
Appeal Decisions

Site visit made on 30 November 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal A: APP/R5510/C/21/3267601

**Land at Summerfield Bungalow, Springwell Lane, Rickmansworth
WD3 8UX**

- 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 Mr Andrew Travers against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 16 December 2020.
 - The breach of planning control as alleged in the notice is: The material change of use of the building marked A and hatched in blue on the attached plan as a self-contained residential unit.
 - The requirements of the notice are: (i) cease the use of the property as a self-contained residential unit; (ii) Revert building A (internal layout and externally) to accord with the approved plans in Planning Decision Reference 24597/A/89/1968 granted on 07 August 1990; (iii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the works listed above.
 - The period for compliance with the requirements is: 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/R5510/C/21/3267589

**Land at Summerfield Bungalow, Springwell Lane, Rickmansworth
WD3 8UX**

- 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 Mr Andrew Travers against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 16 December 2020.
- The breach of planning control as alleged in the notice is: The material change of use of the building marked B and hatched in purple on the attached plan as a self-contained residential unit.
- The requirements of the notice are: (i) Cease the use of the property as a separate self-contained residential unit; (ii) Dismantle and remove from building B the "fitted kitchen", including the oven, hob, extractor unit, sink, worksurfaces and kitchen style cupboards and hot and cold water supply; (iii) Dismantle and remove from building B the bathroom, including the shower and associated plumbing, the sink unit and associated plumbing and the toilet pan and toilet cistern; (iv) Revert the use of building B to garage and store as approved in Planning Decision Reference 24597/A/89/1968 granted on 07 August 1990; (v) Alter building B to accord with the plans as approved in Planning Decision Reference 24597/A/89/1968 granted on 07 August 1990; (vi) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the works listed above.
- The period for compliance with the requirements is: 5 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the

Town and Country Planning Act 1990 as amended.

Decisions

Appeal A: APP/R5510/C/21/3267601

1. The appeal is dismissed, the Enforcement Notice (EN) is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/R5510/C/21/3267589

2. It is directed that the EN is varied by:
 - Deleting requirements (iv) and (v) from section 5 and renumbering requirement (vi) to become (iv).
3. Subject to these variations, the appeal is dismissed, the EN is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for Costs

4. Applications for costs made by Mr Travers against the Council of the London Borough of Hillingdon, for both appeals, are the subjects of separate decisions.

Procedural Matters

5. The appeals are against two different ENs related to two different buildings. However, the buildings are on the same overall site, the alleged breaches of planning control are the same, as are the appellant and the agent for both appeals, and some of the issues to be considered under each ground (a) appeal are similar, primarily arising from both buildings being in the Green Belt (GB). I have therefore found it appropriate to write one decision letter that covers both appeals. Nevertheless, the evidence for the ground (a) appeals differs when it comes to, in particular, the personal circumstances in each case and how they could affect the overall GB balance. I have, therefore, been careful to consider such matters separately as they relate to the specific circumstances of each appeal as can be seen below.
6. Both buildings were the subject of appeals determined in 2020 (Refs: APP/R5510/X/19/3225198 and APP/R5510/X/19/3226599). These related to applications for Lawful Development Certificates (LDC) for residential uses in each building. I determined those appeals, and they were dismissed. The determination of the earlier appeals was based solely on considering whether the existing uses of the buildings were lawful under s191(1)(a) of the 1990 Act. That is a consideration separate and different to the evidence I shall consider under the cases made in these appeals. Therefore, while both sides have referred to the earlier appeals and I shall take that evidence into account accordingly where necessary, I shall determine the current appeals based on the submitted evidence with an open mind unfettered by my previous involvement with the appeals on this site.
7. In legal grounds of appeal, such as under s174(2)(b) and (c) of the 1990 Act, the burden to make out the case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Appeal A - ground (c)

8. On 9th November 2020 an application was made for Prior Approval (PA) (Council ref: 76006/APP/2020/3659) for change of use of building A from office to residential to create a 3 bed dwelling under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The appellant asserts that the Council did not notify the applicant of its decision on the PA application within the relevant 56 days from when the Council received the application and, as such, PA has been deemed to be granted. Consequently, planning permission for the change of use to a Class C3 dwellinghouse already exists by way of it being Permitted Development (PD) and there has thus been no breach of planning control.
9. Before looking at the 56 days issue, where PA is deemed to be or expressly granted, the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact PD. Relevant to this appeal, and raised by the Council when it issued its decision on the PA application, is that development under Class O is not permitted if the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order (i) on 29th May 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use. I shall hereafter refer to 29 May 2013 as the material date.
10. The sales brochure for the appeal site, relied upon as part of the case that the building had an office use on the material date, was submitted with the PA application referred to above and is dated 19 June 2013. I accept that the estate agent would have visited the site and been inside building 'A' before the material date to prepare the sales information. However, while I note the description of building A as 'Detached Office Premises', the detailed description under the subheading 'Office' sets out that the building had several rooms over two floors that included a bathroom/WC, wet room/WC and a kitchen with a range of eye and base level units, oven and hob. Only one room is described as an office. Moreover, whilst the details are factual about the layout and content of the building, they do not confirm that the building was being used as an office on the material date. A photograph showing office furniture is not dated and when it was taken is also imprecise. Also, it does not confirm whether this was the room identified as an office in the estate agent details.
11. The Council has also drawn attention to what I considered in the previous LDC appeals dismissed last year. Paragraph 14 is particularly relevant:

"The estate agent appointed to sell the site around June 2013 refers to inspecting the site several times prior to this date. He describes that the slightly larger of the two dwellings was the primary residence of the previous owner, but due to the recent separation from his wife, the second building (the appeal building) showed clear indications of habitation. There was apparently a kitchen clearly in use and there were soft furnishings throughout and beds in the upstairs rooms. The appellant's daughter also refers to visiting the site during the summer of 2013 and describes the property as having 3 bedrooms and it was already set up as a family home".
12. In the previous appeals I went on to find I was not satisfied about the residential use occurring before 15 August 2013 (the material date in the LDC appeals). I also acknowledge that the material date in these appeals is

different from the material date in the last appeals where I also considered other evidence that might have indicated an office use before the date of another previous PA application made in October 2013. Nevertheless, the appellant is this time around seeking to rely on very similar estate agent circumstances, in particular visits by the agent, to show that the building was in office use on 29 May 2013 but at around the same time in the previous appeals, I was being asked to find that they showed the building was in residential use. As a matter of fact and degree, this paints a confused and contradictory picture, even if the building could have been identified as a separate planning unit from the rest of the overall site.

13. Given the above, the appellant has not shown on the balance of probability that the appeal building was in Class B1(a) Office use on the material date or that if not in use on that date, that it was in use as an office when last in use. The PA change of use to a Class C3 dwellinghouse is therefore not permitted and even if the PA application has been deemed to be granted, it would not be lawful. Consequently, I do not need to consider the 56 days issue.
14. The material change of use of a building to a self-contained dwellinghouse as alleged in the EN is development. Planning permission has not been granted by the GPDO. Without planning permission for the development, there has been a breach of planning control. The ground (c) appeal must therefore fail.

Appeal B – ground (b)

15. For success on this ground, the appellant must show that the matters alleged in the EN have not occurred. I have read all the evidence about the kitchen in the building being removed and that the Valuation Office accepts that the building is not a self-contained residential unit. However, the outcome under this ground of appeal does not hinge on when facilities such as the kitchen, the oven, hob, all units, and worktops were removed, even if the Council was informed about this before the EN was issued. The 'test' is whether the matters occurred, which in this case is a 'self-contained residential unit'.
16. The evidence points very strongly to the fact that the building had all the means of self-contained living. For example, the appellant advises that "the building, when originally converted, contained a bedroom, kitchen and bathroom". It is also clear that what the appellant suggests could now be a 'dining area/study' is the room where the kitchen used to be, and the rest of the layout shows what is currently there which includes a bathroom and a bedroom. Moreover, in the earlier dismissed LDC appeal (Ref: APP/R5510/X/19/3226599), the appellant asserted on the LDC application form that the dwellinghouse use started on 5 September 2014. The Council has also drawn attention to a further claim made on the LDC application form that "the existing use as a single dwelling house began more than four years before the date of the application". The unit has also previously been advertised for short term lets as a newly converted 2-person apartment on Airbnb.
17. The building may have been occupied sometimes by members of the appellant's family meaning that there was an ancillary/annex link to the residents of the main dwelling next door. Nevertheless, as a matter of fact and degree, there is very little doubt that the building had all the means of self-contained living and that is the way it had been used. Although the appellant says that it has not been used since the end of 2018, the last use was the

unauthorised use that is subject to the EN, and the breach has therefore occurred as a matter of fact. The ground (b) appeal fails.

Appeals A and B – ground (a) planning merits

Procedural Matters

18. Following on from the above, the appellant has suggested that in Appeal B planning permission should be granted for a change of use from a garage to a residential annex, with a condition to prevent the building being used as a separate self-contained dwelling. The annex could have just a bedroom and a bathroom. However, the terms of the deemed planning application under the ground (a) appeal derive directly from the alleged breach of planning control. In my judgement a self-contained residential unit is materially different from rooms that may be occupied for overspill accommodation to an existing host property or for occupation by family of the residents of the main dwelling. Therefore, what is suggested is not part of the matters in the EN and I shall consider the planning merits of a self-contained residential unit in the GB.
19. This is not to say I have not considered the appellant's suggestion carefully because of the reasons behind it. I shall have regard to the personal circumstances advanced in support of the building being occupied under the 'Other Considerations' section below.
20. Regarding planning policy, since the ENs were issued, the National Planning Policy Framework (NPPF) has been revised. The parties were asked to comment on the changes and where necessary I have had regard to comments made. The London Plan 2021 has also been published. It is clear from the evidence that both sides are aware of this and I have taken account of the new London Plan policies as appropriate. In this context, neither side has been caused injustice to their cases.

Main Issues

21. The main issues are:

- For both appeals, whether the developments are inappropriate development in the GB having regard to the NPPF and any relevant development plan policies;
- For Appeal A, whether it has been shown that the building is redundant as there is no realistic prospect of it being reused for employment purposes;
- For Appeal B, whether the internal floor area of building would provide a suitable standard of living accommodation and whether it would comply with the Council's development plan policy on 'Outbuildings';
- For both appeals, whether the residential units would have an appropriate usable outdoor private amenity space;
- For both appeals, whether the character or appearance of the Springwell Lock Conservation Area (CA) has been preserved or enhanced;
- For both appeals, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Inappropriate development – both appeals

22. Paragraph 150 of the NPPF sets out that certain forms of development are not inappropriate in the GB provided they preserve its openness and do not conflict with the purposes of including land within it. Those include at (d) the re-use of buildings provided that the buildings are of permanent and substantial construction. The Council asserts that a material change of use as alleged to have occurred is not a re-use of a building and that re-use means putting an unused building back into its previous use.
23. I do not agree. A plain on the face reading of the NPPF does not prevent a building being re-used for another purpose and it allows for development to occur in certain circumstances. There is no preclusion to that development being constituted by a material change of use as defined under s55(1) of the 1990 Act. In principle, therefore, paragraph 150 does allow for changes of use and in this case the buildings would not be extended, and they are permanently and substantially constructed. However, that is not the end of the matter. The re-use of buildings must also preserve the openness of the GB and not conflict with the purposes of including land within it.
24. The fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of GBs are their openness and their permanence. With both buildings, their residential use is likely to lead to domestication of the land associated with them with the consequent introduction of domestic paraphernalia. There are photographs showing, particularly related to Building A, items such as a gazebo, trampoline, bench, chairs, flowerpots, and a child's toy. I also saw a shed at my site visit. Although for building B the use has ceased and there is nothing specifically related to it domestically outdoors, to my mind dwellings with gardens invariably leads to associated accoutrements.
25. Moreover, defining gardens with fences adds to the domestic appearance of land and they adversely affect the openness of the GB. At the front of building A there is a low fence that encloses the lawn and down one side there is a much taller solid fence about 2m high that appears to have been recently erected, and which sections off building A from the rest of the site to the west. The tall fence and the domestication of the land are visible from the highway that runs past the site. There are currently no similar enclosing fences for building B. However, I am considering an application for the change of use to a self-contained residential unit that could be occupied separate from the main house next door. It is therefore reasonable to find that the occupiers of the dwelling would wish to have at least a small area of enclosed private outdoor space, particularly because of its closeness to the appellant's house. I shall return to the issue of outdoor space below.
26. Consequently, the adverse effects on the openness of the GB are/would be spatial and visual. There is no evidence showing how the appeal developments might compare with the impact on the GB of any lawful use of the land, which it seems very unlikely would reoccur anyway given the planning history of the site over the last 8 years or so. I have therefore assessed the scheme related to the current appearance of the site.
27. Against this background, I am of the view that in both appeals the developments would fail to prevent urban sprawl by failing to counteract the inappropriate introduction of new domestic uses into the GB. They would also

not preserve the openness of the GB and conflict with its purpose to assist in safeguarding the countryside from encroachment. For both appeals, the schemes are inappropriate development.

28. In relation to Appeal A, the appellant has argued that the development is not inappropriate because it would meet the exception in paragraph 145(g) (now paragraph 149) from the NPPF because it would represent limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would..... contribute to meeting an identified affordable housing need within the area of the local planning authority. However, that exception is for the construction of new buildings and because Appeal A involves the change of use of an existing building, paragraph 149 from the NPPF is not relevant.
29. Inappropriate development is, by definition, harmful to the GB. There is also harm to the openness of the GB. The NPPF requires that substantial weight is given to any harm to the GB.

Office/Storage space – Appeal A

30. The planning permission in 1990 for “change of use of watercress beds to garden nursery; erection of associated shop and office building; erection of a bungalow and ancillary parking”, showed building A marked as a shop/office.
31. Policy DMH3 ‘Office Conversions’ from the LP supports the demolition and redevelopment of office accommodation where they are found to be redundant. I note the letter dated 3 August 2018 from a person who was employed by the agent who handled the sale of the site in June 2013. The letter sets out reservations about focussing the sale on the commercial element of the site with the office building, as there would be unlikely to be any commercial appetite for such an office space given its remote location. However, there is little to back up this opinion and it does not give any current view about whether the office could be considered redundant. The view given is also in a letter from over three years ago and it reflects on advice given in 2013. It is therefore not an up-to-date market assessment. I note the layout back in 2013 did not have an overall office layout. However, decisions presumably taken to have such an internal layout at that time should not in my view detract from the fact that the lawful use of the building was/is as an office/shop.
32. Policy DME2 from the LP also allows for the loss of employment floorspace or land outside of designated employment areas subject to meeting various criteria which include showing that the: *ii) the site is unsuitable for employment re-use or development because of its size, shape, location or unsuitability of access; iii) sufficient evidence has been provided to demonstrate that there is no realistic prospect of land being reused for employment; iv) the new use will not adversely affect the functioning of any adjoining employment land.*
33. Criteria (iii) has a footnote that states: *Note that sufficient evidence should include details of marketing of the site for a minimum period of 12 months.* In this case, there is no such evidence. I have read the letter from an agent who was contacted by the appellant to give a view on the commercial/office potential of Building A. However, there is nothing to show on what basis the agent was instructed, and it appears that the agency is a residential one. I

give this letter limited weight. Also, despite what has been said about the site's location, it clearly was considered suitable for employment use in the past and unless specific evidence such as failed marketing shows that any potential office use has fallen away, there is a clear conflict with this policy.

34. I accept that the current covid-19 pandemic, which has been accompanied at times by policies to work from home, has had an immediate impact on the way and where people work. Those effects may also have longer term consequences and make the buoyancy of the office market situation uncertain. Nevertheless, in the absence of realistic evidence to show what those effects might be on the appeal site, I give generalised reports and comments little weight. The fact that other nearby businesses are not offices, does not show that there is no demand for the office use of building A.
35. The appeal development conflicts with the office and employment floorspace protection aims of policies DMH3 and DME2 from the LP.

Standard of living accommodation and policy on 'Outbuildings' – Appeal B

36. The appellant asserts that because the building is an annex it does not need to meet any set internal space standard. I disagree because I am considering an application for a self-contained residential unit. Nevertheless, as a studio for 1 person (with a shower room), it is further argued that the internal floorspace of the building would exceed what is needed to comply with table 5.1 'Minimum Floorspace Standards' from the Hillingdon Local Plan Part 2 – Development Management Policies (LP). The table relates to policy DMHB16 from the LP which seeks all housing development to have adequate internal space to provide an appropriate living environment. Table 5.1 reflects table 3.1 relevant to policy D6 'Housing quality and standards' from The London Plan 2021.
37. However, given the way the accommodation has been advertised as referred to above in ground (b), with photographs showing a double bed, it was clearly converted not for a studio but as a two-person/bed spaces one storey dwelling which requires a minimum gross internal area of 50 sqm to accord with table 5.1. Whether the existing gross internal space is 40 sqm as advertised, or at 43.45 sqm as stated in this appeal, either way there is a significant shortfall in the minimum space required needed to provide an acceptable living environment. It may be the case that the lack of built-in storage would also mean the living space is substandard, but it is the overall lack of internal space that is the prevailing concern.
38. Whilst I have been clear that I am considering a self-contained residential unit, based on the plans for the original planning permission for a garden nursery, it appears that Building B was the garage associated with the new house granted on the site which is now occupied by the appellant. It is therefore an outbuilding and notwithstanding that the kitchen has been removed and its use has ceased, it did have primary living accommodation in it. Under policy DMHD2: 'Outbuildings' from the LP, the Council seeks to strongly resist proposals for detached outbuildings which are capable of independent occupation from the main dwelling, and which effectively constitute a separate dwelling in a position where such a dwelling would not be accepted.
39. The appeal development conflicts with policies DMHB16 and DMHB2 from the LP, and policy D6 from The London Plan insofar as they seek to ensure

acceptable standards of internal living space and resist the use of outbuildings as independent residential accommodation.

Outdoor private amenity space – both appeals

40. Notwithstanding concerns about the effects of defining areas of outdoor amenity space on the GB, a large private garden could be demarcated for building A that would exceed the minimum standard set out in table 5.3 which relates to policy DMHB18 'Private Outdoor Amenity Space from the LP. For building B, the situation is less clear because the appellant suggests that the residential occupation should be considered as an annex to the host property and any outdoor amenity area could be shared with the ample space already associated with the lawful dwelling. However, given that building B would have one bedroom, the amount of space required to meet the standard in table 5.3 could also be provided. Had the appeals been allowed, these matters could have been dealt with by planning conditions.
41. The appeal schemes would accord with policy DMHB18 from the LP which aims to ensure outdoor space would be well located and usable for the private enjoyment of the occupiers of new residential development.

Springwell Lock Conservation Area

42. The Council has not identified any harm to the character or appearance of the CA and the appellant has not touched on this issue either. However, there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Despite my concerns related to the harm to the GB, given that the CA contains other residential uses, the changes of use would preserve the significance of the designated heritage asset.

Other Considerations

43. For Building A, the property is a family home for parents and their children. It would not be appropriate to go into the details of the family circumstances in this decision, but I can assure the appellant that I have read very carefully the information submitted about the family. I recognise the closeness of the property to grandparents also means there is further childcare support that allows the parents to work. The property is also an affordable place for the family to live and they have been there for a significant time. It must, notwithstanding the fact that the occupation is unauthorised, by now be a settled base and I am acutely aware of my responsibility to have regard to what could be the consequences of Appeal A being dismissed. Nothing should be more important as a primary consideration than the best interests' of children and here that could involve the loss of their home and possible disruption to family life and their schooling.
44. However, it seems only natural to me that the grandparents would wish to continue caring and supporting the family even if that had to adapt to the family not living so immediately close. Furthermore, there is nothing to show that the attendance of the children at their current school could not continue or that the additional school and local authority care and support would stop. That said, I recognise that potential disruption to home life and education can cause uncertain times.

45. Nevertheless, a public authority may interfere with qualified rights to private and family lives, and their homes, where there is a clear legal basis for doing so and the action is necessary in a democratic society. It has been held that interference may be justified if it relates to the regulation of land use using development control measures that are recognised as an important function of Government. In this case, there are several development control planning policies that the change of use of building A conflict with, most notably in this appeal are those related to protection of the GB to which the Government attaches great importance. In my view, therefore, the interference with this home and the family lives concerned would be a justified and proportionate response. I shall though, still attach significant weight to the personal circumstances when it comes to the GB balance below, particularly so in the exercise of my duty to have due regard to the circumstances of the persons affected by this decision.
46. Regarding building B, I have again carefully read the background to why the residential use of the building would be required. I shall go into no more detail than is necessary to support my reasoning. I can understand the wish for the appellant's son to live in building B. The desire to provide him with support from family either side of what could be his place of residence is understandable. I am left with the view that this is a caring family trying to do their best for a member of that family.
47. Whilst, in Appeal B my decision is not directly interfering with the home of the person in mind as the building is unoccupied and that person already lives elsewhere, there is an interference with private and family lives. Nevertheless, for the same reasons as given above, these are qualified rights, and the interference is proportionate and justified. The planning system can sometimes resolve concerns about where someone is living, but in this case, they should be resolved away from this appeal. Having due regard to the personal circumstances cited in Appeal B, I attach them moderate weight, but that is not to denigrate the laudable intentions of the family.
48. I have noted that the building was occupied by other persons, including the appellant's brother. However, there is nothing to support a current need for such accommodation. This background has very little weight.
49. I note the planning permission granted by the Council for a single storey gym/office/store at another property along Springwell Lane. However, having read the Council officer report, whether the planning policy context has changed or not, the other site is not in the GB and therefore not subject to the tight GB restrictions relevant in these appeals. Moreover, the other development was not for a self-contained residential unit. The other planning permission has very little relevance and as such has very little weight.
50. I saw the block of flats opposite the appeal site that are also in the GB. There is very limited detail to show the considerations that led to the flats being granted planning permission in 1998 and so I cannot draw any meaningful comparisons with the developments I am considering. They are also a materially different form of development to buildings A and B. The 1998 planning permission for the flats has very little weight. The proposed scheme nearby in 2015 for up to 122 residential units was never determined. The absence of a planning permission means this formerly proposed scheme also has very little weight.

51. I note other considerations raised about the background to the PA applications made related to Building A and matters of flood risk and condition 12 on the 1990 planning permission for the garden nursery use. However, based on the cases made in these appeals, these are not determinative matters and as such I have not had to consider them. These points have very little weight. Concerns about how the Council has handled the enforcement investigations and engaged with the appellant, and what happened when Council officers visited the site in August 2020, are separate to considering the planning merits of the appeals. They too have very little weight.

Green Belt Balance

Appeal A

52. I have identified harm to the GB by way of inappropriateness and to its openness. Substantial weight must be given to any harm to the GB. I have also found harm related to conflicts with development plan policies that seek to safeguard the loss of office/employment land. I attach substantial weight to this harm as well. On the other side of the balance, I have attached significant weight to the personal circumstances cited, but for the other considerations I have attached very little weight for the reasons given. Findings of no harm related to the lack of identified outdoor amenity space and to the CA are neutral considerations with no weight either way.
53. Even though the family situation has significant weight, that, along with the totality of the weights arising from the other considerations, does not clearly outweigh the harm so as to amount to the very special circumstances required to justify the proposal. As such, the development conflicts with the GB protection aims of policy DMEI4 from the LP and policy G2 from the London Plan 2021. There are further conflicts with policies DMH3 and DME2 from the LP for the reasons already given. The development does not accord with the development plan taken as a whole.

Appeal B

54. I have identified harm to the GB by way of inappropriateness and to its openness. Substantial weight must be given to any harm to the GB. I have also found harm related to conflicts with development plan policies that seek to provide appropriate standards of living space and seek to resist the use of detached outbuildings which are capable of independent occupation from the main dwelling, and which effectively constitute a separate dwelling in a position where such a dwelling would not be accepted. I attach substantial weight to these harms as well. As with Appeal A, no harm related to the lack of identified outdoor amenity space and to the CA are neutral considerations with no weight either way.
55. For the reasons given, the cumulative weight of the other considerations does not clearly outweigh the harm so as to amount to the very special circumstances required to justify the proposal. As such, the development conflicts with the GB protection aims of policy DMEI4 from the LP and policy G2 from the London Plan 2021. There are further conflicts with policies DMHB16 and DMHB2 from the LP, and policy D6 from The London Plan for the reasons already given. The development does not accord with the development plan taken as a whole.

Further GB balance

56. It is apparent that although the appeals are separate and against two ENs, the family circumstances between Buildings A and B, and with the appellant's property, are intertwined. For the avoidance of doubt, I wish to make it clear that even if I took all the other considerations into account from both appeals, their cumulative weight would still not outweigh the harm to the GB and any other harm, for both appeals. Thus, the very special circumstances required to justify the developments would still not be demonstrated.

Ground (a) Conclusions – both appeals

57. For the reasons given, the ground (a) appeals fail, and I shall refuse to grant planning permission for the applications deemed to have been made under s177(5) of the 1990 Act.

Appeal B - ground (f)

58. The EN alleges a material change of use to a self-contained residential unit. In broad terms it then requires the fixtures and fittings installed to facilitate that use to be removed and taken away. Thus, the EN is setting out to have the building back to its condition before the breach took place. On this basis, the purpose of the EN is that under s173(4)(a) of the 1990 Act which is to remedy the breach of planning control. This sets the context for considering whether the steps the EN require to be taken exceed what is necessary to remedy the breach of planning control. Furthermore, whilst I am aware of works already undertaken to remove the kitchen facilities, for example, that has no bearing on whether this requirement is excessive. It just means that some steps might have already been complied with.

59. Step (i) requires the use to cease. The unit has not been occupied for a few years. Nevertheless, it must be a requirement in an EN alleging a material change of use for that use to cease. This is not an excessive requirement. Step (ii) relates to removing the kitchen facilities. It is not excessive in material change of use cases for items installed that facilitated the use for them to be removed. Although the appellant states that the garage had a butler sink and hot and cold water prior to the kitchen being fitted, it has not been shown that the hot and cold supply was not installed to facilitate a self-contained residential use. Accordingly, step (ii) is also not excessive.

60. An essential part of self-contained living would be bathroom and WC facilities. For them to be removed is also not therefore excessive. Step (iii) should remain unchanged. Any future arrangements such as the wish to have a bedroom and a bathroom in the building is a matter for discussion with the Council away from this appeal.

61. There is no scope under s173(4)(a) to require reversion to the lawful use. Thus, the EN should not require the use to be back to a garage and store and step (iv) should be deleted. Regarding step (v) it appears that the garage building differs from the appearance of what was granted planning permission in 1990. However, it seems to me that if I consider what is the minimum necessary to remedy the breach, requirements (i) to (iii) do that in a proportionate way without putting more burden on the appellant. I therefore consider that requirement (v) is excessive, and I shall delete it from the EN.

Step (vi) is not excessive as part of restoring the land back to its condition before the breach took place.

62. In view of the above, there is partial success under this ground of appeal, and I shall vary the requirements of the EN accordingly.

Conclusions

Appeal A

63. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR