



Appeal Decisions

Hearing Held on 16 November 2021

Site visit made on 16 November 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Appeal A Ref: APP/G5180/C/19/3231907

Appeal B Ref: APP/G5180/C/19/3231908

8 Austin Avenue, Bromley BR2 8AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Leslie Baker against an enforcement notice issued by the Council of the London Borough of Bromley. Appeal B is made by Mrs Janet Baker.
- The enforcement notice was issued on 31 May 2019.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a link extension between two outbuildings at the rear of the Land and the material change of use of the extended and combined current outbuilding into a self-contained unit of habitable accommodation.
- The requirements of the notice are:
 - 1) Remove the link extension from the current outbuilding on the Land;
 - 2) Reinstate the two former outbuildings to their condition prior to the unauthorised link extension development;
 - 3) Cease the use of the outbuilding(s) as a self-contained unit of habitable accommodation and revert it or them to a lawful use ancillary to the main dwelling on the Land;
 - 4) Remove all materials associated with paragraphs 5(1) and 5(2);
 - 5) Leave the land in a clean and tidy condition.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a) and (f) of the 1990 Act as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Application for costs

1. At the Hearing, applications for costs were made by (1) Mr Leslie Baker and Mrs Janet Baker against the Council of the London Borough of Bromley and (2) the Council of the London Borough of Bromley against Mr Leslie Baker and Mrs Janet Baker. These applications are the subject of separate Decisions.

Preliminary Matters

2. The appeals were previously dismissed, however, that decision was challenged under Section 289 of the 1990 Act. The High Court was of the opinion that the decision appealed against was erroneous in point of law. The matter was remitted to the Secretary of State for re-hearing and determination in accordance with the opinion of the court.

3. The fifth requirement as specified in the notice allows a subjective consideration of what may amount to leaving the land in “a clean and tidy condition”. In that respect, it is vague. Moreover, it is not necessary since the fourth requirement, if complied with, would have the same effect. The notice should, therefore, be corrected to delete the fifth requirement. The main parties agreed that I could make this correction without injustice.
4. The Council claims that the appellants are too late to directly challenge the findings of a previous Inspector by seeking a further opportunity to argue whether the building is in ancillary use or in a self-contained residential accommodation use. I am invited to dismiss the appeals on the basis that it is an abuse of process under the principle in *Henderson*¹ as applicable in a planning context by *Thrasyvoulou*².
5. By way of background, the previous Inspector was considering an appeal made under Section 78 of the 1990 Act against the Council’s refusal to grant planning permission for the use of an outbuilding in the rear garden of No 8 Austin Avenue as accommodation ancillary to the main house³. That Inspector identified the main issues as being “whether the development constitutes a separate unit of residential accommodation rather than an ancillary use, and the effect on the character and appearance of the local area”. In DL7 of the decision, the Inspector concluded: “From my site visit and on the basis of the albeit very limited information before me, my assessment concurs with the conclusions drawn by the Council, that the building at the rear of the garden appears to be in use independently of the main house”. The Inspector went on to find in DL9 that “the building constitutes a separate unit of residential accommodation rather than an ancillary use and it is a cramped form of development which harms the spacious character of the local area”. It was found to be in conflict with the development plan and the appeal was dismissed. The decision was not challenged and an enforcement notice was issued sometime later.
6. The rule in *Henderson* established the principle that a party is expected, indeed required, to present their entire case during the course of legal proceedings. The act of raising a line of argument in subsequent proceedings which could and should have been raised in the earlier proceedings, but was omitted from negligence, inadvertence or accident constitutes an abuse of process and leaves the subsequent proceedings vulnerable to a strike-out application. In *Thrasyvoulou*, the House of Lords confirmed that the principle applied to planning decisions. A distinction could be drawn between a decision to grant or refuse planning permission and a decision on the legal status of the alleged development.
7. The rule was further explained in *Barrow*⁴, and expanded upon in *Divine-Bortey*⁵. When a matter becomes the subject of litigation between them in a court of competent jurisdiction, parties are required to bring their whole case before the courts so all aspects of it may be finally decided. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision

¹ *Henderson v Henderson* [1843] 3 Hare 100, 67 E.R. 313.

² *Thrasyvoulou v SSE* [1990] 2 A.C. 272.

³ Ref APP/G5180/D/17/3189698 dated 14 March 2018.

⁴ *Barrow v Bankside Members Agency Ltd* [1996] 1 All ER 981.

⁵ *Divine-Bortey v Brent LBC* [1998] I.C.R. 886.

on the first occasion, but failed to raise. The rationale being the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever. This is an abuse of process at which the rule is directed.

8. Against this background, the Council argues that the previous Inspector was concerned with deciding whether the outbuilding was in use as a self-contained dwelling. The decision that it was being used as such was a finding on matters of fact as well as planning judgement. Given that circumstances have not changed materially in the meantime, the appellants should not be permitted to run the same argument again with more developed evidence. The Council stresses that this is not a case of issue estoppel, although it is acknowledged that both issue estoppel and abuse of process estoppel are both variants of the principle of 'res judicata'. As such, I consider the caselaw pertaining to that principle to be relevant to the matters at issue⁶.
9. I am mindful that the previous Inspector was considering, first and foremost, whether planning permission should be granted. They were not required to make a fact and degree judgement on the lawfulness or otherwise of the subject outbuilding. I am not satisfied, therefore, that the relevant issue was determined on the basis of both fact and law nor that the whole matter was fairly and squarely before the previous Inspector. I accept that, in reaching a finding on the issue of character and appearance, the Inspector first reached a conclusion on the use of the outbuilding. However, that conclusion was not fully addressed, nor unequivocal, in my reading of it. The finding was qualified to a certain extent by the reference to the "very limited information before me" and that the building "appears" to be in use independently of the main house.
10. With regard to the deemed planning application, the Council argues that the principle in *Thrasyvoulou*, that a refusal of planning permission will not bind future decision makers, is not engaged and the planning merits should not be re-considered. Nonetheless, caselaw has established that an Inspector may disagree with a previous decision so long as the reasoning is clear and general principles of consistency are not offended⁷. Previous decisions are, however, relevant considerations. As the previous decision concerned the same site and development, and was relatively recent, it carries significant weight.
11. To conclude on this matter, and having regard to all submissions, I find that the appellants are not prevented from advancing arguments in respect of the use and effect of the outbuilding by way of abuse of process.

Appeals A and B: Ground (c)

12. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. The main issue is whether the appellants have shown, on the balance of probability, that the matters alleged do not constitute a breach of planning control.

⁶ *Watts v SSE & South Oxfordshire DC* [1991] 1 PLR 61, *A & T Investments v SSE* [1996] JPL B94.

⁷ *Rockhold Ltd v SSE & South Oxfordshire DC* [1986] JPL 130 and *North Wiltshire DC v SSE & Clover* (1993) 65 P&CR 137; [1992] JPL 955.

13. Given the matters in dispute, I consider it useful to set out the legal framework. Planning permission is required for the carrying out of any development of land⁸. 'Development' comprises two limbs; the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land⁹. The notice alleges both operational development and a material change of use.
14. The concept of a material change of use is not defined in statute. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously. In making this assessment the starting point is to define the planning unit. The leading authority is *Burdle*¹⁰, which established that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
15. The appeals concern two outbuildings in the rear garden of a residential property. The outbuildings have been connected by a link extension and altered internally to provide residential accommodation, comprising a kitchen, a living room, two bedrooms and a bathroom. The accommodation provides the facilities required for day-to-day private domestic existence and thus meets the '*Gravesham* test'¹¹ concerning the characteristics of a dwellinghouse. The outbuilding is physically separate from the main dwelling and I saw that it can be accessed via a side gate. However, the appellants argue there is a functional link between the main dwelling and the outbuilding. It is claimed that there has been no material change of use. A separate planning unit has not been created because the outbuilding is occupied by their daughter, Ms Jennifer Baker, and her family.
16. Mr Leslie Baker and Mrs Janet Baker explained that the whole family moved to the property in 2007. The main house was, and remains, occupied by the appellants and Mrs Baker's elderly mother, Mrs Bridger. The appellants' two sons, Christopher and Mark, have also lived at the property periodically, either in the house or the right-hand side outbuilding prior to the subject alterations. The link extension was erected in late 2015 and the combined outbuilding was fitted out to provide residential accommodation for Ms Jennifer Baker, her partner Mr Mark Wakeman and their young son, who have occupied the outbuilding since the conversion. I heard that Ms Jennifer Baker works full-time and has done so for several years. It was explained that the family all 'pull-together' on a daily basis to help with childcare, in providing care for Mrs Bridger and in looking after the home and the family dog. Evening meals are prepared by Mrs Baker, who undertakes the majority of the daily domestic duties, and the family eat and socialise together regularly, if not daily. The extended family and friends also assist when necessary, and also tackle repairs and gardening, although Mr Mark Baker and his brother Christopher now live elsewhere.
17. It is common ground that the leading authority is *Uttlesford*¹². This considered whether the residential use of an extension or outbuilding may be regarded as

⁸ Section 57 of the 1990 Act.

⁹ Section 55 of the 1990 Act.

¹⁰ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.

¹¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

¹² *Uttlesford DC v SSE & White* [1992] JPL 171.

part and parcel of (rather than incidental to) the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained dwellinghouse. The case concerned the conversion of part of a detached garage to provide some small separate living accommodation. The accommodation gave the occupant the facilities of a self-contained unit, although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. The elderly relative to be accommodated would have her own bedroom, bathroom and WC, a small kitchen, somewhere to sit and her own front door. To that extent she would be independent from the rest of the family. It was held that there was no reason in law why self-contained accommodation, to enable an elderly relative to be independent of the family, should become a separate planning unit from the main dwelling. Otherwise, the removal of any element thus making the relative dependent on the facilities of the main house would maintain that living accommodation in the same planning unit. It is a matter of fact and degree, depending on the circumstances of the case.

18. The appellants have sought to argue that Ms Jennifer Baker and her family share their living activity in company with the rest of the family in the main house. However, I saw that the outbuilding is laid out, equipped and furnished as a self-contained dwelling, as opposed to being an annexe. There is a fully equipped, and well used, kitchen and a modest-sized bathroom containing a bath and a shower. There is a relatively large living/dining room with a sizeable dining table and chairs, and two separate bedrooms. All the main habitable rooms contained televisions. The outbuilding has a separate access, food preparation and storage area, washing, laundry, sleeping and leisure facilities, with access to an outdoor area. It is clear to me that it provides a level of accommodation beyond that which could be described as giving a level of independence but where the occupants share most of their living activity in the main dwelling. The circumstances of this case can be differentiated from *Uttlesford* because of the size of the outbuilding, its occupation by a small family and, crucially, because of the way it is laid out, equipped and used.
19. I heard that the family share chores and care responsibilities on a regular basis and they rely on each other in that respect. However, this type of arrangement is not uncommon where close families live nearby. Grandparents often assist with childcare or dog minding. Similarly, care responsibilities are often shared between family members. This level of family interaction does not imply shared living as a single household nor does it show the outbuilding is functioning solely as an annexe.
20. I also heard from the extended family, and from friends and neighbours, who all explained that the Bakers are a close family who spend a lot of time together and rely on each other for emotional and day-to-day support. However, I return to the level of functional dependence, which I do not consider has been shown. Notwithstanding the shared utilities, the accommodation is laid out and equipped for primary residential use and nothing I have seen or heard, including the sworn evidence and additional witness statements, persuades me that it used otherwise. The relationship is one of convenience and stems from strong family bonds, but there is no functional dependence, such as that in *Uttlesford*, where the occupant of the annexe relied on the primary accommodation provided in the main house.

21. I find, therefore, that the outbuilding comprises a separate planning unit, as a matter of fact and degree. It is used and occupied such that it functions as a self-contained unit of residential accommodation, as opposed to being part and parcel of the use of the main dwellinghouse. I appreciate that the right-hand outbuilding provided some living/sleeping accommodation previously and contained a shower/WC and a small kitchenette. The other outbuilding contained games or leisure facilities. However, due to the nature of the accommodation provided previously, and the extent of their use, the outbuildings would have functioned as an annexe that was ancillary to the main dwelling. The use of the extended and refitted outbuilding as a self-contained unit of residential accommodation has a very different character to how the outbuildings were used previously. A new planning unit has been created and a material change of use has occurred for which planning permission is required.
22. As set out above, the allegation includes operational development. The appellants have sought to argue that the link extension falls within development 'permitted' under Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings incidental to the enjoyment of a dwellinghouse. As I have found the outbuilding to be a separate, self-contained unit of residential accommodation, as opposed to being an outbuilding put to an incidental use, Class E cannot be relied upon. Furthermore, the use of the outbuilding has not been shown to be lawful and, thus, the permission granted by Schedule 2 does not apply¹³.
23. In any event, even if I were to accept the arguments advanced by the appellants on this matter, it has been established that a notice that is directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place¹⁴. On the basis of the appellants' own evidence, it is apparent that the link extension was erected solely for the purpose of facilitating the material change of use. It was explained that it was necessary to make a bigger place as Ms Jennifer Baker needed more room for her family. The link extension is integral to the material change of use and the notice is correct to require its removal to prevent the unauthorised use re-occurring.
24. I conclude on this matter, that the appellants have not shown, on the balance of probability, that the matters alleged do not constitute a breach of planning control. The appeals on ground (c) fail, therefore.

Appeal A: The ground (a) appeal and the deemed planning application

Preliminary Matter

25. The notice cites Policies 7 and 37 of the Bromley Local Plan (2019). Policy 7 is concerned with extensions to provide accommodation for family members. While the policy is aimed at extensions that are attached to the main house, it is not wholly irrelevant since I am concerned with a link extension that

¹³ Article 3(5)(b) of the GPDO.

¹⁴ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

facilitated a material change of use to provide space for additional family members. I afford the policy significant weight, therefore.

Main Issue

26. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the construction of a link extension between two outbuildings at the rear of the Land and the material change of use of the extended and combined current outbuilding into a self-contained unit of habitable accommodation. The main issue is the effect of the development on the character and appearance of the area.

Reasons

Character and Appearance

27. The appeal property is a semi-detached, extended house, which is located at the head of a cul-de-sac in a residential area. Austin Avenue is suburban in character, with detached and semi-detached houses arranged in a spacious layout. The appeal plot is generous in size and is wedge-shaped, being wider towards the rear. The outbuilding is situated in the rear garden, close to the rear boundary. There is a track adjoining the boundary at the rear, but I understand the appellants have no right of access.
28. The outbuilding is irregular in shape, as it arose from the linking of two formerly detached buildings. The resulting building is relatively large and it has a dominant appearance, visible from neighbouring properties. It has a porch, a number of windows and patio doors. I saw that the outbuilding has the character and appearance of a modest bungalow. This type and form of development is not characteristic of the area. While there are other outbuildings in the vicinity, these tend to be small, utilitarian-type buildings as opposed to a large structure of generous proportions, which functions as a separate self-contained unit of residential accommodation. Despite the spacious garden, I find the development to be inappropriate in terms of its scale, size and use. It does not reflect the prevailing character of development in the vicinity.
29. I have considered the fact that the majority of the built structure was pre-existing and the two separate outbuildings would remain once the notice is complied with. However, the link extension, and the resulting use of the combined outbuilding, have significantly altered the appearance and character of the development. Two detached outbuildings have become a modest sized bungalow, which is not consistent with the established pattern of development in the area.
30. The appellants have put forward a number of 'fallback' positions, with alternatives comprising replacement link extensions, the stationing of a caravan(s) or the erection of a new outbuilding. Crucially, there is no suggestion that any replacement structure would be used and occupied differently to the outbuilding enforced against.
31. I do not doubt the appellants' intentions, as stated in sworn evidence, nor their means to pursue the types of development set out as fallback positions. However, I have found the outbuilding to be in use as a self-contained unit of residential accommodation. If a replacement link extension were built, or another outbuilding were to be erected, or indeed a caravan sited, and the

alternative building/caravan were to be used and occupied as it is now, it would constitute a material change of use and planning permission would be required. In other words, the appellants could not accomplish their aim and continue to use any of the fallback options in the same way as they are currently using the appeal building as this would perpetuate the same breach of planning control. Consequently, I afford the fallback options limited weight.

32. I understand that previous Council advice, during a site visit when the link extension was under construction, was that the works would not require planning permission. This advice was subsequently withdrawn. In any event, such informal advice does not fetter the discretion of the Council to make a different decision and this consideration carries very limited weight.

Other Matters

33. I have considered comments from interested people, which concern the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance and privacy. I saw that it is possible to access the outbuilding via the side gate that lies close to the boundary with No 9. The neighbours indicated that comings and goings via the side gate cause noise and disturbance, especially in the evening. I appreciate the potential for adverse impact that this arrangement creates. However, given number of occupants of the unauthorised development, which is dictated by its size, I do not consider the likely levels of noise and disturbance would be material.
34. I have also considered whether the development had led to increased overlooking. I saw that views are restricted by the ground floor position of the windows. Even with greater use of the outbuilding as self-contained residential accommodation, I do not consider that overlooking is likely to be much greater than that which would have existed previously. Consequently, I do not find a material loss of privacy.
35. I note there is a culverted watercourse to the rear of the property and that the Environment Agency has objected to the development. The letter adopts the 'precautionary principle' approach as it is acknowledged that the extent of works is unclear. However, given the location of the operational development, it is unlikely that this would restrict access to the culvert for maintenance. It is unclear whether the works have affected the stability of the culvert but, again, as the link is largely located between two pre-existing structures this is unlikely. I do not consider that the development has resulted in a flood risk, therefore.
36. It was pointed out during the Hearing that a sinkhole has emerged in the vicinity of the outbuilding. During my site visit, I saw the sinkhole in the track at the rear the appeal property. It was not suggested, nor is it apparent, that the sinkhole is connected with the matters before me. However, if I were to consider granting planning permission, it would be necessary to first assess ground stability in the immediate area.
37. The appellants have submitted an alternative scheme under ground (f). The plans¹⁵ were submitted with an application that sought permission for a single-storey infill extension between existing outbuildings¹⁶, which the Council declined to determine. The alternative scheme comprises the forward extension

¹⁵ Ref AA-LB_20190919_01/Rev C and 02 Rev B.

¹⁶ Ref 19/04784/FULL6.

of the link and the replacement of the sloping roof with a pitched roof. I appreciate that this was offered as an attempt to address the Council's concerns about the appearance of the link extension, its roof in particular. However, the alternative scheme would not overcome the fundamental concern about the development. It would still have the appearance of a modest sized bungalow sited in the rear garden of a semi-detached house. In fact, the addition of a projecting porch would accentuate the self-contained nature and appearance of the outbuilding. Consequently, the proposed alternative development would not respect the character and appearance of the area.

Conclusion

38. I am aware that the Baker family have had to deal with exceptional family circumstances over the years, which has impacted on their health and wellbeing. In addition, Mrs Bridger relies on family members for personal care on a daily basis. Age and disability are 'relevant protected characteristics' for the purposes of the Equality Act 2010 and the Public Sector Equality Duty. Hence, I must have due regard to the need, among other things, to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. The retention of the development would enable the family to live in close proximity and their current support and care arrangements would be unaffected. However, the harm resulting from the development is considerable and the negative impact on the appellants of dismissing this appeal would not outweigh the conflict with local planning policy. The family may continue to support each other without having to reside in the outbuilding, as Mark and Christopher Baker do now. I heard no justified reason why Ms Baker, Mr Wakeman and their son need to live in the outbuilding at No 8. It is a convenient arrangement and I understand that the cost of suitable alternative accommodation in the local area is likely to be prohibitive. However, this does not justify the continued occupation of the unauthorised development and the approval of a scheme that is in conflict with the relevant planning policy.
39. The appellants' rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, must be considered. Article 8 deals with the right to respect for private and family life, and the home. Article 1 of the First Protocol concerns the protection of property. Dismissal of this appeal will require the appellants' daughter and her family to find alternative accommodation and would affect the living arrangements of the whole family. This would represent an interference with their home and family life. However, the conflict with local planning policy which would arise, in particular the fact that the development is incompatible with the surrounding area, is significant. I am satisfied that the legitimate aim of conforming with planning policy, and taking decisions in the public interest, outweighs the interference with the appellants' rights. There are no other means that would achieve the relevant planning policy objective which interfere less with the individuals' rights.
40. I conclude on this matter, that the unauthorised development has an adverse impact on the character and appearance of the area and would be in conflict with Policies 7 and 37 of the Local Plan, which seek to ensure high quality development that complements the locality. There are no planning conditions that could be imposed to make the development acceptable. The development is in conflict with the development plan, and no material considerations indicate that planning permission should be granted despite that conflict.

41. For the reasons given above, the appeal on ground (a) fails and planning permission will be refused on the deemed planning application. I consider this to be necessary and proportionate in this instance.

Appeals A and B: Ground (f)

42. The ground (f) appeals are that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. While the connection is not explicit, the wording of Section 174(2)(f) of the 1990 Act links back to Section 173 which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity. In this case, the notice requires the unauthorised use to cease and link extension to be removed. Hence, its purpose is to remedy the breach of planning control. I must consider whether the requirements exceed what is necessary to achieve that purpose.
43. I have found that a material change of use has occurred and that use has been facilitated by the construction of the link extension. It follows that the breach can only be remedied through the cessation of the unauthorised use and the removal of the link extension, which facilitated the breach of planning control. Thus, the requirements are not excessive to achieve the statutory purpose behind the notice. The appeals on ground (f) fail, therefore.
44. The appellants have offered an 'obvious alternative', in an attempt to overcome the Council's objections. While the alternative scheme would not achieve the purposes of the enforcement notice, I may consider solutions short of a complete remedy of the breach that may be acceptable in planning terms, provided ground (a) is pleaded, which it is in this case.
45. I acknowledge that the requirements of the notice cannot be varied so as to result in a grant of deemed planning permission under Section 173(11) for operations or activities that were not in existence when the notice was issued¹⁷. However, I must consider the extent to which the alternative scheme may be considered part of the matters to which the notice relates. The alternative concerns the link extension but would result in a larger porch and a pitched roof. Although this would involve 'new works', the rear walls and a significant part of the porch walls would be retained. In my judgement, the proposal could be considered part of the matters and it is permissible for me to consider whether permission should be granted for the alternative under ground (a). I have dealt with this matter above and it is not necessary to repeat it here.

Conclusion

46. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

¹⁷ *Ioannou v SSCLG & Enfield LBC* [2014] EWCA Civ 1432.

Formal Decision

47. It is directed that the enforcement notice is corrected by the deletion of requirement 5 in paragraph 5. Subject to this correction, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Nicholas Kingsley-Smith	Kingsley Smith Solicitors
Mr Leslie Baker	Appellant
Mrs Janet Baker	Appellant
Ms Jennifer Baker	Interested Person
Mr Mark Wakeman	Interested Person
Mr Mark Baker	Interested Person
Mr Christopher Baker	Interested Person
Ms Samantha Pescud	Interested Person
Ms Jacqui Everett	Interested Person
Ms Sally Mudares	Interested Person

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Rees Phillips of Counsel instructed by The Council of the London Brough of Bromley

Ms Karen Daye	Council of the London Borough of Bromley
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INTERESTED PERSONS:

Mr Ian Stanton	Interested Person
Mrs Sarah Stanton	Interested Person
Mr Adrian Liley	Interested Person
Mr Tamer Suleyman	Interested Person

DOCUMENTS SUBMITTED AT THE HEARING

Environment Agency Consultation Response dated 9 February 2020