

Appeal Decisions

Site visit made on 13 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 28 March 2017

Appeal A Ref: APP/T5150/C/16/3163282

9 Flamsted Avenue, Wembley, London HA9 6DL

- 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 Brendan Lally against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, reference E/16/0046, was issued on 10 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the multi-storey building at the front of the site from a single dwellinghouse to six self-contained flats and the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window to this building, and the erection of a single-storey dwelling in the rear garden of the premises.
- The requirements of the notice are to:
 - (1) Cease the use of the multi-storey building at the front of the site as flats and its occupation by more than one household and remove all kitchens and cooking facilities, except one, and remove all bathrooms, except two, from this building. Remove all fixtures and fittings associated with these works from the premises.
 - (2) Demolish the single-storey rear extension and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - (3) Demolish the hip-to-gable roof extension and rear dormer window and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - (4) Demolish the single-storey dwelling in the rear garden and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and planning permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied as set out below in the formal decision.

Appeal B Ref: APP/T5150/C/16/3163283

22 Flamsted Avenue, Wembley, London HA9 6DL

- 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 Brendan Lally against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, reference E/16/0412, was issued on 10 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the multi-storey building at the front of the site from a single dwellinghouse to six self-contained flats and the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window to this building, and the
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- erection of a single-storey dwelling in the rear garden of the premises.
- The requirements of the notice are exactly the same as that stated in Appeal A fifth bullet-point.
- The period for compliance with the requirements
 - (1) Cease the use of the multi-storey building at the front of the site as flats and its occupation by more than one household and remove all kitchens and cooking facilities, except one, and remove all bathrooms, except two, from this building. Remove all fixtures and fittings associated with these works from the premises.
 - (2) Demolish the single-storey rear extension and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - (3) Demolish the hip-to-gable roof extension and rear dormer window and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - (4) Demolish the single-storey dwelling in the rear garden and remove all materials, items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period of compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and planning permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied as set out below in the formal decision.

Matters concerning the notices

1. The allegation refers to a 'multi-storey building' at the front of the site. No. 9 and 22 can lawfully be occupied as a single dwelling. Each notice attacks a material change of use of each property and the carrying out of building work, without planning permission. In the interest of greater clarity, I consider the allegation should describe the breach as: *'Without planning permission, the material change of use of the dwellinghouse into six self-contained flats, the carrying out of operational development comprising the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window and a single-storey dwelling in the rear garden of the premises'*. For consistency the requirements should flow from the corrected allegation.
2. The written submissions suggest to me the description of the alleged breach of planning controls stated in the issued notices has not caused any confusion between the appeal parties and its intent has been correctly interpreted and understood. I am satisfied that the intended corrections, which are minor in nature, will cause no injustice to any party. I will correct the allegation.

The appeals on ground (b)

3. Commonly known as a 'legal' ground of appeal, the onus of proof is firmly on Mr Lally to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities. If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make his version of events less than probable, there is no good reason to dismiss an appeal on any legal ground provided his evidence alone is sufficiently precise and unambiguous¹.

¹ See the case of *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

4. The planning agent does not claim sufficient knowledge of each site's planning history and relies upon the appellant's evidence of fact. Mr Lally refutes the allegation that each property had been converted into self-contained flats. He states each property comprises bedsits or well-appointed apartments with communal kitchens and toilet/shower facility. The claim is that no. 9 and 22 have been converted into a house in multiple occupation [abbreviated as 'HMO']. The Council, on the other hand, claims each property had been converted into six self-contained flats prior to the issuing of the notices. Each flat had its own lockable door and contained, amongst other things, a small washroom with basin, shower and WC, a kitchen with cooking equipment, worktops, sink, a refrigerator and storage cupboards. In applying the leading legal authority², each bedsit is a separate dwellinghouse in the Council's view.
5. It is reasonable to examine whether a building equipped as described above could be defined as a HMO for planning control, which is a common issue in both Appeals. The Town and Country Planning (Use Classes) Order 1987 as amended ['the UCO'] defines a HMO for the purposes of Class C4 as not including a converted block of flats to which section 257 of the Housing Act 2004³ applies, but otherwise having the same meaning as in s 254 of the same Act. Thus, a building converted into self-contained flats is expressly excluded from the UCO definition of a HMO. It is apparent from s 254 that a building is not a HMO for Class C4 purposes if certain exceptions⁴ apply, which are not relevant in this case. In addition, a HMO would not exist where at least two households in occupation did not share, or the living accommodation was lacking in, one or more 'basic amenities'. The latter is defined in subsection 254(8) as a toilet, personal washing facilities or cooking facilities.
6. What is meant by a cooking facility because the term is undefined? I have not been provided with any legal authority as to what constitutes a cooking facility, or how the term should be interpreted and applied for development control purposes. It is therefore reasonable to conclude that, to amount to a basic amenity, such a facility would have to include items or equipment that enable food to be heated sufficiently to prepare meals for sustenance purposes without the user having to eat elsewhere. Common sense dictates an appliance such as oven, hob, grill, hotplate or microwave would fulfil that purpose; a kettle and sandwich toaster would probably not.
7. In my opinion, it follows that communal kitchens would ensure each building, considered as a whole, does not lack any basic amenities and if heating appliances, as described above, is not available in the rooms the shared kitchens are the basic amenities that households are obliged to share. Whilst refrigerators, sinks, worktops, food storage cupboards, pots and pans and other utensils might fall within a wider definition of 'cooking facilities', they would not fulfil that definition in themselves unless heating equipment was also present. Despite there being a large amount of equipment intended for the private personal use of occupant(s), in my assessment, the existence of in-room facilities for heating food sufficient for sustenance could prevent that property from being within a HMO use.
8. The UCO definition applies only to Class C4 HMOs (occupied by three to six people). However, there is no logical reason to presume that larger *sui generis* HMOs fall to be defined differently, other than in terms of the number of occupiers. In order to assess the strength of Mr Lally's case, it is necessary and reasonable to focus on the evidence

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

³ As amended by the Housing Act 2016.

⁴ In summary, these exceptions are the following; it is occupied by persons forming part of a single household, or it is occupied by persons in a manner other than as their main residence, or occupation of the living accommodation by those persons is not the only use of that accommodation or no rent or other consideration is provided.

that shows cooking facilities were not present in each flat when the notices were issued.

9. I undertook a comprehensive accompanied site visit and carried out a full internal inspection to see for myself the arrangement of each property and to gain an impression of the standard of accommodation within each unit. The configuration and layout is basically the same. For example, each bedsit has a washroom and designated bedroom/living area, and there is communal washing and drying machine in the hallway. There are notice boards displaying cleaning rotas or other information or announcements. There are separate devices for measuring utility usage or fuse boxes. In my experience, this type of arrangement is not uncommon within genuine HMOs; to my mind, the existence of these facilities does not, in themselves, substantiate use of each property as self-contained flats.
10. At the time of my site visit the bedsits did not contain cooking facilities of the kind or type described above. Instead, each unit contains a designated kitchenette area comprising wall and base cupboards and worktop. According to Mr Lally, this kitchenette functions as a tea-making area and did not contain cooking appliances before each notice was issued. That explanation is broadly consistent with his reply to searching questions found in a planning contravention notice, signed and dated on 22 August 2016⁵.
11. On the contrary, planning enforcement officers visited the ground floor flats on 21 July 2016⁶. I find the photographic evidence of each property particularly instructive of the flats' layout and configuration at that time. To my mind, this information confirms that the flats contained cooking appliances such as electric oven and hob. In addition to that, the evidence is that officers were informed at the time by tenants that it was their understanding each property was subdivided into separate self-contained flats with separate cooking, washing and sleeping facilities. There is nothing before me to suggest that officers were deliberately misinformed or misled by the tenants.
12. Mr Lally asserts officers were mistaken and maintains that each property contained shared kitchens at ground and roof level. Mr Al-Emam, a tenant who occupied the ground floor flat at no. 9 from 23 June 2016, confirms that claim. He says that a shared kitchen had been relocated into his ground floor bedsit to achieve a better layout for the occupants of the whole building. He says he moved out to live in a first floor flat however provides little detail showing exactly when and where. There is limited information as to how the layout of the property and ground floor bedsit changed to include shared cooking facilities. To my mind, the advanced explanation for existence of in-room cooking facilities is implausible and, given the significant degree of ambiguity, I attach this evidence limited weight.
13. Mr Lally provides no precise and clear evidence to make less than credible the Council's version of events. Apart from vague assertions and irrelevant documentary information, there is nothing showing where the shared basic amenities existed in each property, the nature and scale of their use by residents. There is no sound reason to question the credibility or accurateness of the Council's account. As a matter of fact and degree, I find that the evidence presented points in the likelihood that each of the six flats within no. 9 and 22 were equipped with cooking facilities of

⁵ Resent 19 October 2016.

⁶ The enforcement investigation into alleged change of use of no. 9 Flamstead Avenue opened 22 January 2016 and a site visit by Council enforcement officer on 26 January of that year revealed no result as access into the property could not be gained.

the kind and type referred to above during the period leading up to the issuing of the notices.

14. Tenancy agreements do not show occupancy or use of each building as a HMO. Mr Lally's evidence is unclear as to who, when and how occupants actually used no. 9 and 22. It is unclear how occupants shared or led their lives. In my mind, the configuration and layout of the flats combined with available facilities for independent cooking, washing and sleeping, strongly suggests each flat was occupied by individuals or couples forming households during the period leading up to the issuing of each notice.
15. The Council's licensing team has certified HMO use of no. 9 and 22. The decision to approve the licence was made on 12 December 2016, which is after the issuing of the enforcement notices. In any event, there is nothing to suggest the same planning considerations apply when determining whether or not a HMO license should be granted.
16. In my planning judgement, the quantum of Mr Lally's evidence does not sufficiently show, to my satisfaction, that each property was occupied and used as a HMO at the date of the notice. On the contrary, the evidence points in the possibility that no. 9 and 22 were actually converted and occupied as six self-contained residential planning units. The character of this type of use is different to the building's use as a single dwelling and amounts to a change of use for planning controls. The description in each notice, as corrected, reflects the reality of the alleged material change in the use of each property.
17. There is no dispute between the appeal parties that the alleged operational development had been carried out when each notice was actually issued. This resulted in the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window, a single-storey outbuilding; the Council allege the latter was erected as a dwelling. Nevertheless, it is acknowledged, on behalf of Mr Lally, that the building work falls within the meaning of section 55(1) and 55(1A) of the Act, because of the nature and scale of the buildings.
18. Mr Lally says that a dwelling in the rear garden has not, in fact, been erected. He says an outbuilding was initially constructed but his evidence on this topic is less than satisfactory. The assertion is that each outbuilding had been built to function as a builder's hut during conversion of no. 9 and 22. On the other hand, he claims that each outbuilding was required for ancillary or incidental purpose in connection with the use of the main dwellinghouse. Additionally there is evidence that at least one of the outbuilding's had been occupied and used for primary residential purposes, albeit on a temporary basis.
19. In contrast, planning enforcement officers inspected each property on 8 September 2016 and accessed the rear garden. Each outbuilding was in residential use and photographs show existence of facilities for cooking, washing and sleeping. Furthermore, the outbuildings had been physically subdivided by close-boarded fence; they are accessed via a pedestrian gate. It appears to me that a curtilage had been created. A self-contained residential planning unit had been created given the significant degree of physical and functional separation. That was the circumstances at the time of my site visit.
20. Given that the onus is firmly on Mr Lally, the totality of his evidence does not sufficiently show why each outbuilding had been built with cooking, washing and sleeping facilities if incidental use was intended. There is also evidence to the effect

that each building had been in self-contained residential occupation and use before the notices were issued. In all probability, the nature and scale of the building operations resulted in the erection of a single-storey dwelling in the rear garden to no. 9 and 22.

Conclusion on ground (b)

21. Pulling all of the above threads together, the overall weight of evidence points in the probability that each property had been converted and subsequently used as six self-contained flats by the time the notices were issued. Each flat constitutes a separate planning unit given functional and physical separation. The nature and scale of the alleged building operations, comprising the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window, and single-storey dwelling in the rear garden, amount to operational that existed at the date of each notice. It follows that the matters alleged in the corrected notices factually occurred. I conclude that the appeals on ground (b) must fail.

The appeals on ground (c)

22. In this legal ground of appeal, the onus of proof is squarely upon Mr Lally to show on the balance of probabilities that the matters stated in the corrected notices do not constitute a breach of planning controls. In this context, a positive case has not been advanced in relation to the hip-to-gable roof extension and dormer window. I concur with the appeal parties that this part of operational development requires express planning permission and the building work does not fall within the scope of permitted development ['PD'] rights set out in any class to Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. I shall therefore focus upon the material change in the use of each property, and the erection of a single-storey extension and dwelling.
23. Mr Lally's submission that no. 9 and 22 have each been converted into a HMO is unsustainable. While a change of use of a single dwellinghouse to a HMO is PD by virtue of Class L, Part 3 of Schedule 2 to the GPDO and vice versa, the law does not authorise conversion of a single dwellinghouse into self-contained flats. In order to facilitate such a change of use, it is necessary to subdivide the original single dwellinghouse into separate dwelling houses. On the facts and circumstances, six self-contained residential planning units out of a single dwellinghouse have been created at no. 9 and 22. The character of this type of use is significantly different to the lawful use of each property, and is likely to have on and off site planning consequences requiring a merits assessment.
24. Moreover, the change of use targeted in each notice flies in the face of section 55(3) of the Act. It states that use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. That, in itself, means express planning permission is necessary for the subdivision of each property by operation of law, exemption from which is not PD.
25. The single-storey extension at no. 9 covers the full width of its rear elevation and is 6 m deep and 3.35 m high. Likewise, the addition at no. 22 is 5.95 m deep. Mr Lally asserts that these extensions were built while each property was occupied as a single dwellinghouse. However, his supporting evidence is sparse. I note that prior approval for the extensions has been obtained⁷, but in practice each extension was built and

⁷ Council ref: 14/0222 9 Flamsted Avenue and 15/2489 for no. 22.

subsequently occupied as a self-contained flat. While Class A, Part 1 of Schedule 2 to the GPDO sets out PD rights for the enlargement, improvement or other alteration of a dwellinghouse, it does not apply to self-contained flats⁸.

26. Turning to the erection of a single-storey dwelling in the rear garden, Mr Lally refers to PD rights in Class E, Part 1 of Schedule 2 to the GPDO. It permits development including the provision of buildings required for a purpose incidental to the enjoyment of the dwellinghouse. Such outbuildings cannot be incidental to the enjoyment of the dwellinghouse as such if they contain primary living accommodation for self-contained residential use. Operational development comprising the erection of an outbuilding as a dwelling is therefore unlawful.
27. Even if Mr Lally's argument is well-founded and he initially built outbuildings for incidental purposes, he does not precisely show how each structure meets Class E parameters. For example, the building at no. 9 is 2.74 m high⁹ and falls within 2 m of the property's curtilage boundary. Thus, contravening paragraph E.1 subsection (e)(ii) – development is not permitted by Class E if the height of the building would exceed 2.5 m in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse. The height limitation is technically breached.
28. For completeness, I have examined the argument that the outbuilding had been built in connection with lawful building operations. Among other things, Part 4 of Schedule 2 to the GPDO permits the provision on land of buildings or moveable structures required temporarily in connection with and for the duration of operations being or to be carried out on the land. Planning permission granted for the carrying out of operational development on land conveys permission for the carrying out of all necessary operations. The GPDO extends that right to include permission for the provision of buildings that are required temporarily for such operations. The principal effect of this class is in relation to structures whose provision would itself amount to a building operation, which do not fall part of the development granted planning permission. Whether a structure really is required *temporarily* in connection with operations on the same or adjoining land is a matter of fact and degree [my emphasis].
29. Factors like size and means of construction of the building in question will be highly relevant. Whilst it is possible that a landowner would wish to erect a permanent building to serve a temporary purpose, as a matter of common sense, absent any other explanation, the larger and more permanent the building in question the less likely it is to be *genuinely required temporarily* [my emphasis] in connection with the carrying out of the authorised development. It is reasonable to assume that a landowner will not usually erect a permanent building if it is required temporarily.
30. There is a problem. To benefit from Part 4 PD rights, I consider Mr Lally should show that each outbuilding was required temporarily in connection with, and for the duration of, lawful operations carried out on the site. Firstly, conversion of no. 9 and 22 into six self-contained flats is not a lawful operation. Secondly, permeant structures have been built in the rear garden containing viable facilities for independent cooking, washing and sleeping. I therefore find that Mr Lally cannot rely on Part 4 of Schedule 2 to the GPDO.

⁸ Article 2 – interpretation – “dwellinghouse”, except in Part 3 of Schedule 2 to this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building; “flat”, except in the expression “flat roof”, means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally.

⁹ Measurements confirmed between the appeal parties at the site visit for both sites.

Conclusions on the ground (c) appeals

31. Pulling all of the above points together, I find that, on the balance of probabilities, express planning permission is required for the change of use of each dwelling into six self-contained flats, the erection of single-storey rear extensions and dwelling. Planning permission has not been obtained for the alleged matters therefore they constitute a breach of planning controls. I conclude that these appeals must fail.

The appeals on ground (a)

32. Terms of the deemed planning application are directly derived from the corrected allegation. No positive case is advanced for the material change of use of each dwellinghouse into six self-contained flats; I shall make no comment on its merits.
33. Mr Lally's representations indicate planning permission is sought only for the following part of the alleged matters: the erection of a single-storey extension to the rear, hip-to-gable roof extension and dormer window and single-storey dwelling. However, as an alternative to the single-storey dwelling, the case advanced by is that planning permission should be granted for the retention of each outbuilding for incidental use. The problem is this. I am faced with an allegation that, in part, describes the breach as the carrying out of unlawful building operations comprising the erection of a dwelling, not any building or outbuilding.
34. As I have already observed above, the appeals on ground (a) and the deemed applications for planning permission under s 177(5) of the Act are linked to the corrected breach of planning control. This is mirrored by the power to grant planning permission under s 177(1), which is limited to a power to grant planning permission in relation to the whole or any part of the matters stated in each notice as constituting the breach. Having regard to the relevant case law, it seems to me that something other than the grant of planning permission for all or part of the matters alleged in the notice to constitute the breach of planning control would be required to achieve the retention of the outbuilding for incidental purposes. I have no power to consider a grant planning permission for that alternative scheme. Of course it may be open to Mr Lally to submit a different proposal for the outbuildings to the Council and I shall return to this matter in grounds (g) below.
35. The **main issues**, common to both Appeal A and B, are the following:
- (1) The effect of the single-storey rear extension, hip to gable roof extension and rear dormer window, and single-storey dwelling in the rear garden upon the character and appearance of the host dwelling and that of the locality, and
 - (2) The effect of the single-storey extension and dwelling on existing and future residents' living conditions, having particular regard to standard of accommodation, noise and general disturbance.
36. The Brent Local Plan Development Management Policies ['DMP'], adopted November 2016, has replaced the Council's unitary development plan. Policies referred to in each notice have been superseded since the issuing of the notices. I shall refer to relevant policies now in force, which have been identified by the Council in its evidence¹⁰.

Character and appearance - single-storey rear extension, hip-to-gable roof extension and dormer window and dwelling in the rear garden

¹⁰ Section 3.0 – response to grounds of appeal subsection 3.1 – ground (a) of the Council's statement of case in relation to both Appeal A and B. The appellant's agent has had opportunity to comment on the statements.

37. No. 9 and 22 are semi-detached dwellings situated in a mainly residential area. The rear extension, hip-to-gable roof and rear dormer window could be used in connection with the lawful use of the dwellinghouse, subject, of course, to each building's use as a single dwellinghouse. Nonetheless, the overall size and scale of these extensions result in development that does not harm the external appearance of each building. In addition, the location and positioning of these additions do not adversely affect symmetry of the semi-detached properties, nor detract from the residential character of the street scene. The design combined with materials used in the outer surfaces is sympathetic to the appearance of the host buildings and reflect local character.
38. A close-boarded fence subdivides the rear dwelling from the garden. That subdivision creates a separate curtilage attached to the dwelling. I note that domestic scale outbuildings of varying size and shapes can be found in the locality, but self-contained dwellings in backland location, such as this, are not a particular feature of the settlement. The reward position of the dwelling typifies ad hoc planning alien to the pattern of settlement in this locality. I therefore find that this aspect of development is out of keeping with the suburban residential settlement pattern and conflicts with development plan policy DMP1.
39. Much is made of a perceived fall-back position. If planning permission for the outbuilding is not granted, Mr Lally contends outbuildings could be erected under PD rights in Class E of Part 1 of Schedule 2 to the GPDO. It should be borne in mind these PD rights relate to buildings required for a purpose incidental to the enjoyment of a dwellinghouse as such. Outbuildings erected under Class E PD rights would be materially different compared to the rear dwelling. I attach little weight to this line of reasoning.
40. In concluding on this main issue, the erection of a single-storey rear dwelling has a harmful effect upon the character and appearance of the host buildings and surrounding area. Accordingly this aspect of the matters alleged conflicts with policy CP17 of the Council's Core Strategy (2010) and DMP policy DMP1, and national policy found in paragraph 48, 53 and 56 to the National Planning Policy Framework. On the other hand, the single-storey rear extension and hip-to-gable/dormer roof additions comply with cited planning policies.

Living conditions - single-storey extension and dwelling in the rear garden

41. The bulk and scale of the single-storey extension is visible from the neighbours but its overall depth is not excessive. The height and scale of the extension does not adversely affect outlook from rear elevations. I find this aspect does not materially harm residential or visual amenity. The rear extensions in combination with the roof alterations meet with the design aims and objectives of supplementary planning guidance no. 5: *Altering and extending your home*.
42. I note that the single-storey dwelling might be suitable for occupation by one or two persons. It may be affordable to rent in a competitive housing market. That is, however, not a strong justification to grant permission for substandard accommodation. This is because the space is contrived and the layout restricts free circulation and movement as domestic furniture is further likely to reduce circulation space. There is inadequate space to store possessions or undertake normal activities such as socialising, given the overall dimensions of the dwelling. I take the view that the size and amount of useable floor space is likely to have knock-on effects on the health and wellbeing of future occupants.

43. The rearward position of the dwelling is likely to attract significant level of activity generated by comings and goings associated with residential living. The nature and scale of this activity is likely to be over and above levels usually associated with a more typical and subservient domestic shed, or storage room. In this relatively quiet garden environment, neighbours using their back gardens are likely to experience additional noise and disturbance as a result of the backland location of the dwelling.
44. The single-storey design and layout of the dwelling suggests outlook from the neighbouring properties is unlikely to be compromised. That said however, due to the location of openings in the elevations, occupiers potentially have unimpeded views of adjoining gardens and properties. In addition, the dwelling is likely to be noticeable from rear elevations of adjoining properties. The location of the dwelling is likely to increase neighbours' sense of being overlooked. Furthermore I have strong reservations about usability of the shared rear gardens, because the latter is used to access the rear dwelling and is therefore not private. To my mind, such a layout compromises the amenity value of the rear garden to each property.
45. Drawing all of the above points together, I conclude that the development has a materially harmful effect upon the living conditions of existing and future occupants, because of the rearward location and position of each dwelling at no. 9 and 22. Accordingly, this aspect of the operational development conflicts with DMP policy DM1, DMP18 and DMP19, and policy 3.5 of The London Plan (2016), and guidance and national policy found in NPPF paragraph 17 and 56.

Conditions and overall conclusions on ground (a)

46. The materials used in the erection of the single-storey rear extension and hip-to-gable and dormer roof additions at each property are appropriate and acceptable. Having regard to planning practice guidance, it is unnecessary to impose conditions.
47. For all of the above reasons, I conclude ground (a) should succeed in part and planning permission will be granted for the single-storey rear extension, hip-to-gable roof extension and rear dormer window, but refused for erection of a single-storey dwelling. Clearly, these elements of operational development are physically separate and severable.

The appeals on ground (f)

48. These appeals are limited to the material change of use and erection of a single-storey dwelling. Mr Lally argues each dwelling could, in theory, revert to single dwellinghouse use and subsequently change to HMO without the need for a further planning permission. He now has in place the relevant licence. But to achieve that change of use, I think he would need to first revert to a single dwellinghouse use. Nonetheless, it is unreasonable, he contends, to require internal alterations because these fixtures, fittings and partitions did not require planning permission and can be reused in connection with a contemplated HMO. He forcefully argues that the notices' terms should be varied to simply require removal of communal kitchen in the loft, remove tea-making facilities on the ground and first floors, and retain one shower/toilet at ground floor level.
49. Use of each property as six self-contained flats is a material change of use for which express planning permission has not been obtained. From the wording of the whole document, it seeks to remedy that breach of planning control by restoring the land to its condition before the breach occurred; as a single dwellinghouse. That objective

falls within s 173(4)(a). It is necessary to consider whether the requirements exceed what is necessary to remedy the breach (s 174(2)(f)).

50. It is apparent that the physical subdivision into self-contained flats of each property involved considerable works of conversion. Cooking facilities have since been removed from some of the flats but each flat included living space; bedroom, kitchen and bathroom facility when each notice was issued. Each flat had the necessary facility for independent cooking, washing and sleeping. Clearly, the change of use of each property had been sustained by internal subdivision and installation of additional kitchens and bathrooms. There is no evidence to show that these works of conversion and installation of additional facilities was carried out in connection with the lawful use of each property.
51. It appears to me that there is a fundamental and crucial link between the rearrangement of each building's layout, installation of additional kitchens and bathrooms and the subsequent use as six self-contained flats. In my assessment, the former facilitates the latter. The nature and scale of the operations suggest that the additional kitchens, bathrooms and internal fittings and fixtures are integral to the unlawful use. Now, it is well established in case law that a notice can legitimately require the removal of works integral to and solely for the purpose of facilitating an unauthorised use.
52. In my considered opinion, the intent behind each notice can only be achieved by ceasing the unauthorised use and removal of all facilitating work as well as items introduced to enable the use of each property as six flats. Likewise, the requirement to demolish the single-storey dwelling is necessary to remedy the breach. I find Mr Lally's arguments unpersuasive as the lesser steps advanced would not remedy the breach of planning controls and nothing short of total compliance would achieve that purpose. To my mind, the requirements are not excessive.
53. That said, however, step (1) requires the following: *'Cease the use of the multi-storey building at the front of the site as flats and its occupation by more than one household...'* In my opinion, this prohibition seeks to control the future use of each property and goes beyond the scope of the notice because it, potentially, seems to restrict lawful use rights. The property can revert to single dwellinghouse use and internal subdivision or additional kitchens and bathrooms that facilitated that unauthorised use will be removed. Thereafter, provided occupants function as a single household, it seems to me that the character of that type of activity falls within the lawful use. I am satisfied no injustice is caused to any party if these words are deleted and the intended variations do not make each notice any more onerous than first issued. As I am varying the notices, appeal on ground (f) succeeds to that limited extent.

Split decision: the effect of section 180 of the Act

54. This subsection states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part without conditions. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under s 173(11) as a variation of cutting down the requirements. To avoid this possibility I take the view that the requirements should not be varied. Reliance will be placed on operation of s 180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

The appeals on ground (g)

55. It is necessary to consider whether the compliance period, three months, is too short. Mr Lally's submission is a simple one, namely, if the legal grounds of appeal fail a period of nine months should be given. The Council say six months would be sufficient. In my assessment, the breach of planning control should not be allowed to continue more than necessary, because of the harm caused by the change of use and dwelling in the rear garden.
56. Having said all of that, my decision is likely to lead to some disruption and upheaval to occupants and I acknowledge a slightly extended period would assist in finding suitable alternative accommodation. In addition, I understand there might be an alternative scheme advanced for use of each dwelling as a HMO and retention of outbuildings. Moreover, the steps required to comply with the notice probably involve specialist building work; that needs to be arranged which is likely to take some time. A period of seven months is a reasonable compromise. On the particular circumstances, extending the period of compliance is a proportionate response and strikes a fair balance between the competing interests of the individuals involved and the public interest. Therefore, I shall vary the compliance period. The appeals on ground (g) succeed to this extent only.

Formal decisions

Appeal A - 9 Flamsted Avenue, Wembley, London HA9 6DL

57. It is directed that the enforcement notice be corrected and varied by:

- (1) Delete all of the text in schedule 2, the alleged breach of planning control, and the substitution therefor of the following text:

Without planning permission, the material change of use of the dwellinghouse into six self-contained flats, the carrying out of operational development comprising the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window and a single-storey dwelling in the rear garden of the premises.
- (2) Delete all of the text in schedule 4, subsection (1), what you are required to do, and the substitution therefore by the following step (1):

Cease the use of the building known as 9 Flamsted Avenue Wembley London HA9 6DL as flats and remove all kitchens and cooking facilities, except one, and remove all bathrooms, except two, from this building. Remove all fixtures and fittings associated with these works from the premises.
- (3) Delete digit '6' in schedule 5, time for compliance, and substitution therefor of the text 'seven'.

58. Subject to a correction and the variations above, the appeal is allowed insofar as it relates to the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window at 9 Flamsted Avenue, Wembley, London HA9 6DL, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window.
59. The appeal is dismissed and the enforcement notice is upheld as corrected and varied for the material change of use of the dwelling into six self-contained flats and the

erection of a single-storey dwelling in the rear garden of the premises at 9 Flamsted Avenue, Wembley, London HA9 6DL, and planning permission is refused in respect of the material change of use of the dwelling into six self-contained flats and the erection of a single-storey dwelling in the rear garden of the premises on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - 22 Flamsted Avenue, Wembley, London HA9 6DL

60. It is directed that the enforcement notice be corrected and varied by:

- (4) Delete all of the text in schedule 2, the alleged breach of planning control, and the substitution therefor of the following text:

Without planning permission, the material change of use of the dwellinghouse into six self-contained flats, the carrying out of operational development comprising the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window and a single-storey dwelling in the rear garden of the premises.

- (5) Delete all of the text in schedule 4, subsection (1), what you are required to do, and the substitution therefore by the following step (1):

Cease the use of the dwellinghouse known as 22 Flamsted Avenue Wembley London HA9 6DL as flats and remove all kitchens and cooking facilities, except one, and remove all bathrooms, except two, from this building. Remove all fixtures and fittings associated with these works from the premises.

- (6) Delete digit '6' in schedule 5, time for compliance, and substitution therefor of the text 'seven'.

61. Subject to a correction and the variations above, the appeal is allowed insofar as it relates to the erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window at 22 Flamsted Avenue, Wembley, London HA9 6DL, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for erection of a single-storey rear extension, hip-to-gable roof extension and rear dormer window.

62. The appeal is dismissed and the enforcement notice is upheld as corrected and varied for the material change of use of the dwelling into six self-contained flats and the erection of a single-storey dwelling in the rear garden of the premises at 22 Flamsted Avenue, Wembley, London HA9 6DL, and planning permission is refused in respect of the material change of use of the dwelling into six self-contained flats and the erection of a single-storey dwelling in the rear garden of the premises on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A U Ghafoor

Inspector