
Appeals Decision

Site visit made on 4 July 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 19 July 2019

Appeal Refs: APP/Z5060/C/18/3207913 & 3207914 233 Stamford Street, Dagenham RM9 4EJ

- 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 Osaro Richards and Mr Osaro Aiyamenkhue against an enforcement notice issued by the London Borough of Barking and Dagenham.
 - The enforcement notice, reference 18/00004/NOPERM, was issued on 3 July 2018.
 - The breach of planning control as alleged in the notice is the conversion of the property into 4 independent units of accommodation.
 - The requirements of the notice are as follows:
 - Cease the use of the four independent units of accommodation
 - Revert the premises to a single family dwelling.
 - Remove all alterations and fixtures enabling the conversion to four independent units of residential accommodation.
 - Remove all consequent waste material from the land.
 - The period for compliance with the requirements is 3 months.
 - Appeal 3207913 is proceeding on grounds (a), (d), (f), and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Appeal 3207914 is only proceeding on grounds (d), (f) and (g), since the prescribed fees have not been paid within the specified period. For this appeal the ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. The appeals succeed to a limited degree on ground (g) only. Otherwise the appeals are dismissed and the enforcement is upheld as varied.

Background information

2. The appeals property is a two-storey terraced house located on the south side of Stamford Road, close to its junction with Campsey Road. It is not a listed building and is not within a conservation area. The rear garden backs onto the Monteagle Primary School land to the south-east. The surrounding area is predominantly residential comprising similar sized dwellings. Stamford Road leads into Lodge Avenue (the A1153) to the west and the A13 lies to the south beyond.
3. It is indicated that the property was purchased in May 2002 and, at that time, was being used as a house in multiple occupation (HMO). It is not clear how many people were living in the house but some tenants are stated to have been receiving housing benefit from the Council. In 2007 the appellant (for Appeal A) had moved in to share with a tenant and states that a separate kitchen and bathroom on the ground floor had been created. This must have been in the front ground floor room, now Flat/Studio 1. This is stated to have been in addition to the existing kitchen on the ground floor and the bathroom on the first floor. At a later date, but before 2013, a kitchen and bathroom were created in another of the rooms.

4. It is indicated that the property was renovated in 2013 to its present state of providing 4 separate dwellings. The appellant states that Flats 3 and 4 were rented out in December 2013 and that Flat 1 was rented out shortly afterwards, although this flat is later stated to have been occupied at times by one of the appellants. Flat 2 is also stated to have been kept for the appellant's use on other occasions. However, at the time of my visit the appellant confirmed that he was no longer living in the property. At the time of my visit I noted four separate electricity meters in the internal meter cupboard. The supply had been upgraded to provide 4 supplies around 2015. On 2 October 2015 there is evidence that the electricity supply related to 4 different Account numbers in the name of Mr Brian Richards.

5. At the time of the Council's statement, submitted on the 3 June 2019, the appellants had not provided any evidence relating to the ground (d) appeal. The evidence was submitted late. However, after considering the overall circumstances the evidence was accepted. The appellant then requested that further evidence be allowed to be submitted. However, this was rejected as being out of time with no further justification for its acceptance. There was, however, justification in my view for the appellant's to submit comments on the Council's latest submissions.

6. The Planning Inspectorate Case Officer wrote to the Council asking for their comments on the ground (d) evidence. The appellant has responded to these comments in the final submissions dated 11 July 2019. In reaching my conclusions I have taken into account all of the initial, subsequent and final submissions from the appellant as well as and the Council's response to the appellants' statement and evidence.

Both appeals on ground (d)

7. To be successful on this ground of appeal the onus is on the appellants to conclusively show that the conversion of the property into 4 independent units of accommodation (Flats/studios) took place 4 years or more prior to the issue of the enforcement notice and that all 4 units have been used as such for a continuous four year period. The notice was issued on 3 July 2018 and so the relevant date for the start of the four year period is 3 July 2014.

8. Once a change of use has taken place in breach of planning control it needs to continue substantially uninterrupted before it accrues immunity from enforcement action (*Thurrock BC v SSETR and Holding (CA) [2002]JPL 1278*). In this case the court held that a change of use could only become lawful if it continued throughout the requisite period and that, if it could not be shown that the use was continuous, then the gaps in the use could not count towards immunity. As indicated above, therefore, it must be shown that the four units have been used continuously, on the balance of probabilities, as separate Flats/studios from on, or before, 3 July 2014 until 3 July 2018 when the notice was issued.

9. In support of this ground of appeal the appellants have submitted considerable evidence in the form of Assured Tenancy Agreements (ATAs); Deposit Protection Certificates (DPCs); Identification Cards (ICs) copies of passports; bank statements; electoral registration information and some services documents in relation to the Flat/studios. This is all set out in an index and statement of case extending to over 200 pages.

10. The Council responded briefly, by e-mail, on 27 June 2019. In particular they referred to an HMO related inspection on 24 March 2014; to a part built rear extension (now used as part of Flat 2); to some ATAs having numbers crossed out and changed, thereby questioning their accuracy and that limited ATAs had been submitted for 2015-2016. However, from the appellant's final comments (11 July 2019) it is clear that the officer did not inspect the interior of the property. The

rear extension referred to was under construction and eventually became part of Flat 2, the use of which is alleged to have started later that year.

11. The appellants' statement of case sets out '*Events*', '*Evidence*' and '*Page number*' with separate sections entitled '*Flat 4*', '*Flat 3*', '*Flat 2*' and '*Flat 1*'. Under each flat heading the details are then set out.

12. Having studied all of these documents it is evident that a change in use from a single dwelling house to several units of accommodation first took place towards the end of 2013. The appellant refers to the units as Flats 1,2,3 and 4. During my visit I inspected all 4 units. Flat 1 (Studio) is a one room unit with small kitchenette and shower room at the front of the property on the ground floor. Flat 2 comprises an ensuite (shower room) bedroom, kitchen and living room to the rear ground floor. The living room is in the form of an extension which has been added to the property and was noted as being partially constructed in March 2014, several months before the relevant date of 4 July 2014. Flat 3 (Studio) is located on the first floor to the front of the property and has a small kitchen and shower room. Flat 4 (Studio) lies to the rear at first floor level with a WC and shower room opening off the main space and a small separate kitchen.

Evidence relating to the use of Flat/Studio 1

13. Turning to each specific Flat/studio, the first ATA for Flat 1 is dated 01/02/2014 and the agreement finished on 01/08/2014. A second ATA shows the next tenancy being from 01/09/2014 until 01/03 2015. There then appears to be a gap of around 4 months until 07/07/2015 when it is indicated that another tenant occupied the flat until 07/01/2015. Although there is no ATA submitted there is a DPC in the name of the tenant given for this period. It could have been the case that the 4 month gap was a carry-over of the previous tenancy but this is not clear and no evidence that this was the case has been provided. The appellant has also referred (in final comments) to the ATAs being converted to Statutory Periodic Tenancies (SPTs). There are no copies of communications between the landlords or tenants relating to these SPTs.

14. Between 19/02/2016 and 19/08/2016 there was another ATA in another tenant's name. There is then another gap until 01/05/17 (29/04/2017) and a further ATA from then until 01/11/2017. The same tenant had another ATA from 29/08/2017 until 29/02/2018. The next tenancy was not until 01/07/2018 and is stated to have been until January 2019. There are no submitted ATAs for this last tenancy but there was evidence of DPCs having been completed and again there is reference to SPTs. Other documents submitted for Flat 1 include two Electricity Statements from the supplier 'e-on'. These are addressed to one of the appellants, Mr Osaro Richards and are dated 14 September 2017 and 7 December 2017.

15. In summary on Flat/Studio 1, between 3 July 2014 and 3 July 2018, the evidence indicates that there have been at least 6 different tenants. However, there are long gaps between ATAs and no other evidence to support the case that there were that these tenancies became SPTs. I accept that some DPCs are in the same names as the tenants, who are claimed to have been occupying the unit during the stated periods. However if the ATAs became SPTs one could normally expect other documentation such as utility or other bills to corroborate the claim that there had been no breaks in tenancy. Without clear and unambiguous evidence I do not consider, therefore, that these 'gaps' can be considered to count towards immunity. On the balance of probabilities, it is my view, that it has not been demonstrated that Flat 1 had been continually occupied for the necessary continuous 4 year period.

Evidence relating to the use of Flat/Studio 2

16. Flat/Studio 2 was listed for rent on the website 'Zoopla' from 02/05/2014 and the first tenant was named in two ATAs from 05/05/2014 to 05/11/2014 and from 01/09/2014 to 01/03/2015. There were photographs of the flat including one of the living room showing the rear extension. The two ATAs clearly overlapped but an explanation could be that the rent had increased from £750 to £800. For the next named tenant, who is stated to have occupied the studio from 21/12/2015 to 21/6/2016 or 21/12/2016, again there are missing ATAs. However, as for Flat/studio 1, there is a DPC in the tenant's name dated 21/12/2014 and it is also indicated that the tenancy became a SPT on 5 March 2015.

17. Records for the next tenant indicate an ATA from 21/08/2017 to 21/02/2018. and there are also two DPCs in the same tenant's name dated 21/08/2017 and 22/06/2018. However, again there are significant 'gaps' and/or missing ATAs and again there is no firm evidence to support the contention that these were also converted to SPTs. Again, therefore the gaps in evidence means that those periods cannot be counted towards immunity from enforcement action.

Evidence relating to the use of Flat/Studio 3

18. The evidence for Flat 3 (first floor front room) is the most convincing and conclusive. It indicates the same tenant having occupied the unit from 16/12/2013 to 16/7/2019. This tenant is also named on the electoral form dated 29/9/2017 and there are DPCs between 16/9/2014 and 16/7/2018. In conclusion for this unit I consider that the evidence shows, on the balance of probabilities, that it was occupied continuously for that period by the same tenant. Thus it covers the necessary 4 year period from 3 July 2014 to 3 July 2018.

Evidence relating to the use of Flat/Studio 4

19. The first ATA is dated 18/12/2013 and was a 6 month agreement until 18/6/2014, shortly before the relevant date. The evidence shows that the same tenant (first tenant named) then had another ATA from 18/9/2014 to 18/3/2015. This indicates that the unit was occupied on 3 July 2014, the relevant start date for the necessary 4 year period. However, between 18/3/2015 and the next ATA (in a second tenant's name) there is a significant gap in the evidence of over 2 years. Again there is no indication that the previous ATA was carried over and there is no other evidence to explain the significant apparent 'gap' in occupation.

20. There are ATAs between 01/5/2017 and 01/4/2018 for the second tenant named and then one from 21/8/2018 to 21/8/2019 for a third tenant. But again there is a 'gap' of over 4 months between the second and third tenants, with no evidence of any carry over (SPT) of the second tenancy.

21. In conclusion for Flat 4 I do not consider that the appellant has provided clear precise and unambiguous evidence that this unit was occupied as a separate dwelling for a continuous four year period commencing on 3 July 2014.

Other points

22. As well as the 'gaps' referred to above and despite the ATA conversions to SPTs, there are other ambiguities relating to the claim that the four units were completely separate dwelling units for the whole of the necessary 4 year period without interruption. The provision of electricity is one such matter. It is evident that the supply was not confirmed as being split (reference to Flats 1 to 4) until 2/10/15. This is some 15 months after the start date of 3 July 2014. Also at the much later dates of 14/9/2017 and 7/12/2017 the electricity accounts/bills were sent to Mr Osaro Richards for 'Flat 4' and Flat 1' respectively.

23. This suggests some sort of ad-hoc hybrid use of letting rooms/studios (albeit with small kitchen facilities and shower room or ensuite rooms) with all services

provided, rather than each unit being totally responsible for its own services as a separate dwellinghouse. Clearly the appellants could have been initially responsible for all electricity charges which were then passed on to tenants, but this use would have been more akin to a situation for the use of the property as a HMO which was its use when initially purchased by the appellant(s).

24. Another unusual omission in terms of evidence is that there are no records of separate Council Tax payments for the 4 Flats/Studios. Neither the appellants nor the Council has provided such information. Also, in September 2017 the Council's electoral roll details showed that the property was a single dwellinghouse occupied by 5 individuals. Whilst accepting that one of those was the tenant in Flat/Studio 3, if the other flats were occupied separately one would have expected there to have been some Council Tax records.

Overall conclusion on ground (d)

25. Despite the considerable number of documents submitted in support of this ground of appeal, I consider that there are too many anomalies and omissions and 'gaps' in the appellants' evidence. In my view, the appellants have not clearly and unambiguously shown, on the balance of probabilities that the property has been in use continuously as four separate dwellings from 3 July 2014 until 3 July 2018. The only conclusive evidence, in my view, relates to Unit 3 but, in situations such as this, the onus is on an appellant to show uninterrupted use of the all four units for the relevant period. The appeal fails, therefore, on ground (d).

Appeal 3207913 on ground (a)

The Main Issues

26. The main issues with regard to whether or not planning permission should be granted for the conversion of the dwelling into four independent Flats/Studios (ie separate dwellings) are related to:

- The loss of a 3-bedroom house in the Borough;
- The effect on the living conditions of occupants of the Flats and neighbours.
- The effect on parking in the locality.

27. The most relevant policies are Policy BC4 (Residential Conversions and Houses of Multiple Occupation); Policy BP8 (Protecting Residential Amenity) and Policy BR9 (Parking) of the Barking and Dagenham Borough Wide Development Policies Development Plan Document (DPD). The National Planning Policy Framework (NPPF) is a major material consideration and the policies relating to 'Achieving sustainable development' and 'Achieving well-designed places' are most relevant. I have had also had regard to relevant Planning Practice Guidance (PPG).

The loss of a 3-bedroom house

28. Policy BC4 of the DPD seeks to preserve and increase the stock of family housing in the Borough. Where houses are proposed to be sub-divided the Council resists such proposals which involve the loss of housing with 3 bedrooms or more. This is such a case. The policy restricts the numbers of houses to be converted if totals exceed 10% within the road or street and also indicates that no two properties immediately adjacent to each other should be converted.

29. The Council has not provided any specific information regarding the percentage of sub-divided houses in the road or details of the adjacent properties. I can only assume, therefore that the above restrictions are not proven. However, the policy also aims to ensure that there is no significant loss of character or amenity and that regard has to be had to the appropriate '*design, transportation and internal and external amenity space standards policies*'. The internal space standards required by

Policy BP6 need to be met for all of the proposed dwelling units and adequate space needs to be provided for storing refuse and recycling ready for collection.

30. Space standards for single room Studio Flats (such as Flats 1, 3 and 4 here) are not included within the policy, because the Borough is not seeking to encourage any growth to its supply of such units. But any proposals for conversion to Studio Flats are expected to provide at least 1 double bedroom and are judged against the standards set out in the policy for a two person dwelling which should provide at least 1 double bedroom. A 2 person unit requires 22m² of cooking, eating and living areas (that is kitchen, dining and living space), as well as the double bedroom and storage of at least 1m².

31. I have not been provided with any detailed figures relating to the specific areas of each unit but the Council indicates that the conversion as carried out in this small two-storey dwelling house does not meet the internal and external amenity standards relating to the policies. Having inspected the property and having noted the cramped arrangements (particularly for Flat/Studios 1 and 3) it seems to me that the space standards and other policy requirements fall well short of what is required.

32. I accept that there is a reasonably sized rear garden to the property but this is only accessible by the occupant of Flat 2. This in fact seems the only reasonably sized and laid out unit of the 4, in that it has a separate kitchen, a separate living room and a separate ensuite bedroom. In my view the others are cramped and very poorly designed. Flat 1 is only just about large enough to take a bed and Flat 4 is most peculiarly laid out. Although the kitchen is an adequate size the unit has a WC which opens directly into the living area of the studio and a separate shower room in the corner of the room.

33. In conclusion I consider that the loss of this 3-bedroom dwelling house is contrary to Policy BC4 of the DPD, as well as to the policies in the NPPF which seek to achieve well-designed places. The layouts of the units are far from being well-designed and the works appear to have been carried out in an inappropriately ad-hoc manner which has resulted in a complete overdevelopment of this small two-storey dwellinghouse. The appeal fails, therefore, on ground (a) on this first issue.

The effect on the living conditions of occupants of the 4 Flat/Studios and neighbours

34. Whilst acknowledging that the various tenants might be satisfied with the layouts of the various units, this cannot go towards justifying the provision of sub-standard accommodation which does not meet relevant policy aims and objectives. As indicated above Flat 1 is particularly cramped and only Flat 2 has access to external amenity space. Thus, any application for planning permission for the four units would clearly have been resisted by the LPA.

35. Having inspected each Flat/studio, I accept that Flat 2 could meet the spatial policy requirements and, as small studio units, Flats 3 and 4 (subject to my reservations set out above) could provide adequate living accommodation if well-designed. However, one of the requirements of Policy BP8 (Protecting Residential Amenity) requires that existing or proposed occupiers are not exposed to unacceptable levels noise during occupation.

36. There are no details of sound insulation having been provided between the Flat/studio units. Indeed there is no evidence that the conversion works from a single dwelling house to four independent units has been subject to any Building Control Regulations (BCR) relating to, amongst other things, Part E (Resistance to Sound); Part B (Fire Safety) and Part F (Ventilation). It follows that in my view that it has not been shown that the current occupants are not exposed to unacceptable levels of noise caused by other Flat/Studio occupiers.

37. Following my inspection of the premises I have already referred to the seemingly 'ad-hoc' manner in which the 'conversion' has been carried out and I am far from convinced that relevant and necessary works have been carried out to satisfy the above requirements of the BCR. Particularly with regard to the effect of noise and disturbance on the occupants of the units .

38. The 'Reasoned Justification' for Policy BP8 indicates that in order '*To achieve good quality design and protect amenity, a development must provide high quality living conditions for future occupiers. The development must also carefully consider how it contributes to local character and the impact it has on surrounding developments.*' On the first point I have already made it clear above that I do not consider that this conversion to four units of accommodation provides high quality living conditions. In fact my view is that the opposite is the case.

39. As for the impact on the residential amenities of the surrounding area, I acknowledge that any initial visual perception of the house will not immediately affect its character or appearance. However, the area to the front of the house is not as spacious as that in front of Nos 231 and 237. When seen from the road the front area to No 233 appears cramped in comparison to its neighbours and other houses along the road. With the necessary provision of refuse and recycling facilities for 4, rather than just 1 dwellinghouse, this small cramped area would appear significantly cluttered and would detract markedly from the appearance of the streetscene in this part of the Borough.

40. With 4 households occupying the property one would expect there to be more comings and goings to No 233 than to other single dwellinghouses. This would result in the potential for more noise and disturbance being caused for those living nearby. These are relatively small terraced houses and the proximity of the dwellings to each other results in tight spaces to their frontages on to the street. This tight layout of dwellings, without significant spaces between entrances and with living rooms fronting the road, has the clear potential to provide a noisy environment when people are leaving or returning to their homes.

41. I conclude, therefore, that the use of the property as 4 separate dwellinghouses is contrary to Policy BP8 of the DPD, as well as to Policy BC4. The residential amenities of both existing and future residents would be detrimentally affected by a continued use of this small terraced house as four dwellings. In addition, I consider that the use would also be detrimental to the living conditions and visual amenities of those occupying nearby single dwellinghouses. The appeal also fails on ground (a) in relation to this second issue.

The effect on parking.

42. Policy BR9 of the DPD is the relevant policy. This indicates that the Council applies the parking standards set out in the London Plan (LP) and that final levels of provision relating to proposed developments are based on various factors including '*On-Street Parking availability*' and '*Development type*'. In terms of managing the impact of street parking the policy aims to ensure any provision prevents footway parking and does not dominate the street. The policy applies to existing streets as well as for proposed developments.

43. In this case I noted that, with few exceptions, parking was restricted to permit holders only during daytime periods. There was very limited parking for others and at the time of my visit most of the parking spaces on both sides of the road were taken up. It seems evident from my inspection of the appeals property and the surrounding residential area that parking could be an issue for residents and visitors alike. Clearly, as a new development, the formation of the four dwellings could not

provide adequate parking facilities. There is only the space for one vehicle to the front of the house.

44. I agree with the Council, therefore, that the unauthorised 'development' exacerbates the shortfall of parking in the immediate locality and does not provide adequate parking for the residents of the four flats. It is contrary to Policy BR9 of the DPD and there are no other material considerations which justify allowing a development which exacerbates the on-street parking situation on Stamford Road.

Conclusion on ground (a)

45. I have concluded above that the use of the single dwelling house as 4 separate dwellings is harmful to the Council's policy (BC4) which seeks to retain family dwellings. I have also concluded that it is contrary to policy BP8 in that it is harmful to residential amenity for existing and future residents of the 4 units and to other residents who occupy nearby properties. Finally I have found the use to be contrary to the parking policy BR.

46. In the absence of any material considerations which can outweigh the harm which I have identified I consider that the decision, as to whether or not planning permission should be granted for this conversion, should be made in accordance with the relevant development plan policies. The appeals fail, therefore, on ground (a).

Both appeals on ground (f)

47. The notice was issued to remedy the breach of planning control. To be successful on this ground it must be shown that the steps required to be complied with are excessive and that lesser steps would overcome the objections. In the appellant's (Osaro Richards) statement it is simply indicated that *'I do not believe that the Council's case should succeed in any event'*.

48. It is then stated that *'the steps required by the council go beyond what is required to comply with the breach'* and that *'there are other ways to achieve the stated aim of the Council'* and *'What the Council requires is too vaguely defined'*. However the statement does not go on to suggest what these other ways might be or indeed, why the requirements are considered to be vague. The Council stresses that the lawful use of the property is as a single-family dwelling house and that the requirements are necessary as drafted to allow the lawful use to recommence and to cease the use of the property as 4 separate dwellings.

49. The Council's aim is clearly to correct the breach by reverting the property back to a single dwellinghouse. Having seen the requirements it is my view that they are not vague. The appellants have carried out specific alterations to the property to enable them to be used as 4 separate dwellings. These alterations have included separate entrances; some partitions and the small kitchens and shower rooms in Flat/studios 1, 3 and 4.

50. Having carried out all of the adhoc alterations (albeit over a period of time) to provide 4 separate units, the appellants should be clear about what needs to be done to reverse the process and to restore No 233 to a single-family dwellinghouse. In doing so the appellant would not be precluded from applying for Building Control approval to retain ensuite shower rooms if required in the bedrooms.

51. I do not consider, therefore, that the requirements are excessive. Thus in the absence of any clear lesser steps which would overcome the harm identified above, I consider that the appeals on ground (f) must fail.

Both appeals on ground (g)

52. Due to the current tenancies and issues which might arise for vacating the 4 flats and reverting back to a single dwellinghouse, the appellants contend that a period of 12 months, rather than just 3, is necessary.

53. Since the Council submitted its statement the appellants have provided the evidence set out above relating to each flat including details of ATAs and references to SPTs. Where the ATAs were submitted the majority were for 6 month periods. Taking into account the length of time that has elapsed since the notice was served and the appeals made, I consider that 12 months would be excessive. However, in the overall circumstances of these appeals I consider that the compliance period should be extended to 6 months. In my view, this would be a reasonable time in relation to the tenancy situations, as well as giving the appellant time to liaise with the LPA regarding any other proposals relating to compliance with the requirements of the notice or any other lawful alterations to No 233.

54. The appeals succeed therefore to a limited degree on ground (g) and I will vary the notice accordingly.

Other Matters

55. In reaching my decision I have considered all of the submissions made by the Council and by the appellants. These include the initial grounds of appeal; the detailed statements; the considerable evidence relating to each of the four units; the plans and the photographic evidence. However, none of these carries sufficient weight to alter any of my conclusions on the grounds of appeal as pleaded and nor is any other factor of such significance so as to change my decision.

56. In reaching my decisions I have taken into account the Human Rights of the appellants and the occupants of No 233. From all of my findings I consider that the need to comply with the requirements of the enforcement notice (as varied) are proportional and necessary in order to safeguard the visual and residential amenities of this part of the Borough. I do not consider that my decisions have interfered with any of the appellant's, or others', rights under ECHR legislation.

Formal Decisions

57. The appeals succeed to a limited degree on ground (g) only. I direct that the notice be varied by deleting the figure '3', before the word '*Months*', in Part 6 of the enforcement notice (TIME FOR COMPLIANCE) and by substituting therefor the figure '6'.

58. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied. In Appeal 3207913, planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector