The Planning Inspectorate

Appeal Decision

Site visit made on 2 February 2011

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Decision date: 11 February 2011

Appeal Ref: APP/T5150/A/10/2139396
Land adjacent to 147 Harley Road, London NW10 8AY

- 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 Alex Peron against the decision of the Council of the London Borough of Brent.
- The application Ref: 09/2474, dated 19 November 2009, was refused by notice dated 16 August 2010.
- The development proposed is a new dwelling.

Decision

1. I allow the appeal, and grant planning permission for a new dwelling at land adjacent to 147 Harley Road, London NW10 8AY in accordance with the terms of the application, Ref: 09/2474, dated 19 November 2009, subject to the conditions included in the schedule at the end of this decision.

Main Issue

2. The main issue in this case is the effect of the proposed development on the character and appearance of the street scene.

Reasons

3. The appeal site is a small, triangular-shaped plot lying at the junction of two terraces at a bend in Harley Road. The two terraces comprise typical 2-storey late-Victorian brick and tile dwellings with square bay windows and front projecting gables. Although the front elevation of one of the adjacent buildings – No 147 – has been altered, many of the original features of the houses survive including timber doors and windows. I agree with the council that the street scene exhibits a notable uniformity and consistency of appearance.

4. The appeal scheme occupies the land between the rather severe gable ends of Nos 147 and 149 including a means of pedestrian access to the rear gardens of both houses. The front wall of the building would follow the curve of the street behind a narrow front garden area. It would essentially comprise a glass and brick structure with timber doors on three levels and a sheet metal roof. The second floor of the dwelling would essentially occupy the roof space.

5. The restrictions and peculiarity of the site inevitably impose themselves on the design solution. The Design and Access Statement submitted with the application records that a contemporary landmark building is proposed, but the council is concerned that the submitted scheme would not successfully fill the

gap. The proposal is certainly an ingenious solution, but I gather in some respects the proposal does not accord with all the standards included in SPG 17 – the *Design Guide for New Development.* The external amenity space for example would be well below the areas considered appropriate for both houses and flats. I gather this deficiency could be mitigated however by making a contribution towards open space provision in the Borough. I note in this case that, in the event of the appeal succeeding and the development progressing, an Agreement made under section 106 of the above Act provides for a total contribution of £11,000. This would cover additional costs generated by the needs of education, sustainable transport, and the open space provision. I consider the Agreement complies with the advice included in ODPM Circular 05/2005 and Regulation 122 of the CIL Regulations.

6. The council raises no objection in principle to the development of the site, but it draws particular attention to the proposed fenestration of the building. It is recognised that a contemporary building would not be inappropriate but reference to the distinctive windows of the street scene would be desirable.

7. There may, of course, be many different ways of developing the land, but, taking account of the shape and configuration of the site, I suspect that an uncompromisingly plain and simple collection of forms and materials is likely to be the most fitting solution. I believe it would be very difficult to insert a modernised form of the box bay window into the scheme without it appearing to be trying too hard to defer to its surroundings. The curved front wall of the building and the unconventional roof shape would inevitably result in the dwelling having an uncompromisingly modern appearance, and I do not believe the proposed fenestration would undermine its appearance or quality. The council also expresses some concern about the proposed two doors adjoining No 149 but these would be set behind what I take to be a low front wall at the back edge of the pavement[1]. This would lessen their impact in comparison with the submitted drawings.

8. I have considered the draft conditions suggested by the council in the event of the appeal succeeding. I consider all these to be necessary and reasonable in the interests of local amenity, highway safety and the requirements of the development plan.

9. I have taken account of the recent change to the definition of previously-developed land included in PPS3 *Housing,* but in any event the former definition did not form part of the appellant's case. I conclude the proposed development would cause no harm to the character and appearance of the street scene, and it follows that I see no conflict with Policies BE2 (Townscape: Local Context and Character) or BE9 (Architectural Quality) of the *Brent Unitary Development Plan – 2004.*

10. It is for the reasons given above that I have concluded the appeal should be allowed.

Andrew Pykett

INSPECTOR

[1] Details of this part of the proposal would need to be secured by an appropriately worded condition.

Schedule of conditions

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

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos: 090330/05; 090330/09; 090330/06; 090330/08; 090330/07.

3) Notwithstanding condition 2 no development shall take place until details of the front boundary treatment have been submitted to and approved writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) Notwithstanding the approved plans, the curtilage of the site shall be landscaped in accordance with a scheme and schedule to be submitted to and approved in writing by the local planning authority before any works commence, and the scheme shall be completed in accordance with the schedule. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration shall be carried out.

7) The development shall not be occupied until the reinstatement of the crossover into the site has taken place at the developer's expense.

8) Further details of the proposed bicycle storage provision, showing adequate storage and security, shall have been submitted to and approved in writing by the local planning authority. The provision shall be installed before the occupation of the dwelling.

The Planning Inspectorate

Appeal Decision

Site visit made on 2 February 2011

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Decision date: 11 February 2011

Appeal Ref: APP/T5150/A/10/2141400
The Avenue, adjacent to West Hill, London

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Vodafone Limited against the decision of the Council of the London Borough of Brent.
- The application Ref: 10/1036, dated 28 April 2010, was refused by notice dated 18 June 2010.
- The development proposed is a slimline streetworks monopole with 3 antennas and equipment cabinets.

Decision

1. I allow the appeal and grant approval under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for the siting and appearance of a slimline streetworks monopole with 3 antennas and equipment cabinets on land at The Avenue, adjacent to West Hill, London in accordance with the terms of the application Ref : 10/1036, dated 28 April 2010, and the plans submitted with it (Drawing Nos: 100A; 201A; 301A; 400A; 500A), subject to the following conditions:

    1) The development hereby approved shall be no taller than 13.8m above ground level.

    2) The development hereby approved shall be finished and thereafter maintained holly green to match the colour of the existing street light columns in the locality.

    3) Before the commencement of the development hereby approved details of tree root protection measures shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved.

Main Issue

2. The main issue in this case is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

3. The application form records the total height of the proposed mast as 13.6m, but on the submitted drawings the height is shown as 13.8m. I note the council considered the case on the basis of the latter height, and I have done the same. The structure would be painted holly green, and there would be two small equipment cabinets close to the base of the mast. These would be

painted the same colour as the mast. Both these matters could be secured by the imposition of appropriately worded conditions.

4. The appeal site lies close to the junction of West Hill with The Avenue. The Avenue is a relatively busy road which connects the Wembley Park area to the south-east with Kenton to the north-west. West Hill on the other hand is a residential road. However, it serves a large residential area as well as providing a means of access to the Barn Hill and the Fryent Country Park. Just to the west of the junction, The Avenue is crossed by the north-western length of the Jubilee Line with embankments to both north and south. The culverted Wealdstone Brook passes below the junction, although it has little impact on the street scene in this area.

5. The appeal site forms part of an open grassed area which provides visibility at The Avenue/West Hill junction. The triangular area is defined by footpaths. The grassed area includes a relatively young tree, the trunk of which would be about 3m from the pole with a bench about 6m from the tree in the opposite direction. The area also provides a means of access for maintenance purposes to the railway and the brook, although I would expect that these are only infrequently in use.

6. Although in much of London the underlying landscape is obscured by the extent and the intensity of development, the topography of the surroundings to the appeal site are readily apparent. For a heavily built-up area West Hill is relatively steep and the appeal site occupies land at the bottom of a shallow valley. The three approaches to the site – along The Avenue from the north-west, along The Avenue from the south-east, or from West Hill to the east – all therefore entail the observer travelling downhill. I have considered the impact of the proposed development from all three directions.

7. From the north-west the street scene is dominated by the heavy steel bridge and brickwork of the Jubilee Line although this is relieved by both garden trees and trees on the railway embankments. The appellant's photomontage (from Uxendon Crescent) indicates the top of the pole would be visible above top of the bridge, but I consider this effect would be of little significance. The impact of the pole would inevitably be much greater having passed under the bridge. It would be clearly and readily visible with much of its length against the background of the sky. It would be noticeably taller than the adjacent tree.

8. Approaching the appeal site from the opposite direction along The Avenue, the railway bridge is less dominant. The prospect to the north-west is more open and the top of the mast would be lower than the tree on the opposite side of the road. For much of the route it would also be below the level of the tree tops on the opposite side of the railway embankment. Its presence would, of course, become greater as the West Hill junction is approached. At the junction a significant proportion would be seen against the sky, but I believe its impact would continue to be ameliorated by the nearby trees.

9. During my visit I considered the impact of the proposal on prospects into or from the Barn Hill Conservation Area. The closest part of the area lies at the junction of West Hill with Alverstone Road, to the east of the appeal site. However, I believe it is most unlikely the mast would be visible from this location. The vantage points on West Hill are notably higher than those on The Avenue and the view comprises a typical north London suburban scene. The eastern slopes of Harrow form the horizon. Closer to the site the railway bridge again becomes an important component of the scene along with the

houses on the other side of the line. From these vantage points the pole would be largely lost in the urban landscape. The presence of the mast would be obscured until closer to the West Hill/Uxendon Hill junction. At and beyond the junction the top of the pole would appear against the sky, but I believe its impact would be lessened by both the dominance of the bridge and the height of the trees on the embankment and on the opposite side of The Avenue.

10. Although as I have recorded above the Barn Hill Conservation Area boundary is some distance from the site, I do not dispute that the pole might be visible from some of the west facing windows of houses within the area. It would however be a small and rather distant component of the scene. I do not consider either the character or the appearance of the Area would be harmed. They would remain unaffected and the Area would thus be preserved. I have come to the same conclusion in relation to views into the Area from locations where the proposed development would be simultaneously visible.

11. I have taken account of the appellant's photomontages and note that the original photographs were taken when the trees were in leaf. As I saw on my visit, the impact of the pole would be greater in winter, but I do not believe it would be sufficiently serious to justify the dismissal of the appeal. The mast would be taller than the existing lighting columns or most of the telegraph poles in the area, but the design is clean and simple. As far as its height is concerned, I do not consider this would be unreasonable or unmanageable in townscape terms.

12. I acknowledge the pole would add another component to the range of equipment and signage in the locality. The grassed area itself is currently relatively clear, and, to a degree, the presence of the mast and equipment cabinets would diminish the appearance and attraction of the two trees on the land. I recognise also that, notwithstanding the proximity of road traffic, this might render the bench a less attractive prospect. I do not believe however that it could be said the proposed development would result in the area having a cluttered character or appearance. Such installations are now relatively common-place.

13. As the council's delegated report confirms, the appellant has submitted supplementary information including an ICNIRP certificate, health and mobile phone information, alternatives considered and 3G coverage plots. Planning Policy Guidance Note 8: *Telecommunications* advises that if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure to radio waves it should not be necessary to further consider the health aspects of a proposal. Several local residents have nevertheless raised objections to the scheme on health grounds and I accept their fears are relevant material considerations. I note in this context the proximity of the site to the nearby church hall in The Avenue. On balance however, and bearing in mind that there is little objective evidence to support these fears, I do not consider the concerns are sufficient to justify dismissing the appeal.

14. Although I do not dispute the proposed mast would change the appearance of the immediate area, I have concluded the scheme would not seriously harm either its character or appearance. I have taken account of Policy BE19 of the *Brent Unitary Development Plan – 2004* which is specifically concerned with this type of telecommunications proposal. The tenor of the policy is however generally permissive and I see no conflict with its contents. Policies BE2 (Townscape: Local Context and Character) and BE7 (Public Realm:

Streetscape) are more general in their application, but in view of the conclusion I have reached on the main issue, I see no significant conflict with either their contents or purposes.

15. The council has also expressed some concern about the possible effect of the proposed development on the roots of the adjacent tree to which I have referred. The pole would be about 1m from the edge of the canopy however and, even if some roots would be affected by its installation, they would comprise only be a relatively limited proportion. Although the equipment cabinets would be under the canopy they would not have such deep foundations. In the interests of the tree however I agree with the council that any permission should be subject to a condition requiring details of root protection measures.

16. I have taken account of all other matters raised but I do not consider these are sufficient to outweigh the conclusion I have reached.

17. It is for the reasons given above that I have concluded the appeal should be allowed.

Andrew Pykett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 2 February 2011

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Decision date: 10 February 2011

Appeal Ref: APP/T5150/D/10/2143175
87 Brampton Road, Kingsbury, London NW9 9DE

- 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 Praful Kumar Rayvadera against the decision of the Council of the London Borough of Brent.
- The application Ref: 10/2303, dated 23 August 2010, was refused by notice dated 1 November 2010.
- The development proposed is a single storey rear extension to accommodate a shower room for elderly occupants of the property, a front porch, and the conversion of the rear garage/store into a storage/fitness room.

Decision

1. I allow the appeal, and grant planning permission for a single storey rear extension to accommodate a shower room for elderly occupants of the property, a front porch, and the conversion of the rear garage/store into a storage/fitness room at 87 Brampton Road, Kingsbury, London NW9 9DE in accordance with the terms of the application, Ref: 10/2303, dated 23 August 2010, subject to the following conditions:

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

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2686/02C and 2686/03C.

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

Main Issues

2. The main issues in this case are the effect of the proposed development on the character and appearance of the surrounding area, and the impact of the scheme on the living conditions of the occupiers of both the appeal building and nearby dwellings.

Reasons

3. The appeal property is an end of terrace two storey house with a small patio to the rear. Beyond this lies a former garage, although I gather this is now used only for storage. The appeal scheme envisages alterations and the conversion of this building including the construction of a pitched roof. The existing modest rear extension would be enlarged as recorded above with a lean-to

roof. The proposed porch to the front door of the house would result in a minor alteration to its front elevation. The council has raised no objection to this component of the scheme and nor do I.

4. The existing garage/store has a maximum height of 2.4m. Under the scheme the walls would be increased in height to the front and rear with a shallow pitch taking the ridge height up to 3.4m above ground level. I agree with the council that, in comparison with the house and its curtilage, this is a relatively large building. However, although the project would result in an increase in its height, I also agree with the appellant that the works would result in an improvement in its appearance. I do not consider it would have an overbearing impact on either the surrounding area or the outlook of neighbours.

5. The rear extension of the house itself would add a further 3.3m to its length, but the resultant development would not extend any further than the equivalent part of the neighbouring property. The council is concerned that this component of the development would consume part of the external amenity space, but I cannot see that this would result in conflict with the detailed guidance in SPG5 *Altering and Extending You Home,* adopted by the council in 2002. I consider the remaining patio area would still be a useable amenity of the dwelling, and that the works as a whole would not amount to the over-development of the site.

6. I therefore conclude the scheme would have no harmful effect on the character and appearance of the surrounding area. Nor do I believe it would have a serious impact on living conditions at either No 87 or any of the nearby dwellings. It follows that I see conflict with neither Policies BE2 or BE9 of the *Brent Unitary Development Plan – 2004,* nor with SPG5.

7. It is for the reasons given above that I have concluded the appeal should be allowed. I have imposed the standard conditions relevant to extensions in the interests of local amenity.

Andrew Pykett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Inquiry held on 25 January 2011
Site visit made on 24 January 2011

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 7 February 2011

Appeal Ref: APP/T5150/C/10/2128313
1 Springwell Avenue, London, NW10 4HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Philip Harvey against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0848.
- The notice was issued on 31 March 2010.
- The breach of planning control as alleged in the notice is the change of use of the premises from a single family dwellinghouse to nine self-contained flats.
- The requirements of the notice are to cease the use of the premises as nine self-contained flats and remove all items, materials and debris associated with the unauthorised use, including all kitchens, except one, and bathrooms, except one, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary and procedural matters

1. Two other appeals[1] have been made in respect of the appeal site and the notice. These appeals have been made by different Appellants and with different grounds of appeal. The other two appeals are to be determined by written representations. Each appeal will be the subject of a separate decision. However, as the Inspector appointed to determine these three appeals in respect of the same notice I am aware of evidence submitted in each appeal. Where relevant, and for the sake of consistency, I have taken that evidence into consideration in each appeal.

2. The Appellant in one of the written representation appeals[2] sent a unilateral undertaking made under s.106 of the Act to the Inspectorate under cover of a letter dated 26 January 2011. This document makes reference to this appeal and the unilateral undertaking is given by Mr Harvey and Ms Metcalfe who are

[1] APP/T5150/C/10/2127985 and APP/T5150/C/10/2127902
[2] APP/T5150/C/10/2127985

the freehold owners of No.1. However, there is no ground (a) or deemed planning application in this appeal and the unilateral undertaking has no relevance in this appeal.

3. All witnesses gave oral evidence to the Inquiry after taking the oath.

The appeal under ground (d)

4. In a ground (d) appeal the burden of proof is on the Appellant to show, on the balance of probability, that the use of the property as nine self-contained flats began on or before four years from the date on which the enforcement notice was issued and that the use has continued without material interruption since that date, that is, 31 March 2006.

5. The Appellant bought 1 Springwell Avenue with his wife in June 2007 from Mr Mark Tyrell. Mr Tyrell says in his affidavit that he bought the property in June 1998 and that when he first owned it the property was a single family dwelling house. Mr Tyrell says that he began converting the property into nine self-contained dwelling units in September 2004 and the conversion was completed in January 2005. From January 2005 until he sold the property he says that the units were continuously occupied. Mr Tyrell swore his affidavit on 13 August 2010 and, as he lives abroad, he did not attend the Inquiry.

6. Ms Fox moved into the rear garden flat, now flat D, in 2002. Although she had a written tenancy agreement this was kept by Mr Tyrell and she did not have a copy. She paid her rent in cash each month to Mr Tyrell and he signed a rent book which she kept in the flat but which she no longer has. In her statement Ms Fox says that when she moved in there was a shared bathroom above her flat but in her oral evidence she was not clear as she said that she never went upstairs and was only aware of the bathroom because of the noise and one glimpse of it from the stairs. She said that the bathroom could have been immediately above her flat or to the left. Ms Fox did not know how many people were living in the property or what units of occupation those people had. At some time builders came in, works were done and she was no longer disturbed by noise from the shared bathroom. Ms Fox did not know what had replaced the bathroom. Ms Fox recalled that when she moved in the garage was used for storage but when she saw a new girl in the garden she understood that it had been converted to residential use; Ms Fox did not remember when this was. Nor could she remember when she left the flat, it was either in the summer of 2005 or 2006.

7. There is no reason why Ms Fox should remember dates and events going back several years into the past. She gave her evidence in an open and forthright way and acknowledged that she could not remember a number of things. Ms Fox kept herself to herself and lived her own life, she had no knowledge of what the situation was on the floors above her, or indeed what was the situation on the ground floor. Her evidence did not assist me in establishing when the nine units came into existence.

8. When Mr Harvey and his wife bought the property he says that No.1 was already converted into nine self-contained units. The layout was the same as it is now but the flats were in a poor state of repair and the lighting, in particular in the attic, now flat H, was not good. To improve the attic flat Mr Harvey's builder put in a rear dormer window which also increased the size of the unit plus associated works such as roof lights and a space for the boiler and water tanks. These works took place in about November 2007; there are no receipts

or documents and the builder is now deceased. The aerial photograph of 2005-2006 appears to substantiate this evidence as no dormer or the additional rooflights mentioned by Mr Harvey can be seen on the photograph.

9. In his statement Mr Harvey says that Mr Tyrell's solicitor provided him with sample tenancy agreements but in his oral evidence it transpired that the nine tenancy agreements provided to the Inquiry were with the people who were living in the property around the time of the transfer of the property. However, three left before the legalities were completed and there were therefore six tenants in occupation when Mr Harvey and his wife became the owners. The nine tenancy agreements provided all relate to 1 Springwell Avenue as a whole, not individual units within the property. The Landlord is Vertex Properties and no evidence was provided to link that entity with Mr Tyrell. All nine tenants were 'holding over' as one tenancy for twelve months was dated 24 March 2001 and the last to be granted, 4 November 2006, was for six months. Mr Harvey said that Mr Tyrell used to collect rent every two weeks in cash and that he gave him three rent books which Mr Harvey subsequently threw away. There is no information about whether rents had increased or not but even if Mr Tyrell had been a landlord for a long time with 'old fashioned practices' I find it difficult to credit that a tenant was holding over a tenancy for some six years and still paying the same all inclusive rent in June 2007 as that set in March 2001.

10. Two of Mr Tyrell's tenants, Atanas Zapryanov and Tinka Zapryanoxa[3] are still living at the property; they are the only people who are still there who were also Mr Tyrell's tenants. They did not provide any evidence to the Inquiry. Another longstanding tenant, Maria Marchenko, left in April 2010[4] although Mr Harvey thought in his oral evidence it was four-five months ago.

11. Mr McDonna was said to be the tenant of the attic and his tenancy agreement with Vertex Properties is dated 9 September 2005 and the rent is £600 per four weeks. There is no indication what part of No.1 Mr McDonna occupied as the tenancy is for the whole of the property. Mr McDonna entered into a six month tenancy agreement with Mr Harvey for the attic flat[5] from 10 July 2007 at a rent of £650 per calendar month. Mr Harvey described the attic at the time he bought the property as having dreadful lighting with a small window to the back garden and a small roof light at the front, no extractor and a space where stuff was dumped under the eaves. The works to install the dormer and other improvements took place in November 2007 and Mr Harvey says that Mr McDonna remained in residence throughout because no work was undertaken to the bedroom area. Mr Harvey acknowledges that it would have been uncomfortable. Mr McDonna left in the New Year 2008 when his tenancy came to an end.

12. I consider it surprising that a tenant paying a not insignificant rent was prepared to put up with such sub-standard accommodation as that provided in the attic and that he was also prepared to put up with what must have been considerable disruption when the dormer window was put in only to leave so soon thereafter. I note, however, that the new tenants in the re-furbished attic paid a rent of £801 per calendar month which may have been a reason why Mr McDonna chose to leave. From the inventory signed by the new tenants it appears that the flat was newly decorated and all furnishings were in a good

[3] As spelt on the tenancy agreement dated 1 April 2006, elsewhere Zapryanova
[4] Letter to the Council dated 5 May 2010
[5] Now unit H

condition which reflects Mr Harvey's evidence that when Mr McDonna left further works of improvement were undertaken to the attic.

13. Prior to November 2008, No.1 was registered for Council Tax purposes as one dwelling. In November 2008 the nine flats were registered and each tenant became responsible for paying Council Tax. According to Mr Harvey this was not greeted by the tenants with any favour and the rent was subsequently reduced by the Council Tax amount payable on each flat. Each change in tenancy was notified to the Council by Mr Harvey's book-keeper. Copies of unsigned letters to this effect were produced by Mr Harvey. Mr Unuigbe had not checked whether these letters had been received by the Revenues and Benefits Service.

14. One of the Appellants in one of the other appeals originally lodged an appeal under ground (d). This ground of appeal was withdrawn because 'following investigations made by an enquiry agent, insufficient evidence has been obtained in order to support a ground D appeal'[6]. Mr Harvey said that he had no knowledge of this and he was not aware of any enquiry agent investigating the history of No.1. Mr Harvey's planning consultant agents were, however, aware of the position as an email dated 19 May 2010 from the Inspectorate to the three agents involved in the three appeals stated 'Further to our telephone conversation …we have now decided to allow all three appellants until 16 June 2010 to confirm whether there are sufficient facts to support a ground (d) appeal. We believe that the history of the premises is going to be investigated by a Private Enquiry agent and that a report should be available and a decision reached on the feasibility of a ground (d) appeal by 16 June'.

15. The appeal was made on Mr Harvey's behalf by planning consultants. The appeal was originally made on ground (a) and (f) only. The grounds of appeal under ground (a) state 'Eight of the nine units have been used for over four years. It is considered that the additional units should reasonably be allowed to continue in residential use…' and under ground (f) 'The appeal property has been used as eight self-contained flats for over four years. It is therefore submitted that seven of the units are lawful and immune from enforcement action'. I do not know the reason why, but Mr Harvey's appeal was amended on 16 June 2010 to include grounds (d) and (g). Mr Harvey said that he had given instructions to his agents but he could not tell how the grounds had come to say what they did. He suggested that this was the second time that something similar had happened and that it was a mistake. The appeal is an important document. It was the subject of correspondence between the agents, who are planning consultants, and the Inspectorate prior to its amendment by the agents; Mr Harvey's explanation is neither sufficient nor credible.

16. Mr Tyrell was not available for cross examination on the contents of his affidavit and he did not exhibit any documents to support his version of events. I therefore give his evidence very limited weight. There were discrepancies between the evidence of Ms Fox and Mr Harvey with regard to how rent was collected during, and immediately after, Mr Tyrell's ownership because Ms Fox said she had her own rent book that she kept for Mr Tyrell to sign each month when she paid the rent; Mr Harvey, however, referred to three rent books for, at the time of the transfer, six tenants and rent being collected every two weeks. I accept that Mr Harvey has a number of properties and a large

[6] Doc 7 - APP/T5150/C/10/2127902 – letter dated 25 June 2010

number of tenants and he cannot be expected to remember every detail, however, he has no direct knowledge of the situation prior to May 2007 when he first visited the premises. His recollection of how the property was being occupied at that time is not supported by any of the documents; the documents relating to the nine self-contained units date from shortly after Mr Harvey purchased the property in June 2007. The reason why none of the occupiers as at June 2007 were asked to give evidence was that Mr Harvey could not get hold of them, but flat D is currently occupied by people[7] who have been, according to the documents, in residence at No. 1 since 1 April 2006. No explanation was provided why they did not attend the Inquiry.

17. It is for the Appellant to prove his case on the balance of probability. Although relating to Lawful Development Certificate (LDC) applications, the advice in Circular 10/97[8] is helpful as the standard of proof in a LDC application is the same as a ground (d) appeal. The Circular[9] states that if the Council "does not have evidence of it own, or from others, to contradict or otherwise make the applicant's version of events less than probable …. There is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate".

18. For the reasons given above I do not consider that the evidence provided by, and on and behalf of, the Appellant was sufficiently precise and unambiguous. I therefore conclude that the Appellant has failed to prove, on the balance of probability, that the change of use of the premises from a single family dwellinghouse to nine self-contained flats took place on or before four years from the date on which the enforcement notice was issued and that the use as nine self-contained flats has continued without material interruption since that date, that is, 31 March 2006. The appeal under ground (d) therefore fails.

The appeal under ground (f)

19. The Council concedes that the removal of all bathrooms except one is excessive. In the grounds of appeal the Appellant submitted that seven of the units are lawful and immune from enforcement action and no further submissions were made at the Inquiry.

20. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place[10]. In the circumstances, even if the premises had been in multiple occupation or divided into a number of self-contained flats, the requirement to remove all items, materials and debris associated with the unauthorised use, including all kitchens, except one, from the premises is not excessive.

21. I agree with the Council's concession and consider that it is not unreasonable for a property of this size to have more than one bathroom. To the limited extent conceded by the Council, the appeal under ground (f) succeeds.

[7] Atanas Zapryanov and Tinka Zapryanoxa or Zapryanova
[8] Enforcing Planning Control: Legislative Provisions and Procedural Requirements
[9] Paragraph 8.15
[10] *Murfitt v SSE* [1980] JPL 598

The appeal under ground (g)

22. The Appellant sought a period of twenty-four months in his grounds of appeal to comply with the notice but this was reduced to twelve months at the Inquiry. In the grounds of appeal the complicated situation with regard to leases and mortgages was mentioned as was the need for the tenants to vacate the premises. At the Inquiry the reason given was to allow time for Mr Harvey to obtain possession of the units.

23. There may well be a complex legal situation with regard to leases and mortgages but no argument was put forward why this should hinder or delay Mr Harvey, as landlord and freeholder, obtaining possession of the units from his tenants and ceasing the use of the premises as nine self-contained units and doing the required works. I appreciate that there may be legal matters to sort out, but do not see this as a reason why the notice cannot be complied with.

24. Under the terms of the current tenancies the last one to lapse is flat G on 31 May 2011; others end before then and three tenants are holding over from expired agreements. Whilst I do not underestimate the difficulties that can arise in obtaining possession, it appears me likely that several flats will become empty in the relatively near future. There would therefore be nothing to prevent works being undertaken to dismantle those units. It is apparent that work can be undertaken at the premises in respect of empty units because that is what has happened in the past when they were being refurbished. It is also apparent from Mr Harvey's evidence that work can be undertaken relatively speedily, for example, the short period of time it took to insert the dormer window.

25. The period of six months therefore appears to me to be a reasonable one in which to comply with the notice. The Council is aware of its powers under s.173A of the Act to extend the time for compliance should it be necessary, for example, if Mr Harvey has difficulty in obtaining possession from his tenants. The appeal under ground (g) fails.

Conclusions

26. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent and the appeals under grounds (d) and (g) fail.

Decision

27. I allow the appeal on ground (f), and direct that the enforcement notice be varied by the deletion of 'and bathrooms, except one' from Schedule 4 Step1. Subject to this variation I uphold the enforcement notice.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr W Innes	Solicitor

He called

Mr P Harvey	Appellant
Ms T Fox	Former Tenant

FOR THE LOCAL PLANNING AUTHORITY

Mr N Wicks MRTPI	Director, Enforcement Services Ltd

He called

Mr V Unuigbe BSc(Hons) MSc	Planning Enforcement Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1 -	Land Registry plans of the leasehold titles, submitted by the Council
Document 2 -	Aerial photograph 2005-2006, submitted by the Council
Document 3 -	Mr Harvey's written statement
Document 4 -	Ms Fox's written statement
Document 5 -	Floor plan of the property, 078-EX.01, submitted by the Appellant
Document 6 -	Floor plan of the property, 078-EX.01, showing the nine flats, submitted by the Appellant
Document 7 -	Letter dated 25 June 2010 from Solicitors acting for Mortgage Express, from appeal APP/T5150/C/2127902

The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2011

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 7 February 2011

Appeal Ref: APP/T5150/C/10/2127902
1 Springwell Avenue,London, NW10 4HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mortgage Express against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0848.
- The notice was issued on 31 March 2010.
- The breach of planning control as alleged in the notice is the change of use of the premises from a single family dwellinghouse to nine self-contained flats.
- The requirements of the notice are to cease the use of the premises as nine self-contained flats and remove all items, materials and debris associated with the unauthorised use, including all kitchens except one, and bathrooms, except one, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary and procedural matters

1. Two other appeals[1] have been made in respect of the appeal site and the notice. These appeals have been made by different Appellants and with different grounds of appeal. One is to be determined by written representations and the other by an Inquiry. Each appeal will be the subject of a separate decision. However, as the Inspector appointed to determine these three appeals in respect of the same notice I am aware of evidence submitted in each appeal. Where relevant, and for the sake of consistency, I have taken that evidence into consideration in each appeal.

The appeal under ground (f)

2. The Appellant submits that the requirements are excessive and that objections to the breach could be overcome by lesser steps through improvements to internal design, parking and residential amenity.

[1] APP/T5150/C/10/2127985 and APP/T5150/C/10/2128313

3. The purposes of the requirements of a notice are to remedy the breach by discontinuing the use of the land[2]. The only submission in this case available to the Appellant is that, as a matter of fact, the requirements exceed what is necessary to remedy the breach. The Appellant has raised planning merits which should be considered under ground (a). However, in this appeal there is no ground (a) appeal and the deemed application fee has not been paid; it is therefore not appropriate for the Appellant to introduce arguments on the planning merits in the context of an appeal on ground (f).

4. In its statement in this appeal the Council takes the view that one bathroom is sufficient for a single household and that if more than one bathroom remained the property could be used for multiple residential occupation. However, in its evidence to the Inquiry[3] the Council conceded that the removal of all bathrooms except one is excessive. I agree with the Council in this respect as it is not unreasonable for a property of this size to have more than one bathroom. The prevention of a future use, whether authorised or not, is not the purpose of an enforcement notice. To this limited extent the appeal under ground (f) succeeds.

The appeal under ground (g)

5. In view of the fact that the property is divided into nine flats which encompass a number of interests the Appellant maintains that it is not reasonable or realistic to expect the steps required to be undertaken within six months. The Appellant suggests twelve months would be a more reasonable period in which possession of the property could be obtained, agreements reached with other interested parties and the works carried out.

6. The Appellant has not provided any information about the current occupiers of the property or the terms of their tenure. However, at the Inquiry it was established that under the terms of the current tenancies the last one to lapse is flat G on 31 May 2011; others end before then and three tenants are holding over from expired agreements. Whilst I do not underestimate the difficulties that can arise in obtaining possession, it appears me likely that several flats will become empty in the relatively near future. There would therefore be nothing to prevent works being undertaken to dismantle those units.

7. The works required are not substantial. Legal matters relating to who is responsible for what are not dependent on the property retaining its current unauthorised use. From submissions made at the Inquiry I am satisfied that the Council is aware of its powers under s.173A of the Act to extend the time for compliance should it be necessary if, for example, there is difficulty in obtaining possession from the ocupiers. I therefore consider that six months is a reasonable period for compliance with the notice. The appeal under ground (g) fails.

Conclusions

8. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

[2] S.173(4)(a) of the 1990 Act
[3] APP/T5150/C/10/2128313

Decision

9. I allow the appeal on ground (f), and direct that the enforcement notice be varied by the deletion of 'and bathrooms, except one' from Schedule 4 Step1. Subject to this variation I uphold the enforcement notice.

Gloria McFarlane

Inspector