



Appeal Decisions

Inquiry held on 10 and 11 February and 23 and 24 March 2021

Site visit made on 25 March 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal A Ref: APP/N5090/C/19/3226803

Appeal B Ref: APP/N5090/C/19/3226804

Land at 21 Woodcote Avenue, London NW7 2PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Fatma Ugur and Appeal B is made by Mr Hayrettin Ugur against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0975/18, was issued on 13 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission the sub-division of the property into 2no. self-contained flats.
 - The requirements of the notice are
 1. Cease the use of the property as self-contained flats.
 2. The permanent removal from the property of all but one kitchen including kitchen units, sinks, cookers and food preparation areas.
 3. Permanently remove from the property all but two bathrooms including toilets, showers, baths and basins.
 4. Permanently remove all constituent materials resulting from the works required above from the property.
 - The period for compliance with the requirements is 4 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 only.
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Appeal C Ref: APP/N5090/W/19/3226879

Land at 21 Woodcote Avenue, London NW7 2PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Fatma Ugur against the decision of the Council of the London Borough of Barnet.
 - The application Ref 18/6984/FUL, dated 21 November 2018, was refused by notice dated 11 January 2019.
 - The development is conversion of property into 2 self-contained flats, 1x1 bed flat at ground floor 1x2 bed maisonette at first floor and 2nd floor (loft).
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Decisions

1. Appeals A and B are allowed and the enforcement notice is quashed.
2. Appeal C is dismissed.

Application for costs

3. At the Inquiry an application for costs was made by Mrs Fatma Ugur against the Council of the London Borough of Barnet and by the Council against the appellant. These applications are the subject of separate Decisions.

Procedural Matter

4. The appellants did not submit their appeals on the basis of ground (b) which is that the matters to which the notice relates have not occurred. However, in response to submissions made by the Council and a request for clarification from me, they have confirmed that they wish the appeals to proceed on this ground. The Council has had the opportunity to make submissions at the Inquiry, consequently, I considered ground (b) and my conclusion is set out below.
5. Mr Ugur was not named as an applicant for the planning application, which is the subject of Appeal C, therefore he does not benefit from the fee exemption which is available to Mrs Ugur in respect of Appeal A. On this basis Appeal B proceeds on grounds (b) and (d) only.
6. Mr Ugur was not at the Inquiry and Mrs Ugur presented their case and gave her own evidence, which was open to cross examination. Mrs Ugur, who I have referred to as the appellant, called seven witnesses as listed in the appearances at the end of this letter. The witnesses and Mrs Ugur gave oral evidence under the general affirmation. A translator was also present, and she also took the general affirmation. I have assigned each witness a number and these are set out on the same list. I have referred to the individual witnesses by number in my decision.
7. During the course of the Inquiry the London Plan 2021 was published and it now forms part of the Development Plan. I invited both main parties to make written submissions regarding any implications of the London Plan March 2021 for my determination of the appeals. The Council made a submission which concluded that the adoption of the London Plan 2021 had no effect on the planning merits of the appeal and raised no new matters. The appellants had the opportunity to comment during the Inquiry and they agreed with the Council's conclusion.

Appeals A and B - Ground (b)

8. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.
9. When I carried out my site visit, I noted the house can be used as two flats. The ground floor is occupied by the appellant's mother and provides extensive kitchen, bathroom and living space capable of being used independently of the upper floors. There were two bedrooms, a kitchen and a bathroom on the first floor and a bedroom with a kitchenette and shower room in the loft. The accommodation on the first and second floors was therefore capable of being self-contained. There were locks on most of the internal doors and specifically locks on the door into the ground floor accommodation and at the top of the stairs into the upper floors. However, the appellant confirmed that these doors were not generally locked as she provides care to her mother and thus accesses the whole house.

10. The appellants say that as far as they are concerned, they did not subdivide the property because it was used by only their family. They regarded the people who stayed with them as guests and they made no changes to the external appearance of the building.
11. These arguments are inconsistent with their arguments under ground (d). The appellant also conceded during the Inquiry that when her parents moved into 21 Woodcote Avenue (No. 21) in April 2018 they occupied independent living accommodation on the ground floor. She explained that this was necessary to accommodate the equipment required for the care of her father including a hospital bed.
12. Furthermore, witness 1 said that his family did not stay with the appellants family although they were under the same roof. He described his accommodation as a separate home, which was at odds with the appellants' description of the occupation by others as 'guests'. The evidence demonstrates that witness 1 and other witnesses were tenants of the appellant and on that basis, they cannot be reasonably described as 'guests'.
13. Notwithstanding that different parts of No. 21 were occupied by different groups of people and that through time the appellant's family group occupied in turn the ground floor and then the first and second floors, the subdivision of the property into two self-contained flats has occurred. This is development under the terms of Section 55(3)(a) of the Planning Act 1990.
14. For the reasons set out above Appeals A and B fail on ground (b).

Appeals A and B - Ground (d)

15. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.

Main issues

16. There is no dispute between the parties that in order to succeed on ground (d) the appellants must show that the sub-division of the property into 2no. self-contained flats occurred before 13 March 2015 in view of the time limit provided under section 171B(2) of the Planning Act 1990 (the Act).
17. However, in addition to this main issue and as a consequence of responses to question at the Inquiry, the Council also sought to run an alternative argument based on the 'Welwyn Principle'. Effectively under the Welwyn Principle, the appellants would be disentitled to rely on the time limit provided by section 171B(2) of the Act if it can be shown that there has been concealment/positive deception by them.
18. In the light of the above the main issues are:
 - Whether, on the balance of probability, the material change of use of the property to two self-contained flats occurred on or before 13 March 2015, and whether the use of each self-contained flat has continued throughout the subsequent four year period.

- Whether there has been concealment of the change of use to two self-contained flats by positive deception, so as to engage the Welwyn Principle and deprive the appellants of the benefit of the four year limitation period in section 171B(2) of the Act.

Reasons - time limit provided by section 171B(2) of the Act

19. The appellants submitted an application for prior approval for an extension to No. 21 (Council Ref. H/04214/14) which was determined by the Council on 11 September 2014. The submitted plans show an extension to provide additional space in a ground floor bedroom and a kitchen/diner. The plan is titled single storey rear extension and the address is shown as 21 Woodcote Avenue. At this point No. 21 was in use as a single dwellinghouse.
20. Witness 6 explained that he helped to dismantle the ground floor kitchen and moved it to the first floor so that kitchen facilities would be available within the property while a new kitchen was fitted in the proposed extension. At the same time, the appellants had three students staying with them (witnesses 2, 3 and 4) (the student witnesses). The appellant explained that until the works to the ground floor were completed everyone in the house shared the kitchen on the first floor. This was corroborated by the student witnesses who also confirmed that they arrived in October 2014.
21. At some stage during December 2014 a kitchenette was installed in the loft room. However, there is no suggestion that this part of the house became a self-contained unit. The student witnesses occupied the loft room and the appellant's and their younger son occupied the first floor and the first floor kitchen was shared by all residents of the property. This much is established by the evidence provided in relation to how the house was being used while the works to the ground floor were carried out.
22. None of the student witnesses was able to provide a definitive date when the ground floor works were complete. There is agreement between the student witnesses that the appellants' family moved into the ground floor after the works were completed and at that point only the students used the first and second floors and the kitchen on the first floor. Witness 4, who signed a tenancy agreement for a period of one year on 1 September 2014, said that the students had separate living accommodation when the works were complete and that there were locks on the doors which provided access separately to the ground floor rooms and first and second floor accommodation.
23. Witness 1 moved into the accommodation in October 2015. He could not remember if the tenancy agreement he had entered into limited the occupation by his family to a particular part of the house. However, he said that it was not necessary to set that out in writing because in any event it was clear between himself and the appellant that they had separate homes.
24. The appellant referred to the students living together as a family under the same roof. It is clear that the appellant has maintained contact with the students and a friendship was cited between the appellant and the mother of witness 4, which formed the basis for the students using No.21 during their stay in the UK. There was also reference to the students and the appellants family mixing socially after the works to the ground floor had been completed. However, the students were tenants of the appellant and similar relationships

can arise between neighbours occupying separate flats and this does not demonstrate that the occupants were living together as a family.

25. I conclude that when witness 1 moved into the accommodation in October 2015 No. 21 had already been separated into two flats. Therefore, at some point between the arrival of the students in October 2014 and witness 1 occupying the first and second floors with his family from October 2015, the property was subdivided into two flats.
26. This time period includes 13 March 2015 which is the relevant date for the time limit provided by section 171B(2) of the Act. Bearing in mind the way in which the occupation of No. 21 by the appellants and the students has been described it is highly probable that the occupation of the ground floor following the completion of the extension and particularly the use of the new kitchen marked the point at which the subdivision took place.
27. Witness 2 said that she could not remember when the works to the ground floor were completed, witness 3 thought they were finished around December 2014 and January/February 2015 and witnesses 4 and 5 considered the works finished in December 2014/January 2015.
28. In her proof of evidence, the appellant states that the works were carried out in 2014. However, under cross examination the appellant conceded that the ground floor kitchen could have been completed in January 2015. The appellant said that in January 2015 there were some alterations needed to accommodate a fridge into the kitchen but at that time the kitchen was in a state that could be used.
29. The Council sets out in its closing submissions that the appellant has not shown that all of the three kitchens had been completed in 2014. However, in order to achieve success under ground (d) the appellant does not need to show the subdivision occurred in 2014 and her change of stance on when the kitchen was completed is not fatal to her argument as the relevant date is in March 2015.
30. The evidence provided by the appellants does not provide full clarity on the date when the ground floor kitchen was complete, and that part of the house was capable of being used independently from the first and second floors. In order to succeed on ground (d) the appellants' evidence must pass the test of the balance of probabilities, and it must be sufficiently precise and unambiguous. This includes a consideration of whether there is evidence to contradict their version of events or make it less than probable.
31. If the ground floor was capable of being occupied as a separate unit of accommodation in January 2015, and continuously used in that way thereafter for four years, then the relevant four year period would be demonstrated. However, the Council argues that the evidence which it provides undermines this position.
32. Whilst the Council's Planning Compliance officers did not inspect the site while the works to the ground floor were in progress and completed, it was visited by their colleagues in Building Control (BC). The records from BC show that on 5 December 2014 roof joists were in place, that works were recorded as completed on 21 April 2015 and that a completion certificate was issued on 12 April 2016. The appellant says that these dates have been recorded

- incorrectly and that she had to 'chase' the BC officer to provide the completion certificate. However, that explains the period of time between the last site visit and the issuing of the certificate but does not necessarily bring into question the dates of the site visits themselves.
33. The appellant herself requested the visit which was made on 21 April 2015 and the works which were described as single storey rear extension and formation of ground floor bathroom are recorded as complete at that time. The BC records do not reference the installation of the ground floor kitchen.
34. At the Inquiry the Planning Compliance Officer (PCO) suggested that most people would finish the build and then do the internal works, however he did accept that the appellants may have carried out the works differently. He also said that there may have been delays to the works after the BC site visit in early December 2014 as a result of the Christmas break and noted that there was evidence that the kitchen was still being designed in mid-January 2015.
35. In response to the observations of the PCO the appellant says that works to the extension continued throughout December and January without a break because the builders and the appellants are of the Muslim faith and do not celebrate Christmas. In terms of the detailed design of the kitchen the appellant explained that elements of the original design had to be changed and this is why there was a design dated mid-January 2015. She confirmed that the fridge which was the subject of the redesign was capable of use while the redesign was taking place and that the kitchen could be used while the cosmetic works were ongoing.
36. Drawing all of these points together it appears on the balance of probability the ground floor space was capable of being used independently from the first and second floor accommodation from mid-January 2015. This is when the appellant confirmed the facilities were capable of use despite works continuing which were to rectify defects and of a cosmetic nature. This is prior to the relevant date, 15 March 2015 and the information provided is sufficiently precise and unambiguous.
37. The explanations provided by the appellants counter the arguments made by the Council. Consequently, the opinions and evidence put forward by the Council do not contradict or otherwise make the appellants' version of events less than probable. However, in order to succeed on ground (d) the appellants evidence must also show that the use has been continuous from when it began throughout the following 4 year period.
38. The appellant has provided evidence in the form of a complete tenancy agreement and signed front pages to show that she had tenants for the property after it was vacated by witness 5 in October 2015 and thereafter continuously until April 2018. The Council criticise the appellants' failure to provide full copies of the tenancy agreements and witness statements from two of the tenants. However, the documents which have been submitted provide the necessary information to demonstrate the continuous letting of the flats in the light of the appellants confirmation that all of the tenancy agreements were identical.
39. The appellant's parents moved into the ground floor accommodation and it was at this stage that the appellant contacted the Council regarding the occupation of the property. The Council accepts that the property has been occupied as

two self-contained flats since April 2018 when the appellant's parents moved in. On this basis the appellants have shown that the property has been in use or capable of being in use as two flats continuously between January 2015 and 13 March 2019 when the notice was served. This is a longer period than the four years required to be demonstrated.

40. Accordingly, I conclude, on the balance of probability, that the material change of use of the property to two self-contained flats occurred on or before 13 March 2015, and that the use of each self-contained flat has continued throughout the subsequent four year period.

Reasons - Concealment/positive deception – the Welwyn Principle

41. The Council explained that prior to the Inquiry it had focussed its case on the fact that the appellants had not shown the use had been continuous for a period of four years. However, in the light of evidence provided to the Inquiry the Council argues that the Welwyn Principle should apply on the basis that the Council was misled as to how the property had been used prior to 2018.
42. The appellant's view is that generally the Welwyn Principle does not apply in relation to the appeals because she has not concealed anything or any part of her property from the Council. Furthermore the appellant argues that she was not aware of the time limit provided under section 171B(2) of the Planning Act 1990 when the Council's investigations began. However, it is reasonable to conclude that she was aware of how the property was being used since the application for prior approval was submitted in 2014 as she was living there herself.
43. The Council provided advice to the appellants in an email dated 9 October 2018 in response to questions which they had asked. This advice makes it clear that planning permission was required to retain the separate units. Furthermore, in the same advice the Council confirmed that sharing the property with a lodger/tenant without any separate areas such as kitchens would not be a breach of planning control. It follows that from this point the appellants would have been aware that their occupation of the ground floor independently of their tenants on the first and second floors which had happened in the past was a breach of planning control.
44. The planning application which one of the appellants submitted in October 2018 was made on an incorrect form. Nevertheless, the appellant made it clear that she was applying to split the property and that the works to do so had started and been completed in March/April 2018. The knowledge the appellant had of the way in which her family and her tenants had been using the property and the advice which she had had from the Council regarding the need for planning permission for subdivision should have led her to at least question if the use by the tenants should have been recorded in her application.
45. This application was returned to the appellant and she then made another application with the assistance of an architect. The architect subsequently confirmed that the date of the commencement of the use which was put on the form was incorrect and he advised the Council accordingly. However, on the basis of the appellant's advice the correction was sent to the Council on 16 April 2019, which was after the Council had determined the planning application.

46. The architect was not present at the Inquiry, neither did he provide a witness statement or Statutory Declaration. Even had he been present or provided a statement, it is unlikely that he could have done more than confirm that the appellant had highlighted the error. This would not resolve whether or not the question of concealment arises in this case.
47. The appellant says that the error on the application form should be capable of being corrected in the same way as errors in the Council's submissions. The corrections made by the Council were in relation to the correlation between references in the text of statements and the evidence which had been submitted. Those changes did not change the evidence which had been submitted in support of the Council's case. In contrast the application form is a historic legal document which having been the subject of a determination cannot now be amended.
48. Again, at this point, and bearing in mind the appellant's knowledge of the way in which the property had been used in the past and the advice provided by the Council, the appellant could have sought further advice about the relevance of the earlier occupation by her tenants.
49. The intentions of the appellant in terms of the use of the property at the time of the submission of the application are set out in a supporting letter dated 21 November 2018. This letter implies that the decision to split the property into two properties was made as a result of the appellant's parents needing to move in. In particular the appellant refers to the consequence of the works being that she and her family would have their own separate living space and privacy.
50. This information is provided in spite of the fact that the appellants already had separate living space when the tenants were present and at a stage when the appellants were aware of the need for planning permission for the subdivision of the property.
51. The appellant argues that she was following the advice of the Council and that she was under significant personal stress at the time when the applications were made. However, these factors do not absolve the appellant from seeking further advice from the Council or her architect if matters relating to the past use of the property were unclear or from ensuring that information provided to the Council was accurate.
52. The principles on deception and public policy derived from *Welwyn* are: that positive deception is a matter integral to the planning process; that deception was directly intended to undermine the planning process; it did undermine that process: and, the wrong-doer would profit from the deception if the normal limitation period were to enable him to resist enforcement.
53. If the appellant did deceive the Council, it would undermine the process because it would lead to an acceptance that the breach set out in the notice is immune from enforcement action. This would stop the Council from preventing the establishment of a building comprising of two flats on a site where it seeks to resist such changes of use in the interest of the protection of the character of the area. Consequently, the appellants would benefit in terms of being able to use the property as two flats when such a use would ordinarily have been refused by the Council and arguably dismissed at appeal, as my consideration of Appeal C below demonstrates.

54. In terms of whether or not there was positive deception in matters integral to the planning process and that the deception was directly intended to undermine the planning process, the situation is not clear cut. The appellant said under oath that she was not aware of the time limit provided by section 171B(2) of the Act until she was preparing her appeal. There is no evidence that she was and there was no reference to this time limit in the Council's advice to her, which is understandable given the information before the Council at that time.
55. The appellant was not represented by a planning professional either at the time when the Council was carrying out its investigation, or when she submitted planning applications or during the Inquiry. It is not clear what level of planning knowledge her architect had. Whilst it was not necessary for the appellant to be aware of the time limit provided by section 171B(2) of the Act for her to have deceived the Council in terms of how the property was used, this lack of knowledge is an indication of the appellant's lack of familiarity with the planning system.
56. There were a number of times during the submission of the planning applications by the appellant when she could have sought advice from the Council or her architect or a planning agent regarding including information in her applications relating to how the house had been used from 2014/2015. However, that does not amount to positive deception, particularly given her lack of knowledge of the planning process.
57. From the beginning of the enforcement investigation by the Council, which arose as a result of the appellant's contact with the Council, the appellants engaged with the process and there is no evidence to demonstrate that they did not answer any questions posed by the Council. There is also some merit in the appellants' argument that the Council did not ask them how the property had been used before the appellant's parents moved in.
58. From the Council's point of view there is an inconsistency between the appellants' comment during the PCO's visit that the property was not being used as flats and what the appellant is now arguing in terms of its use. Nevertheless, the Council has recognised that the property was subdivided at the point when the appellant's parents moved in and there is no argument before me that No. 21 was in use as a single dwellinghouse at that point given the degree of care provided by the appellant for her parents.
59. Maybe the appellants should have offered up extra information voluntarily and in the light of their knowledge of the use of the property and the advice from the Council regarding the need for planning permission. However, the fact that they did not do so, in this case does not amount to positive deception.
60. I conclude that on balance there was no concealment of the change of use of the property to two self-contained flats by positive deception in matters integral to the planning process. The Welwyn Principle is not engaged and the appellants are not deprived of the benefit of the four year limitation period in section 171B(2) of the Act.

Conclusion on ground (d) (Appeals A and B)

61. For the reasons given above, and with specific reference to my conclusions on the two main issues, the two self-contained flats have gained immunity from

enforcement action by the passage of time and are lawful. The appeals by Mr and Mrs Ugur (Appeals A and B) succeed on ground (d). Accordingly, the enforcement notice, will be quashed.

62. In these circumstances the appeal made under ground (a) and the Deemed Planning Application (Appeal A only) set out in section 174(2) to the 1990 Act as amended do not need to be considered. Appeal C remains to be determined because it has been submitted under section 78 of the Act.

Appeal C

Main issue

63. The main issue is the effect of the development on the character of Woodcote Avenue.

Reasons

64. Policy DM01 of Barnet's Local Plan Development Management Policies (2012) (the DMP) specifically highlights the Council's aim of protecting Barnet's character and amenity and sets out a number of ways in which this will be achieved. Under DMO1(h) the conversion of dwellings into flats on roads characterised by houses will not normally be appropriate.
65. The Council describes the predominant character of Woodcote Avenue as of single family dwellinghouses. In the officer's report she says on the basis of an assessment of the site, council tax records and planning history that all except one dwelling are in lawful use as single family dwellings. The Senior Planning Officer (SPO) also made the point during the Inquiry that the character of the area was not just its visual appearance but impacts such as car parking, refuse storage and increased number of households also contributed to it.
66. This view was reflected in the comments made by the interested parties who pointed to increased internal noise and disturbance. Whilst their concerns were generally about the effect on residential amenity which was not a basis for the reason for refusal by the Council, their points also feed into the character argument in terms of the desirability of the houses for single family occupation.
67. During my site visit I observed that Woodcote Avenue is characterised by short terraces and pairs of semi-detached two storey houses, some of which have car parking space within their front gardens. On street parking was present but restricted by the dropped kerb accesses to individual buildings. Although wheelie bins were on the pavement there appeared to be rear access to the houses allowing them to be stored elsewhere. Overall, the on-street car parking and bins did not overwhelm the appearance of Woodcote Avenue as an attractive residential street.
68. No. 21 is currently occupied by the appellants' family and the appellant's mother. It is clear from the evidence that the appellant supports her mother, but this does not amount to the house reverting to use as a single dwelling house because both kitchens, bathrooms and living spaces are used independently. Nevertheless, on this basis the full effects of the occupation of the property by two separate households may not be present.
69. However, it is reasonable to assume that two households living entirely independently of each other in one building would have a different impact to

that currently evident in a neighbourhood comprised of single family occupation. For example, there would be likely to be more comings and goings associated with access to shops and services and deliveries given that a co-ordinated approach is less likely between two households than within the same family. Further, it is likely that there would be different social interactions leading to a greater number of visitors.

70. Whilst individually the subdivision of each house may not have a significantly greater impact on the character of the area than large family occupation, a cumulative effect arising from multiple deviations from the Council's policies would lead to a change in the character of the area. Both parties referred to the extent of change to the houses in Woodcote Avenue in terms of extensions and alterations. Whilst such works can be positive in terms of maintaining good quality family homes, they also provide the scope for larger houses to be more successfully subdivided.
71. To allow a change of use to flats against the Council's established policy stance, could set a precedent and undermine the Council's position with regard to other flat conversion schemes. There is a reasonable prospect of similar development being repeated nearby and such development would have a harmful cumulative effect on the character of the area.
72. The appellant considers that her scheme should be approved on the basis that No.61 has been allowed to be two flats by the Council. However, the application made in relation to No. 61 was for a lawful development certificate and as such the Council was unable to consider the planning merits of the scheme and to refuse the application on the grounds of non-compliance with planning policies. For these reasons the two developments are not sufficiently similar for No. 61 to be regarded as setting a precedent for the grant of planning permission for flats in Woodcote Avenue.
73. In the wider area the appellant refers to a dwelling on Rushden Gardens which has been extended to create a self-contained unit. The use of this particular property in Rushden Gardens does not affect the character of Woodcote Avenue by virtue of its location furthest from the junction of Woodcote Avenue and Rushden Gardens. The subdivision in this case arises from an extension of the original property and not a conversion and it is positioned at the junction of a number of pedestrian routes, with associated activity. Thus, the Rushden Gardens example is not directly comparable with the appeal scheme.
74. The character of the area is radically different around the junction of Salcombe Gardens, which provides access to Woodcote Avenue, with Pursley Road. At this point there is a small parade of shops, a church and a school. The redevelopment scheme of flats off Salcombe Gardens which is referred to by the appellant reads as an intrinsic part of this busy urban environment where other flats are also present in Morton Close. For these reasons the reference to this scheme is also not comparable to and does not establish a precedent for the appeal scheme.
75. I conclude that the change of use to two self-contained flats would have a harmful effect on the character of Woodcote Avenue. The development is contrary to Policies CS1 and CS5 of Barnet's Local Plan – Core Strategy 2012 which seek to protect and enhance high quality suburbs and ensure that development in Barnet respects local context and distinctive local character and to Policy DM01 of the DMP which protects Barnet's character and amenity

through amongst other things normally resisting the conversion of dwellings into flats on roads characterised by houses.

Other considerations

76. The appellant considered that the Council did not place sufficient weight on her personal circumstances when it was considering the planning application and that Council officers had made commitments regarding the decision which would be made on the application which were not fulfilled.
77. The evidence provided by the SPO shows that she had read the covering letter to the application and took the matters raised by the appellant into account when she made her recommendations. The SPO and the PCO confirmed that there was no discussion between them regarding the application and that that was normal practice when an application was submitted as part of an enforcement investigation. Notwithstanding that the SPO was not aware of the advice provided by her colleagues and whether or not that advice provided any commitment by the Council, the formal decision of the Council on the application is clear and it is that which is the subject of the appeal.
78. The appellant questioned the SPO in relation to the reference to 'normally' in Policy DM01(h), however she did not offer any evidence, save for the arguments made in relation to the personal circumstances of her family, to justify why an exception to the 'normal' application of the policy should be made. Furthermore, as part of a discussion regarding whether the imposition of an occupancy condition limiting the occupancy of the flats to the appellant and her family, the appellant said that she did not want the occupation of the flats to be limited. She said the purpose of the development was to separate the building into two flats.
79. The appeals have been successful on ground (d) which means that the subdivision of the property into two self- contained flats is immune from enforcement action. However, this determination was made without reference to the merits of the development and local planning policy was not a consideration. On that basis my decision on the appeals under ground (d) does not weigh in favour of success on the appeal against the refusal of planning permission (Appeal C).
80. Taken together, the other considerations in this case do not amount to material considerations which outweigh the conflicts with the Development Plan.

Conclusion on Appeal C

81. For the reasons set out above, Appeal C is dismissed.

Sarah Dyer

Inspector

