
Appeal Decision

Inquiry held on 2 – 5 April 2019 and 20 – 22 August 2019 inclusive

Site visit made on 2 April 2019

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/X5210/C/18/3193167

Land at South Fairground Site, Vale of Health, London, NW3 1AU

- 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 Miss Jita Lukka against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN17/1284, was issued on 20 December 2017.
 - The breach of planning control as alleged in the notice is without planning permission: Construction of a one-storey dwelling house.
 - The requirements of the notice are: (1) Completely remove the one-storey dwelling house from the site; and (2) Make good the site following completion of the above works.
 - The period for compliance with the requirements is four months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Application for costs

2. At the inquiry, the Council of the London Borough of Camden (the Council) and the Rule 6 parties, namely the City of London Corporation (the CoL) and the Heath and Hampstead and Vale of Health Societies (the Societies) indicated that they wished to seek costs against Miss Jita Lukka. I agreed that those applications could be submitted and responded to in writing, following the close of the inquiry on 22 August, but in accordance with a time table fixed by me. Those applications are the subject of a separate Decision letter.

Procedural matters

3. For the first 4 days of the inquiry, and until 26 April 2019 during the long adjournment, the appellant was represented by a friend, Mr Nigel Watts. Thereafter, she engaged Barton Willmore, planning consultants, who instructed Richard Harwood QC to appear for her at the resumed inquiry.
4. All witnesses gave evidence under oath or affirmation.

Preliminary matters

5. The appeal was initially made on grounds (b), (c) and (d). However, ground (c) was withdrawn by Mr Watts on behalf of the appellant at the start of the

fourth day of the inquiry. He also said the appellant would consider withdrawing ground (b). The appellant's new representatives, Barton Willmore, confirmed the withdrawal of that ground on 26 April 2019.

Main Issue

6. As noted in the Statement of Common Ground (SOCG), to succeed on ground (d), the appellant must prove on the balance of probability that the one-storey dwellinghouse was substantially complete by 20 December 2013.
7. There is conflicting evidence of what, if any, building was on site by that date and the extent of any later works undertaken by the appellant and/or a previous occupant. Accordingly, as the SOCG also indicates, the main issue can be broken down into 2 parts as follows:
 - (i) was there a dwellinghouse which was substantially complete on site by 20 December 2013; and, if so
 - (ii) did subsequent works amount to the construction of a new dwelling.

Reasons

8. In dealing with part (i) of the main issue, I will start by looking at the **evidence given by the appellant's witnesses** at the inquiry.
9. The appellant purchased the appeal site in March 2017 and, when cross examined, she said she did not go onto it before early 2016. Furthermore, when asked, having regard to aerial photographs, when "objects" on the site were substantially complete as a building, she said she did not know. The appellant's own evidence does not assist with part (i) of the main issue.
10. Mr Covey, a member of the Chartered Association of Building Engineers, first visited the appeal site on 7 February 2017. In his proof he said it was his opinion that the structure he saw on site had *"been in existence for in excess of 4 years."* Later in his proof, he said that he believed it had existed *"for at least 4 years prior to the date of the enforcement notice"* and that it *"had certainly been in place for several years"* by the time of his inspection on 7 February 2017.
11. However, when cross examined, Mr Covey acknowledged that he could not be precise about the date. He said that none of the structure looked new but accepted that recycled materials had been used and therefore you could not tell when the structure was built, just by looking at the materials. Nevertheless, whilst acknowledging that he was not an expert in interpreting aerial photographs, Mr Covey relied on those produced by Christine Cox, and included at appendices E – G of his proof. Based on those images alone, Mr Covey concluded that about 86% of the structure had probably been there for more than 4 years before the enforcement notice was issued; the remaining 14% being added after February 2014. I will come back to the aerial photographs later.
12. For the last 40 years, Mrs Joan Burstein CBE has lived in the top floor flat at Spencer House, immediately adjacent to the appeal site. Whilst no windows directly face the appeal building, Mrs Burstein's flat opens onto a rear roof garden/terrace, some 6 floors up. In oral evidence she said she had *"a bird's eye view"* and this must have been from that terrace. That is consistent with

an email Mrs Burstein sent to Mrs Solomons on 24 January 2017¹ in which she wrote "*I wrapped myself up and peered over.*" Evidently, you must make a deliberate effort to look into the site from Mrs Burstein's property.

13. In her written statement, Mrs Burstein said that since "*at least 2012 there has been a substantial structure on the site in which Rob Litvoi lived*", albeit that in the 2017 email exchange, she merely referred to "*a lot of shacks.*" Her statement noted that the site had been "*full of vermin attracting rubbish*", whereas the appellant has brought "*beauty... to this utterly neglected piece of land.*" When cross examined, Mrs Burstein accepted that views were slightly obstructed by greenery but said that, even in summer, she could always see the wooden structure and was intrigued by the fact that 2 trees were growing through it. Mrs Solomons said she viewed the appeal site from Mrs Burstein's flat in January 2017, but she could not see very much; just that there were shacks. This reference to shacks is consistent with the January email exchange.
14. Despite the slight difference between Mrs Burstein and Mrs Solomons over the extent of the view from to top flat of Spencer House, I accept Mrs Burstein gave her honest recollection of what she had seen and attach considerable importance to her testimony. However, she said during cross examination that she was "*not terribly good*" with dates. Many much younger people would admit to that but, when asked why she thought the substantial structure had been on site since 2012, Mrs Burstein accepted it could possibly have been because the appellant had given her that date. I am not suggesting there was anything underhand about the appellant's approach. However, Mrs Burstein gave no other reason for recalling 2012 as the key date from her many years of living at Spencer House.
15. I note that Mrs Burstein's initial letter to the Planning Inspectorate of 18 July 2018 did not specify a date or even a year by which the "*substantial structure*" was built. In all the circumstances, Mrs Burstein's evidence is insufficient to enable me to conclude that a dwelling of any sort was probably substantially complete by the relevant date.
16. James Taylor gave evidence on behalf of the appellant. He was clearly keen to assist her, saying in oral evidence that he was impressed with what she has done on the site. He said it was "*previously a mess*" and was now "*beautiful*" and that there were "*nasty and violent people on the site before.*" He felt a lot safer now the appellant was there and believed she had been treated unfairly.
17. In his written statement, Mr Taylor said he had used the heath for recreational purposes for 25 years, particularly fishing in the Vale of Health pond, which adjoins the south side of the appeal site. He said he had seen lots of people living on the appeal site in tents and caravans, but also that "Rob" lived in a "*house*" there. He said he could see through a gap in the corrugated fence that "*there was a big wooden house built there.*" His written statement said that Rob told him he lived there and "*this was about 8 years ago.*"
18. When cross examined, Mr Taylor explained that he never went into the "*house*" and had not been on the site until the appellant bought it in March 2017. He said that, when Rob was there, he could only see through the fence by climbing up onto the wall below that fence. Mr Taylor admitted that he

¹ Inquiry document 23.

could not remember dates, *"off the top of (his) head"*, but thought Rob was living in the house about 8 years ago because, *"off the top of (his) head"*, that was when he was there most. He explained that he worked out dates from his children's ages and photographs of them at the pond. However, Mr Taylor did not relate any specific photographs to times when he saw a *"house"* on the appeal site and indeed did not produce any photographs.

19. Mr Taylor also said that the last time he had seen Rob at the site was 6 or maybe 8 years ago. This is hard to reconcile with the clear video evidence, along with Mr Cochran's testimony, that Rob was still on site at the very end of 2016, just over 2 years before Mr Taylor gave evidence. In all the circumstances, leaving aside what exactly he saw on site, which he described as *"a big wooden house"*, I consider Mr Taylor's memory of dates unreliable.
20. Jim Pratchett was also a local who said in his statement that he used the heath all the time for walking his dog and fishing, including in the Vale of Health pond. He said that *"probably around 2012"* a man named Rob built *"a big wooden structure"* on the site. He said Rob lived there with his wife and child. When cross examined, Mr Pratchett said he had seen them playing on a trampoline, from at least 2012, before the wooden structure went up and when they were living in a tent. No other witnesses mentioned a wife and child; indeed, the only 'live' witness, who regularly visited the site from 2008 to 2016 said he was not aware of any wife and child on the site.
21. Mr Pratchett's statement says the wooden structure was *"built very well with solid windows and doors."* He also said you could clearly see it through a gap in the metal fence. When cross examined, Mr Pratchett said he had never been on the site but, in contrast to Mr Taylor, he claimed that he did not have to climb onto the wall to see the structure from the pond side; he could see it from where he sat on the *"beach"* to fish. Mr Pratchett said about a year after the wooden structure was first built, Rob *"put a top bit on...a pointy thing, like a gable end, but stuck in the middle. Then it got bigger over the years."*
22. Like Mr Taylor, Mr Pratchett had a high opinion of the appellant and a low opinion of Rob, saying *"the heath is better off without him there."* He said that when the appellant told him people wanted to knock her house down, he said *"there's nothing wrong with it, it's lovely and it's better than the crap that was there before."* Mr Pratchett was evasive at times during cross examination. He said for example that a friend had written his statement for him because he has arthritis. Though he claimed she was a close friend, he said he did not know her name.
23. More importantly, Mr Pratchett said he was not good with dates. At one point, when asked in cross examination how he knew the structure was built in 2012 as opposed to 2016, he said *"it roughly started going up in 2012."* Later however, he said that in 2013 – 14 *"it was already being built"* which would suggest completion after 20 December 2013.
24. Rob Howard, another angler, said in his written statement of February 2019 that, on looking through gaps in the metal fence, he *"noticed a wooden structure built around 7 or 8 years ago."* However, when giving oral evidence, the first thing Mr Howard said after reading his statement was *"I'm not great with dates."* Nevertheless, he explained that, whilst he had not been in the wooden structure, he had been onto the site to complain about noise scaring the fish. He said: *"I saw a lean-to bit, a wooden structure and pots and pans"*

hanging up. I was quite impressed, but I didn't go in. I was amazed to see a fully working kitchen, running water for a start, pots and pans hanging up, a sink and a water bottle." He said this was "a few years ago – must be 5 or 6 or maybe more." Like Mr Taylor, but unlike Mr Pratchett, Mr Howard said you needed to climb onto the wall near the pond in order to see into the site through the fence.

25. Mr Howard also said he had been at the pond talking to the appellant when "*Rob the squatter*" came by and said something to the appellant. He said this would probably have been about 5 years ago. When it was put to him that the appellant first came in 2016, he responded "*I'm not a spot-on kind of person with dates.*" Later, he said it might have been less than 5 years when Rob made a comment to the appellant; he would not put a date on when it was because he "*might be wrong.*"
26. Indeed, when asked again when it was that he had gone onto the appeal site he said he had only been on a couple of times and he could not remember when this was. When reminded that he had said the wooden structure was built 7 or 8 years ago he replied "*Yes, just a rough estimate. I'm not good with dates.*" He also added that, when he went onto the site, he was "*not paying much attention to what was there.*"
27. Mr Howard also said that he had first seen the structure on site about a year before he had witnessed Rob speaking to the appellant. Given that the appellant first came in 2016,² this would mean he first saw the structure in 2015, rather than 8, 7, 6 or even 5 years ago. Mr Howard said that the second time he went onto the site could have been in late 2016, when it sounded like a party was going on and a band was playing.
28. Mr Howard was obviously doing his best to ensure that he did not give inaccurate evidence under oath, but his testimony provided no clear or reliable indication of when a substantial structure was completed on the site.
29. Though she was not called as a witness, Christine Cox BA MA MCIfA FSA provided a statement for the appellant.³ She is a professional interpreter of aerial imagery with over 30 years' experience and her statement says the aim of her analysis of date-authenticated aerial photographs was to determine the presence or absence of a house structure within the site between 2007 and 2018. Christine Cox's statement includes an expert's declaration.
30. Having regard to photographs taken in 2006, 2007, 2008, 2011, 2013, 2014, 2017 and 2018, Ms Cox concludes that:

"...the same house structure, with a small annexe and sometimes a light extended cover, was present on the site since 2006 and is visible through to 2014. The next year of photography is 2016, when the site is masked by tree canopies, and the house is very clearly visible in 2017 on the same site as previously. The house is just visible on a less high resolution photo taken in February 2018."
31. In the absence of further explanation from Ms Cox, I am not persuaded that all these photographs show the same structure in the same location as each

² Indeed, the appellant's statutory declaration of 14 September 2018 indicates that the appellant's first contact with RL was in 2016.

³ Exhibit D to the appellant's Statement of Case.

other, or in the same location as the appellant's existing house. Furthermore, Ms Cox's statement does not explain how she reaches the conclusion, from the images alone, that any of these items is a house or residential structure.

32. In her proof⁴, the appellant said she had conveyed the wrong remit to Ms Cox because "Rob Litvoi" had falsely stated in his first statutory declaration that he had built his house in 2005. The appellant consequently reassessed the position and *"confined it to the two relevant images dated April 2013 and February 2014."* In closing, Mr Harwood QC referred to these photographs and the Cadmap survey plan, commissioned by Mr Covey for the appellant in March 2017.⁵ That Cadmap plan shows the outline of the structure, as it existed at that date, and Mr Harwood says:

"Most, if not all of the Cadmap house outline is shown as containing objects joined together in the April 2013 aerial photograph. The 1st February photograph, taken at an oblique angle, shows the bulk of the building, in particular towards the Studio end."

33. Whilst Ms Cox's evidence carries weight, she was not at the inquiry and her evidence was not tested through cross examination. Neither I nor anyone else at the inquiry profess to have any expertise in interpreting aerial photography. However, in the absence of more detailed explanations from Ms Cox, I am not persuaded on the balance of probability that the April 2013 photograph does show *"objects joined together"*; indeed, it appears to me to show two separate objects within the relevant area outlined on the Cadmap plan, with a wedge shaped area of separation between those objects, albeit that the object to the west is not at all clear.
34. Similarly, it is not possible to clearly relate the overall shape of the objects in the April 2013 photograph or oblique image on the 1 February 2014 photograph to the outline on the Cadmap plan. In any event, that 2014 image was taken after the relevant date of 20 December 2013.
35. Ms Cox's proof also exhibited an aerial photograph from 19 July 2013, but that is too indistinct to be of any assistance. Of that image, Ms Cox merely said that it shows the tree canopy and *"some newly visible possibly temporary awnings or structures in the west of the site."*
36. Given that Ms Cox's evidence has not been tested through cross examination and in view of the lack of clarity in the aerial images and the other points I have outlined, I am not persuaded by her conclusion regarding the presence of a house structure on the site on or before the relevant date.
37. Tom Brent, the former agent of the previous site owners, attempted to submit written representations to the Planning Inspectorate. These were rejected as being too late, but the appellant exhibited them to her proof of evidence anyway. Mr Brent said the squatters had formally left the site by 31 December 2016 and an inspection then revealed *"several established and well used fully constructed timber buildings concealed under waterproofing membranes and felt, linked by a series of passageways"* which had *"clearly been there for much of the 15 or so years of the squatters' occupation."* However, Mr Brent did not attend the inquiry to explain how he reached that conclusion, and in any event, his written representations do not indicate

⁴ At paragraphs 5.1 – 5.2.

⁵ Mr Covey's proof, appendix A.

substantial completion of a dwelling by the relevant date. Furthermore, his reference to "*buildings concealed under waterproofing membranes*" adds to my concerns about how aerial photographs and Mrs Burstein's "*bird's eye view*" could prove the extent and nature of structures on the ground.

38. The appellant's Statement of Case (SOC) exhibited a statutory declaration of Robert Andrew Litvoi, dated 31 March 2017 (SD1). He was a previous occupier of the appeal site and was referred to by Mrs Burstein, Mr Taylor, Mr Pratchett and Mr Howard as "Rob." Others refer to him as "Robbie." The Societies' SOC exhibited a second statutory declaration dated 19 July 2018 (SD2), this time signed in the name of Robert Andrew Litvai, in which he says, among other things, that his name was incorrectly spelt in SD1. Although he did not attend the inquiry (I am told that he is now in Hungary), the Societies also produced a witness statement signed in the name of Robert Andrew Litvai on 5 March 2019⁶. Another witness, Robert Cochran, referred to "Robert Litvai" in his inquiry statement and "Robi Litvoi" in an earlier statement for other proceeding. In oral evidence he said he may have spelt the name phonetically at first. I shall just refer to this person as RL.
39. There are problems with RL's evidence, to which I shall return, but the appellant's SOC also exhibited statements from Alicia Logan, Nick Evans, Constantine Stamatopolous, Oliver Short, Kuno Frei, Robert Cochran, Jeanette Nitsche and Timea Tallian.⁷ These statements were made for use in defence of proceedings taken by the previous owner of the appeal site to recover possession of it, though Robert Cochran also made a separate statement for and gave evidence at my inquiry.
40. In her undated statement, Alicia Logan said she was homeless in early 2012, but then met Robbie at the appeal site and he invited her to live there in a caravan. Although she later said in a 2018 statutory declaration, that RL had lived in a caravan himself, Alicia Logan's undated statement indicated that, in 2012, Robbie was "*living in his maintenance hut*". The statements of Kuno Frei and Jeanette Nitsche also indicated that RL lived in a "*maintenance hut*" on the site from 2004/2005.
41. In SD1, RL said he built a security and maintenance/tool shed in 2004 adjacent to the fencing running along the boundary with the access road, namely a different location to that of the appeal building. In SD2, RL said he did not in fact build such a shed in 2004 but, in any event, the statements of Alicia Logan and Kuno Frei do not indicate substantial completion of a dwelling in the location of the appeal building by 20 December 2013. Indeed, whatever and wherever this "*maintenance hut*" might have been, Alicia Logan's statutory declaration said RL had not lived in the Music Box or Studio. The contradictions in Alicia Logan's evidence, the fact that she assisted in the preparation of RL's SD1 and the fact that her evidence was not tested through cross examination limit its weight. However, these factors do not assist the appellant.
42. The statements of Nick Evans, Constantine Stamatopolous, Oliver Short, Robert Cochran and Timea Tallian all refer to RL living at the appeal site. However, none provides support for the proposition that a dwelling was substantially complete in the location of the appeal building by

⁶ Inquiry document 11.

⁷ Appellant's Statement of case, exhibit K.

20 December 2013. Indeed, they do not refer to any dwelling or building on the site.

43. On 15 September 2016, the Camden New Journal published an article about the eviction of RL from the appeal site. They had interviewed him but, at his request, referred to him only as "Robbie L". The article states that RL had been on the site for more than 12 years. It also referred to his *"self-made home made of scrap wood"* which had been *"gradually enlarged using recycled timber."* That article makes no reference to when this home was initially built or gradually enlarged. The reference to gradual enlargement is insufficient to show that a house had been on site since 20 December 2013.
44. Turning then to **RL's evidence**, in SD1, he said that he had lived on the site in caravans from 2004, but went onto say:
- "... in 2005 I built a house from reclaimed timber for me to live in. The basic structure was completed in 6 Months and I was able to live in it whilst continuing to improve my facilities there by upgrading, repairing and providing new water proof coverings as required. The building had two levels with the upper floor being accessed by steps and having views over the pond adjacent to the site."*
45. He also confirmed in SD1 that the Cadmap plan depicted the arrangement of his timber house. In SD2, RL said that on 8 May 2017 he had demanded that the appellant return SD1 and that it was *"false in several particulars."* This alone calls into question RL's credibility. As Mr Harwood QC said in closing, the *"problem with dealing with a lying witness is knowing what the lies are"* and he said that I should not rely on the evidence of RL unless there is some other evidence supporting that particular element of it.
46. That said and accepted, SD2 then indicates that RL did not build a timber house in 2005. It indicates that:
- in the summer of 2008, he built a wooden box as a sound-proofed music space ("the Music Box);
 - in August 2013 he constructed a single-storey painting studio ("the Studio");
 - in autumn 2014, he added a higher lean-to roof to the Studio, which was on stilts and its highest part was open to the elements; and
 - in August 2016, he joined the Music Box and the Studio together in an "L" shape, removing a wall from each and adding a new wooden wall giving the new larger footprint an overall loose triangular shape.
47. RL's witness statement, produced by the Societies, confirms those parts of SD2, but adds that:
- in 2009, the roof of the Music Box was made slightly sloping and a triangular extension was added, in which RL sometimes slept on a yoga mat and sleeping bag, as well as in his caravan;
 - in August 2013, he started constructing the Studio;

- by spring 2014, the Studio was occasionally usable, by which time a wood burning stove had been installed, but the Studio was only finished in summer 2015; and
 - in summer 2016, the Studio and Music Box were joined together by creating a new room between them, significantly increasing the floor area into an approximately rectangular shape and with food storage and sitting areas being created. (An invoice for new materials is exhibited)⁸.
48. Turning to the evidence of the Council, the CoL and the Societies, neither the Council nor the CoL called witnesses who had been on the appeal site or had clear views into it at the relevant time. None of them could say with any confidence what structures or objects were present as at 20 December 2013. However, the Societies called Robert Cochran, a friend of RL's, who said he visited the appeal site regularly from 2008 to 2016.
49. Mr Cochran confirmed the stages of construction on site were as set out in RL's witness statement. In particular, Mr Cochran's own statement said that *"the room which joined up the Music Box and the Studio...did not exist in 2015."* He confirmed this in oral evidence and, by reference to video evidence from December 2016, he identified the new sections of roof, where the 2 previously separate objects were joined together. He was referred to the invoice for new materials and said he knew RL had bought some materials and used them in the construction of the new room to link the Music Box and the Studio. Mr Cochran said that, just after completing the new room, RL was ordered to leave. In answer to my question, he said the new connecting room was approximately 3m x 5m.
50. During cross examination, Mr Cochran said that in 2012, RL had the red caravan and the Music Box, but he did not know if RL spent his nights in the Music Box. He said it was a very small space, but RL was not very big and could have slept in there on a futon. Mr Cochran confirmed that by 2016, RL had a "futon kind of thing" in the Music Box, which he used as a *"rest/day room"*. He did not know if RL slept in there, but said the caravan was still serviceable. As noted above, RL said in SD2 that, by 2009, he sometimes slept in the Music Box on a yoga mat and sleeping bag.
51. Mr Cochran said that, whilst he had no real interest in the construction of the Studio, it was built after the relevant date, namely in 2014 or 2015 and it was then a small dry store, open plan, with bench space and very basic.
52. Mr Cochran was taken to RL's witness statement in which he referred to the Music Box and Studio being *"joined to the tree against which they were built."* It was put to him that there was therefore no separation between the Music Box and Studio. Mr Cochran was a little hesitant during this part of his evidence but, whilst accepting that the Music Box and the Studio were *"up against"* the tree, he nevertheless said that *"there was a degree of separation"*, though the tree was *"in the middle."* There is no written evidence of which part of each structure adjoined the tree and, as submitted by Mr Altaras in closing, the video evidence suggests that one corner of the Music Box and one corner of the Studio may have abutted the tree.

⁸ Inquiry document 11, Annexure C.

Further discussion of the evidence

53. Overall, Mr Cochran was a clear and convincing witness. Whilst I treat RL's evidence with considerable caution, Mr Cochran's evidence confirms material parts of RL's witness statement. I have already indicated that, without more evidence from Ms Cox, I am not persuaded that the aerial images taken in 2013 and 2014 show joined structures or structures which conform to the outline on the Cadmap plan. On the evidence before me I am satisfied that any objects on this part of the site were separate until after the relevant date and I note Mr Covey's view that 14% of the structure was constructed after February 2014.
54. It is not at all clear that Alicia Logan's reference to the "*maintenance hut*", in which she said RL was "living" in 2012, was really a reference to the Music Box. However, there is some evidence from RL himself, which is not actively disputed by Mr Cochran, that RL sometimes slept in the Music Box from before 20 December 2013. However, Mr Cochran, the only witness to give evidence at the inquiry, who had any direct knowledge of the site at that time, was not aware of RL living in the Music Box at that point.
55. I note Mr Harwood QC's submissions that a dwellinghouse may be substantially complete and then be altered, improved or extended subsequently. I accept that, whilst such works might be in breach of planning control, they will not normally amount to the construction of a new dwelling. However, the indication that RL sometimes slept on a yoga mat or futon in the Music Box before the relevant date does not persuade me, on the balance of probability that it was a substantially completed dwelling by then. Apart from that yoga mat or futon, there is no firm evidence that the Music Box provided any of the facilities necessary for day to day living by the relevant date. I have noted Mr Howard's reference to some additional basic facilities but, on his own admission, his recollection of dates cannot be relied upon and it is not clear that these basic facilities served the Music Box.
56. The 6 April 2013 aerial photograph, though unclear, may indicate that the Studio had been at least started by then, and this would conflict slightly with RL's SD2 and his witness statement. However, that image does not demonstrate, especially in the light of Mr Cochran's evidence, that the Studio had been substantially completed by then, let alone that it constituted a dwelling, or any part of a dwelling.
57. Furthermore, the 6 April 2013 image suggests to me that there were 2 separate elements at that point, consistent with the evidence of Mr Cochran. Indeed, Mr Covey's assessment was that the structure was only 86% complete by February 2014. Even ignoring the fact that it was taken after the relevant date, the 1 February 2014 image does not establish that there was a single structure, comparable to what was there by the end of 2016, as seen in the video evidence.
58. Even if, which I do not accept, the Studio was substantially completed by 20 December 2013, the thrust of the evidence is that there were then 2 separate elements. Even assuming the Music Box and Studio were buildings, having regard to Mr Cochran's direct evidence, the definition in s336(1) of the 1990 Act and the tests of size, permanence and degree of

physical attachment⁹, there is insufficient evidence to demonstrate on the balance of probability, that either building was a substantially completed dwelling. Neither structure was a dwelling which was merely altered or extended later.

59. If, and I do not strictly need to determine this point, the structure in the December 2016, or any part of it, was a building and indeed a dwelling, I am not persuaded that it had been substantially completed as a dwelling until at least the Music Box and Studio were joined by the construction of a further room. On the evidence, this fundamental change had not occurred by 20 December 2013, but rather after February 2014 and probably in 2016. I do not therefore need to go on to consider the Societies' contention that, adopting a holistic approach, RL's works and the appellant's works together amounted to a continuous operation which, as a matter of fact and degree, was not substantially completed as a dwelling house until the appellant completed her works.

Conclusions on part (i) of the main issue

60. For all the reasons given, I conclude that the appellant has not proved on the balance of probability that there was a dwellinghouse which was substantially complete on site by 20 December 2013. Accordingly, element (ii) of the main issue does not fall to be considered and the appeal must be dismissed.

J A Murray

INSPECTOR

⁹ *Skerritts of Nottingham v SSETR* [2000] JPL 1025; *R (Save Woolley Valley Action Group) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin), [2013] Env LR 8; *R v Swansea CC ex p Elitestone* (1993) P & CR 422; *R (o a o Hall Hunter Partnership v FSS, Waverley BC & Tuesley Farm Campaign/Residents Group* [2006] EWHC 3482 (Admin)

APPEARANCES

FOR THE APPELLANT: Nigel Watts until 26 April 2019 and thereafter Richard Harwood QC

They called	Richard Covey ACABE
	James Taylor
	Jim Pratchett
	Rob Howard
	Joan Burstein CBE
	Jita Lukka

FOR THE LOCAL PLANNING AUTHORITY: Morag Ellis QC

She called	John Sheehy BA MA, Senior Planning Officer, Enforcement Team
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FOR THE CITY OF LONDON CORPORATION (RULE 6 PARTY): Caroline Daly of counsel

She called	Daniel Murphy, Heath Ranger Supervisor
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FOR THE LOCAL HEATH AND HAMPSTEAD SOCIETY AND THE VALE OF HEALTH SOCIETY (RULE 6 PARTY): David Altaras of counsel

He called	Jonathan Longden BSc MRICS ACI Arb
	Ellen Solomons
	Robert Cochran

DOCUMENTS SUBMITTED DURING THE INQUIRY

1	Notice of inquiry
2	Mr Longden's summary
3	Mrs Solomon's summary
4	Letter from Heath & Hampstead Society to appellant dated 12.3.19 re photographs
5	Summary of aerial photograph references
6	Cabe Rules of Professional Conduct
7	Appellant's opening
8	Council's opening
9	City of London's opening
10	Heath & Hampstead/Vale of Health Societies' opening
10(a)	Full copy of Mr Sheehy's appendix JS2
11	Mr Litvai's signed statement
12	Mr Longden's site visit notes
13	Mr Longden's site visit photographs
14	Mr Longden's drainage plan
15	Site survey plan 170324 Rev A

16	Site survey plan 170324 Rev B
17	Site survey plan extract with inquiry site visit measurements added
18	Comparison of 21.7.17 photograph with March 2018 photograph
19	Mr Covey's photograph taken 2.4.19 as comparison with Mr Murphy's appendix 5
20	A1 copy of site survey plan
21	Statement of Lorna Kerr dated 16.8.19
22	Still extract from video
23	Email exchange between Mrs Solomons and Mrs Burstein 23.1.17 – 25.1.17
24	Statement of Common Ground
25	Mr Cochran's signed statement
26	Bundle of email correspondence between the appellant and the Council July – November 2017
27	Closing submission on behalf of Heath & Hampstead/Vale of Health Societies
28	<i>Sage v SSETR & Maidstone BC</i> [2003] 2 P & CR 26
29	Closing submission on behalf of the Council and the City of London
30	<i>R v Swansea CC</i> (1993) 66 P&CR 422
31	<i>R (on the application of Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council</i> [2013] Env. LR 8
32	<i>Elitestone Ltd v Morris and Another</i> [1997] 1 WLR 687
33	Closing submission on behalf of the appellant
34	<i>Sainty v MHLG</i> (1964) 15 P & CR 432