellant
Mr M Galliani	The second Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks MRTPI, Environment Services Ltd	Planning and enforcement witness
Mr T Rolt MRTPI, Brent Council	Planning and enforcement witness

DOCUMENTS

1 Letter of Notification of the Hearing and the list of persons notified
2 Email form an interested person
3 The *Ellis* Judgement transcript

The Planning Inspectorate

Plan (LDC, and amended Enforcement Notice, plan)

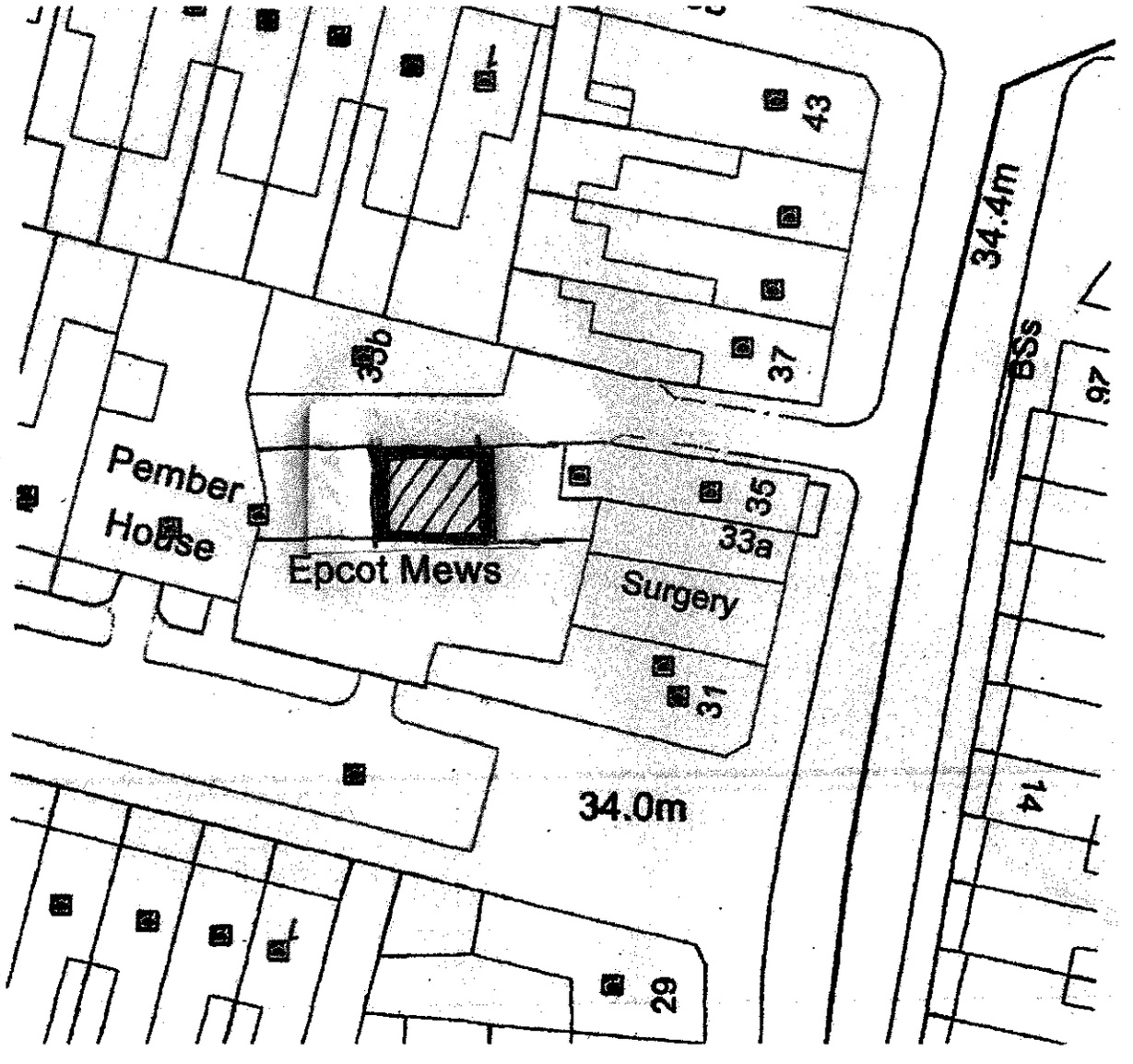
This is the plan referred to in the Lawful Development Certificate dated: 09.10.2013

by C A Thompson DiplArch DipTP Reg Arch RIBA MRTPI IHBC

Land at: 2 Epcot Mews, Pember Road, LONDON, NW10 5LL

Reference: APP/T5150/X/13/2195266 and C/13/2195278

Scale: NTS



The Planning Inspectorate

Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 21/11/2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The breach of condition 5, of the 87/0135 planning permission, has subsisted for more than 10 years

Signed

Colin A Thompson

Date 09.10.2013
Reference: APP/T5150/X/13/2195266

First Schedule

The use of the roof as a garden terrace

Second Schedule

Land at 2 Epcot Mews, Pember Road, LONDON, NW10 5LL

NOTES

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

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

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

The Planning Inspectorate

Appeal Decision

Site visit made on 16 September 2013

by Chris Couper BA (Hons) DiP TP MRTPI

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

Decision date: 30 October 2013

Appeal Ref: APP/T5150/A/13/2198678
146A High Street, Harlesden NW10 4SP

- 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 Misbah Rahman against the decision of the Council of the London Borough of Brent.
- The application Ref 12/2701, dated 3 October 2012, was refused by notice dated 17 December 2012.
- The development proposed is change of use from self-contained flat to house in multiple occupation.

Decision

1. The appeal is allowed and planning permission is granted for change of use from self-contained flat to house in multiple occupation at 146A High Street, Harlesden NW10 4SP in accordance with the terms of the application, Ref 12/2701, dated 3 October 2012.

Procedural matter

2. I note from the appellant's statement and from my site visit that the property is already in use as a House in Multiple Occupation ('HMO') and that the proposal is therefore retrospective. I have determined the appeal on this basis.

Main Issues

3. The main issues are: i) the effect of the proposal upon the supply of suitable family accommodation in the area; ii) whether occupiers of the accommodation would experience satisfactory living conditions; and iii) the effect of the proposal on the living conditions of neighbours with particular regard to noise and disturbance.

Reasons

The supply of family accommodation

4. The Council contends that the proposal results in the loss of a self-contained residential property that is suitable for family accommodation. It states that the Borough has a high and increasing average household size, that the average number of rooms per unit is one of the lowest in London and that the existing

housing stock is therefore overcrowded and inadequate to accommodate existing needs. Furthermore, family accommodation has been lost over the years as part of development schemes and most new housing, including that in the 'pipeline', is for 1-2 bedroom units which does not address the need for family-sized accommodation. The existing housing stock is inadequate to satisfactorily accommodate the Borough's disproportionately larger households. In addition it states that in accordance with policy, non-self-contained accommodation should meet the identified needs of a named institution and that suitable management arrangements should be provided as part of the proposal.

5. In my view, whilst the premises are of a suitable size, the location above a restaurant on a busy thoroughfare with access directly off the pavement, together with the lack of any outdoor amenity space, is such that the property does not lend itself to use as family accommodation. My conclusion on this matter is supported by the letter from St John Chartered Surveyors dated 3 October 2012 indicating that the use of the premises as family accommodation ceased due to changes to the character of the area and a lack of demand as the premises was unattractive for family use.

6. The appellant states that the occupants of the HMO are currently employees of the catering establishment beneath and that the proposal accords with guidance in the National Planning Policy Framework ('the Framework') which requires at paragraph 50 that local planning authorities should plan for a mix of housing to address the needs of different groups in the community. The appellant also states that due to changes to Social Welfare provision there is a growing demand for smaller units for 1 or 2 persons for use by key workers or those with short term needs. Enquiries made to Housing Associations who have housing stock in Brent indicate that the demand for HMO accommodation in the area outstrips the supply and the appellant therefore maintains that the proposal contributes to addressing those needs in a highly sustainable location in accordance with guidance in the Framework.

7. Whilst I accept from the evidence before me that there is a high demand for family-sized units, there appears to also be a high demand for HMO accommodation. I consider it reasonable that HMO accommodation should be provided in suitable premises to meet those needs in accordance with the guidance in the Framework which seeks to deliver housing for all sectors of the community. I also accept that the site is highly accessible and sustainably located with very good access to public transport and service provision.

8. Whilst the scheme does not provide any family-sized units as part of the conversion, given the overall size of the premises and my conclusions that the property does not lend itself to use as family accommodation, I do not consider that it is a reasonable or necessary requirement in this case.

9. I have assessed the proposal against policy CP21 of the Brent Core Strategy 2010 ('the Core Strategy') which seeks, in broad terms, to maintain and provide a balanced housing stock by protecting accommodation that meets known needs, and to ensure that new housing contributes to the Borough's household needs. This includes, but is not limited to, family-sized accommodation. The policy also states a requirement to provide non-self-contained accommodation (including HMOs) to meet identified needs and requires that family-sized

accommodation should be provided as part of house conversion schemes, although this may not be necessary where a satisfactory environment for young children cannot be provided. For the reasons set out above I consider that the proposal does not conflict with this policy.

10. I have also considered the scheme against the relevant parts of policy H17 of the Brent Unitary Development Plan 2004 ('the UDP') which, together with the supporting text, states that the conversion of dwelling houses to flats will be permitted unless it results in the loss of a small (less than 110sqm) purpose-built family dwelling which meets a specific need. However, I consider the policy to be of limited relevance to this proposal as it addresses schemes to convert dwelling houses into flats rather than HMOs. In addition, I note that the Council states that the existing unit has a floor area of approximately 110sqm and it is therefore unclear from the evidence before me whether it falls within the threshold set out in the policy.

11. Policy H10 of the UDP is referred to in the decision notice. The policy required that new residential development should be self-contained unless designed to meet the known needs of a named institution and that suitable management arrangements be secured as part of the planning application. However, the Council has indicated in its Statement that the policy has been superceded by policy CP21 in the Core Strategy and I have therefore had no regard to it in my decision.

Living conditions within the accommodation

12. The scheme includes 4 bedrooms, each with a shower/toilet room, and each for use by 1-2 persons. All the bedrooms have a window or windows facing either towards High Street or to the rear. The bedroom sizes range from approximately 11sqm to 21sqm and the occupiers also have access to a communal kitchen/dining area of approximately 22sqm. The appellant maintains that these areas exceed the space standards set out for HMO Licensing.

13. Whilst the space provided for the occupants is limited, I am satisfied that the amount and quality of the space within each of the bedrooms, together with the communal space in the kitchen/dining area is sufficient to provide occupiers with areas to cook, relax and sleep. In addition, I observed on my visit that each bedroom is lit by one or more windows which are of a reasonable size and in my view provide sufficient natural light. Whilst the property has no garden or external space, this would also be the case if the premises was occupied as a single family-sized unit of accommodation, and I am not persuaded that the need for external space is any greater for an HMO.

14. I have assessed the proposal against policies H17 and H18 of the UDP which support schemes for the conversion of houses to flats providing that the configuration of the property is appropriate, and which state in broad terms that proposals should provide an acceptable standard of accommodation for future residents with regard to factors such as room size and layout, and should not be over-intensive in terms of the number and size of units proposed. In addition I have considered the adopted Supplementary Planning Guidance 17: Design Guide for New Development ('the SPG') which states that, as a guide, one bedroom flats serving two people should have a minimum unit size of 45sqm.

The Council also refers to a requirement for 50sqm for one bedroom flats serving 2 people set out in the Mayor's London Plan 2011.

15. However, in my view, the standards referred to in the SPG and the policies are intended to address proposals for self-contained flats rather than HMOs. I therefore consider them to be of limited relevance to the appeal proposal. In any event, for the reasons set out above, I consider that occupiers of the accommodation would experience satisfactory living conditions in accordance with the guidance in paragraph 17 of the Framework which requires proposals to provide a good standard of amenity for all existing and future occupants of land and buildings.

The effect on the living conditions of neighbouring occupiers

16. Given the presence of a restaurant in the ground floor of 146a High Street, and other restaurants and commercial uses and the high traffic volume in High Street, I consider that background noise levels and disturbance in the vicinity of the appeal site are generally high.

17. Whilst I have limited information before me, it appeared from my site visit that neighbouring uses in the adjoining terraced properties are residential above ground floor. However, whilst I accept that HMOs may generally have higher occupancy rates than self-contained accommodation and may attract a greater number of comings and goings, I have no clear evidence to indicate that such occupancy gives rise to significantly greater noise and disturbance. Indeed in this case, I note that despite the retrospective nature of the proposal, no objections were received from any adjoining occupiers, and I have not been made aware of any complaints regarding noise or disturbance.

18. I have considered the proposal against policies H17 and H18 of the UDP which require, amongst other matters, that the configuration of the property should be suitable for conversion to flats and that the proposal should provide acceptable standards of accommodation for future residents. I have also considered the requirements of the SPG. However, whilst the SPG does refer in general terms to the need to provide suitable standards of privacy, I have not been directed to any specific requirements relevant to the scheme before me. The policies which relate to flat conversion schemes and the SPG are therefore of limited relevance to the proposal. Nevertheless, I have considered the scheme against the guidance in paragraph 17 of the Framework and I conclude that the proposal ensures that acceptable standards of amenity and living conditions for neighbouring occupiers would be maintained.

Conclusion and conditions

19. For the above reasons and having regard to all other matters raised I will allow the appeal. I have considered the Council's suggested conditions against the tests in Circular 11/95. However, I have noted that the proposal is retrospective and I have therefore not found it necessary to impose either the suggested time limit condition or the condition requiring that the development be carried out in accordance with the approved drawings.

Chris Couper

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 23 September 2013

by R Curnow BSc(Hons) MA(TCP) CMS MRTPI

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

Decision date: 24 October 2013

Appeal Ref: APP/T5150/D/13/2201953
11 Highfield Avenue, Wembley, Middlesex, HA9 8LE

- 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 Ponnambalam Ananthan against the decision of the Council of the London Borough of Brent.
- The application Ref 13/0945, dated 10 April 2013, was refused by notice dated 5 June 2013.
- The development proposed is retention of canopy at the rear of property.

Procedural matter

1. The description of the development on the application form reads 'Retention of canopy at rear of property'. As retention is not a form of development, I have amended the description in my decision, to better reflect what has been applied for.

Decision

2. The appeal is allowed and planning permission granted for canopy at the rear of property at 11 Highfield Road, Wembley, Middlesex, HA9 8LE, subject to the following condition:

   1) The development hereby permitted shall be carried out in accordance with the following approved plans: KD/PP/58/11/H134.1, KD/PP/58/11/H134.2, KD/PP/58/11/H134.3 and KD/PP/58/11/H134.4.

Main issues

3. The main issues in this appeal are the effects of the development on the character of the host dwellinghouse and others nearby, and whether it would have an overbearing impact on the occupants of neighbouring properties.

Reasons

4. The canopy is a simple open fronted addition to the rear of this semi-detached dwelling, comprising a plastic roof supported by boundary walls and timber columns. Where it projects above the boundary walls, there are infill panels of the same plastic material. The canopy, which appeared to be nearing completion at the time of my visit, projects from an earlier single storey extension, giving an overall depth of 6.1 metres from the original dwelling.

5. Policy BE2 of the London Borough of Brent Unitary Development Plan 2004 (UDP) states that developments should make a positive contribution to the

character of an area – an aim reflected in Policy CP17 of the London Borough of Brent Core Strategy 2010 (Core Strategy). UDP Policy BE9 requires extensions to be complementary and harmonious, stating, amongst other things, that local design should be respected, though not necessarily replicated, with the use of compatible or complementary materials.

6. The Council's adopted Supplementary Planning Guidance 5, 'Altering and Extending Your Home' 2002 (SPG) states, with respect to single storey extensions to semi-detached dwellings, that the maximum permitted depth permitted is 3 metres, though this might be reduced where neighbouring dwellings are at a lower level or a different rear building line.

7. Notwithstanding that the SPG seems to place a greater degree of restriction on the depth of rear extensions than may otherwise be permitted under the terms of the Town and Country Planning (General Permitted Development) Order 1995, as amended, I find that the canopy is acceptable in its own right. Its simplicity of design respects the character of the existing dwelling, as well as others nearby, and is therefore compliant with this UDP Policy BE9. As it is not seen from public vantage points, it has no impact on the wider townscape and I find that it is compliant with the aims of UDP Policy BE2 and Core Strategy Policy CP17.

8. Whilst the canopy's materials differ from those in the main house, their quality is acceptable and they would complement it. Therefore, I see no necessity for the materials in the canopy to match those of the existing house.

9. At my visit, I saw that the canopy abuts a conservatory on the rear of 9 Highfield Avenue, itself deeper than the 3 metres set out in the SPG, extending a little beyond it. On the other side, it runs along the common boundary with 17 Highfield Avenue, which has a line of Cypress trees growing on its side of the boundary.

10. The Council's reason for refusal states that there would be an overbearing relationship with the neighbouring properties; however, its officer's report states that the "residential amenity" of number 9 will not be detrimentally affected and it is not considered to be "overly-dominant" to number 17.

11. The canopy does not have an overbearing impact on number 9, due to its limited height, the properties are at the same level and it mostly runs alongside the extension to number 9. I viewed the site from the rear garden of 17, which is at a slightly lower level adjacent to the canopy. Again, it is not overbearing; nor would it be, even were the trees to be removed.

12. My conclusions are that the design of the canopy is appropriate to the dwelling and the area, and that there would be no significant adverse impact on the living conditions of the occupants of neighbouring properties. The development would, therefore, accord with the terms of the relevant development plan policies, for my reasoning above. I therefore allow the appeal. The Council has not suggested any conditions to be applied. As the development has been commenced, I have attached a single condition, requiring compliance with the submitted plans.

R Curnow

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 23 September 2013

by D Lamont

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

Decision date: 10 October 2013

Appeal Ref: APP/T5150/D/13/2203918
154 Salmon Street, LONDON, NW9 8NU

- 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 Faiz Dalili against the decision of the Council of the London Borough of Brent.
- The application Ref 13/1402 was refused by notice dated 19 July 2013.
- The development proposed is the retention of boundary wall.

Decision

1. The appeal is allowed and planning permission is granted for the boundary wall at 154 Salmon Street, London NW9 8NU, in accordance with the terms of application, Ref 13/1402, dated 24 May 2013, and the plan submitted with it, numbered KD/PP/Boundary/83/12/S130.

Procedural Matter

2. The development has been completed and I deal with the appeal on that basis.

Main issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site lies within an established suburban area. It is on the east side of Salmon Street, where the properties are predominantly early 20th century two-storey, red brick, detached and semi-detached family homes. Their curtilages are set back behind generous broad green verges, with narrow roads behind, serving the driveways. On the west side, and to the south of the site on the east side, these properties are substantially screened by landscaping.

5. I have had regard to two appeal decisions in respect of boundary enclosures at Nos. 284 and 19 Salmon Street (ref. APP/T5150/A/08/2079240 and APP/T5150/D/12/2185713). The street is particularly long and its character and appearance varies locally and between each side of the street. Both sites are distant from the current appeal site. Consistent with the previous Inspectors' approach, this appeal is determined within its local context and the particular site and development circumstances.

6. The site lies at the southern end of an eastern stretch along which the houses are prominent from Salmon Street, due to the absence of meaningful

landscaped screening. Within this open row of housing, the grass verge also narrows to the point where the proximity of front gardens (or parking areas) to the Street is reflective of a more typical suburban street. This 'harder', more urban, edge is further emphasised by wide asphalt vehicular cross-overs and expansive front garden parking areas. The impact is particularly evident at the street's junction with Mallard Way. Here, there are wide views across the combined open hard parking areas of two houses to the north, to the walls and railings of the opposite corner house and no. 178.

7. No. 158's walls are the only substantial front boundary enclosures between No. 178 and the appeal site; and are lower than the subject development. However, No. 158's walls are particularly prominent as a result of its corner position, double-fronted aspect and walls, total length of walls, and the reduced green foreground between the property boundary and Salmon Street. However, the walls reduce the hardstanding's visual impact on the streetscene.

8. The subject enclosure maintains the existing green space between the building and Salmon Street. The front garden does not have a soft green character garden because it has been covered with paving for vehicle parking. The walls and railings extend higher than similar features found along this part of the street. However, within the context of the local streetscene, their set-back from road junction corners and Salmon Street has the effect of a consistency of character and appearance with the lower, longer and more prominently positioned examples of similar walls along this side of Salmon Street.

9. In addition, the development has been completed in red brick which is sympathetic, in appearance and scale, to the host and adjacent houses. The wall is read against the red brick background of the substantially higher host building and its neighbours. As such, it is less pronounced than established walls and railings which are positioned closer to local principal roads and on corner plots. The enclosure also mitigates the urban impact of its hardstanding and parked cars on the character and appearance of the streetscene. The transparency of the wall-mounted railings and gates also reduce the solidity of the enclosure's height and continuum of wall.

10. The development's low height and width, within the context of the existing space between the exposed house gable wall and the neighbouring house, will also maintain the sense of space between the two buildings.

11. For these reasons, and having had regard to all other matters raised, I conclude that the development is sympathetic to, and maintains, the established open character of the streetscene; and makes a positive contribution to the distinctive residential character and appearance of the area. This is consistent with the London Borough of Brent Unitary Development Plan 2004 Policies BE2, BE6 and BE7 and BE29, on urban design of public realm, town and streetscapes and protecting spaces between buildings in Areas of Distinctive Residential Character; and the Council's Supplementary Planning Guidance 5 Altering and Extending Your Home. Accordingly, the appeal is allowed and there is no requirement for any conditions, given the development has been completed.

D Lamont

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on Monday 2 September 2013

by Alan Langton DipTP CEng MRTPI MICE MCIHT

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

Decision date: 25 October 2013

Appeal ref: APP/T5150/C/13/2197467
1 Mentmore Close, Harrow HA3 0EA

- The appeal is made 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 appeal is made by Dr S Rahman.
- The Council's reference is E/12/0321.
- The notice was issued on 22 March 2013.
- The breach of planning control as alleged in the notice is: Without planning permission, the partial removal of a front boundary wall and formation of hard surface to the front garden, and the installation of replacement of uPVC windows to the front elevation of the premises. ("The unauthorised development").
- The requirements of the notice are:
  Step 1 Remove the unauthorised uPVC windows from the front elevation of the premises.
  Step 2 Remove the unauthorised hard surface from the premises as shown hatched on the attached Plan B to the notice. Deposit top soil where the hard surface formerly stood and then turf over that area.
  Step 3 Plan a privet hedge at intervals of between 400 mm and 600 mm in the location as shown marked red on the attached Plan B to the notice.
  Step 4 Plan shrubbery in the location as shown black on the attached Plan B to the notice.
  Step 5 Reinstate the front boundary wall of similar height and design as shown on the attached photograph [to the notice] and in the cross hatched location as shown on the attached Plan B to the notice.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary Decision: The appeal is allowed in part and dismissed in part, in the terms set out below in the Formal Decision.

Preliminary matters

1. At the outset there are corrections that I need to make to the enforcement notice. In the allegation, as quoted above, aside from the repeated word "of", not all the windows in question are replacements, those on the house extension were installed as they are from the outset. I shall correct this by deleting the reference to replacements, which I can do without injustice since the intentions of the notice are clear and have been responded to accordingly by the appellant. The requirements in Steps 3 and 4 quoted above to "Plan" a privet hedge and "Plan" shrubbery are plainly intended to mean "Plant" in each case. Again, these

are corrections that I can make without injustice, since the notice has in these regards also has been understood and responded to accordingly.

2. Mentmore Close is within the Northwick Circle Conservation Area, subject to a Direction made in 2005 under Article 4(2) of The Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). Amongst other things, and in brief, this removes permitted development rights at dwellinghouses otherwise conferred by Article 3 of the GPDO with regard to hard surfaces and both the erection and demolition of gates, walls and fences.

3. At the end of 2011 the Council granted planning permission for "Demolition of existing attached side garage, [and erection of] two storey side and single storey rear extension to dwellinghouse" at 1 Mentmore Close (ref 11/2383 12 December 2011). The permission was subject to conditions including:

   3) The front garden (in particular the proportion of soft landscaping) shall be retained as existing following construction works on site. ...[1]

   4) Details of materials for all external work, including samples, shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced. The work shall be carried out in accordance with the approved details.

   5) Notwithstanding the submitted plans otherwise approved, further details of the windows to the front elevation of the side extension shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site and the works shall be carried out in accordance with the approved details. Such details shall include:

      a) Elevation of proposed window at a scale of 1:10

      b) Cross-section at a scale of 1:5 through the transom showing the relationship of opening and fixed lights, with full-sized details of externally mounted glazing bars.

4. This development was implemented though not in full accord with the permission. The Council subsequently refused retrospective approval of details pursuant to Conditions 4 and 5 (ref 12/2009, 15 November 2012). An appeal against this refusal was allowed with regard to details subject to Condition 4 but refused with regard to Condition 5 (APP/T5150/D/12/2189298, 21 February 2013).

5. A local written objection to this current appeal relates to the pebble dash finish on the extension, however that is not subject to the enforcement notice or before me for consideration.

The appeal on ground (c)

6. To succeed on ground (c) it is necessary for the appellant to demonstrate, on a balance of probabilities, that the matters alleged in the notice do not amount to a breach of planning control. The changes that have taken place to the entrance and driveway were not authorised by the 2011 permission, but rather they are contrary to its Condition 3. The front windows now across the whole of the extended house, that is to say the original house and the extension, are quite different from those in photographs of the house prior to the works. Those there now were not authorised by the 2011 permission, quite the reverse, the

[1] The condition then sets out detailed requirements regarding the replacement of plants that fail within 5 years.

approved drawings stated that the then existing windows would be retained on the house while those to be installed on the extension were to be subject to the further approval required by Condition 5.

7. The Article 4(2) Direction means that neither the alterations to the front wall and driveway nor the new and replacement windows on the front elevation were permitted by the GPDO. The works to the front wall and driveway, and installing the windows, were acts of development, which require planning permission, but which were carried out without either specific permissions or under the provisions of the GPDO. Accordingly, the matters alleged in the enforcement notice are breaches of planning control and the appeal fails on ground (c).

The appeal on ground (a) and the deemed planning application

8. The main issues concern the effects that the front garden layout and the windows have on the street scene and thereby on the appearance and character of the Conservation Area.

9. The works to the front wall and hardstanding widened the previous opening and parking area, and there is little by way of planting in the remaining garden, where previously on (albeit rather indistinct) photographic evidence there was hedging. I do not condone these variations from the requirements of the 2011 permission Condition 3, but the paved area has been neatly laid out, is not excessively wide, and a little more than half the front garden remains unsurfaced. In these regards it is broadly complies with the guidance at Section 4.0 of the Council's Supplementary Planning Guidance (SPG5) *Altering and Extending Your Home* adopted in September 2002. The main detracting feature is the condition of the pavement vehicle crossing, but that lies outside the appellant's property and enforcement notice site. The proportion of retained garden compares favourably with most houses in the Close and in that sense at least preserves the appearance and character of the Conservation Area.

10. There are hedges in the road and wider locality but they are by no means a dominant characteristic. In my view, prescribing that the appellant's front garden must feature a privet hedge gives an unwarranted degree of control over his home. Ultimately, the attractiveness or otherwise of individual front gardens in the locality, and their contribution to the Conservation Area, hinges more on the care, ability and interest of individual households than by specifying a particular plant species. The present layout safeguards a choice of options for the front garden. A privet hedge planted simply to meet the requirements of the enforcement notice might well in practice lead to a less satisfactory outcome in the longer term.

11. In all, the appearance and character of the Conservation Area would be better served by allowing the appellant to retain the now existing parking area and to cultivate his front garden through choice. On balance, this outcome would I believe sufficiently meet the aims of urban design principles in the Council's Unitary Development Plan Policies BE2 and BE7 and their more particular application in conservation areas in Policies BE25 and BE26. The appeal on ground (a) succeeds with regard to the works to the front wall, hardstanding and garden. The appeal on ground (f) does not need to considered in these regards.

12. The appellant does not dispute the need to replace the now existing windows but questions the need to do so fully matching those previously on the house.

The enforcement notice does not, however, specify any particular requirements for replacements, only that those there now must be removed. It is not open to me to specify the details of their replacements. There can be no dispute that the now existing windows lack the attractive and locally characteristic details of the house's former windows. Even aside from the choice of material, uPVC rather than timber, the windows lack level sight lines, satisfactory frames and proportions, stained glass, and a dentil moulded drip-rail. Taken together, the outcome harms, and certainly does not enhance or preserve, the distinctive appearance and character of the Northwick Circle Conservation Area, contrary to urban design principles in the Council's Unitary Development Plan. The appeal on ground (a) fails with respect to the windows, which remain subject to the appeal on ground (f).

The appeal on ground (f)

13. The enforcement notice is limited to requiring that the existing windows be removed. This does not go further than is necessary to remedy the breach of planning control that occurred when these were installed. It would be open to the appellant to install replacements on the main house matching those there previously, and to install replacements on the extension in accordance with the requirements of the 2011 permission. Any variation would need to be submitted to and approved by the Council. That, however, lies outside the scope of the appeal before me since the enforcement notice does not seek to specify replacement details. For the avoidance of doubt, my criticisms of the currently existing windows are just that; they are not intended to fetter consideration of replacement proposals. Subject to these points, the notice does not go further than necessary and the appeal fails on ground (f).

Formal Decision

14. The enforcement notice is corrected by in its Schedule 2, The Alleged Breach of Planning Control, deleting the words "of replacement" in front of the words "of uPVC" so that the phrase reads "the installation of uPVC windows"; and in its Schedule 4 deleting the word "Plan" in Steps 3 and 4 and replacing it with the word "Plant".

15. The appeal is allowed in part insofar at it relates to the partial removal of a front boundary wall and formation of hard surface to the front garden, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the said development already carried out, namely the partial removal of a front boundary wall and formation of hard surface to the front garden on land at 1 Mentmore Close, Harrow HA3 0EA referred to in the notice.

16. The appeal is dismissed and the enforcement notice is upheld as corrected for the installation of replacement uPVC windows to the front elevation of the premises and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the said development already carried out, namely the installation of uPVC windows to the front elevation of the premises at 1 Mentmore Close, Harrow HA3 0EA referred to in the notice.

Alan Langton

Inspector

The Planning Inspectorate

Appeal Decision

Site Inspection on 9 September 2013

John Whalley

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

Decision date: 21 October 2013

Appeal Reference: APP/T5150/C/13/2195299

Site at: 15 Beverley Gardens Wembley Middlesex HA9 9RD

- The appeal is made by Mrs Yasmin Akhatr 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 London Borough of Brent Council.
- The Council's reference is E/12/0453.
- The notice was dated 11 February 2013.
- The breach of planning control alleged in the notice is, without planning permission, the erection of a timber and plastic roof canopy extension to the rear of the premises.
- The requirement of the notice is: Demolish the timber and plastic roof canopy extension to the rear and remove all associated debris and materials arising from this demolition from the premises.

  The period for compliance is one month after the notice takes effect.
- The appeal was made on grounds (c) and (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is quashed

The appeal structure

1. The appeal concerns a roughly built timber and plastic sheet canopy immediately adjoining the end wall of the single storey rear extension to the semi-detached house at No. 15 Beverley Gardens. It measures 2.4m high, 4.7m wide and is 5m deep. Gaps between parts of the appeal structure and the house extension wall were no more than about 50mm. The canopy's roof was overhung by, but not touching, the extension's roof eaves. I saw no indication that the appeal structure had, at any time, been attached to the house extension. There were, for example, no filled in bolt holes or similar indications of previous fixings.

The implied ground (d) appeal

2. The original appeal was made on ground (c); that planning permission was not required to erect the canopy at the rear of No. 15 Beverley Gardens. Later, ground (f) was added. The Council's statement noted

that it had been claimed that the structure had been there for more than 4 years.

3. Mrs Akhatr said in her statement that the canopy was about 6 years old. Recent work had been to repair its dilapidated state. Her final submissions of 10 June 2013 emphasised that the canopy had merely been repaired recently, not newly built. The Planning Inspectorate sent an e-mail to Mrs Akhatr on 11 June 2013 asking if she wished to add a ground (d) appeal and submit any supporting evidence. The e-mail requested a reply by 26 June 2013. No reply was received.

4. Whilst the assertions about repairs were repeated throughout Mrs Akhatr's statement, no factual evidence was put in as to what, for instance, those repairs consisted of. No photographs of before and after works were shown; no bills or receipts were submitted. On the basis of what I have before me, I consider that an appeal on ground (d) would have failed.

The appeal on ground (c)

5. The decision on the ground (c) appeal turns on whether the canopy was, when built, permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended.

6. Mrs Akhatr said the appeal canopy was not attached to the rear extension of No. 15. It was a free standing structure which should therefore benefit from the concessions in Class E to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 as amended. That allows the provision, amongst others, of buildings within the curtilage of a dwellinghouse, subject to compliance with the conditions set out at E.1.

7. The Council said the canopy, as constructed, had been built onto the end wall of the rear extension of the house and should therefore be dealt with by condition A.1(e)(i) of Class A. It was not a Class E development. Class A limited a single storey rear extension of this semi-detached house to extend beyond the rear wall of the original dwellinghouse by no more than 3 metres. As the rear extension which was built following an August 2000 planning permission had a depth of 3m from the main rear wall, the appeal canopy was not development permitted by Class A to the Order.

8. I agree that if the Council were correct to allege that the canopy had been built attached to the house extension, permitted development rights could not apply, *Fayrewood Fish Farms v SSE [1984] JPL* 287. Nor could such a development become permitted development by making changes to it.

9. I note that the original 1995 Order at Class E.1 to Schedule 2, Part 1, required that where the building to be constructed or provided would have a cubic content greater than 10 cubic metres, any part of it would have to be more than 5 metres from of any part of the dwellinghouse. That limitation was removed by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008. So

a Class E building could be built immediately to the rear of the main house, provided it met the other conditions in Class E.1.

10. The Council's case that the appeal canopy had been attached to the rear extension of No. 15 when built is unclear. As I said above, I saw no evidence on site that showed it was built attached to the house. Had there been any fixings, I would have expected to see them on the Council's photographs. Their photographs showed proximity to the rear extension, but no attachments.

11. In an appeal on a legal ground, the burden of proof lies with an appellant, *(Nelsovil v MHLG [1962] 1 WLR 404)*. However, Mrs Akhatr's claim that the canopy had been built separate from the main house was not persuasively refuted by the Council. My conclusion, therefore, favours the Appellant's version of events, and that the appeal canopy benefits from planning permission by virtue of Class E of the Order. The appeal on ground (c) succeeds. I do not need to go on to deal with the appeal on ground (f).

12. It seems to me that even if the Council had succeeded on the ground (c) appeal, the enforcement notice would have served little purpose. If the unauthorised canopy was to be removed as the notice required, it could have been re-built immediately in the same position, maintaining the small gap between it and the house, the new canopy thus complying with the provisions of Class E to the Order. The enforcement procedure is intended to be remedial rather than punitive. Requiring removal of the appeal canopy may have achieved nothing and could have been seen to be excessive, *(Tapecrown Ltd v FSS & Anr [2006] EWCA Civ 1744)*.

FORMAL DECISION

13. The enforcement notice is quashed.

John Whalley

Inspector

The Planning Inspectorate

Appeal Decision

Site Inspection on 9 September 2013

by John Whalley

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

Decision date: 21 October 2013

Appeal reference: APP/T5150/C/13/2195757

Site at: 20 Berens Road London NW10 5DT

- The appeal is made by Mr Adrian Farrell 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 London Borough of Brent Council.
- The Council's reference is E/12/0477.
- The notice was dated 25 February 2013.
- The breach of planning control alleged in the notice is, without planning permission, the formation of a rear roof terrace on top of the existing two storey rear projection including the installation of timber decking and timber railings.
- The requirements of the notice are:
  - i) Remove the timber decking and timber railings on top of the two storey rear projection and remove all items, debris and all materials associated with the unauthorised development from the premises.
  - ii) Block up any openings that allow access onto the two storey rear projection so that the flat roof cannot be accessed.
- The period for compliance is 3 months from the date the notice takes effect.
- The appeal was made on grounds (a), (c) and (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is quashed

The appeal on ground (c)

1. For the Appellant, Adrian Farrell, it was pointed out that the Council had issued a Certificate of Lawfulness or Lawful Development Certificate, (LDC), on 2 November 2007, (Application No. 07/2640), for work at No. 20 Berens Road. That was for a mansard roof extension, a front roof light and a roof extension to the rear projection of the house.

2. What the Council now attack with the appeal enforcement notice is described as the formation of a rear roof terrace on top of the existing 2 storey rear projection including the installation of timber decking and timber railings. There is, rightly in my view, no mention of use of the roof terrace. That is because use of a flat roof of a single family dwelling for sitting out is usually incidental to the enjoyment of the dwelling as such, and may not require planning permission by virtue of s.55(2)(d) of the Town and Country Planning Act 1990. Enforcement notices dealing with the formation of roof terraces are normally directed at operations, for example, French doors, parapet walls and railings. The LDC

approved plans showed full door height glazing with what looks like an opening panel or door which could provide access from the second floor onto the roof of the 2 storey rear projection. Revised plan, drawing no. 0702/201 rev. B at 03/201, shows what looks like a door opening. That, together with revised plan, drawing no. 0702/202 rev. A at 02/202, which shows full door height glazing, also has the appearance of a door.

3. The Council said they had relied on the LDC application drawings' description of the glazing above the second floor roof as a window. They said it was untypical of doors shown elsewhere on the LDC application. Had it been shown as a door, they would not have considered it permitted development. The LDC would have been refused.

4. The extension works have, I understand, been built in accordance with the LDC. Even though the LDC drawings describe the access glazing panel as a window, it has afforded access onto the second floor projection roof. In doing so, it has not facilitated an unlawful use. Neither does the opening glazing as installed look materially different to that shown on the LDC plans. It is a lawful installation. It is not right for this enforcement notice to require it to be blocked up.

5. The other works the notice seeks to have removed is the decking and the timber railings. The question to be answered here is whether they were development permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended.

6. I consider that the appeal timber railings are to be regarded as additions or alterations to the roof, rather than coming within Class A. They come within Classes B or C to the Order. The case of *Richmond-upon-Thames LBC v SSSE and J A P Neale [1991] JPL 948* dealt with parapet walls erected on a flat roofed extension to a dwellinghouse. In that instance, the walls were seen to have enlarged the house and so came within Class B. However, in *R (oao Barry Cousins) V LB Camden [2002] EWHC 324*, Sullivan J, dealing with railings, said that *Richmond* set out the correct test, namely does the house appear larger to those outside looking at it? He concluded that the railings in the matter before him did not enlarge the external appearance of the dwelling and therefore fell within Class C. I come to the same view on the appeal railings. The post and spindle railings, with the insubstantial rush screening, do not have the same sense of solidity that walls would have. The decking has not enlarged the dwelling and also comes within Class C.

7. I conclude that the railings around the roof of the 2 storey projection and the decking upon it were permitted by Class C of the Order. The window, or door, which provides access onto the roof terrace, was also lawful development as shown by the LDC. The appeal on ground (c) therefore succeeds.

8. I do not need to go on to deal with the appeal on grounds (a) or (f).

Formal Decision

9. The appeal succeeds. The enforcement notice is quashed.

John Whalley Inspector

Appeal Decisions

Site visit made on 1 October 2013

by Paul Dignan MSc PhD

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

Decision date: 29 October 2013

Appeal A: APP/T5150/C/13/2196661
Appeal B: APP/T5150/C/13/2196866
22 Pebworth Road, Harrow, HA1 3UD.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr G M McCarron (Appeal A) and Mrs P McCarron (Appeal B) against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/12/0718.
- The notice was issued on 11 March 2013.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey side and rear extension and rear and side dormer windows to the premises.
- The requirements of the notice are Demolish the two storey side and rear extension and rear and side dormer windows to the premises and all other associated unauthorised works and remove all debris and materials resulting from this demolition from the premises, and restore the premises back to its original condition before the unauthorised development took place.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Decisions

1. The enforcement notice is corrected: by the deletion of the words "two storey side and rear extension" and the substitution of the words "first floor side extension, a part single storey and part two storey rear extension," in the description of the alleged breach of planning control at Schedule 2; and by the deletion, in their entirety, of the second and sixth paragraphs of Schedule 3 - Reasons for Issuing the Notice.

2. The appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for part of the development already carried out, namely the erection of a first floor side extension and a single storey rear extension, at 22 Pebworth Road, Harrow, HA1 3UD.

3. Subject to the corrections above, the enforcement notice is upheld. Insofar as it relates to the first floor element of the rear extension, and the rear and side

dormer windows, the appeals are dismissed, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters and ground (b)

4. The appeal property is a two storey detached house on the northern side of Pebworth Road, within an area designated as an Area of Distinctive Character. Planning permission was granted in February 2012 (Ref. 11/3352) for the erection of a first floor side extension, single storey rear extension, erection of a rear dormer window and installation of rooflights to front and side roofslopes. Setting aside for now the matter of the side dormer referred to in the alleged breach of planning control, it is clear that there have been significant departures from the scheme approved in 2012, both externally and internally. Part of the appellants' case is that parts of the development are not materially different from that approved, and that they benefit from the 2012 planning permission. However, the Courts have held that if a building operation is not carried out, both internally and externally, fully in accordance with the relevant planning permission, the whole operation was unlawful[1]. What was built in this case differs materially from the plans approved under the February 2012 permission. It follows that no part of the extensions and alterations can be considered to benefit from that permission.

5. It is also submitted that there are a number of flaws in the notice which render it wholly inaccurate and defunct, such that the notice should be quashed. The first of these referred to is, in the reasons given for issuing the notice, the harm due to the inadequate setback of the side extension. The Council's statement records the setback as 1.5m, noting that it is therefore contrary to its Supplementary Planning Guidance No. 5 *Altering and extending your Home* (SPG5), which requires a set back of 2.5m. On the basis of measurements I took on my site visit, with reference to the 2012 approved plans, I estimate that the setback is about 2.2m. The Council's error in terms of the dimension apparently results from inaccurate plans submitted with a subsequent application to retain the works (Ref. 12/1644). However, the setback, by my estimation, is still less than that required by SPG5, and I do not consider the notice invalid on that basis.

6. The second alleged flaw is the sixth reason, which refers to the loss of a side garage and soft landscaping in the front garden. These are not referred to in the Schedule 2 allegation and hence should not be amongst the reasons for issuing the notice. It does not make the notice invalid, however, as it can be corrected by deleting this reason without prejudice to either party.

7. It is further submitted that the side dormer is permitted development, that the change to the rear bay window can be remedied by the imposition of conditions, and that the rear bay roof is hipped and not gable. None of these are flaws in the notice itself, and I deal with them below as they arise.

8. Two matters are raised under ground (b), the front garden and the first floor side extension. Since the front garden is not part of the alleged breach, it is not a matter I need to address. In relation to the first floor side extension, it is submitted that no breach of planning control has occurred. This is only relevant to ground (c), and I return to this below.

[1] Sage v SSETR and Others [2003] UKHL 22

9. There is one problem with the notice that must be corrected. The first part of the alleged breach is the erection of a two storey side and rear extension. At the side, a first floor extension has been erected above the existing side garage, which in turn has been altered and converted to a habitable room. As it stands, the requirement of the notice, if upheld, would include the demolition of the garage, which would be questionable, to say the least. Further, in all of the documents submitted, there is no substantive reference to a two storey side extension. The description appears to have come from the unsuccessful application to retain the works. From the evidence submitted I consider that a more accurate description of the alleged breach of planning control is "Without planning permission, the erection of a first floor side extension, a part single storey and part two storey rear extension, and rear and side dormer windows". I consider that correcting the notice by substituting this description for that set out in the notice as issued does not prejudice either of the parties, and I shall determine the appeal on that basis.

Both appeals - ground (c)

10. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.

11. Dealing first with the first floor side extension, it is submitted that the set back from the front elevation is consistent with the dimensions shown on the approved plans for planning permission Ref. 11/3352. However, although the works were purportedly carried out under that permission, it is not disputed that what was built as a single operation is materially different to what was approved. I find therefore, as a matter of fact, that none of the works, including the first floor side extension, benefit from the permission, and the ground (c) appeal in this respect cannot succeed.

12. The other aspect of the alleged breach challenged under ground (c) is the side dormer. The appellants, acting on advice from their architect, sought to take advantage of permitted development rights before implementing the planning permission. The dormer was inserted in the side roof slope by Robert Carlton, the appellants' roofing contractor. He was instructed to erect and complete the side dormer before commencing works on the permitted extensions. He claims to have completed the dormer, including its full external cladding, that is walls, cheeks and roof, before moving on to start work on the works corresponding to planning permission Ref. 11/3352. He says he started work on the side dormer on 20 February 2012 and on the extensions after 27 February 2012. The Council visited the site on 23 and 29 May 2012. By this stage the works were well advanced. The rear dormer was built, clad and glazed, as was the first floor bay, the first floor element of the part single and part two storey rear extension. The side dormer glazing was not in place however, and internally, the structure did not appear to have been completed. The explanation given for this is that the window, a stained glass casement window, purchased and delivered to the site in February 2012, was removed from the window to prevent damage when work to insert a staircase in the dormer void commenced. It is said that this version of events is supported by the statements of Mr Carlton and the Building Control Inspector, Mr Bullen. However, neither of these statements make any reference to the window.

13. Aside from the window, which I very much doubt was installed and then removed, I can accept that the outer fabric of the side dormer was put in place before works on the rest of the roof began. However, I do not accept that the construction of the dormer did no more than create additional space in the roof void which was available and useable as part of the original roof void. The access to the room in the roofspace, currently a bedroom, is via a staircase in the space provided by the side dormer, the staircase having been constructed some time after the Council's May 2012 visits as part of the loft conversion. As it stands, the side dormer and the rear dormer bedroom are not physically and functionally severable, and I consider that, in all likelihood, the side dormer was built solely to accommodate the staircase to the loft conversion. No other explanation for the construction of the side dormer has been put to me. I consider, on the balance of probabilities, that the side dormer was not substantially completed before the other works commenced because it was an integral part of the loft conversion and it was built as part of a single operation.

14. Class B of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO) sets out the limitations on permitted development where the enlargement of a dwellinghouse consists of an addition or alteration to its roof. Development is not permitted by Class B1(c)(ii) if, in the case of a detached house, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 m^3. The Council's estimate of the roof volume increase including the side dormer is 80m^3, and this is not disputed. As such it exceeds the Class B1(c)(ii) limitation and is not therefore development permitted by the GPDO. Since it is development that requires planning permission, and it does not benefit from an express permission, the ground (c) appeals must fail.

Appeal A - ground (a) and the deemed planning application

15. This ground is that planning permission should be granted for what is alleged in the notice. As noted above, the setback of the first floor side extension was an issue raised by the Council, but there is little between the SPG5 advice and the setback I measured. More importantly, I consider that the side extension has no harmful impact on the character of the existing building or on the street scene.

16. The remaining objections relate to the rear and side dormers and the rear first floor bay extension. The rear dormer is significantly wider than that permitted under permission Ref. 11/3352. As a consequence it dominates the rear roofslope and gives the building a top-heavy, incongruous appearance. It constitutes poor design which is harmful to the character and appearance of the building and the surrounding area.

17. The side dormer is a bulky and discordant projection that is prominent in views from the public highway. In my view it is out of keeping with the character and appearance of the building and harmful to the street scene. Side dormers do not generally feature in the area, but some are currently being constructed further along Pebworth Road. I do not know the details, but in any case they have no impact on the character and appearance of the immediate neighbourhood of the appeal property.

18. The rear first floor bay extension has large side windows which give views into the neighbouring rear gardens close to the backs of the respective dwellings,

places where privacy is usually highly valued. In the case of the neighbouring property to the east, No. 20, the bay windows are particularly close and look directly onto a patio outside the back door. That the side bay windows adversely affect the privacy of the neighbours is not disputed, but it is proposed that it could be remedied by the insertion of obscure glazed windows in the side panels. I disagree. In the case of No. 20, the intrusion is likely to be so great, due to the size and close proximity of the bay, that there would remain an impression of being seriously overlooked, and hence the perception of a lack of privacy which would seriously diminish the living conditions of the occupants. I appreciate that there are personal reasons for the extent of glazing in this extension, but that does not justify the long term harm that would result from its retention.

19. These aspects of the extensions and alterations cause unacceptable harm and conflict with the advice in SPG5 and with saved Policies BE2 and BE9 of the London Borough of Brent Unitary Development Plan (UDP). The roof dormers also conflict with UDP Policy BE29 and Brent Core Strategy Policy CP17. However, since they are physically and functionally severable from the first floor side and single storey rear extensions, I consider it appropriate to make a a split decision, granting planning permission for those parts of the development, but dismissing the ground (a) appeal and refusing planning permission for the two dormers and the rear first floor bay extension.

20. The only condition proposed by the Council relates to the maintenance of planting in the front garden. However, I do not consider such a condition to be necessary in the circumstances.

21. I should explain that the appropriate way to deal with the notice in a case such as this is to grant planning permission for the part of the development deemed acceptable, but not to vary the requirements of the notice, which could otherwise give rise to two inconsistent permissions, the one being granted and one deemed to have been granted under section 173(11) of the 1990 Act as a result of relaxing the requirements. Section 180 of the 1990 Act mitigates the effect of the notice so far as it is inconsistent with the permission. For clarity, I shall modify the notice by deleting from Schedule 3 the reason relating to the first floor side extension.

Both appeals - ground (f)

22. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the purpose of restoring the building to its condition before the breach took place. Subject to what I have said under ground (a), I consider that the requirements of the Enforcement Notice are appropriate to achieve the objective of remedying the breach of planning control as a matter of fact, and there are no lesser steps that could be taken to achieve that objective.

23. In coming to this view I do not ignore the still extant planning permission, but the elements which I have not granted planning permission were not a part of, or did not comply with, that permission, and I have gone as far as I can to enable those parts which accord with the extant permission to be retained. In respect of the first floor bay window extension, other than the suggestion of obscure glazing, which would not satisfactorily remedy the harm, I have not

been provided with an alternative, and it is not my role to devise one. As to the suggestion that the removal of all other parts of the roof alterations would leave the side dormer as permitted development, rights under the GPDO cannot be claimed retrospectively.

24. There is no success on ground (f).

Both appeals - ground (g)

25. A period of 12 months is sought, partly due to complications foreseen in having to separate different elements, assuming some degree of success. Reference is also made to the possible need for complex structural changes or the need to apply for further planning permissions. None of these are matters that should take longer than 6 months, and if there are unforeseen difficulties the Council has the power in any case to extend the compliance period. In view of this I consider that the ground (g) appeals should fail.

Paul Dignan

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on Monday 2 September 2013

by Alan Langton DipTP CEng MRTPI MICE MCIHT

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

Decision date: 21 October 2013

Appeal ref: APP/T5150/C/13/2196722
34 Dartmouth Road, London NW2 4EX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Council of the London Borough of Brent.
- The appeal is made by Mr Paul McKenna.
- The Council's reference is E/12/0834.
- The notice was issued on 21 March 2013.
- The breach of planning control as alleged in the notice is: Without planning permission, the installation of gates to the front of the premises. ("The unauthorised development").
- The requirements of the notice are: Remove the gates from the premises and remove all items, material and debris arising from the removal of the gates from the premises.
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the ground set out in section 174(2) (a), of the Town and Country Planning Act 1990 as amended. Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the installation of gates to the front of the premises at 34 Dartmouth Road, London NW2 4EX referred to in the notice.

Preliminary matters

1. 34 Dartmouth Road is within the Mapesbury Conservation Area, subject to a Direction made in 1987 under Article 4 of The Town and Country Planning General Development Order 1977. This removes permitted development rights at dwellinghouses otherwise conferred by Article 3 of that Order (and the subsequent 1995 Order as amended) with regard, amongst other matters, to gates, walls and fences.

The appeal on ground (a) and the deemed planning application

2. Dartmouth Road, in common with the wider locality, is fronted mainly by fine villas dating by appearance from the late Victorian or Edwardian period. Along this lengthy road I could find no more than one or two wooden, pedestrian gates that appeared to be originals and these were in a poor state of repair. Most of the gardens now have front garden parking where I found no examples of timber gates. Of the gates I did see, those providing pedestrian access were mainly metal and hinged, as were a few across the vehicular hardstandings. One of the hardstandings featured a chain across it, the great majority were simply open to the road and I saw several substantial, fairly ornate steel gates

in the road and locality. At least one other I saw evidently opened by sliding rather than hinging.

3. The pedestrian and vehicular gates at 34 Dartmouth Road were probably the best I saw. They are sturdily and attractively fabricated but not unduly ornate so as to intrude visually, and at just under 1.4 m they are not exceptionally high. Sliding rather than hinged opening, for the vehicular gate, remains a minority feature locally but gives practical benefits: it is more likely to be kept shut whereas gates hinging inwards might well have to be left open once a car is parked while hinging outwards presents obvious hazards and conflicts with highways legislation.
4. Moreover, both gates coordinate well with the front wall, railings and pillars, and are part of a scheme of exemplary hard and soft landscaping that achieves a good balance between the recessed area given over to parking, visually filtered by the vehicular gate, and the more dominant planting and associated landscaping. In comparison, the open fronted parking areas, some occupying the whole front garden, are to a very variable standard, but these now define this aspect of the road's character and appearance. Against this established backcloth, the gates at No 34 enhance rather than detract from the appearance and character of this part of the Conservation Area as it now exists. There is no doubting the importance of the Built Environment Policies in the Council's Unitary Development Plan, both generally and particularly with regard to Conservation Areas, but in my view their aims are supported rather than undermined by the works in front of 34 Dartmouth Road. The security aspects referred to by the appellant would not warrant unsightly gates, but do reinforce my conclusion that the appeal succeeds on its merits.

Alan Langton
Inspector