
Appeal Decisions

Hearing Held on 20 February 2018

Site visit made on 20 February 2018

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 March 2018

113 Tokynton Avenue, Wembley HA9 6HA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr P S Logan against two enforcement notices issued by the Council of the London Borough of Brent.
 - The enforcement notices were issued on 26 May 2017.
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Appeal A: APP/T5150/C/17/3178973 (Notice A)

- The breach of planning control as alleged in Notice A is:
Without planning permission, the material change of use of the dwellinghouse from a single family dwelling to a House in Multiple Occupation (HMO) for more than six people and one flat. AND
Without planning permission, the installation of a hard surface to the front garden of the premises, the erection of single and two storey side and rear extensions, and hip to gable and rear dormer roof extensions to the premises.
 - The requirements of Notice A are:
STEP 1 - Cease the use of the premises as a House in Multiple Occupation (HMO) and flats and its occupation by more than ONE household.
STEP 2 - Remove all kitchens and cooking facilities, except ONE, and remove all bathrooms, except TWO, from the premises and remove all other items associated with the unauthorised change of use from the premises.
STEP 3 - Remove the hard surface from the front garden of the premises and plant a soft landscaping where the hard surface formerly stood.
STEP 4 - Demolish the single and two storey side and rear extensions and hip to gable and rear dormer roof extensions.
STEP 5 - Remove all items, debris, fixtures and fittings associated with these works from the premises.
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Appeal B: APP/T5150/C/17/3178977 (Notice B)

- The breach of planning control as alleged in Notice B is without planning permission, the erection of a building in the rear garden of the premises.
- The requirements of Notice B are:
STEP 1 - Demolish the unauthorised building in the rear garden of the premises.
STEP 2 - Remove all 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 of each notice is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a),(c),(f)&(g) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a) applications for planning permission are deemed to have been made under s177(5) of the Act.

Summary of Decisions:

Appeal A: The appeal is allowed in part and is dismissed in part.

Appeal B: The appeal is allowed on ground (a).

Preliminary Matters

1. The appeals relate to two separate enforcement notices issued in respect of the same site. For that reason the appeals are linked.
2. Notification of Appeal B was not issued by the Council until 8 February 2018. By that time, third parties had already made representations in relation to that appeal prompted by the earlier notice of appeal for Appeal A. Therefore, it is clear that no prejudice was caused by the late notification.
3. Prior to the Hearing, the appellant flagged up that he had not received the Council's Statement of Case for Appeal B. His final written comments were submitted at the Hearing. I have taken those comments into account.
4. It became evident at the site visit that there are in fact two self-contained flats within the property and not one as alleged in Notice A. Both parties agreed that was so. Aside from a ground floor flat, there is another flat on the first floor containing a kitchenette with integrated oven, hob, sink/drain, fridge/freezer, washing machine and kitchen cupboards. It has en-suite facilities with shower, toilet and washbasin. The Hearing remained open during the site visit. The appellant's agent confirmed that no injustice would be caused to the appellant by correction of the notice to allege a material change of use to a House in Multiple Occupation (HMO) and two flats. No injustice would arise to the Council.
5. Neither notice sets out the relevant period for immunity from enforcement action. Where the notices are directed at operational development and a change of use to a flat, no enforcement action may be taken after the end of 4 years. A 10 year period applies to a HMO as it is not a single dwellinghouse. The appellant has not sought to argue that any part of the development attacked by the notices is immune from enforcement action through the passage of time. By the appellant's own evidence the operational development was not substantially complete until 2016 and the change of use commenced afterwards. Thus, there can be no question of immunity from enforcement action and the absence of specified immunity periods makes no difference.
6. It is not argued that the hard surface attacked in Notice A is permitted development and so arguments brought under ground (c) that the hard surface was pre-existing are more pertinent to ground (b). This applies when the breach of control alleged in the notice has not occurred. The Council has replied to the submissions made and so no prejudice arises from me dealing with these arguments as though made under ground (b).

Background

7. No. 113 Tokyngton Avenue is a two storey end of terrace house with associated garden. The house has been extended by the erection of single and two storey side and rear extensions and a hip to gable and rear dormer roof extensions. An outbuilding has been erected in the rearmost part of the garden. The front garden is partially hard surfaced. The enforcement notices are directed at all of these operations along with the change of use of the main dwelling to a large HMO, being a *sui generis*¹ use.

¹ Meaning of 'of its kind' when no use classes or category fits.

Appeal A – ground (b)

8. The appellant submits that the hard surface already existed and formed the access/drive for a garage which has since been demolished. To support this stance the appellant relies upon a photograph in the estate agent's particulars from when the appellant acquired the property in 2006.
9. Prior to the construction of the side/rear extension there was a garage with a driveway leading down the side of the house. This cannot be the same hardstanding as currently exists because they cover different areas despite some overlap. The photograph shows there was planted garden to the side of the steps to the front door which is now hard surfaced.
10. I find as a matter of fact that the installation of a hard surface to the front garden of the premises, as alleged, has occurred. The ground (b) appeal fails.

Appeals A and B - ground (c)

11. The appeals on this ground are that the matters alleged in the notice do not constitute a breach of planning control. The ground (c) appeals are brought solely in relation to the building operations at the appeal site.
12. The onus is on the appellant under this ground of appeal to make out the case that there has not been a breach of planning control. Ground (c) is known as one the legal grounds of appeal where case law indicates that the evidence of the appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground.
13. Thus, the onus is on the appellant in the first instance to give sufficiently precise and unambiguous evidence, even if uncorroborated.
14. The appellant maintains that all elements of the operational development consisting of the construction of hardstanding, roof extension and side/rear extensions have been approved by the Council and the outbuilding constitutes permitted development.

Appeal A - The extensions

15. The Council has issued three decisions in relation to development at the appeal site which are pertinent to this appeal. By a decision notice dated 22 May 2015 (ref:15/1519) the Council confirmed that prior approval was not required for a *single storey rear extension*. A certificate of lawfulness of proposed development (LDC) was issued on 22 June 2015 (ref 15/1517) for the *proposed erection of a hip to gable end roof extension, rear dormer window and insertion of one window to side elevation and two roof lights to front elevation of dwellinghouse*. Planning permission was granted (ref: 15/2930) on 2 October 2015 for the *demolition of detached garage and erection of a two storey side and rear extension, single storey side and rear extensions and a front porch to dwellinghouse*.
16. The existing plans for each showed the dwelling in its un-extended form as none of the proposals had at that time been implemented. The Council's consideration of each application resulted in three separate and distinct decisions which, as things stood, would allow those developments to proceed.

Notwithstanding the three separate Council decisions, the situation must be judged at the date the development was carried out; normally the date the works commenced.

17. To establish if the extensions have planning permission, an important point is whether there was one or more building operation. If works are undertaken contemporaneously, the development as a whole must be looked at. It is not possible to split the works into different components on the basis that part is permitted development and another part has express planning permission etc. if there is one building operation. That could occur only if there were different operations each substantially complete before starting another.
18. This principle was also addressed in an Appeal Decision² dated 14 August 2017. In that case a LDC was refused when the proposed development had already commenced before completing the extension to which it was attached and for which planning permission had been obtained. In consequence there was a single building operation rather than construction of two separate extensions.
19. The appellant acknowledges that the side/rear extensions were undertaken at the same time and comprise works shown in two separate applications; one made under the prior notification procedure and the other for express planning permission. By combining the schemes, the development carried out is not that for which planning permission has been granted and it also falls outside the scope of permitted development. The appellant's argument that the end result is the same may be relevant as a fallback position when considering the ground (a) appeal, but the fact remains that there is no planning permission for the extension built as a single operation. As such, this part of the development is unlawful.
20. The appellant produced a photograph showing the completed hip to gable extension and roof dormer without the other extensions. The Council conceded that those works for which the LDC was issued must have been undertaken as a separate building operation prior to commencement of the other extensions.
21. Permitted development rights relate only to lawful uses. For the roof extension to be lawful, the property must have been a single dwellinghouse when the operations were undertaken. The appellant submits that the roof extension was substantially complete by October 2015 and the property remained in use as a single dwelling until the change of use to a HMO/flats in November 2016.
22. This is uncorroborated. The appellant produced a drawing to illustrate the 'floor layout of the multi-occupancy use'. The elevations shown on that plan correspond with the property as it now exists with all of the extensions. Notably, the drawing is dated 'Sept 2015' and is titled 'Design proposal – multiple occupation floor plans and elevations'. If the roof extension is integral to the unlawful HMO/flats use and was undertaken solely to facilitate that use then it is legitimate for the notice to require its removal.
23. The drawing evidences that the appellant intended in September 2015 to create a HMO by extending the property. If the works were completed soon after as a separate building operation as the appellant claims, it is plausible they were done in connection with the use as a single dwelling rather than solely to facilitate a HMO use which contemplated all the extensions together.

² Appeal ref: APP/Y3615/X/17/3166958

24. There is no contrary evidence that the property was anything other than a single dwelling at the time the roof extension was complete. On balance, I am satisfied that the main roof extensions were constructed lawfully.

Appeal A - The hard surface

25. When planning permission was granted for the extensions in 2015 the block plan identified a rectangular shaped area by broken lines at the front of the property which is annotated 'car space'. Condition 4 of the permission says 'The existing balance of hard and soft landscape in the front garden as indicated on the approved block plan shall be retained'. No other mention is made within the permission of the construction of a hardstanding. The condition suggests that the front garden was to be as existing. If permission was being granted for a new hard surface as part of the development, it might be anticipated that there would be some indication of the materials.
26. In any event, the car park space is shown set away from the path to the front door. The photograph in the estate agents particulars from 2006 shows soft landscaping between the path and drive. The appellant claimed that the frontage was unchanged apart from some works to the front boundary where bins are now stored. Therefore, it appears that the existing soft landscaping mentioned in Condition 4 included an area which is now hard surfaced. Whilst the hard surface covers the area denoted on the block plan as a car park space, it also includes a larger area.
27. I am not satisfied that express planning permission was granted for the car park space. Even if it were, the approved block plan does not correspond with the hard surface as built. I conclude that the hard surface does not benefit from planning permission.

Appeal B - The outbuilding

28. The outbuilding is located at the end of the rear garden. It contains two relatively small rooms plus a shower room with shower, toilet and washbasin.
29. By virtue of the provisions of Article 3(1) and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') development is permitted for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
30. The parties agree that the outbuilding does not conflict with any of the limitations within paragraph E.1. of Class E. They disagree on whether the outbuilding was provided for a purpose incidental to the enjoyment of the dwelling at No 113 as such. It is the purpose for which the outbuilding was provided that is pertinent rather than any different use that may have taken place by the time of issue of the notice or thereafter.
31. The Court in *Emin v SSE*³ held that the term 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. The test to be applied is whether, in the context of the planning unit, *"the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse."* In taking that approach, regard is to be had to the proposed use and to the nature and scale

³ *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, 58 P&CR

- of that use. It was held that the arbiter of the facts will need to concern himself with the nature of the activities carried on in the building so as to ensure that they are incidental or conducive to the very condition of living in the dwelling house and, in that sense, further that condition.
32. It is clear from *Emin* that it should be established whether the provision of the building was genuinely or reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
33. In addition, the Technical Guidance on 'Permitted development rights for householders'⁴ advises that a purpose incidental to a house would not cover "normal residential uses such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen."
34. The appellant maintains that the outbuilding was substantially complete in April 2016. Photographs from the Council Officer's site inspection show that it was clearly not in use in July 2016 with internal works unfinished.
35. The appellant's account of the use and intended purpose of the outbuilding is somewhat contradictory. In April 2017 the appellant stated in an email to the Council that the "building is used for storing furniture as well as for Gym".
36. At the Hearing the appellant explained that he had intended to use one room in the outbuilding as a music room for his son who plays the drums and trumpet and the other room for household storage. If that were so, the shower room was not ancillary to either of those purposes. It would be a use in its own right being primary living accommodation. The appellant said that the outbuilding was used as a music room for a short time, but personal circumstances changed and the outbuilding became used as a gym and storage.
37. The appellant suggests that the use is no different than an incidental swimming pool with bathroom. A gym might feasibly have shower facilities and unlike the Appeal Decision for 16 Priory Gardens⁵, the outbuilding is some distance from the house. However, the layout is confined for use as a gym where one larger room might be expected to give more space. Furthermore, none of this explains the inclusion of what appears to be a partially built kitchen.
38. Photographs taken by Council Officers on 27 April 2017 show the completed building albeit that internal works still appear to be ongoing. Items of furniture can be seen stored including mattresses leant up against walls and chests of drawers. At first glance this is consistent with the appellant's stated use except those photographs also show an area with a fridge, a dishwasher and pipework for a washing machine and a wall mounted boiler. There is a row of spotlights in the ceiling above. The layout, fittings and appliances are highly indicative of a kitchen.
39. It was contended at the Hearing that the fridge was used by the builders during construction works. They may have used the fridge, but it seems unlikely to have been provided for that use alone. Whilst the room was not a kitchen when I visited, a washing machine was plumbed in and the fridge remains.

⁴ Published by the Department for Communities and Local Government. The current version is dated April 2017. The same wording quoted was contained in the earlier 2014 and 2016 versions.

⁵ Appeal ref: APP/T5150/X/15/3139823 dated 19 July 2016 where an application for a Lawful Development Certificate under Class E was refused.

40. Class E does not include a building which is designed from the start as primary residential accommodation. The bare facts are that the building has a shower room and there appeared to be a kitchen in the process of being fitted out along with a separate room containing items of bedroom furniture. All of these factors point firmly towards a building constructed for the purposes of primary residential accommodation.
41. Added to that, the appellant's evidence over the intended use has been contradictory. He has not provided any satisfactory explanation to persuade me that the building was provided for incidental purposes rather than for use as primary living accommodation.
42. Third parties suggest that someone was living in the outbuilding. This is refuted by the appellant. Without further details from those people on how that view was formed, their assertions carry little weight. Regardless of whether or not the outbuilding was used as a separate dwelling, it would still fall outside the scope of Class E where built for primary living accommodation.
43. The appellant has not discharged the burden of proof to demonstrate on the balance of probabilities that the building falls within Class E(a) of Part 1 of Schedule 2 of the GPDO. Accordingly, I am not satisfied it is permitted development.

Conclusions on ground (c)

Appeal A

44. I conclude that the hip to gable and rear dormer roof extensions do not constitute a breach of planning control. To this extent the appeal on ground (c) succeeds and the notice shall be corrected by deletion of those references.
45. The installation of a hard surface to the front garden of the premises and the erection of single and two storey side and rear extensions as alleged in the notice all constitute a breach of planning control. In these respects the appeal on ground (c) fails.

Appeal B

46. I conclude that the erection of a building in the rear garden of the premises as alleged in the notice constitutes a breach of planning control. The ground (c) appeal fails.

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

Main Issues

47. The main issues are:-

Change of use

- whether the change of use provides a satisfactory standard of accommodation having regard to the intensity of the use of the premises, outdoor garden space, accessibility and bin and cycle storage facilities;
- the effect on family sized housing provision within the Borough;

- the effect on the living conditions of neighbouring occupiers in terms of noise and disturbance; and
- the effect on parking in the area.

Extensions & hard surfacing

- the effect of the extensions on the character and appearance of the host dwelling and the surrounding area;
- the effect of the side/rear extensions on the living conditions of neighbouring occupiers with particular reference to daylight/sunlight and outlook; and
- the effect of the hard surface on flood risk.

Reasons

Standard of accommodation

48. The Council confirmed that it has no policies with specific space standards for HMO's. Its concern in this regard was said to be confined to the flat. I take it that the same concerns apply to the second flat which is smaller than the first originally identified. The arguments presented by both parties could apply equally to both flats and I shall deal with them accordingly.
49. In its reasons for issuing the enforcement notice, the Council has cited Policy DMP 16 of its Development Management Policies (DMP) document, 2016. This policy identifies the circumstances in which development resulting in a net loss of residential units will be supported. As there is no net loss, this policy does not appear to have direct relevance in this instance.
50. It is DPD Policy DMP 18 that states the size of dwellings should be consistent with London Plan Policy 3.5 Table 3.3 which provides minimum space standards for new dwellings. These standards provide that for a 1 bedroom, 1 person flat the minimum gross internal area is 37sqm where the dwelling has a shower room. For a 2 person flat the minimum gross internal area increases to 50sqm. The London Plan is more recent and carries more weight than the Council's adopted Design Guide for New Development Supplementary Planning Guidance (SPG 17), 2001. The SPG guides a minimum unit size of 33sqm and 45sqm for a 1 and 2 person studio flat, respectively.
51. The HMO Licence records the floor area of each 'room', the largest being 20.19sqm. It identifies the rooms which are flats as suitable for 2 persons. Even if the flats are occupied by 1 person only, they still fall well beneath the minimum floor space requirements of both the London Plan and SPG.
52. The issue of the HMO Licence does not mean that the flats meet appropriate space standards for planning purposes. They are separate regimes.
53. Whilst the quality of the flats in terms of their condition and fittings appears to be high, the limited amount of space within each flat does constitute substandard accommodation. Whilst the occupants could use the large shared kitchen, there would be no reason for them to do so when there are cooking facilities within each flat. There is a shared ground floor dining room, but it is not particularly spacious for the number of potential habitants. The availability

of shared space does not offset the shortage of internal space within the flats to provide appropriate living conditions.

54. Externally, there is a large garden laid to lawn between the house and outbuilding. The Council clarified that its concern is the lack of separate space for the flat. It was accepted that feasibly part of the rear garden could be segregated for the exclusive use of the ground floor flat. However, it would be uncharacteristic of the area if this garden were to be sub-divided when others in the row are not. The situation would be compounded if more garden space was sectioned off to provide a separate external area for the second flat.
55. The Council's SPG 17 guides that family housing should normally have a minimum of 50sqm of external open space and a minimum of 20sqm should normally be provided for each flat. At over 135sqm⁶, the amount of garden space comfortably exceeds the minimum threshold normally expected for residential accommodation. SPG 17 does not require separate areas for each residential unit and it is not uncommon for flats to have communal garden space. To my mind, the rear garden provides a sufficient quantity of external space in its undivided state to meet the reasonable needs of all the occupants. A planning condition could ensure appropriate landscaping is retained.
56. In terms of accessibility, the Council's concern was the need to walk through the property to access the flat. Contrary to the Council's belief, the ground floor flat is accessed off the internal hallway without walking through other accommodation. The entrance to the first floor flat is at the top of the stairs. This is a typical arrangement for flats and no harm arises over accessibility.
57. There is a designated bin storage area at the front of the property for 3 bins. The front garden is large enough for secure cycle storage to be provided. The Council agreed that these issues are capable of being addressed by condition.
58. On the first main issue, I conclude that the change of use does not provide a satisfactory standard of accommodation with regard to the self-contained flats as they do not meet the space standards referenced in DMP 18 and Policy 3.5 of the London Plan. Thus, they do not provide the high levels of internal amenity sought by DPD Policy DMP 1. There is also conflict with Paragraph 17 of the National Planning Policy Framework (the Framework) which, amongst other things, promotes a good standard of amenity for all existing and future occupants of land and buildings. There is no policy conflict regarding accessibility. Subject to the imposition of conditions, I find no harm in relation to outdoor space provision or bin/cycle storage. Nevertheless, these factors do not negate the fact that the change of use is nevertheless harmful in relation to the size of the flats.

Family sized housing provision

59. The Council's concern is over the loss of a single family dwelling. Whilst the appellant described the property as formerly a 4 bedroom house, the LDC application identified 3 bedrooms. It appears that a dining room had been used as a bedroom. The property clearly had at least 3 bedrooms plus accommodation in the loft space after the roof extension.
60. Policy CP 21 of the London Borough of Brent Core Strategy (CS), 2010 seeks to maintain and provide a balanced housing stock in Brent by protecting existing

⁶ Figure provided by the appellant which was not contested by the Council.

accommodation that meets known needs and by ensuring that new housing appropriately contributes towards the wide range of borough household needs. This is expressed to include an appropriate range and mix of self-contained types and sizes including family sized accommodation capable of providing three or more bedrooms. It also includes non-self contained accommodation to meet identified needs. The supporting text suggests that Brent's housing stock is inadequate to satisfactorily accommodate the Borough's disproportionately larger households and refers to an historical shortage of family-sized accommodation.

61. Again, the Council cites DPD Policy DMP 16 which includes references to sub-standard units and the proposed loss of housing, but does so in the context of development resulting in the net loss of residential units. It does not appear relevant as there is no reduction in residential units.
62. It is DMP 17 that deals with the conversion of family sized dwellings. The appellant considers this policy to also be irrelevant suggesting that it does not concern multiple occupation of dwellings. In my view, DMP 17 is engaged because it is targeted at maintaining family sized homes of 3 bedrooms or more exceeding 130sqm, such as this. The policy specifies the circumstances in which the conversion to 2 or more dwellings will be allowed. Here, there has been conversion to an HMO and two self-contained flats resulting in more than one dwelling. No case was brought under ground (b) to argue that the allegation was wrong and that a single dwelling remains.
63. The conversion has not resulted in at least a 3 bedroom dwelling to accord with DMP 17. There is no suggestion that the amenity of the dwelling prior to its conversion was so deficient for a policy exception to apply.
64. The appeal property has the benefit of a HMO Licence granted by the Council for occupation by up to 12 people. Notwithstanding this, no evidence has been submitted to show how the change of use to a HMO and flats contributes to the Council's housing needs in preference to a retained use as a single family home which policy seeks to protect to meet known needs.
65. Thus, the change of use has resulted in the loss of a family sized dwelling contrary to DPD Policy DMP 17 and CS Policy CP 21.

Noise and disturbance

66. By definition a large HMO accommodates more than six people. The HMO Licence issued under the Housing Act 2004 relates to the premises as a whole including the flats. The overall occupancy of the property is restricted to a maximum of 12 persons.
67. Inevitably, the comings and goings and activities of such a large number of people living under one roof will generate noise and disturbance. When that use is as intensive as a large HMO with studio flats, there is scope for unreasonable levels of noise and disturbance to be caused with so many people living in close proximity and going about their individual daily business.
68. A single dwelling is capable of being occupied by a very large family, but it is unlikely that there would be 12 adults. A single household is likely to spend time together, sharing tasks and behaving as a family unit. Whereas activities are repeated many times over with a HMO/flats. Noise is more likely to

emanate from televisions, music and suchlike from what could be numerous rooms especially as people may spend long periods in their one room.

69. A planning condition restricting the number of occupants would be neither reasonable nor enforceable.
70. I consider that the high intensity of residential use of this end terrace house will have an unacceptable detrimental effect on the living conditions of neighbouring occupiers in terms of noise and disturbance. As such the change of use is contrary to DPD Policy DMP 1 which seeks, among other things, development that does not unacceptably increase exposure to noise and Paragraph 17 of the Framework insofar as it seeks to protect living conditions.

Parking

71. DPD Policy DMP 12 states that developments should provide parking consistent with parking standards appended. No distinction is made between a HMO and flats. The Council calculates that 2 parking spaces should be provided based upon 1 space for a flat and 1.5 spaces for a HMO. As there are in fact 2 flats, the standards require a total of 3 spaces. Only 1 space is provided. There is space within the frontage for further parking, but this would diminish the amount of soft landscaping to detrimental visual effect bringing conflict with DMP 12 which seeks 50% coverage of soft landscaping in front gardens.
72. The parties disagree on whether the occupants of a HMO are more likely to have greater car use than a single family unit. It is possible that the occupants of a HMO may be less likely to afford a car. There is no information to indicate either way.
73. Many of the dwellings in Tokyngton Avenue have parking provision within their front garden. The road is not far from Wembley stadium and parking restrictions apply on event days only. According to the Council commuters will park in the road and use the nearby Tube station. If this occurs, it is most likely to be during working hours. On the occasions that I travelled along the road, it was busy with parked cars, but there were spaces available.
74. The parties agreed that there are good public transport links being close to the Tube and bus stops. It is also within walking distance of shops and facilities.
75. In the circumstances, I am unpersuaded that the development places additional pressure on parking in the area contrary to DPD Policy DMP 1 which requires development to be satisfactory in terms of parking, amongst other matters or that any harm arises from non-compliance with the standards in Policy DMP 12 as aforesaid.

Character and appearance

76. Tokynton Avenue is a very long residential road. It is composed predominantly of terraced two storey houses of traditional appearance many of which feature bay windows and/or porches. Most are finished in painted render including the appeal property. Various additions and alterations are apparent along the street and there is no one discernible style of architecture. The properties have front gardens. Those in the same and neighbouring terraces as No 113 have long rear gardens.

77. Within this terrace a couple of the houses, including adjoining No 115 have a distinctive projecting gabled front. In common with the appeal property, the other end terrace has a hip to gable extension with rear roof dormer. In addition, No 113 has a large porch along with single and two storey side extensions. The two storey extension is stepped down from the main roof. Aside from its rather awkward relationship with the neighbouring single storey side extension arising from their angled and close proximity, the additions harmonise relatively well with the host dwelling when viewed from the front.
78. At the rear, the position is altogether different. The combination of roof dormer with two storey hipped roof extension and full width single storey extension causes the property to be dominated by the additions. Only a small part of the original rear elevation remains in view. They do not integrate well as a whole appearing somewhat haphazard. The overall effect does not represent good design. I saw no other properties with such an array of extensions. Collectively, they neither complement the host dwelling nor the locality.
79. The appellant argues that the same outcome could be achieved by implementing the 2015 planning permission and the prior approval scheme separately. That is incorrect. The prior approval was for a full width single storey rear extension. It would have ended midway into what is now the kitchen of the 2015 permission. There is an overlap and what has been built is a mix of the two schemes with different fenestration at ground floor level. Neither scheme could proceed without demolishing another part of the development. The two storey extension has been adjoined to the roof dormer which would require removal to implement the 2015 planning permission.
80. Thus, the fallback position would mean a lesser form of development which would not be as harmful as the development now built. The three Council decisions could not be implemented separately to achieve the same outcome.
81. I conclude that the combination of the two and single storey extensions have a significant adverse effect on the character and appearance of the host dwelling and the surrounding area. As such they are contrary to DPD Policy DMP 1 and CS Policy CP 17 which seek to protect the character of the area and safeguard against inappropriate development. There is also conflict with the provisions within Paragraphs 17, 56 and 58 of the Framework for high quality design.

Daylight/sunlight & outlook

82. The appeal property is adjoined to No 115 which has patio style doors at the rear near to the shared boundary. The single storey extension is built up to the boundary. This element has a flat roof and it is not of such a height or depth to cause an unreasonable reduction in sunlight or daylight to the neighbouring ground floor windows. Bearing in mind that a single storey rear extension of the same height and projection could have been built as permitted development following the Council's prior approval decision on 22 May 2015, there appears to be no greater impact arising from the development as built.
83. There is a first floor window in the gable end of the dwelling at No. 111 which directly faces the two storey side extension at the appeal property. The appellant referred to the issue of prior approval for an extension at No. 111 which would result in removal of this window. There is no guarantee that any such development would be implemented. Nevertheless, whilst views of a wall

will not be attractive, there is unlikely to be an overbearing effect on occupiers given the separation distance between the window and two storey addition. Indeed, in deciding to grant planning permission for a two storey side and rear extension at the appeal property in 2015, a similar separation distance was considered to suffice.

84. I find no material harm to the living conditions of neighbouring occupiers with particular reference to daylight/sunlight and outlook to cause conflict with DPD Policy DMP 1 or Paragraph 17 of the Framework.

Hard surfacing & flood risk

85. DPD Policy DMP 12 requires off-street parking to have a permeable surface. The Council confirmed that its concern arises from the absence of on-site drainage for the hardstanding. It was agreed at the Hearing that this is capable of being addressed by the imposition of a planning condition. There is no reason to withhold planning permission for this part of the development as it is severable from the remainder.

Conclusion on ground (a) - Notice A

86. Although I have found no harm from the change of use with regard to accessibility, garden provision, parking and bin and cycle storage this does not alter the fact that the development is harmful due to the unsatisfactory standard of accommodation of the flats, the loss of a single family dwelling and the effect on the living conditions of neighbouring occupiers from noise and disturbance.
87. I have found no harm from the extensions to the neighbouring living conditions, but harm is nevertheless caused to the character and appearance of the host dwelling and the surrounding area.
88. Subject to the imposition of a condition concerning drainage, no harm arises from the hard surfacing for which planning permission should be granted.

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

Main issues

89. The Council describes the outbuilding as 'unsightly' for neighbours, but there is no right to a view as a matter of law. Therefore, the main issues are:-
- the effect of the building on the character and appearance of the surrounding area;
 - whether adequate garden space remains; and
 - the effect on the living conditions of neighbouring occupiers in terms of noise and disturbance.

Reasons

Character and appearance

90. The outbuilding is a single storey structure with flat roof of simple architectural design and finished in painted render. It is located in the rearmost part of the garden. There are allotments behind the rear gardens of

this and neighbouring properties in Tokynton Avenue where there are an assortment of sheds and other structures of temporary appearance.

91. Ground levels slope upwards from the houses towards the rear of the gardens. The rear garden of No 113 has been excavated and levelled so that the garden is at two levels. The outbuilding is built approximately 1m below the previous ground level. During the Hearing the Council suggested that those works would have constituted unlawful engineering works, but there is no such allegation within the notice.
92. The Council has drawn my attention to an Appeal Decision for 35 Byron Avenue⁷. In that case a ground (a) appeal was dismissed and the enforcement notice upheld for an outbuilding that failed to make a positive contribution towards the character of the area in circumstances where there were other large outbuildings in the immediate area. The size and position of the outbuilding was found to dominate its residential garden setting.
93. That does not occur in this case because the outbuilding is at the end of a very long garden. It does not fill the full width of the plot and is not disproportionately large in comparison to either its plot or the house. In the context of a number of other outbuildings in the vicinity including ones of similar or larger scale, it does not appear out of place in the setting. Whilst the topography means that the outbuilding is located at the highest point of the garden, the impact has been offset by the lowered ground level.
94. I find no material adverse harm from the outbuilding on the character and appearance of the surrounding area to cause conflict with CS Policy CP 17 and DPD Policy DMP1 which seek to protect the character of the area. Nor do I find conflict with the similar aim of Paragraph 58 of the Framework.

Garden space provision

95. As previously established, there remains a reasonable amount of garden space to accord with the Council's outdoor space criteria within SPG 17.

Living conditions – noise and disturbance

96. The enforcement notice has been issued for the erection of a building and not its use. The actual use to which the building has been put is unclear. The Council acknowledged that the level of noise and disturbance depends on the use of the outbuilding. The notice indicates that the use at the time of its issue was for landlord storage associated with the management of the HMO. That is consistent with the apparent use at the time of my visit.
97. A storage use is unlikely by its very nature to give rise to legitimate concern over noise and disturbance. Even if it is used as a gym as suggested, it is difficult to see that the level and type of use would present unreasonable disturbance of neighbours. The outbuilding is some distance away from neighbouring dwellings. In isolation, the comings and goings between the house and outbuilding are unlikely to cause unreasonable levels of noise and disturbance to neighbours.
98. The Council suspects that the building was intended to be used as a separate dwelling and fears that this may occur. Possible future use of the outbuilding

⁷ Appeal ref: APP/T5150/C/14/2223430 dated 24 June 2015

as an independent unit of accommodation is not a justifiable planning reason for refusal when that is not the development to which the deemed planning application relates. If the Council's fears were realised and there was a material change of use of the building then there would be a further breach of planning control for which the Council has powers to action. That scenario could also be prevented by a condition confining its use to purposes incidental to the dwelling and requiring removal of facilities found within primary residential accommodation.

99. Subject to the use being restricted by condition to incidental purposes, I find no adverse effect on neighbouring living conditions from use of the outbuilding to cause conflict with DPD Policy DMP 1 and Paragraph 17 of the Framework. The Council's reference to DMP 12 is erroneous in this context as that policy concerns parking.

Appeals A & B

Conclusion on ground (a) and the deemed planning applications

100. For the reasons given above, and having had regard to all other matters raised, I conclude the following:

Notice A

101. The appeal on ground (a) and the application for deemed planning permission should succeed in part. Planning permission will be granted for the hard surface subject to conditions, but refused for the change of use to a HMO and flats and for the erection of single and two storey side and rear extensions.

Notice B

102. The appeal on ground (a) and the application for deemed planning permission should succeed. It follows that the appeals on ground (f) and (g) do not fall to be considered.

Conditions

103. The Council produced a list of conditions at the Hearing on which a discussion took place. I have considered those conditions in accordance with Paragraph 206 of the Framework and the national Planning Practice Guidance.
104. As set out above, the grant of planning permission for the hard surface should be subject to a condition for the provision of drainage facility. To achieve compliance with DPD Policy DMP 12 a condition is required to ensure the retention of the soft landscaping to the frontage.
105. In terms of the outbuilding, a condition is necessary and reasonable to ensure that the outbuilding is used for purposes incidental to the dwelling only. As my findings on ground (c) are based upon the inclusion of bathroom and some kitchen facilities, it is appropriate that these should be removed. Removal of internal walls is also reasonable to prevent the use as a separate dwelling. Had the outbuilding been constructed lawfully under Class E, there would have been no requirement for it to be screened by landscaping and there is no justification for it now.

Appeal A - ground (f)

106. The ground of appeal is that the steps required by the notice to be taken are excessive. Since the roof extension and hardstanding have succeeded on ground (c) and (a) respectively the ground (f) appeal proceeds in relation to the side and rear extensions and change of use only.
107. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
108. The enforcement notice indicates in the heading of Schedule 4 that it intends to remedy the breach of planning control. The Council confirmed this to be its intention.
109. The appellant considers the steps to be punitive, but given that the notice does no more than seek to achieve the purposes of section 173(4)(a), it is not excessive.
110. The appellant's arguments with regard to the side and rear extensions are effectively a reiteration of the fallback position made under ground (a) relating to the separate decisions issued by the Council. In essence it is an argument on the planning merits which has been considered already under ground (a) rather than a lesser step. It is not excessive to require removal of more than two bathrooms as they facilitate the breach of planning control.
111. At the Hearing a discussion took place over whether an obvious alternative to complete demolition of the extensions would be to allow the appellant the option of modifying the development to comply with the 2015 planning permission which remains extant. However, it became evident on site that the two storey extension is joined to the roof extension and so the 2015 permission could not be built out without removing the roof extension.
112. As permitted development rights not apply retrospectively there is no lesser step that could be taken to retain a single storey extension as shown in the prior approval plans.
113. A material change of use from a *sui generis* HMO/flats to a small HMO under Class C4 of the UCO is not permitted development. For there to be a lawful change of use from a Class C3 dwellinghouse to Class C4⁸ the property would firstly need to comply with the notice to revert back to a single dwellinghouse.
114. It is also suggested that the requirements could be varied to limit the number of occupiers to 12. By this I take it that the appellant means that the steps would require the use as a HMO ceases for more than 12 people. The effect of such approach would be to grant an unconditional planning permission for a HMO accommodating up to 12 people. That is because the provisions of section 173(11) specify that where an enforcement notice could have required any activity to cease, but does not do so, then planning permission shall be treated as having been granted by virtue of section 73A once all the requirements of the notice have been complied with.

⁸ under Article 3(1) and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015.

115. I have already considered under ground (a) whether a condition could be imposed to place a limit on occupation. I have found that a condition would not be reasonable or enforceable nor would it address the planning harm.
116. Consequently, there is no obvious alternative scheme that would overcome the planning difficulties. I consider that the requirements of Notice A do not exceed what is necessary to remedy the breach. Nothing in the requirements prevent the appellant from doing what he is lawfully entitled to do in the future after he has complied with the notice. The appeal on ground (f) fails.

Appeal A - ground (g)

117. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. Instead of 3 months, the appellant seeks 9 months to comply with all the requirements of the notice.
118. The existing occupiers would need to find alternative accommodation, but the appellant revealed at the Hearing that the contracts can be terminated on 28 days' notice. The appellant confirmed that there are no children or other occupiers who might suffer undue hardship unless eviction is delayed. It may become the responsibility of the Council to re-home individuals, but that in itself does not give reason to prolong the compliance period.
119. The appellant cites financial reasons for needing longer than 3 months. The appellant may well have spent considerable sums on the conversion works, but a vague assertion without any supporting information is not enough to persuade me that more than 3 months is justified.
120. As a consequence of the partial success of the appeals, there are less cumulative impacts than if the notices had been upheld in their entirety. There is nothing before me to suggest that securing a contractor to undertake the various works required within 3 months will be problematic.
121. The appeal on ground (g) fails.

Formal Decisions

Appeal A (Notice A)

122. It is directed that the enforcement notice be corrected by:
- (i) deleting the words "one flat" from the allegation in Schedule 2 and substituting the words "two flats".
 - (ii) deleting the second allegation in Schedule 2 and substituting the words "Without planning permission, the installation of a hard surface to the front garden of the premises and the erection of single and two storey side and rear extensions to the premises."
 - (iii) deleting the words "and hip to gable and rear dormer roof extensions" from STEP 4 of Schedule 4.
123. Subject to those corrections the appeal is allowed on ground (a) insofar as it relates to the installation of a hard surface to the front garden of the premises. Planning permission is granted 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 installation of a hard surface to the front garden of the premises at 113 Tokynton Avenue, Wembley HA9 6HA subject to the conditions set out in Schedule A at the end of this Decision.

124. The appeal is dismissed in respect of the remaining part of the development for the material change of use of the dwellinghouse from a single family dwelling to a House in Multiple Occupation (HMO) for more than six people and two flats and the erection of single and two storey side and rear extensions to the premises.
125. The enforcement notice is upheld as corrected and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the material change of use of the dwellinghouse from a single family dwelling to a House in Multiple Occupation (HMO) for more than six people and two flats and the erection of single and two storey side and rear extensions to the premises.

Appeal B (Notice B)

126. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building in the rear garden of the premises on land at 113 Tokynton Avenue, Wembley HA9 6HA referred to in the notice, subject to conditions set out in Schedule B at the end of this Decision.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sucha Singh Basuta

Planning consultant

P S Logan

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Scott Davies

Deputy Planning Enforcement Manager

Michael Wood

Senior Planning Enforcement Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Notification of Hearing (Appeal A)
2. Council's list of draft conditions
3. Appellant's final comments on the Council's statement of case (Appeal B)
4. Lawful Development Certificate ref 05/12/2017 dated 30/01/2018 for No 115 Tokyngton Avenue
5. Prior approval application No. 17/4520 dated 4 December 2017 for No 115 Tokyngton Avenue

Schedule A – Conditions relating to APP/T5150/C/17/3178973 (Notice A)

- 1) The hard surface hereby permitted shall be removed and all materials resulting therefrom shall be removed from the premises within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision details of a scheme for surface water drainage of the hard surface shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Soft landscaping shall be retained in the front garden to provide no less than the existing coverage.

Schedule B – Conditions relating to APP/T5150/C/17/3178977 (Notice B)

- 1) The building hereby permitted shall only be used for purposes incidental to the enjoyment of the dwellinghouse as such known as 113 Tokynton Avenue, Wembley HA9 6HA.
- 2) Unless within 6 months of the date of this decision all bathroom and kitchen facilities (including associated plumbing and fittings) and internal walls shall have been removed from the development hereby permitted, the building shall be demolished and all items and debris arising from the demolition and all materials brought onto the land for the purposes of its use shall be removed from the premises.

-END-