The Planning Inspectorate

Appeal Decision

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 2 March 2011

Appeal Ref: APP/T5150/X/10/2139015
12 Bulmer Gardens, Harrow, Middlesex HA3 0PA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Kiran Shah against the decision of the Council of the London Borough of Brent.
- The application ref no 10/1853, dated 23 July 2010, was refused by notice dated 14 September 2010.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The proposed development for which a LDC is sought is described on the application form as: 'Outbuildings to rear of garden'.

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

The Proposal

1. The appeal property is a single dwellinghouse. The proposal, as described in drawing no 0714.3 Rev A dated July 2010, comprises the erection of two flat roofed outbuildings within the property's rear garden and positioned 1 metre apart. Both would have a maximum height as measured from ground level of 2.5 metres and, projecting towards the rear boundary of the site, would be 6 metres long. One, to be used as a gymnasium, would be 4 metres wide. The other, to be used as a garden store, would have a width of 3 metres.

2. The Appellant confirms his intention that both buildings would be used solely for purposes incidental to the enjoyment of the dwellinghouse as such. I therefore consider that, notwithstanding the description of development used on the application form, the proposal would be more accurately described as: *The erection of two outbuildings to be used as a gymnasium and garden store incidental to the enjoyment of a dwellinghouse as such*. I will determine the appeal on this basis and am satisfied that there is no prejudice to the interest of any party in doing so.

Reasoning

3. The Appellant contends that, on the date of the subject application, the proposed development would have benefited from deemed planning permission pursuant to Article 3 of and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO). Class E conveys permitted development rights to provide within the curtilage of a dwellinghouse any building required for a purpose incidental

the enjoyment of the dwellinghouse as such, subject to certain limitations. The Appellant and the Council are in agreement that the location and dimensions of the proposed buildings comply with the limitations set out in Class E, and I concur. The matter in dispute between the parties, and which is determinative in this appeal, is whether or not the buildings are required for purposes incidental to the enjoyment of the dwellinghouse as such.

4. Paragraphs 8.12 and 8.26 of Annex 8 to Circular 10/97: *Enforcing Planning Control: Legislative Provisions and Procedural Requirements* make it clear that the onus of proof in a LDC application made under section 192 of the 1990 Act as amended is firmly on the Applicant. The same applies to the Appellant at the appeal stage. The Council contends that, in this case, the Appellant has not demonstrated that buildings of the sizes proposed are required for the purposes cited. However, no clear indication is given as to the type of evidence the Council would expect to be produced.

5. The Courts have long held that the term 'required' in successive versions of Class E should be interpreted as 'reasonably required'. The dwellinghouse is a four bedroom property and thus capable of accommodating a large family. In such circumstances, a home gymnasium with a footprint of 24 square metres is, in my judgement and experience, a perfectly reasonable requirement and could readily be used solely for purposes incidental to the enjoyment of the dwellinghouse as such. Although the Appellant has not provided cogent evidence to substantiate his assertion that the gymnasium is required for health reasons, there is no need for a special justification in this case.

6. The proposed garden store would have a footprint of 18 square metres. This approximates in scale to a single vehicle garage and, having regard to the substantial length of the rear garden, is by no means excessive for the purposes of storing modern gardening equipment appropriate to the size of the property. It is not apparent to me why the Council should require further evidence of need for a building of this kind.

7. The Council draws unfavourable comparisons between the combined footprint of the proposed outbuildings and that of the original dwellinghouse. However, the latter has been extended such that its footprint is now far larger than that of the appeal development. Whilst the original footprint might be pertinent in a case where the planning merits of a proposal fall to be considered, the extended footprint is more relevant to my deliberations. In any event, I note that separation between dwelling and outbuildings would be at least 17 metres. In such a context, I find no reason to suspect that buildings of the size envisaged might not be genuinely required for incidental purposes.

8. The Council draws my attention to two appeal decisions concerning other properties, which it considers to be comparable to the present case. Each proposal must be assessed independently with reference to its particular circumstances, and I do not know the full circumstances of either of the examples cited. Nonetheless, it is apparent that in one (ref no APP/R5510/X/10/2122954) the footprint of the proposed outbuilding would have been larger than that of the dwelling itself and the size of the remaining garden would have been minimal, whilst in the other (ref no APP/T5150/C/08/2065350) the building was to be used, at least in part, for business purposes and was larger than the combined footprint of the current proposals.

9. In those cases, there was clearly good reason to question the incidental nature of the developments. However, with regard to the current scheme, I find the Council to have applied the guidance in the Circular concerning the burden of proof with unreasonable stringency. Were there grounds to suspect that the proposed buildings might not reasonably or genuinely be required for incidental purposes, a call for further evidence might be justified. However, the size of this property is such that the suitability of these buildings to their stated uses, and the incidental nature of those uses, is self evident. The Appellant has therefore fulfilled the burden of proof in an acceptable manner. Other considerations raised by neighbouring residents, including external appearance, effects on amenity, flooding and an appeal against a refusal of planning permission for similar development, are not material to the lawfulness of the proposal.

10. I conclude on the balance of probabilities that, on the date of the subject application, the proposed development would have benefited from deemed planning permission pursuant to Article 3 of and Class E of Part 1 of Schedule 2 to the GPDO. It would therefore have been lawful. Ultimately, should the buildings be erected and put to uses which do not fall within the scope of Class E, the Council would be able to pursue enforcement action.

Conclusion

11. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

12. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operations which I consider to be lawful.

Alan Woolnough

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 23 July 2010 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 as amended, for the following reason:

The purposes to which the proposed buildings would be put, as described in the application and associated plan, would be incidental to the enjoyment of the dwellinghouse as such and the buildings are required for those purposes. The provision of the buildings would therefore have benefited from deemed planning permission pursuant to Article 3 of and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended.

Signed

Alan Woolnough

Inspector

Date: 02.03.2011

Reference: APP/T5150/X/10/2139015

First Schedule

The erection of two outbuildings to be used as a gymnasium and garden store incidental to the enjoyment of a dwellinghouse as such, as depicted in drawing no 0714.3 Rev A dated July 2010.

Second Schedule

Land at 12 Bulmer Gardens, Harrow, Middlesex HA3 0PA

NOTES

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

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

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

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

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 02.03.2011

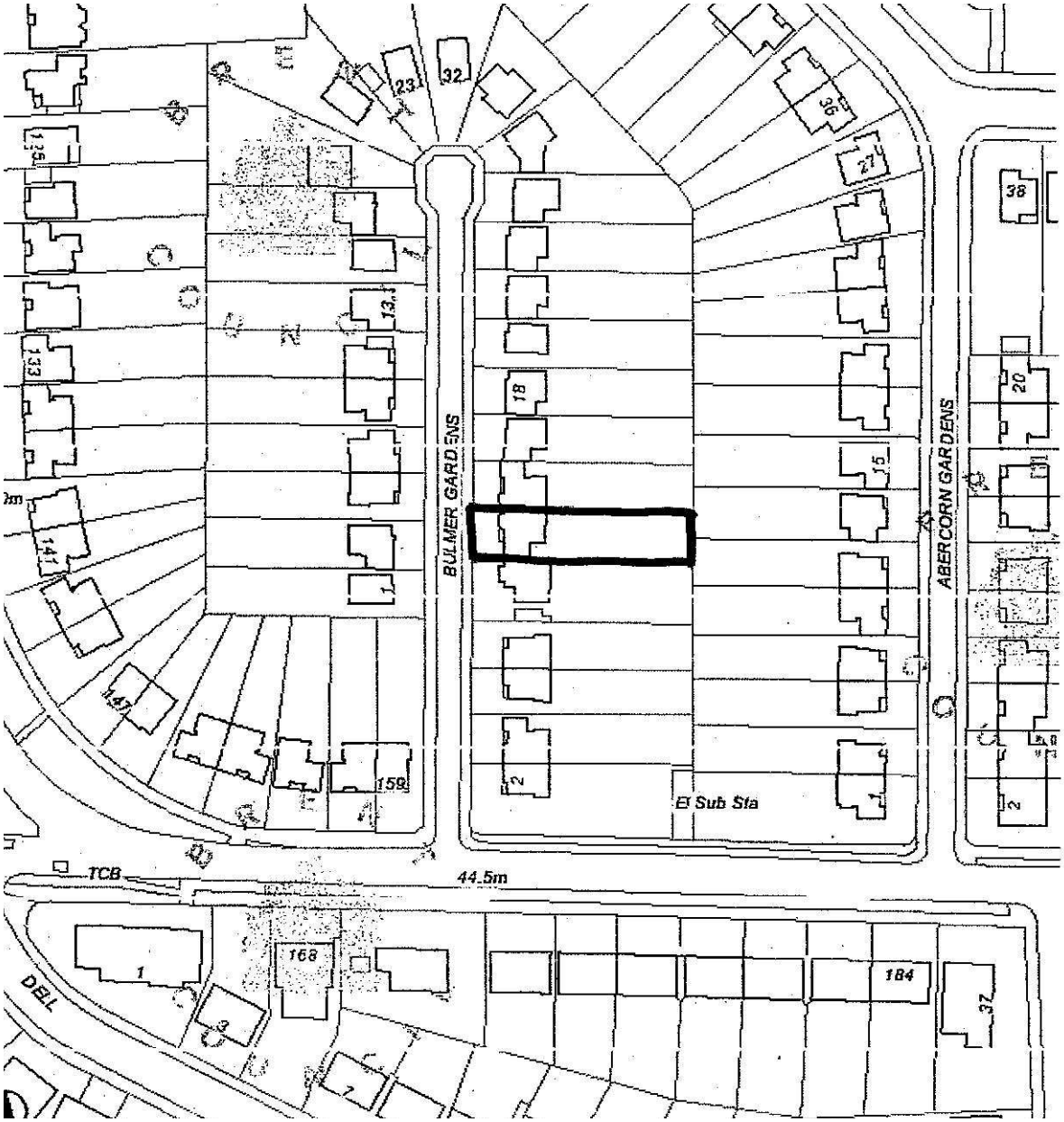
Alan Woolnough

Alan Woolnough BA(Hons) DMS MRTPI

Land at 12 Bulmer Gardens, Harrow, Middlesex HA3 0PA

Reference: APP/T5150/X/10/2139015

Scale not stated



The Planning Inspectorate

EST 1909

Appeal Decision

Site visit made on 29 March 2011

by S R G Baird BA(Hons) MRTPI

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

Decision date: 11 April 2011

Appeal Ref: APP/T5150/H/11/2145119
7 Bridge Road, Wembley, Middlesex HA9 9AB

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by JC Decaux Limited against the decision of the Council of the London Borough of Brent.
- The application Ref 10/2695, dated 15 October 2010, was refused by notice dated 10 December 2010.
- The advertisement proposed is the erection of an internally illuminated sequential advertising display.

Preliminary Matter

1. As submitted, the application comprised 2 elements, a wall mounted internally illuminated panel featuring the sequential display of static advertisements measuring some 6.4m by 3.7m and the associated cladding of the side elevation of No. 7. The appellant has indicated that the appeal relates only to the advertisement panel and not the cladding. No party would be prejudiced by continuing with the appeal on this basis.

Decision

2. The appeal is allowed and consent granted for the display of an internally illuminated sequential advertising display from the date of this decision and is subject to the 5 standard conditions set out in the Regulations and the following additional condition that the maximum level of luminance for the display hereby approved shall not exceed 600 cdm^2.

Reasons

3. The Council refer to Unitary Development Plan Policies BE20 and BE21 and Supplementary Planning Guidance No. 8 Advertisements (Other Than Shops). Powers under the regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors. In the determination of this appeal, these policies have not therefore, by themselves, been decisive. Notwithstanding the construction of the reason for refusal and the restatement of national policy in relation to public safety in the Council's statement, it is clear that the Council's concern relates solely to the impact on amenity.

4. The panel would be to the top right hand corner of the almost blank side elevation of No. 7, which is located at the end of a row of 2-storey commercial units. Bridge Road is a busy, largely commercial road and part of the Wembley Park shopping area. The site is not within a Conservation Area; No. 7

is not a Listed Building nor is it identified as a building of particular local character. The layout and finish of the side elevation displays no features of or is finished in a way that has any townscape merit.

5. The panel would broadly align with the first-floor of No. 7 and the position towards the top right-hand quarter of the elevation would acceptably relate to the scale of the host and surrounding buildings, it would be consistent with the general character of the area and would not be unduly dominant. In these circumstances an advertisement panel in this location would not unacceptably the amenity of the area.

Conditions

6. The consent is subject to the standard 5 conditions set out in Part 2 of the Annex to Circular 03/2007 and these mirror the 7 conditions referred to by the Council. The suggested additional conditions relate to levels of luminance and the development being carried out in accordance with the approved plans. The imposition of a condition relating to approved drawing in S78 appeals is to allow for minor amendments to an approved scheme before it is carried out. As far as I am aware there is no similar provision under Regulation 17 and as such the condition is unnecessary. The Council suggests graduated levels of luminance depending on the colour of the sign varying from 250 to 1000 cdm^2. The appellant suggests a fixed maximum level of luminance of 600 cdm^2. In this case, as the permission relates to an internally illuminated panel featuring the sequential display of static advertisements, a fixed maximum level of luminance is more appropriate.

George Baird

INSPECTOR

The Planning Inspectorate

EST 1909

Appeal Decision

Site visit made on 29 March 2011

by S R Baird BA(Hons) MRTPI

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

Decision date: 1 April 2011

Appeal Ref: APP/T5150/D/11/2146176
31 Meadow Way, Wembley, HA9 7LB

- 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 Raza Anwar against the decision of London Borough of Brent.
- The application Ref 10/2857, dated 5 November 2010, was refused by notice dated 30 December 2010.
- The development proposed is a single-storey detached building at the bottom of garden for storage and gym use only.

Preliminary Matters

1. As the development had been carried out before the date of the application it is treated as one made under S73 of the Act. Although the application sought planning permission for a detached outbuilding, the appellant says, "the building was permitted development when built in 2009" and implies that planning permission is not required. Whether or not planning permission is required is not a matter to be determined in the context of an appeal made under S78 of the above Act. It is open to the appellant to apply for a determination under S191/192 of the above Act to determine this matter. A determination of this appeal under S78 of the above Act does not affect the issuing of a determination under S191/192 of the same Act.

Decision

2. The appeal is allowed and planning permission granted for a single-storey detached building at the bottom of garden for storage and gym use only at 31 Meadow Way, Wembley, HA9 7LB in accordance with the terms of the application, Ref 10/2857, dated 5 November 2010.

Main Issue

3. The effect on the character and appearance of the area.

Reasons

4. I am aware that an enforcement notice relating to the use of the outbuilding for a purpose not incidental to the main dwellinghouse was upheld on appeal in October 2010 and that at the time of the current application was being considered the use of the main house as a House in Multiple Occupation was the subject of an enforcement investigation. However, the consideration of the merits of this appeal has to be based on the application as it was submitted and what was seen on the site visit.

5. The development plan seeks to ensure that development within a residential garden respects the setting of existing dwellings and does not unacceptably affect the character and appearance of the area. Whilst in the past the building may have been used as a self-contained residential unit, that is not the basis of the proposal the subject of this appeal, nor is there any evidence to show that the main dwelling is being used as anything other than a single dwelling house. The building comprises one room, which contains several items of personal fitness equipment, a toilet and a shower. The fact that the detached building contains a shower room does not automatically mean that it cannot be for a purpose ancillary to the house. It is not unreasonable that a purpose-built detached gym building should have a toilet and shower facilities. Whilst a gym is not an essential part of the primary use, it could be a purpose ancillary to the primary use.

6. I can understand, given the previous history, the concern that a separate planning unit might be created. However, the outbuilding is within the curtilage of No.31, no physical separation is proposed that could lead to the formation of a separate planning unit. If independent occupation did occur it is open to the Council to take further enforcement action as the ancillary link to the main dwelling house would be lost.

7. Although in this case, the building almost fills the width of the plot, I saw similar sized buildings in several surrounding gardens and such buildings appear to be part of the character of this residential area. The building is subordinate in scale to the surrounding dwellings and does not appear dominant, overbearing or intrusive. There is a tall evergreen hedge on the boundary with No. 29, tall dense shrubbery to the rear and a lower evergreen hedge on the boundary with No. 33 all of which helps to mitigate the visual impact of this building. Accordingly, the building does not have an unacceptable impact on the character and appearance of the area and would not conflict with the objectives of development plan policy.

Conditions

8. The Council suggest 3 conditions. The first relates to the development being carried out in accordance with the submitted plans. The purpose of such a condition is to provide an opportunity to seek minor amendments to an approved scheme before it is carried out, rather than an alteration to an already completed development. Here, such a condition is unnecessary. The second condition seeks to restrict the use of the building. Depending on the scale of the operation, working from home does not necessarily need planning permission. Thus, given the guidance in Circular 11/95 The Use of Conditions in Planning Permissions, a blanket restriction on such activity by way of a planning condition is unreasonable. As with independent residential occupation, where the ancillary link to the main dwelling is lost, it is open to the Council to take enforcement action. Accordingly, I consider the suggested condition is unnecessary. The third condition relates to additional landscaping. Given the conclusions about the existing boundary planting, such a condition is also unnecessary.

George Baird

INSPECTOR

The Planning Inspectorate

EST 1909

Appeal Decision

Site visit made on 29 March 2011

by S R G Baird BA(Hons) MRTPI

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

Decision date: 5 April 2011

Appeal Ref: APP/T5150/D/11/2147694
3 The Avenue, Wembley, Middlesex HA9 9QH

- 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 J Siddiqui against the decision of the Council of the London Borough of Brent.
- The application Ref 10/3114, dated 6 December 2010, was refused by notice dated 31 January 2011.
- The development proposed is the demolition of a garage, the erection of part single, part 2-storey side and rear extensions, a front extension and a new porch and the erection of a rear dormer window and the installation of one rear and 2 front roof lights as amended by revised plans received on 28 January 2011.

Preliminary Matter

1. Some detail contained on Drawing No. 3/1110/2 Rev A showing the proposed rear elevation is inconsistent with Drawing No. 3/1110/02A Rev A which shows the proposed side elevations and Drawing No. 3/1110/01B Rev A the proposed roof plan. Whilst the drawings of the side elevation and the roof plan show a smaller, hipped roof over the 2-storey side extension this detail is omitted from the drawing of the rear elevation. In addition, the proposed rear elevation shows 2 roof lights whereas the floor layout drawing and the roof plan show only one, in a slightly different position. Notwithstanding these omissions, it is clear from the submitted plans what the appellant's intentions are and, as the Council indicates, this matter could be controlled by a planning condition.

Decision

2. The appeal is allowed and planning permission granted for the demolition of a garage, the erection of part single, part 2-storey side and rear extensions, a front extension and a new porch and the erection of a rear dormer window and the installation of one rear and two front roof lights as amended by revised plans received on 28 January 2011 at 3 The Avenue, Wembley, Middlesex HA9 9QH in accordance with the terms of the application, Ref 10/3114, dated 6 December 2010, subject to the following conditions:

    1) the development hereby permitted shall begin not later than 3 years from the date of this decision;

    2) the materials to be used in the construction of the external surfaces of the extensions hereby permitted shall match those used in the existing building;

    3) the development hereby permitted shall be carried out in accordance with Drawing Nos. 3/1110/01 Rev A; 3/1110/01A Rev A; 3/1110/01B Rev A;

3/1110/01C Rev A; 3/1110/02 Rev A and 3/1110/02A Rev A and an unnumbered location plan;

4) notwithstanding the detail shown on the submitted plans, before the commencement of any works details of, the vehicle crossover widened to 4.2m, the rear elevation showing the roof form and position of skylights and the treatment, including species, plant sizes and planting density, of the boundaries with Nos. 1 and 5 The Avenue as shown on Drawing No. 3/1110/01C Rev A shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first occupation of the extension hereby permitted;

5) any plants forming part of the boundary treatment scheme approved under condition 4, which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

Main Issues

3. The proposed extensions to No. 3 are substantial and comprise several elements, which the Council indicates comply with or do not conflict with the objectives of Unitary Development Plan (UDP) Policies BE2 and 9 and Supplementary Planning Guidance 5 – Altering and Extending Your Home (SPG). These acceptable elements comprise, the enlarged porch/study room, the setback of the first floor of the proposed side extension, the proposed rear dormer window, the number and position of the roof lights, the depth of the single-storey rear extension and the depth of the first-floor rear extension. There are no reasons to disagree with the Council's conclusions on these elements. The 2 elements the Council object to are, the stepped first floor rear extension and the resulting pitched and hipped roof forms and the front single-storey element of the proposed prayer room.

4. In light of the above, the main issues are (a) the effect of the front single-storey extension on the street scene and (b) the effect of the proposed first-floor rear extension and roof form on the appearance of the existing house.

Reasons

Front Extension and Street Scene

5. No. 3 is one of several large detached houses set in wide plots on the eastern side of The Avenue. The house is L-shaped with a substantial 2-storey bay, forming the toe of the L, projecting to the front. This 2-storey bay and the deep rendered horizontal band immediately below the first-floor windows mark the presence of No. 3 in the street. SPG is general guidance which, as the Council have done with several other elements, has to be applied in the context of the subject property and not as a strict set of rules. Moreover, the application of the guidance requires the application of subjective judgement regarding the impact of a proposal on the street scene and or the host dwelling.

6. For single-storey side extensions, the SPG suggests that they are set back from the front wall of the house. Here, the Council identify the main front wall to be that which contains the door. However, as the Council acknowledges the 2-

storey bay is large and that it is a prominent feature of the property. Thus, although the single-storey element of the prayer room would project forward of the existing front elevation, by the depth of the new porch, the scale and prominence of the 2-storey bay is such that the extension would not be seen in the same context as the main front wall. Moreover, in views from the north-west this element would be partly screened by the substantial bay window to the front of No. 1. As a result, the single-storey element of the proposed prayer room would not be a prominent feature and would not unbalance the appearance of the house. As such the proposed extension would not have an adverse effect on the street scene.

Rear Extension and Appearance

7. The stepped nature of the rear extension would produce a complicated roof form. However, despite the omission of the smaller hipped roof from the drawing, it is clear that the visual impact of the proposed works have been carefully thought out to reduce the visual mass of the extension. The rear projecting extension would be positioned just off-centre of the extended house and the stepped nature of the 3 hipped gables exhibits some symmetry in terms of form and appearance. In this context, the overall impact of the proposed rear extensions on the appearance of the dwelling would not be unacceptable.

Conclusions

8. For the above reasons, the proposed extensions would not have an unacceptable effect on the street scene or the appearance of the dwelling. As such the proposal would not conflict with the objective of development plan policy or Supplementary Planning Guidance.

Conditions

9. In the interests of clarity, the appearance of the area, highway safety and the protection of neighbours' living conditions, the suggested conditions relating to the specification of the plans, the use of matching materials, the provision of a wider vehicle crossover, the submission of corrected rear elevation details and the details of boundary planting to the rear and, if necessary, the restoration of any planting are reasonable and necessary. The layout drawing shows the provision of a landscaped area to the front. However, the suggested condition requiring approval of the planting of this area is unnecessary and unduly onerous and is a matter best left to the personal choice of the appellant.

George Baird

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2011

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 30 March 2011

Appeal ref: APP/T5150/C/10/2140499
32A Victor Road, London NW10 5XG

- 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 Maeve Bhavan.
- The Council's reference is E/08/0404.
- The notice was issued on 4 October 2010.
- The breach of planning control as alleged in the notice is the erection of a single storey extension in rear garden of the premises.
- The requirements of the notice are to:
    1. Demolish the single storey extension in the rear garden of the premises, and remove all items, materials and debris arising from that (sic) the demolition and associated with the unauthorised development.
    2. Restore the ground back to the condition before the unauthorised development took place which was a mixture of soft and hard landscaping.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 also falls to be considered.

Decision

1. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey extension in rear garden of the premises at 32A Victor Road, London NW10 5XG referred to in the notice.

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

2. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice. A retrospective planning application (10/2671) was originally submitted to the Council in October 2010, shortly after this enforcement notice was issued. I have been provided with the plans numbered VR32.00 and VR32.01 and a Design Statement. I have taken them into account in determining this appeal. The planning application was still undetermined when the statement of case from the Council was submitted.

3. The development plan policies of most relevance to this appeal are saved Policies BE2 and BE9 of the Brent Unitary Development Plan (UDP) adopted in 2004.

4. The parties also refer to Supplementary Planning Guidance (SPG) documents – SPG5 Altering and Extending Your Home and SPG17 Design Guide for New Development. The gist of this guidance (SPG5) relied on by the Council is that single storey rear extensions to terraced houses should be no more than 2.5m in depth and no more than 3.0m in height for a flat roof. In addition, there should normally be a minimum of 50 sq. m of external amenity space for a ground floor flat suitable for a family (SPG17).

5. Having regard to the policies and guidance, the Council's reasons for issuing the notice and the written submissions on this appeal, including those from third parties, I consider the main issue to be the impact of this development on the local residential environment, taking into account the availability of amenity space, the character and appearance of the host property and area and the living conditions of neighbouring residents.

6. No. 32A is a ground floor, two-bedroom flat in a two-storey terraced property dating from the Victorian period like many of the other terraced residential properties nearby. The appellant indicates that the original property was converted to two flats over 20 years ago. Owing to its location on a corner, at the junction of Victor Road and Napier Road, the frontage of the property is far wider than the rear and the area behind the two-storey rear building line is very compact and triangular in shape. Even if there were no buildings or structures behind that building line, I see from the submitted plans there would be less than 20 sq. m of external amenity space available. The ground floor flat is occupied by a family – two adults with two young sons.

7. From Victorian times until around July 2008 there was a single storey, brick-built, rear-projecting wing containing a kitchen and an outside lavatory. Around that wing were various covered sheds. The rear wing and covered sheds were demolished in approximately July 2008, although a substantial part of the south-facing wall of that rear-projecting wing remains and forms part of the new extension. The subject flat–roofed, single storey extension roughly follows the outer line of the former covered sheds. Given that the rear wing and covered sheds were demolished in the very recent past to directly make way for the extension and they are recorded on the two plans before me, I find them to be an important material consideration in this appeal.

8. In judging the impact of the subject extension, attention needs to be paid to the pre-existing situation. It is also important to record what would have been deemed to be acceptable in July 2008 under SPG5. Given the date of construction (before July 1948) I would have taken the rear wing to be part of the original building. In these circumstances a flat-roofed extension (not exceeding 3m high) covering virtually all the land in the rear curtilage beyond and to the side of that rear wing would have been deemed to be broadly acceptable under SPG5, section 3.3.

9. The availability of amenity space at no. 32A is not specifically identified in the reasons for issuing the notice at Schedule 3 of the notice. Nonetheless, it is identified as a concern in the Council's statement. From the submitted plans I

calculate that there is about 2.63 sq. m of outdoor amenity space available in the triangular area to the north of the patio doors. This is a significant shortfall when compared to the Council's adopted standard but prior to the extension being built the plans indicate that there was only about 2.1 sq. m of uncovered outdoor amenity space in that same triangular part of the land. Moreover, that smaller space does not appear to have been accessible from the flat. A long-standing resident of 54B Napier Road, the adjoining property to the north-west, recalls that the former small triangle of space was too restricted to serve either as a proper backyard or garden; rather it was used as a small repository for rubbish.

10. Given these circumstances, an objection on the grounds of a lack of amenity space cannot be sustained. At the same time, the internal living conditions for host families or other occupiers have been improved significantly. In particular, the habitable living room/kitchen area is more spacious and receives more daylight. The current tenants report that it has taken them a very long time to find such good accommodation and that they like the flat as it is.

11. On the matter of amenity space, the notice says that the extension "…provides a lack of amenity space to the rear gardens of 34 Victor Road and 54 Napier Road …." This could only be the case if the extension had encroached onto those adjoining lands; there is no suggestion in any of the representations or from what I saw that it has.

12. In visual terms the subject extension presents a more coherent built form compared to the assorted structures that previously occupied the rear yard. The extension reflects the shape of the site and according to the measurements taken by the parties at the site visit the top of the parapet in the north-western corner of the extension does not exceed 3m in height. If other faces of the extension exceed 3m in height they do so only by a nominal amount. The extension does not extend deeper into the rear garden than the previous rear wing and covered sheds. Whilst the extension may largely fill the very small yard at the rear, its scale, height and massing are not notably different to the pre-existing structures. The design is more logical and the chosen bricks are a suitable match for those used in the main building. As a result, the character and appearance of the host property have not been adversely affected.

13. The extension cannot be seen from any public vantage points on the roads hereabouts and has not caused harm to the character or appearance of the area. The occupier at 54B Napier Road asserts that "the extension is, frankly, a great improvement on what was there before." This reinforces my findings on character and appearance.

14. I have carefully studied the previous arrangement of buildings to the rear, the orientation of adjacent properties and the physical impact of the main two-storey building on this densely developed and very compact residential environment at the rear. In so doing, I am not convinced on the available evidence that the development has had such a detrimental impact on the level of sunlighting, daylighting, outlook and visual amenities enjoyed by existing neighbouring residents as to warrant the refusal of planning permission.

15. It is a telling point that no neighbouring residents have lodged objections to this extension in response to this appeal. Rather, the occupiers of 54A and 54B

Napier Road and 34 Victor Road have written to positively declare that they do not wish to see the extension demolished. This reinforces my findings on neighbours' living conditions.

16. Having regard to the above, I conclude on the main issue that the development is an acceptable addition within this local residential environment. There is no conflict with the relevant development plan policies and there is no other ground for refusing planning permission. Any other proposals for similar developments would have to be assessed on their own merits against the prevailing development plan policies and in the light of all material considerations.

17. I have noted the appellant's offer to install a green-planted roof over the extension in the event of the appeal being successful. I find the development to be acceptable as built; a condition requiring such a roof is not therefore necessary in this case.

Conclusion

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Andrew Dale

INSPECTOR

The Planning Inspectorate

Appeal Decision

Inquiry held on 15 March 2011
Site visit made on 15 March 2011

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 31 March 2011

Appeal Ref: APP/T5150/C/10/2129405
30 and adjacent land, Rowley Close, Wembley, HA0 4HE.

- 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 H S Roopra against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0266.
- The notice was issued on 15 April 2010.
- The breach of planning control as alleged in the notice is "Without planning permission, the erection of a building in the rear garden of the premises and the material change of use of the premises from residential to a mixed use as residential and the storage of building materials".
- The requirements of the notice are to demolish the building in the rear garden of the premises and cease the use of the premises for the storage of building materials; and remove all debris, materials and items associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 must also be considered.

Summary of Decision: the appeal under ground (b) is allowed and the part of the notice related to the mixed use including the use for the storage of building materials is corrected, however, the substantive appeal under grounds (c) (a) and (g) is dismissed, the corrected notice is upheld, and planning permission is refused on the deemed application.

Application for costs

1. At the Inquiry an application for costs was made by the Council against Mr Roopra. This application is the subject of a separate Decision.

Procedural matters

2. At the opening of the inquiry, Mr Keen on behalf of Mr Roopra, voiced his concerns, previously put in writing, that the proof of evidence prepared by Mrs Ashton for the Council contained references to other appeal decisions which had not been referred to in the Council's Statement of Case, as required by the Regulations. He said if these matters were considered at the inquiry, it would disadvantage his client and an adjournment would be requested or an alternative procedure suggested whereby other cases in the appellant's favour could be raised. I advised that I had

not read the appeal cases referred to but was aware of the case of *Townsley*[1] as established legal authority. In the circumstances, the Council decided to withdraw the reference to the other appeal decisions from their case and these were not discussed at the inquiry nor have I had regard to them in my decision. For the avoidance of doubt, these cases refer to land at 22 Wembley Park Drive, Wembley; 34 Oxenpark Gardens, Wembley; and 34 Birchen Grove, Kingsbury.

3. All oral evidence at the inquiry was given on oath.

The appeal site and background

4. The Statement of Common Ground (SCG) indicates that planning permission was granted in October 2003 for the erection of a three-bedroom semi-detached house adjacent to 30 Rowley Road under ref. 03/2610. Further, evidence presented at the inquiry from Building Control records indicates that the construction of the additional property started in late Sept. 2008 and was substantially completed about early January 2010. This new property is now occupied and is called no. 32 Rowley Close.

5. The enforcement notice relates to the construction and use of a building within an area defined on the plan accompanying the notice as the original curtilage of no. 30, described as "the premises" (i.e. it includes the curtilage of what is now no. 32 as well). I shall from now on refer to the building as the 'outbuilding' to distinguish it from the new dwelling. The SCG includes the dimensions of the outbuilding as 8.213m by 8.220m with a maximum height to the ridge of the roof of 3.97m and a height to eaves of 2.3m. The outbuilding is constructed in brick under a tiled pitched roof.

6. The appellant does not contest the Council's evidence that the construction of the outbuilding was first brought to the Council's attention by a neighbour in April 2009 with an officer site visit made in May 2009 where photographs of the largely completed fabric of the outbuilding were taken. Mr Keen understands that the main structure of the outbuilding was virtually complete about April 2009 although the building had not been finished off internally by that time. The notice relates to the premises as at the time of issue on the 15 April 2010.

The appeal on ground (b)

7. This ground is that as a matter of fact the matters alleged in the notice have not taken place. Further, the appellant has stated that this ground only applies to the allegation that the premises have been used in part for the storage of building materials.

8. Evidence of the allegation as presented by the Council is in two parts; firstly Mrs Ashton said on oath that the appellant, Mr Roopra, had advised her during a telephone conversation with her on the 5 March 2010 that the outbuilding had been let to builders and was in use as a store, and it transpired later in the same conversation that it was his commercial building firm that was using the store. Secondly, Mrs Ashton produced photographs of the inside of the outbuilding taken on the 17 February 2010.

9. As a witness for the appellant, Mr Robinson, (who acts as a type of accommodation manager working between property owners and companies requiring accommodation for their workers) said he was aware of the new property (no. 32) from about September 2009 and that he had arranged for the let of the property to

[1] *R (oao Townsley) v SSLG HC [2009] EWHC 3522 (Admin)*

5 tenants. He had seen the outbuilding and felt that this ancillary building would be beneficial to the tenants for their recreation as there was only one communal room in the main property. He had visited the property on average every 2 weeks, but had not seen the outbuilding used as a commercial builder's store. He had, however, used the outbuilding for about 2 or 3 weeks in total to store surplus furniture and 'white goods' gathered from or going to other properties. That aside, he has only known a few pots of paint in the outbuilding and never any storage of builders materials that could be described as a commercial use.

10. Mr Rojohn, a nearby resident said that he had lived in the area for many years and had visited the site 40 or 50 times, to chat with the builders when the new house was being built and subsequently with the new occupiers, but had never known the outbuilding be used for storage of building materials.

11. In assessing the evidence on the alleged mixed use as at the 15 April 2010, and especially the use for the storage of building materials, the burden of proof to establish that this has not happened lies with the appellant. Mr Keen casts doubt over the recollection of Mrs Ashton of her conversation with Mr Roopra, on the basis that it was not recorded, nor transcipted, nor did she caution Mr Roopra. Nevertheless Mr Roopra was not called to give evidence on his own behalf, even though he attended the inquiry all day and appeared to understand the proceedings.

12. Further, I have to bear in mind that the construction of the new dwelling now forming no. 32 had only been substantially completed a few months earlier and it would not have been unusual for some quantity of remnant and unused materials to still remain on site. Nevertheless, no such materials were recalled by Mr Robinson or Mr Rojohn around or within the outbuilding around February 2010. Further, the photographs taken by Mrs Ashton on the 17 February 2010 do not show to me clear evidence of the presence of building materials in any of the three rooms in the outbuilding, given that the photographs were taken for that purpose. There is evidence of a large volume of chairs, mattresses and assorted, mainly householder, 'jumble', some of which may have been stored by Mr Robinson at that time. This evidence does not demonstrate a mixed use involving storage of building material as alleged in the notice or by a commercial building firm as alleged to have been said by Mr Roopra.

13. Overall, I consider on the balance of probability on the evidence presented that the premises were not being used for a mixed use involving the storage of building materials at the time the notice was issued. The part of the appeal related to this ground therefore succeeds.

The appeal on ground (c)

14. This ground of appeal is that there has not been a breach of planning control. The appellant says that the work carried out in the erection of the outbuilding was work permitted under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended (with the recent amendments coming into force on the 1 October 2008). It was said on behalf of the appellant that the erection of the outbuilding fell with the provisions of Schedule 2, Part 1, Class E of the GPDO in respect of development within the curtilage of a dwellinghouse.

GPDO rights in principle

15. It is established law, as for example held in the *Townsley* case mentioned earlier, that before Schedule 2, Part 1, GPDO rights can be exercised there must be a

dwelling house in existence. It appears to me that when the outbuilding was started, the dwelling now known as no. 32 was still under construction and was therefore not a dwellinghouse. The outbuilding was sited in the original large curtilage of no. 30, but this was in the process of being sub-divided into two separate planning units and the outbuilding is clearly not sited in the much smaller residual curtilage to that property. The principle of benefiting from the GPDO therefore did not arise at the time when the construction of the outbuilding was commenced.

16. It was said by Mr Keen on behalf of Mr Roopra that the correct time to assess whether a specific building operation is 'permitted development' is at the time of completion. In this case the new house of no. 32 was substantially complete by the time that the outbuilding was completed. However, such argument has no foundation in planning law. Planning permission, either express or by a development order, is a pre-requisite for the carrying out of any development of land as set out in s57 of the Act. It is therefore unlawful to carryout development without planning permission as applies in this case of the erection of the outbuilding.

GPDO rights in Class E

17. Notwithstanding the above assessment of the principle of 'permitted development', for GPDO rights to apply to the new dwelling, the planning permission would have had to have been implemented in full. In this case, the approved plans with permission 03/2610 indicate that the original curtilage would be subdivided with distinct curtilages created for both the old and new properties of roughly similar proportions. Each rear garden was delineated by a boundary fence between the two plots. A similar approach was taken with the detailed plans submitted and approved pursuant to the requirements of conditions 3 and 4 regarding landscaping and fencing. However, Mr Keen stated in answer to my question that he was not aware that the required boundary fence between the two plots had ever been erected in accordance with either of the approved plans. As the new house is occupied there is therefore a breach of the terms of condition 4. This breach, even though it may be of a technical nature, results in the GPDO not now having effect by virtue of section 3 part (4) and (5) of the Order.

18. Further, I noted at my site visit that the majority of the land of the original garden of no. 30 has been included within the curtilage of no. 32 together with some land previously in the rear gardens of the adjacent houses nos. 29, 31 and 33 Marquis Close, which are also said to be in Mr Roopra's ownership. This arrangement accords with the layout shown on drawing no. RCB33/ rev.B as submitted in evidence by Mr Keen.

19. While a landowner may swap around different parcels of garden land, without being subject to planning control, I agree with the Council there is a clear expectation that the land indicated to be part of the curtilage of a new dwelling, and the residual curtilage of the existing dwelling, within a planning application submission, should be put in place prior to the completion of that permission, and retained for a reasonable period thereafter, prior to any further land exchange. On that basis, the siting of the outbuilding lies over at least two of the boundaries of the lawful curtilage of no. 32. This means that the erection of the outbuilding with a height over 2.5m is not permitted development by virtue of the lack of compliance with E.1 (d)(ii).

20. Finally, there is the issue over who can exercise the rights given in Class E to erect a building or enclosure required for a propose incidental to the enjoyment of the

dwelling house. In this case, I agree with the Council that it is not reasonable for the builder/developer to anticipate the requirements of the subsequent occupiers of the new dwelling by designing and starting construction of the outbuilding some 9/10 months before the occupiers of the house took up residence.

21. For all or any of the reasons given above I find that the erection of the outbuilding did not fall within the provisions of Class E of the GPDO. The outbuilding is unauthorised development and there has therefore been a breach of planning control. This ground of appeal therefore fails.

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

22. The main issue in the planning merits of the case is the effect of the outbuilding on the character and appearance of the area.

23. The appeal site lies at the end of a cul-de-sac of mainly terraced properties which are two normal stories in height although some of the properties have accommodation in the roof with attic conversions. The adjoining street to the south–east, Marquis Close lies parallel to Rowley Close and has a similar form. To the north-east of the site lies operational railway land. The properties that front Rowley Close and Marquis Close have rear gardens of a modest size which back on to a rear un-surfaced track. This access way provides rear-access to the properties, including the appeal site, and some of the properties have simple garages and/or single storey outbuildings. The appeal site does not have any special designation or classification.

24. The character of development around the site is therefore quite plain with the area of rear gardens between the groups of terraced houses being mainly open and with any ancillary building being small in scale. Although the outbuilding on the appeal site is of single storey form, and constructed in brick and tile generally to match the adjacent houses, I find that the overall proportions of the building to be large in scale, with a footprint of about 64 sq. m.. I consider that the bulk, massing and siting of the building to be out of scale with its surroundings. It is visually imposing and its physical presence harms the character and appearance of the area. It therefore does not accord with saved policies BE 2, BE 9 and STR 11 of the Brent Unitary Development Plan 2004 which require new development to be designed with regard to its local context and be of an appropriate scale and massing for its setting, and not have a harmful impact on the local environment.

25. Mr Keen on behalf of the appellant, stressed that the decision on the planning merits of the case must take into account the appellant's fallback position where the owners/occupiers of the new house of no. 32 would now be able to exercise their GPDO rights. This could lead to the construction of new outbuildings not exceeding 50% of the total area of the curtilage, even if the present outbuilding was demolished in accordance with the notice. Whilst the general provisions of the GDPO which apply nationally are acknowledged, there was no specific evidence from the occupiers of no. 32 presented at the inquiry as to what their 'requirements' may actually be and whether such development would be likely to happen. Accordingly, I attach little weight to the fallback position and I do not consider that it outweighs the local harm that arises with the outbuilding that I have already identified.

26. This ground of appeal therefore fails and I will not grant planning permission on the deemed application.

The appeal on ground (g)

27. This ground of appeal is that the time given to comply with the notice (3 months) is too short and that a longer period would be more reasonable. Mr Keen suggests 9 months in order that alternative proposals, possibly involving some modification to the outbuilding, could be put forward to the Council. That may involve a formal application and if necessary an appeal. However, Mr Keen agreed that the outbuilding could be demolished, in its simplest meaning, in a couple of days or dismantled within a month.

28. Whilst I appreciate that Mr Roopra does not want to demolish the outbuilding and waste the materials and resources already spent, I have found that the erection of the outbuilding is unauthorised development and therefore is in breach of planning control. I am satisfied that three months is a reasonable period in which to undertake its demolition in accordance with the requirements of the notice. This ground of appeal therefore fails.

Conclusions

29. The appeal on ground (b) succeeds in relation to the alleged material change of use. Normally when an appeal succeeds on this ground it is appropriate to quash the notice. However, that is not possible here because the appeals are dismissed in respect of the other grounds (c) (a) and (g) and I will uphold the notice in relation to the operational development of the erection of the building and refuse to grant planning permission on the deemed application for this development. Accordingly, it is appropriate that I correct the notice by deleting the reference in schedule 2 to the making of a material change of use to a mixed use involving storage of building materials. I also need to make consequential changes to the requirements specified in schedule 4. I can make this correction under s176 (1) (a) of the Act as I am satisfied that the correction will not cause injustice to the appellant or the LPA because the notice, as upheld, requires the demolition of the building in any event.

Decision

30. I direct that the notice be corrected in so far as the allegation refers to the mixed use including the storage of building materials and the words "and the material change of use of the premises from residential to a mixed use as residential and the storage of building materials" be deleted from the allegation in schedule 2. Consequently, the words "and cease the use of the premises for the storage of building materials." shall be deleted from the steps required as specified in schedule 4.

31. Subject to this correction to the notice, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Keen, BA, MSc, Dip. Phil, MRICS, MRTPI.	Advocate and witness,
He called	Mr R Robinson, Director, Solet Ltd.,

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks, MRTPI.	Enforcement Services Ltd., acting for the London Borough of Brent Council.
He called	
Mrs S Ashton, BA, MA	Planning Officer, London Borough of Brent Council.

INTERESTED PERSONS:

Mr S Rojohn	Local Resident.

Documents handed in at the inquiry

1 Copy of Councils letter of notification of the inquiry and list of persons notified (NW)
2 Statement of Common Ground – final version (NW)

The Planning Inspectorate

Appeal Decision

Inquiry held on 22 March 2011

by Derek Thew DipGS MRICS

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

Decision date: 4 April 2011

Appeal Ref: APP/T5150/C/10/2133887 & 2133888
65 Crabtree Avenue, Wembley, HA0 1LW

- 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 Mrs E Mangar (deceased) & Mr T Mangar against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0277.
- The notice was issued on 7 July 2010.
- The breach of planning control as alleged in the notice is, the unauthorised erection of a part single, part two-storey side extension and change of use of the premises to two self-contained residential dwellings.
- The requirements of the notice are:
  1. Cease the use of the premises as two self-contained residential dwellings, its occupation by more than ONE household and remove all items, materials, fixtures and fittings associated with the unauthorised use from the premises.
  2. Demolish the part single, part two-storey side extension, remove all debris and materials arising from that demolition and remove all items and materials associated with the unauthorised development from the premises OR alter it to accord with the plans and conditions approved in the planning permission no.06/3145 dated 28 December 2006.
  3. Restore the premises back to its original condition before the unauthorised development took place.
- The period for compliance with the requirements is 6 months.
- The appeal was made on the grounds set out in section 174(2)[a],[b],[c],[d],[f] and [g] of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.

Decision

1. I allow the appeal on ground [d] insofar as it relates to the use of the premises as two self-contained residential dwellings.

2. I direct that the enforcement notice be varied by the deletion from Schedule 4 of STEPS 1 to 3 and their replacement with the following:

   WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH

   Either

Demolish the part single, part two-storey side extension, remove all debris and materials arising from that demolition, and restore the premises back to their condition before the unauthorised operational development took place.

or

Alter the fabric of the property either to accord with the approved drawings and conditions 1,2,3 and 5 of planning permission no.06/3145 dated 28 December 2006, or to accord with any alternative scheme for which approval in writing is granted by the local planning authority.

3. Subject thereto, I dismiss the appeal and uphold the enforcement notice, as varied, insofar as it relates to the unauthorised erection of a part single, part two-storey side extension. I refuse planning permission in respect of the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

4. At the inquiry the following grounds of appeal were withdrawn: [b],[f] and [g].

Relevant Planning Background

5. The appeal property was originally built as a 3-bedroom semi-detached house.

6. In December 1992 a certificate of lawfulness was granted (ref. 92/1617) for the use of an attached garage as a habitable room. Works to replace the garage with a habitable room, containing a shower and wc, were undertaken in 1999.

7. In 2006 planning permission was granted (ref. 06/3145) for the "*erection of a first floor side extension to dwellinghouse*" over the habitable room formed in 1999. The permitted scheme also included a modest extension of the ground floor accommodation at the rear of the property in order to support the proposed upper floor.

The Appeal on Ground C

8. For the appeal to succeed on this ground it need to be shown that there has been no breach of planning control.

9. The conversion of the property into 2 dwellings has resulted in it being used in a manner materially different from its original use as one 3-bedroom house. As such, the conversion amounts to a material change of use for which planning permission is required. No such permission has been obtained and so the change of use has been undertaken in breach of planning control.

10. There is no dispute that the building works to which the notice relates are those works that have been undertaken both over and around the habitable room built in 1999. I understand it to have been the appellants' intention for these works to be an implementation of the scheme permitted in 2006. However, due to practical difficulties in constructing what is in shown on the approved drawing and a desire to maintain reasonable first floor headroom at the rear of the extension, the scheme was varied. Those variations were made without planning officers of the Council being notified of the intended change. Rather than a sloping roof at the rear, as shown in the drawings approved in 2006, this part of the extension has been enlarged and finished with a flat roof. Furthermore, a narrow, irregular shaped single-storey addition has been

constructed between the extended property and the side boundary of the site. This ground floor addition was not shown on the drawings approved in 2006.

11. In my view these alterations, whether considered individually or cumulatively, are sufficiently large to have resulted in a scheme that is materially different from the one permitted in 2006.

12. I am mindful that these works were approved by the Council under the Building Regulations. However, those Regulations are made under the provisions of the Building Act 1984 and have no direct connection to the Town & Country Planning Act 1990. For the purposes of the 1990 Act, no planning permission has ever been granted for the development in the form it has been built. Those building works are, therefore, in breach of planning control.

13. For each of the above reasons the appeal on ground [c] fails.

The Appeal on Ground D

14. For the appeal to succeed on this ground it needs to be demonstrated that the building works were substantially completed 4 years or more before the notice was issued and/or that the change of use of the property to two dwellings occurred 4 years or more occurred before the notice was issued. The notice was issued on 7 July 2010 and so the relevant date is 7 July 2006 (4 years).

15. With regard to the use of the premises, I was told at the inquiry that the works undertaken in 1999 to replace the garage with a habitable room (containing a shower and wc) also involved the sub-division of the house into two dwellings. This was achieved by forming a small self-contained dwelling from the accommodation provided in the re-built garage plus the kitchen in the original house. Within the residual house, a new kitchen was installed in what had been the dining room. That new kitchen and the ground floor lounge of the original house, plus 3 bedrooms and a bathroom at first floor level, formed another larger self-contained dwelling. The appellants retained the smaller unit for their own personal use and leased the larger unit to Pathmeads Housing Association. An e-mail received from Pathmeads conforms that it has leased the property since 10 July 2000.

16. I understand that, having sub-divided the house into two dwellings, the appellants spent most of each year in Mrs Mangar's home country, Jamaica. During the first few years the appellants may have only spent one month a year resident at the premises, but their small unit was always furnished and their personal belongings were left at the property when they went away. However, in 2004, Mrs Mangar was diagnosed with cancer and, in order to receive the requisite medical treatment in England, the time spent in the smaller unit progressively increased. Mrs Mangar died in 2010 and that unit is now the permanent home of Mr Mangar.

17. At the inquiry the Council did not seek to challenge the above evidence as to how the premises have been used since 2000. The first floor extension, which has been constructed over the smaller of the dwellings, is accessed via a new internal staircase and the additional floorspace provides a bedroom and bathroom for the exclusive use of that unit. These unauthorised works have enlarged that particular unit but do not appear to have changed the essential nature of how the premises have been used since 2000: namely as two self-contained dwellings.

18. In the light of the above evidence, and the supporting e-mail from Pathmeads Housing Association, I am satisfied, on the balance of probability, the premises have been used as two self-contained residential dwellings since 2000. On this basis, the appeal on ground [d] in respect of the use of the property succeeds.

19. As for the building works referred to in the notice, the Council's records under the Building Regulations show that in March 2008 these works had started but were not complete. On this basis, substantial completion must have been well-within the relevant 4 year period. Accordingly the appeal on ground [d] in relation to these works must fail.

The Appeal on Ground A & the Deemed Application

Main Issue

20. In this case the main issue is the effect of the unauthorised building works upon the character and appearance of both the appeal premises and the street scene.

Reasons

21. There are two parts of the extension as built which are a cause for concern: the first floor element that is used as a bathroom at the rear of the property and the ground floor porch structure adjacent to the side boundary.

22. With regard to the first floor element at the rear of the property, this is a bulky flat-roof structure that looks out-of-place on a building where all other roofs at this height are tiled structures with a fairly steep pitch. The Council's supplementary planning guidance 5: "Altering and Extending Your Home" requires that two-storey rear extensions should be designed to respect the character of the existing house and the extension built at the appeal premises does not achieve that aim. The side of the unauthorised structure is readily seen from Crabtree Avenue and, as a result, it harms the character and appearance of both no.65 and the street.

23. I am mindful that the extension as permitted in 2006 would be problematic to construct, because of the irregular shape of the existing ground floor structure. I am also mindful that the extension as built allows for a bathroom with good headroom to be provided at first floor level. But neither of these factors are good reasons for permitting a scheme that is visually harmful.

24. As for the porch, this is a long, irregular shaped, flat-roofed structure built of materials that do not match the main house. By reason of its form and external appearance it looks incongruous in this location. The structure is readily seen from Crabtree Avenue and, as a result, it harms the character and appearance of both no.65 and the street.

25. In summary, I find that the scheme as built is contrary to the provisions of policy B9 of the Brent Unitary Development Plan. The harm caused by the development could not be overcome by planning conditions and, consequently, this element of the appeal should not succeed. I shall, therefore, uphold the enforcement notice and refuse to grant planning permission on the deemed application in respect of the unauthorised building works.

Ground F Matters

26. Even though the appeal on this ground was withdrawn, the partial success of the appeal on ground [d] necessitates variations being made to the requirements of the notice. As I have found the use of the premises as two self-contained dwellings to be lawful, Step 1 should be deleted in its entirety. Steps 2 and 3 provide the option of either demolishing all the unauthorised works or altering them to comply with the terms of the 2006 planning permission. In the interest of clarity, I have combined Steps 2 and 3 into one single requirement whilst retaining the option contained in the notice as issued.

27. If Mr Mangar wishes to alter rather than totally demolish all the unauthorised building works, and if it is agreed with the Council that the roof of the first floor extension cannot be constructed as shown on the drawings forming part of the 2006 permission, a revised scheme will need to be prepared. Depending upon the extent of the revisions contained in that scheme, a new planning application may be required. If planning permission were to be granted for that revised scheme then it could be implemented instead of the 2006 proposal[1]. However, if planning permission for that revised scheme were to be refused, then the demolition of all the revised works and the restoration of the property to its condition before the unauthorised operational development took place is likely to be necessary.

28. I have also varied the reference to the planning conditions attached to the 2006 permission, so as to exclude any requirement to comply with condition no.4 which allows the property to be used only as a single dwelling.

29. These variations can all be made without causing injustice.

Conclusions

30. For the reasons given above I conclude that the appeal should be allowed insofar as it relates to the change of use of the premises and dismissed insofar as it relates to unauthorised building works.

Derek Thew

Inspector

[1] Section 173A of the 1990 Act gives the Council the power to extend the compliance period in the notice should this be necessary.

APPEARANCES

FOR THE APPELLANT:

Mr T Mangar	Appellant
Mr J Mangar	Son of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks	Enforcement Services, 27 Station Road, Winslow
Mr R Sheldon	Planning Officer

DOCUMENTS SUMITTED DURING & AFTER THE INQUIRY

1 Swale Borough Council –v- First Secretary of State [2005] transcript
2 E-mail correspondence between Council & Pathmeads