



Appeal Decision

Site visit made on 19 July 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD OCTOBER 2022

Appeal Ref: APP/U5930/C/21/3268908

Land at 103 Chingford Mount Road, Chingford E4 8LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Zuber Mohamed of Bibeuns of London Limited against an enforcement notice issued by Waltham Forest London Borough Council.
 - The notice, numbered 084437, was issued on 22 January 2021.
 - The breach of planning control as alleged in the notice is:
 - Without planning permission:
 - I. Installation of two lightwells on the highway in front of the property.
 - II. Excavation work to an existing basement, which extends to the front curtilage of the highway.
 - The requirements of the notice are to:
 1. Demolish and remove the two lightwells on the highway fronting the property.
 2. Reinstall the external boundary wall down to the basement level.
 3. Backfill the entire extended parts of the basement hatched in red in appendix A (for identification purposes only).
 4. Return the basement and highway back to its original condition prior to the unauthorised works.
 5. Restore and make good the relevant parts of the site.
 6. Remove all resulting fixtures and fittings, materials and general detritus from the Land following compliance with step 1 -5 above.
 - The period for compliance with the requirements is four months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), 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.
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Summary Decision: The appeal succeeds in part, planning permission is granted for part of the development and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice refers to policies of the London Plan dated 2016 and the Draft London Plan dated July 2019. Shortly after the notice was issued, and before the deadline for the submission of all evidence in this case, the London Plan dated March 2021 (LP) was published. As this replaces the versions of the London Plan referred to in the notice, I have not had regard to the policies of these Plans that are mentioned. I have, however, noted the policies of the LP that have been drawn to my attention.
2. Similarly, the notice refers to Policy 62 (Delivering High-Quality Design) of the Waltham Forest Shaping the Borough Draft Local Plan 2020-2035 (Public Consultation Draft July 2019). However, I have been provided with a copy of a

policy of the same name, but numbered Policy 56 of the Shaping the Borough Waltham Forest Local Plan 2020-2035 Proposed Submission Document Regulation 19 dated October 2020 (DWFLP). It is clear that the draft local plan is an emerging document, but it does not form part of the development plan for the purposes of the deemed planning application. Nevertheless, I have had regard to Policy 56 that has been drawn to my attention.

3. On a separate matter, I note that much of the evidence makes reference to a planning application that was made and subsequently withdrawn. This appears to relate to the development that is the subject of this appeal. The evidence also refers to other planning history for the site and the investigation that led to the issue of the enforcement notice. The appellant refers to the Council's conduct during this period. Whilst I do not dismiss this evidence, much of this is not relevant to the particular grounds of appeal in this case. I am unable to consider the appellant's complaints about the Council's conduct within the scope of this appeal.

The Notice

4. I have a number of concerns with regard to the validity of the notice. The views of the parties were sought on these and I have taken any comments received into account in reaching my decision. Before I deal with each of my concerns in turn below, on a general point I note the appellant's objections to any corrections to the notice, including whether or not the corrections would be fair, having regard to the previous decisions and applications.
5. Whilst the appellant's objections are noted, if there is an error in the notice, I have a duty to put the notice right, if I am able to do so. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether or not the correction or variation would cause any injustice to the appellant or the local planning authority. If I conclude that injustice would not be caused, I have the power to correct the notice and move on to consider the grounds of appeal. Furthermore, I have a duty to put the notice in order, if I can. With this in mind, I consider each of my concerns about the notice as follows.

Land to which the notice relates

6. The Council's response to my questions on the notice has clarified that the works alleged to have been undertaken comprise two covered lightwells and the excavations required to create the voids beneath the lightwell covers. Whilst being directly adjacent to the front elevation of the appeal property, the lightwells and associated excavations are forward of this principal elevation. The Council confirm that no part of the development alleged in the notice is beneath or within the main footprint of the building.
7. With the above in mind, I note that the description of the land to which the notice relates is given as 103 Chingford Mount Road, and the red line boundary on the enforcement notice plan has been drawn in line with the front elevation of the building on this site. However, as noted above, both lightwells and their associated excavations are forward of the front elevation of the building; the Council has confirmed that these are shown crossed hatched in red on the plan

entitled 'Appendix A', attached to the notice. Whilst this clarifies matters for the purposes of this appeal, this plan is not referred to in the description of the land to which the notice relates. Accordingly, it appears that the works alleged in the notice to have been undertaken are outside of the land to which the notice relates. For this reason the notice is incorrect and, therefore, invalid.

8. The Council has provided an amended site plan, which amends the red line boundary to include the land occupied by the lightwells. If I am to correct the notice by substituting the original enforcement notice plan with the Council's amended version, I must be satisfied that injustice would not be caused to either party. Furthermore, if injustice would be caused to any other interested party, that could be a reason for not exercising my discretion to correct the notice.
9. I have seen reference to the red hatched land as highway. If it is the case that the Highway Authority has an interest in the land to the front of the building, it has not been served with a copy of the notice in that capacity.
10. Whilst the Council cannot confirm whether or not the area to the front of the building is owned by the appellant, the evidence provided does not indicate that there is another unknown party with an interest in the land. I note that this is not disputed by the appellant. In short, the Council suggests that those with an interest in this land are either the appellant, the Highway Authority, or both. I have been given no reason to disagree with the Council's findings in this regard.
11. In the event that the appellant is the only party with an interest in the land to the front of the building, I am satisfied that injustice would not be caused were I to substitute the enforcement notice plan and to include this land in the description of the land to which the notice relates. The appellant has made his appeal on a number of grounds and his case clearly relates to development in the location of the red hatched area.
12. If it is the case that the Highway Authority has an interest in the land to the front of the building, I am satisfied that I can rely on the Council's assurance that the Highway Authority has no interest in making an appeal against the notice. Whilst the Council issued the enforcement notice in its capacity as Local Planning Authority, it is also the Highway Authority. As such, injustice would not be caused by substituting the plan.

The allegation

13. The allegations in the notice should be precise. The description of the location of the lightwells is a little vague, and there is some uncertainty with what is meant by 'which extends to the front curtilage of the highway' when describing the location of the excavation works.
14. The notice would be more precise if 3.I. and 3.II. were corrected to simply refer to the red hatched areas on the Appendix A plan in order to specify the location of the lightwells and excavations. Marking each of these red hatched areas as 'A' and 'B' on the Appendix 2 plan would also provide further clarity.
15. Having considered the representations made with regard to any correction to the allegation, I am satisfied that making the above corrections would not cause injustice in this case. Whilst the appellant has referred in evidence to the basement beneath the main footprint of the appeal building, his case also

relates to the lightwells and excavations in the location identified on the Appendix A plan. The claim that the lightwells have always been in place is a matter to be considered under the grounds of appeal.

Requirements of the notice

16. As with the allegations, requirement 5.1 also attempts to identify the location of the two lightwells with reference to the highway 'fronting the property'. This is unnecessary and adds uncertainty with regard to what is required by the notice. There is no need to identify the location of the lightwells in the requirements, provided their location is adequately identified in the allegations, as set out above.
17. I also find requirement 5.2. of the notice to be uncertain. A requirement to reinstate an external boundary wall suggests some form of enclosure to the front of the property. The Council has confirmed that this was not the intention. Instead, it has confirmed that the intention was for the reinstatement of the front wall within the basement below the front elevation of the building. Correcting the notice in this manner to replace requirement 5.2 would overcome any uncertainty with regard to what the recipient of the notice is required to do.
18. The appellant has objected to such a correction as he says that he would no longer have a lightwell that was pre-existing. Also, that the coal bunker lightwell (the smaller of the two) is a feature on many properties. Whilst these comments are noted, they relate to the appellant's case under the grounds of appeal and, therefore, fall to be considered in the following sections of this decision. I can find no reason to conclude that injustice would be caused were I to correct the notice, as indicated above.

Ground (b)

19. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. The onus of proof is on the appellant and the test of any evidence is on the balance of probability.
20. Much of the appellant's case that is relevant to the ground (b) appeal refers to the basement itself within the footprint of No 103, rather than the excavations carried out to create the lightwells. Whatever the parties' respective position is with regard to the basement, the allegations relate only to the lightwells and the associated excavations. As I have noted above, this was clarified in the Council's recent response to my questions on the notice. The ground (b) appeal is, therefore, only concerned with these matters and not with the basement that falls within the footprint of No 103.
21. With regard to the allegations in the notice, it is clear from the evidence that works have been undertaken to the property in recent times to change the use of the ground floor to provide residential accommodation. These works included the alterations of the front elevation of the property. I can see that the matter in dispute between the parties is whether or not the lightwells and associated excavations were in place prior to the carrying out of these works. Indeed, much of the evidence refers to these recent works and what might have existed at the property prior to their commencement. All of this is relevant to the ground (d) appeal.

22. As for this ground (b) appeal, regardless of whether or not the lightwells were in place prior to the carrying out of the recent works to the property, the evidence all points to the lightwells being in place at the time the notice was issued. Indeed, the lightwell coverings were visible on my site visit, and the September 2020 photographs provided in the Council's evidence shows the corresponding excavated lightwells below. This is important to the ground (b) appeal, but is not the only decisive matter in this case.
23. Despite the lightwells and associated excavations being in place at the time the enforcement notice was issued, the appellant might succeed on the ground (b) appeal if he were to demonstrate that the matters alleged in the notice had not occurred because, for example, those matters were instead an original feature of the building at the appeal site; that the building was originally constructed with the lightwells.
24. In this regard, whilst the appellant suggests that the lightwells were in place prior to the recent works to the property, he does not make the case that these are original features of the building. Notwithstanding this, I have seen reference to a previous coal bunker. I also note the appellant's reference to his correspondence with the Council in October 2018¹, in which 'glass blocks' and a 'well' are referred to. Even if these items relate to the matters alleged in the enforcement notice, this is not sufficient to demonstrate that, on the balance of probability, the lightwells and associated excavations had historically existed in their current form or that these were features of the property when it was constructed.
25. Having viewed the area surrounding the appeal site, there is little evidence of such features being common place on other similar properties within the area. This leads me to conclude that it is less than probable that the lightwells are original features of the appeal building.
26. All things considered, I find that, as a matter of fact and degree, the works alleged in the notice, corrected as I intend, have occurred. Accordingly, the ground (b) appeal must fail.

Ground (d)

27. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters stated in the enforcement notice.
28. As noted above, it is clear that recent works have been undertaken to the property. I have also noted the parties' reference in evidence to the basement and the provision of residential accommodation in this space. To be clear once again, the basement level beneath the footprint of No 103 is not referred to in the notice's allegation, once corrected as I intend. It is only the lightwells and the excavations to create these that are of relevance to this ground (d) appeal.
29. With this in mind, it is the appellant's case that the development subject of the notice was in place prior to the recent works to the property. Whilst I can see that this is an important matter in this case, for the appellant's ground (d) appeal to succeed, he must also demonstrate that, prior to the issue of the

¹ The appellant's Evidence J.

enforcement notice, a period of four years has passed beginning with the date on which the development alleged in the notice was substantially completed. The test in this regard is the balance of probability and the burden of proof is on the appellant. The date four years prior to the issue of the enforcement notice was 22 January 2017.

30. The Council has provided plans it says were submitted with an application reference 193121 for the 'conversion of the basement into habitable space' in September 2019. I note that the appellant has also highlighted these plans in his evidence, in particular the plan of the basement. Whilst I can see that the lightwells in question are shown on this plan, I cannot see that this plan assists the appellant. These plans appear to show the arrangement for which the 193121 permission was sought. They do not show the arrangement of the basement, which might have included the lightwells, prior to the conversion works referred to by the Council.
31. I have already referred to the appellant's correspondence with the Council in October 2018, in which 'glass blocks' and a 'well' are referred to. Notwithstanding that this email is dated less than three years prior to the issue of the enforcement notice, I have already concluded that this is not sufficient to demonstrate that the lightwells and associated excavations existed in their current form prior to the works referred to in the correspondence.
32. The appellant has provided Google images of the appeal site from July 2008, August 2011, July 2014, and August 2020. I also note the Council's photographs of the appeal site from September 2015, April 2016, May 2017, March 2019, and September 2020. Although the quality of the appellant's August 2020 image is poor, I can see the raised metal grille above the larger of the two lightwells. This is as I had observed it on site and is also shown in the Council's September 2020 photographs. I note that this grille is not visible in the Council's March 2019 photograph, in which I can see what appears to be an area of lighter hard surfacing and glass blocks. In this photograph I can also see a smaller area of light hard surfacing in the location of the smaller lightwell.
33. With regard to his July 2008, August 2011, and July 2014 photographs, the appellant says that 'the area surrounding the lightwell existed and remained untouched by the highway when the tarmac was laid'. Having considered these photographs, I can see that the surfacing in the location of the larger lightwell has a different appearance to that of the remaining footway. It does not, however, necessarily follow that the larger lightwell, or indeed the smaller lightwell and the excavations associated with both, were in place at this time. I cannot, for example, see any demarcation on the ground in the location of the smaller lightwell. Nor can I see the glass blocks which appear to be present in 2019.
34. I acknowledge the appellant's contention, that the lightwell was in place in the earlier photographs, but in a disintegrated form. The evidence does not, however, support this.
35. All things considered, I cannot be satisfied that the appellant has discharged the burden of proof in this case. I am, therefore, unable to conclude on the balance of probability that on the date the enforcement notice was issued no enforcement action could be taken in respect of the breach of planning control

alleged, once corrected as I intend. For this reason the ground (d) appeal should fail.

Ground (a) and the deemed application for planning permission

Main Issues

36. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. I note the substantive reasons for issuing the enforcement notice and from these I have identified the main issue as being the effect of the development on the character and appearance of the area.

Relevant Policy

37. The enforcement notice refers to Policies DM4 (Residential Extensions and Alterations) and DM29 (Design Principles, Standards and Local Distinctiveness) of the London Borough of Waltham Forest Development Management Policies Local Plan adopted October 2013 (WFLP). These require, amongst other matters, that development is of a high standard of design that reinforces, respects and/or enhances the street scene, local character and distinctiveness. These Policies are reinforced by Policy CS15 (Well Designed Buildings, Places and Spaces) of the Waltham Forest Local Plan Core Strategy adopted March 2012 (WFCS), as well as guidance provided in the Residential Extensions and Alterations Supplementary Planning Document dated February 2010 (SPD) and the National Planning Policy Framework (the Framework). I also note the emerging Policy 56 of the DWFLP includes similar requirements.
38. The Council also refer to Policy D8 (Public realm) of the LP which requires, amongst other matters, that development ensures that the public realm is well-designed, attractive and relates to the local context.
39. Finally, whilst I have seen reference to Policy D4 (Delivering Good Design) of the LP, this policy relates more to the process for delivering good design, rather than specifying the elements of a development that contribute to it, as the above-mentioned Policies do. The Council has not pointed to any particular part of Policy D4 that the development would conflict with. Whilst I have little evidence of the process the appellant has followed in designing the development in this case, I am unable to identify any part of the policy that might be relevant to the main issue in this case.

Reasons

40. The appeal site is on a busy main road in a high street characterised by a mix of commercial and residential properties. The design of properties in the area is mixed. Some have a large front garden or forecourt, whereas other buildings are located close to the edge of the footway. The building at the appeal site is one such property. Although the hard surfacing in front of the building has a different appearance to the rest of the main footway, there is no obvious forecourt to the property. The appeal property is in a row of 4 buildings, with each having an open frontage.
41. As I have already noted, the two lightwells that are the subject of the deemed application are directly in front of the appeal building. The smaller of the two is to the side of the main entrance to the property and projects only a small

distance into the footway, just further than the row of wheelie bins I saw stored along the front elevation of the building. Its level appears fairly flush with the surrounding land and the concrete and glass block covering is inconspicuous within its setting.

42. The larger of the two lightwells projects further from the front elevation. The concrete and glass blocks visible in the Council's March 2019 photograph are no longer visible, and appear to have been covered or replaced with an opaque covering and a raised metal grille above. These can be seen in the Council's September 2020 photographs, taken prior to the issue of the enforcement notice. Both the opaque covering and the metal grille protrude above the level of the surrounding land, and the raised grille in particular appears awkward and incongruous within its setting.
43. I acknowledge above that lightwells are an uncharacteristic feature within the setting of the appeal site. I do not, however, consider the smaller of the two lightwells to be unacceptable. It is a fairly discreet feature and I do not find it to be incongruous within the Chingford Mount Road street scene. As for the larger lightwell, I might have concluded the same, had this been finished at street level in the same way as the smaller lightwell. However, the raised cover and grille above the lightwell void are poorly designed and give this feature a hostile appearance, causing harm to the character of the area.
44. For the reasons given above I conclude that the smaller of the two lightwells has an acceptable effect on the character and appearance of the area. I do not, therefore, find this part of the development to be in conflict with Policies DM4 and DM29 of the WFLP, Policy CS15 of the WFCS, or Policy D8 of the LP. The development is also in accordance with emerging Policy 56 of the DWFLP, the SPD, and the relevant parts of the Framework.
45. I cannot, however, conclude as I have above with regard to the larger of the two lightwells. Having regard to the design and appearance of the lightwell covering, I find this part of the development harmful to the character and appearance of the area and in conflict with the development plan Policies and guidance referred to above.

Other Matters

46. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
47. With regard to the larger lightwell, I can see that this provides natural light to a room that is otherwise wholly contained in the basement of the property. This does not, however, provide sufficient justification for development that causes such harm to the character and appearance of the surrounding area.
48. As for the smaller lightwell, I have been unable to identify any material considerations that indicate that planning permission ought not to be granted for this development.

Conditions

49. Whilst it may be the case that the larger lightwell could be altered in some way to overcome the harm identified, no alternative scheme or condition has been

suggested to secure this. I have considered whether I could draft a condition that might require the removal of the harmful elements of the development, in particular the raised opaque lightwell cover and grille. However, I do not know what is beneath these and, therefore, whether their removal might still result in some harm or even a risk to public safety. Based on the evidence before me, I cannot conclude that conditions would overcome the harm caused in this case.

50. Turning to the smaller lightwell, I have found this to be acceptable and cannot identify any conditions that might be necessary in concluding that permission ought to be granted for this development.

Planning Balance and Conclusion

51. With regard to the smaller lightwell, I have not found any conflict with the development plan and no other reason to conclude that planning permission ought not to be granted for this development.
52. I have, however, identified harm with regard to the larger lightwell and find that this element of the alleged breach conflicts with the development plan when read as a whole. I have no reason to conclude that my determination of the deemed planning application as it relates to the larger lightwell should be made otherwise than in accordance with the development plan.
53. For the reasons given above, I conclude that the ground (a) appeal should succeed in part, insofar as it relates to the smaller lightwell and associated excavations. As this forms part of the allegation in this case, it is open to me to grant planning permission for this element alone, in accordance with section 177(1)(a) of the 1990 Act. However, the notice must be upheld so that it continues to target the matter of the larger lightwell and associated excavations. For this reason the notice will not be quashed.
54. Despite my ground (a) conclusions with regard to the smaller lightwell, I will still include reference to this matter in the notice. However, in accordance with section 180(1) of the 1990 Act, the appellant can rely on the notice ceasing to have effect insofar as it will be inconsistent with the planning permission I will grant.

Formal Decision

55. It is directed that the enforcement notice is corrected by:
- Substituting the first plan attached to the enforcement notice with the plan entitled 'Plan 1'², a copy of which is attached at the end of this decision;
 - Adding the words "entitled 'Plan 1'" after the words "shown edged red on the attached plan" in part 2;
 - Substituting the plan attached to the enforcement notice entitled 'APPENDIX A' with the plan entitled 'Plan 2'³, a copy of which is attached at the end of this decision;

² Plan 1 is the amended plan at the end of the document submitted by the Council on 9 September 2022. I have given this plan the title 'Plan 1' to differentiate it from the other plan attached to the notice.

³ Plan 2 is the original Appendix A plan, but with a different title and added annotation.

- substituting the words "on the highway in front of the property" with the words "in the approximate location hatched red and identified as 'A' and 'B' on the attached plan entitled 'Plan 2'" in part 3.I;
- Substituting the words "to an existing basement, which extends to the front curtilage of the highway" with the words "in the approximate location hatched red and identified as 'A' and 'B' on the attached plan entitled 'Plan 2'" in part 3.II;
- Deleting the words "in the highway fronting the property" from part 5.1.; and
- Substituting the words "external boundary wall down to the basement level" with the words "front wall of the basement below the front elevation of the property" in part 5.2.

56. Subject to these corrections the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the installation of a lightwell and excavation work in the approximate location hatched red and identified as 'B' on the plan entitled 'Plan 2' on land at 103 Chingford Mount Road, Chingford E4 8LU.

57. The appeal is otherwise dismissed, the enforcement notice is upheld and planning permission is refused for the installation of a lightwell and excavation work in the approximate location hatched red and identified as 'A' on the plan entitled 'Plan 2' on the application deemed to have been made under section 177(5) of the 1990 Act.

J Moss

INSPECTOR



Plan 1

This is the plan referred to in my decision dated: **3RD OCTOBER 2022**

by J Moss BSc (Hons) DipTP MRTPI

Land at: 103 Chingford Mount Road, Chingford E4 8LU

Reference: APP/U5930/C/21/3268908





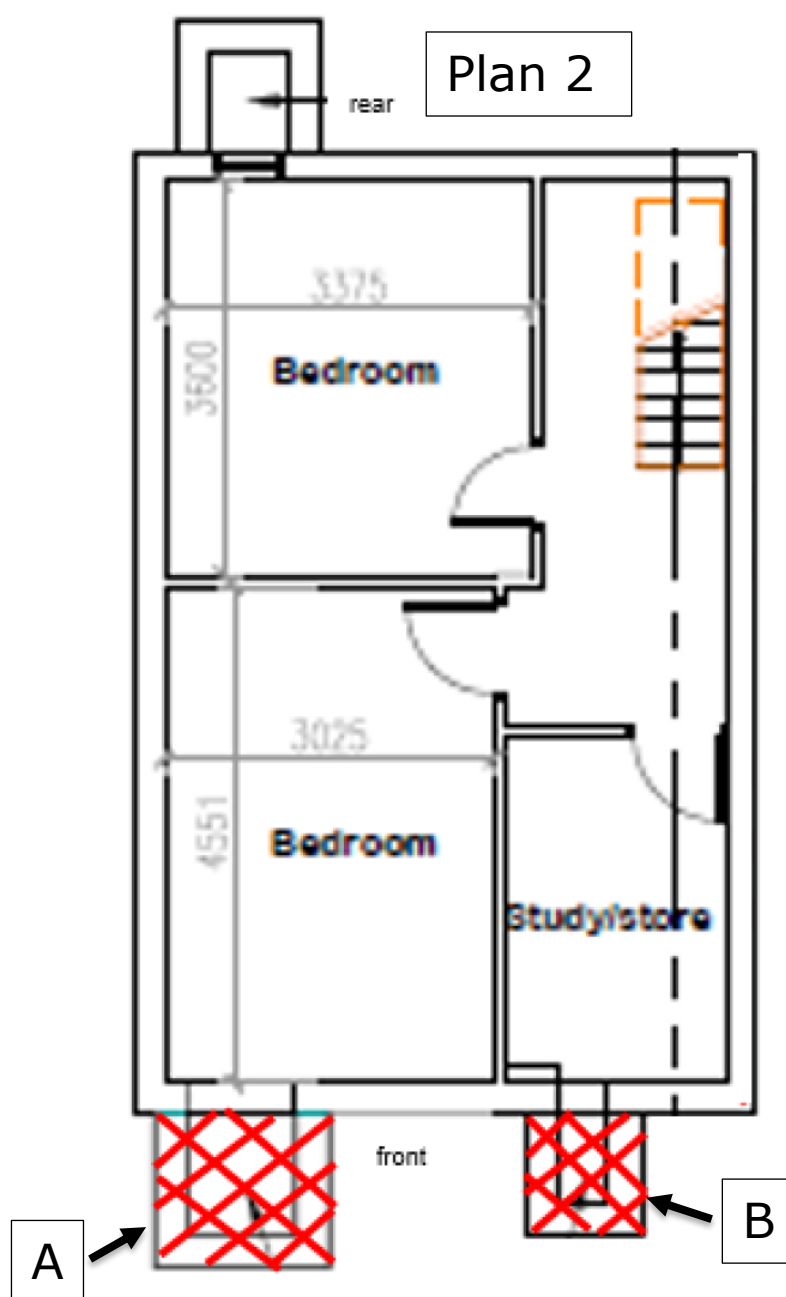
Plan 2

This is the plan referred to in my decision dated: **3RD OCTOBER 2022**

by J Moss BSc (Hons) DipTP MRTPI

Land at: 103 Chingford Mount Road, Chingford E4 8LU

Reference: APP/U5930/C/21/3268908



EXISTING BASEMENT PLAN