

Appeal Decisions

Inquiry held on 25 and 26 April 2023

Site visit made on 27 April 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2023

Appeal A: APP/T5150/C/22/3295449 15A Wyborne Way, LONDON NW10 0TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Kamaran Shiwani against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/21/0722, was issued on 21 February 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to the rear of the premises to separate residential use.
- The requirements of the notice are: (1) Cease the use of the land for separate residential use; (2) Remove from the outbuilding, currently on the land to the rear of the premises, the kitchen and all associated drainage connections, which facilitates the use of the land for separate residential use; (3) Remove from the outbuilding, currently on the land to the rear of the premises, the bathroom and all associated drainage connection, which facilitates the use of the land for separate residential use; (4) Demolish the outbuilding currently on the land to the rear of the premises; (5) Remove all debris and items, arising from this demolition, and remove all materials associated with the unauthorised change of use from the premises; and (6) Restore the land to the rear of the premises to the condition before the unauthorised change of use took place.
- The period for compliance with the requirements is: 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (e) and (f) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/T5150/C/22/3295645 15 Wyborne Way, LONDON NW10 0TE

- The appeal is made under section 174 of the Act by Mr Kamaran Shiwani against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/22/0055, was issued on 21 February 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension to the premises and, without planning permission, the erection of a shed type structure in between the rear extension and the outbuilding at the premises.
- The requirements of the notice are: (1) Demolish the single storey rear extension to the premises; (2) Demolish the shed type structure in between the rear extension and the outbuilding at the premises; and (3) Remove all debris and items, arising from compliance with (1) and (2), and remove all materials associated with the unauthorised development from the premises.

- The period for compliance with the requirements is: 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) and (f) of the Act. 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld.

Appeal C: APP/T5150/X/22/3290487

15 & 15A Wyborne Way, LONDON NW10 0TE

- The appeal is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Kamaran Shiwani against the decision of the Council of the London Borough of Brent.
- The application ref 21/2952, dated 1 July 2021, was refused by notice dated 30 November 2021.
- The application was made under section 191(1)(a) and (b) of the Act.
- The use and development for which an LDC is sought are: Existing use of a single storey building as a self-contained dwelling (15A) in rear garden, existing rear extension to dwellinghouse (15 Wyborne Way), and area of hardstanding to frontage.

Summary of Decision: The appeal is allowed in part and an LDC is issued for that part in the terms set out below in the Formal Decision, but otherwise the appeal is dismissed.

Applications for costs

1. Applications for costs made by the Council of the London Borough of Brent against Mr Kamaran Shiwani, and by Mr Kamaran Shiwani against the Council of the London Borough of Brent, are the subject of separate Decisions.

Preliminary matters

2. The Inquiry sat for 2 days. All evidence was given under affirmation.
3. Changes had been made to the single storey rear extension after the relevant notice was issued. The parties were therefore afforded an additional opportunity to submit photographs recording those changes, and to describe them, in the context of the ground (a) appeal in Appeal B.
4. The application form, the decision notice and the appeal form in Appeal C give different descriptions of what is claimed to be lawful. Nevertheless, it is clear from the application form that the LDC is sought in respect of the use of an existing building ("Building 1") as a dwelling since it was erected in late 2013. Having considered the submissions of the parties, I shall use the description on the decision notice, set out above, which I find to be the most accurate.
5. The Brent Local Plan 2019-2041 was adopted by the Council 3 days after the notices were issued. The draft policies referred to in the notices in Appeal A and Appeal B are therefore now part of the development plan.

Appeals A and B – the appeals on ground (e)

6. An appeal may succeed on this ground if a copy of the relevant notice was not served as section 172 of the Act requires. Copies of each notice were served on all persons with an interest in the land, including the appellant. His copies were

delivered by hand and by recorded delivery post, but he contends the Council knew he was abroad and that no one would read his mail while he was away.

7. Section 176(5) of the Act provides that any failure in service of a notice may be disregarded if neither the appellant, nor the person who should have been served with a copy of the notice, has been substantially prejudiced by that failure. Even if there had been a failure in service, the appellant has still been able to make valid appeals against both notices, so substantial prejudice, in the sense meant by section 176(5), has not occurred.
8. For these reasons, the appeals on ground (e) must fail.

Appeal A - the appeal on ground (d) - and Appeal C: the existing use of a single storey building (15A Wyborne Way) as a self-contained dwelling

9. In Appeal A, the notice alleges the material change of use of the land to the rear of the premises to separate residential use and section 336 of the Act confirms that "land" may include a building. In Appeal C, the existing use for which an LDC is sought is "use of a single storey building as a self-contained dwelling (15A) in rear garden".
10. To succeed on ground (d) or to obtain an LDC, the appellant needs to demonstrate immunity from enforcement action by reason of passage of time. In Appeal A, the immunity period is calculated by reference to the date on which the notice was issued and in Appeal C it is calculated by reference to the date on which the application for an LDC was made.

The change of use of the land to separate residential use (Appeal A)

11. To succeed on ground (d), the appellant must demonstrate, on the balance of probability, that the change of use of the land to the rear of the premises to separate residential use was instituted on or before 21 February 2012. He must also demonstrate, again on the balance of probability, that the use continued without significant interruption over a 10-year period.
12. Because the notice alleges the material change of use of land, it is necessary to consider any separate residential use of the land before Building 1 was erected in 2013. Any such use instituted on or before 21 February 2012 would have involved use of an outbuilding that was demolished to make way for Building 1.

Whether the change of use was instituted on or before 21 February 2012

13. There was a large shed ("the original outbuilding") used as a workshop and office by the previous owner in the position now occupied by Building 1 when the appellant bought the land in July 2010. While he and the builder who demolished the original outbuilding state it included a kitchen and bathroom, the sales particulars do not record any facilities within it at the time of purchase. Nevertheless, the appellant states it was watertight, and only needed minor works for him to begin using it as a separate dwelling in 2010.
14. Other than what the appellant states in terms of his own occupation of the original outbuilding, there is no evidence of separate residential use of the land prior to the substantial completion of Building 1 in late 2013. There are no

photographs of the interior of the original outbuilding and no tenancy agreements, Council Tax records or utility bills relating to it.

15. The appellant contends an email he sent to the Council on 24 September 2016¹ demonstrates separate residential use of the land before Building 1 was erected but that is not apparent from the content of the email. It describes “an outbuilding which is a self-contained small fitted kitchen and bathroom which converted storage since 2010” [sic]. As the email was written nearly 3 years after Building 1 had replaced the original outbuilding, the description appears to conflate the two. Nevertheless, the email stated the appellant had been living abroad since 2008 and planned to live in Building 1 when visiting the UK in future. This differs from other statements by the appellant that he returned to the UK at the end of 2013, around the time Building 1 replaced the original outbuilding. His evidence of separate residential use of the land prior to the substantial completion of Building 1 in late 2013 is therefore ambiguous.
16. For these reasons, and on the balance of probability, it has not been demonstrated that the separate residential use of the land was instituted on or before 21 February 2012.

Whether the use continued without significant interruption

17. Even if it could be demonstrated that the separate residential use of the land was instituted on or before 21 February 2012, it would still be necessary to also demonstrate that the use had continued without significant interruption for at least 10 years.
18. It is agreed that Building 1 was used as a self-contained dwellinghouse in late 2013, shortly after it was substantially completed. Photographs of the interior of the building, some featuring members of the appellant’s family, taken in December 2013 indicate it was habitable and being used for residential purposes at that time.
19. The appellant claims that he lived in Building 1 continually between November 2013 and August 2015 and from October 2019 until 9 March 2020. As noted above, this differs from his email of 24 September 2016, in which he stated he had been living abroad since 2008 and planned to occupy Building 1 when visiting the UK in future. While there are numerous photographs showing the interior of that building in December 2013, no others were produced until those taken by the Council some 8 years later, in February 2022.
20. A YouTube image from November 2013, a photograph from June 2014, and CCTV images from September and November 2017 and January 2018 show exterior views of Building 1 with lights on. The appellant contends they confirm residential occupation of the building at those times but the only conclusion I can draw from the images is that the lights were on, not why they were on.
21. A YouTube video from May 2017 and CCTV images from September and November 2017, and January and May 2018 show attempted burglaries of Building 1. The appellant’s brother, Sherzad Shiwani (“Mr S Shiwani”), can be seen outside Building 1 in the May 2018 image, although that does not demonstrate anybody was living in it at the time. CCTV images appearing to

¹ Appendix 9 to Mr Wicks’ Proof of Evidence.

show another break-in attempt and with lights on in Building 1 were also submitted but their date stamp is defaulted to 1 January 1970, so I cannot rely on them in my decision.

22. Other evidence of separate residential use is provided in statements and tenancy agreements. The most significant, in terms of time span, are the agreements with Mr S Shiwani, and subsequently with Mr S Shiwani and his wife, Hiba Marouf Abed², covering a period of some 28 months. Mr S Shiwani and Mrs Abed appeared at the Inquiry and gave oral evidence.
23. The first of these agreements, dated 8 August 2015, in Mr S Shiwani's name alone, is for "The house and front garden only at 15A Wyborne Way", while the second, dated 19 December 2016, to which Mrs Abed was also a party, is for "Rear flat, 15 Wyborne Way". The appellant and Mr S Shiwani claim both agreements related to Building 1 but the significant change in the property description between the 2 agreements, little more than 16 months apart, is unexplained.
24. Setting that aside, there is no evidence that the house at 15 Wyborne Way was ever sub-divided into flats, so the address in the December 2016 agreement would appear to mean Building 1.
25. However, the August 2015 agreement was produced as evidence in 3 appeals³ against an enforcement notice, issued in October 2019, alleging the erection of a dwelling to the side of No. 15, also known as 15A Wyborne Way ("Building 2"). Appendix 16 to Mr Wicks' Proof of Evidence shows a plaque reading "15A Wyborne Way" on the front of Building 2 in August 2019. There is an obvious contradiction between the claim, in the previous appeals, that the agreement demonstrated Mr S Shiwani was living in Building 2 and the present claim that it demonstrates he was living in Building 1 instead.
26. Neither the appellant nor Mr S Shiwani could explain this contradiction at the Inquiry, and this can only reduce the credibility of the document and the weight I can afford to their evidence as witnesses. The weight I can afford to Mr S Shiwani's evidence is further diminished by his denial of involvement in the appeals in respect of Building 2, despite being recorded as one of the 3 appellants in the decision letter⁴.
27. There are differences between Mr S Shiwani's signature on the 2 tenancy agreements and as it appears on a management agreement relating to a flat he owned elsewhere in London. The management agreement was presented as evidence that he was not living in that flat during the period of his claimed occupation of Building 1. The signature on it is in a very different script, beginning with the initial K. Mr S Shiwani stated in cross-examination that he only has one signature but sometimes it is different, and he did not know how he had come to sign the document in that way. While the management agreement records his address as 15 Wyborne Way as of 15 October 2015, the unresolved question about his signature limits the weight that can be afforded to this evidence.

² The alternative spelling "Hiba Maref Abed" is used in the agreement.

³ APP/T5150/C/19/3238965, 3238966 and 3238967, dismissed 1 June 2020.

⁴ Appeal C, APP/T5150/C/19/3238967, in appendix 12 to Mr Wicks' Proof of Evidence.

28. A bill in Mr S Shiwani's name, for use of electricity at 15 Wyborne Way during the period 9 March to 3 May 2016, was produced. At that time, the electricity for Building 1, and Building 2 if it had a supply, came through a meter in No. 15. In these circumstances, given that Mr S Shiwani previously claimed he occupied Building 2 at that time, his receipt of the bill does little to demonstrate where he lived then. The same issue arises with various letters addressed to "Sherzad Shiwani" or "Mr S Shiwani" at 15 Wyborne Way.
29. The appellant anticipated he might be asked why he wrote the email of 24 September 2016, referred to above, when, as he claims, his brother was living in Building 1. His statement that the purpose was to pay Council Tax, if required, does not explain why he made no reference to the building already being occupied as a separate dwelling. Nevertheless, it should be noted that the August 2015 tenancy agreement, if in effect, required the tenant to pay Council Tax.
30. A neighbour, Mr Ismail Agane, signed a statement before a solicitor confirming that Mr S Shiwani was living in "the rear outbuilding" at the end of 2017 and left in October 2019. The latter date is consistent with the oral evidence given by Mr S Shiwani and Mrs Abed, who both stated they lived in Building 1 until October 2019. That was some 3 months after Mr Mohamed Lamine Gouasmi and Mrs Hala Khelifi had signed a tenancy agreement to occupy "The house and front garden only at 15A Wyborne Way". The 3-month overlap and the property description in Mr Gouasmi and Mrs Khelifi's tenancy agreement indicate they must have occupied Building 2. The description of that property is identical to that in Mr S Shiwani's tenancy agreement of August 2015.
31. While the appellant states that Mr Agane knows Mr S Shiwani, both being taxi drivers, Mr Agane's statement does not mention Mr S Shiwani's wife, Mrs Abed, who was claimed to be living in Building 1 from December 2016. Mr Agane did not appear at the Inquiry, so this apparent omission could not be clarified.
32. An electricity bill for 15A Wyborne Way, for the period 21 December 2021 to 3 March 2022, following the installation of a separate meter, has been produced. Although addressed to the appellant, it post-dates the periods in which he states that he lived in Building 1. However, the bill coincides with the period of a tenancy agreement for "The flat and front garden at 15A Wyborne Way" with Mr Bashir Zeno and Mrs Shamsa Ashur Nur, dated 10 March 2020.
33. Building 2 was also known as 15A Wyborne Way and the appeals against the notice relating to it had not been decided at that time so it is unclear, from the agreement alone, which building Mr Zeno and Mrs Nur's tenancy related to. The appellant states it was Building 1, meaning that the building would have undergone another significant change in description, almost completely reversing the change in description that had been made in the December 2016 tenancy agreement.
34. Mr Zeno signed a statement⁵ before a solicitor confirming that he and Mrs Nur rented "the Rear building of 15A Wyborne Way" from 10 March 2020 but with access to "the side outbuilding and the front garden". There is no reference to any such access in the agreement they signed with the appellant. However, the

⁵ The statement is also in Mrs Nur's name but only Mr Zeno's signature appears on the copies provided.

Council believes Mr Zeno and Mrs Nur occupied Building 2 at first, only moving from there to Building 1 in February 2021.

35. A witness for the Council, Tim Rolt, affirmed that he visited the premises on 9 February 2022 and spoke with a man he believed to be Mr Bashir Zeno, who was then living in Building 1. Mr Rolt stated that Mr Zeno told him that he had originally occupied Building 2 and moved from there to Building 1. The Council cites an exchange of letters and emails with the appellant in support of this. It had written to him, on 4 February 2021, stating that the notice requiring demolition of Building 2 had not been complied with. The appellant replied 2 days later, confirming that Building 2 had been occupied by people and that he had eventually managed to move them out. The Council contends this is a reference to Mr Zeno and Mrs Nur.
36. The appellant challenges the Council's version of events, stating that Mr Zeno either did not understand what Mr Rolt said to him or misspoke, due to his limited command of English. Mr Zeno did not appear at the Inquiry, so this could not be tested but Mr Rolt did appear and affirmed that Mr Zeno seemed to him to have a good command of English, understanding what was said and answering questions clearly. Mr Zeno's statement confirms that he and Mrs Nur spent 2 weeks in Building 2 in 2021 while the roof of Building 1 was being repaired, so it is possible that this was what he described to Mr Rolt. However, Mr Zeno did not appear, so he could not confirm this, while Mr Rolt's oral evidence was clear and unambiguous.
37. The Council produced a record of a neighbour reporting, in April 2020, that "people are definitely living at 15A Wyborne Way". The plaque reading "15A Wyborne Way" had been mounted on the front of Building 2 before then, and would have been visible from the road, so it is reasonable to assume the neighbour meant that building.
38. The evidence provided by the appellant contains significant ambiguities as to what building was occupied under which tenancy and is contradicted by evidence produced by the Council. To accept that Mr S Shiwani lived in Building 1 before December 2016, it is necessary to also accept that the building was renamed in successive tenancy agreements. Because of those ambiguities, and the appellant's inability to explain why the August 2015 tenancy agreement has been presented as evidence of occupation of 2 different buildings, his evidence is imprecise. Consequently, there is considerable doubt about the claimed uninterrupted occupation of Building 1, particularly between August 2015 and December 2016. That is a significant interruption in the 10-year period over which the appellant needs to demonstrate continuous separate residential use for the appeal to succeed.
39. It has not been demonstrated on the balance of probability that the separate residential use of the land was instituted on or before 21 February 2012 or that there has been a continuous 10-year period of separate residential use. For those reasons, the appeal on ground (d) must therefore fail.

The existing use as a self-contained dwelling (Appeal C)

40. The appellant contends that the separate residential use of Building 1 is immune from enforcement action by reason of section 171B(2) of the Act. This

states that no enforcement action may be taken in respect of the unauthorised change of use of a building to use as a single dwellinghouse after the end of the period of 4 years beginning with the date of that breach. The immunity period for any other material change of use is 10 years, under section 171B(3).

41. For clarity, and from the evidence presented, the terms "separate residential use", "use as a self-contained dwelling", and "use as a single dwellinghouse" are equally applicable to the use of Building 1.
42. Section 171B(2) cannot apply if the building in question was erected unlawfully and used as a single dwellinghouse from the outset, for the simple reason that there will have been no change of use of that building. Building 1 was erected in late 2013 and its use as a single dwellinghouse began that year. There is no evidence of it being put to any other use before that, or of any intention to use it other than as a self-contained dwelling. Accordingly, the separate residential use did not arise through a material change of use of Building 1. The relevant immunity period, throughout which the unauthorised use must have continued without significant interruption, is therefore 10 years.
43. Accordingly, Appeal C would only succeed in respect of the use of Building 1 as a self-contained dwelling if it could be demonstrated, on the balance of probability, that the use was instituted on or before 1 July 2011, 10 years before the date the LDC application was made and continued thereafter without significant interruption.
44. Building 1 was substantially completed in November or December of 2013, so its use as a single dwellinghouse could not have been instituted before then. Its use as a self-contained dwelling was therefore instituted significantly less than 10 years before the LDC application was made.
45. For these reasons, the Council's decision to refuse to issue an LDC in respect of the existing use of Building 1 as a self-contained dwelling was well-founded and Appeal C must fail in that regard.

Appeal A – the appeal on ground (f)

46. The notice states, in Schedule 4, that its objective is to remedy the breach of planning control, namely the material change of use of the land to separate residential use. The appeal on ground (f) may succeed if any step set out in the notice exceeds what is necessary to remedy the breach of planning control.
47. The appellant considers the requirement to demolish Building 1 is excessive because it was substantially completed more than 4 years before the notice was issued, a matter that is agreed. Section 173(5)(a) of the Act states that a notice may require "the alteration or removal of any buildings or works." A notice issued in respect of a material change of use may require works that were carried out to facilitate that change of use to be removed in order that the site is restored to its previous condition and the breach is remedied⁶.
48. I have already found that separate residential use of the land has not been demonstrated prior to the substantial completion of Building 1. The available evidence confirms that the building was almost immediately put to separate

⁶ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598.

residential use following its substantial completion in late 2013. No evidence of an intention to use Building 1 for any other purpose prior to its separate residential occupation has been presented.

49. These facts indicate that the erection of Building 1 was integral to making the material change of use alleged in the notice. Accordingly, it is not unreasonable for the notice to seek the demolition of Building 1, even though it was substantially completed more than 4 years before the notice was issued, because its erection was part and parcel of the unauthorised change of use.
50. For these reasons, the appeal on ground (f) must fail.

Appeal B – the appeal on ground (b)

51. An appeal on this ground may succeed if the appellant can show, as a matter of fact, that the breach of planning control alleged in the notice had not occurred or has been incorrectly described. However, there is no dispute that a single storey rear extension and a shed type structure had been erected prior to the notice being issued, so the appeal on ground (b) must fail.

Appeal B – the appeal on ground (c)

52. For an appeal to succeed on this ground, the appellant needs to demonstrate that one or more of the matters alleged in the notice does not constitute a breach of planning control. This could be because it is not development or, if it is development, it does not require an express grant of planning permission.

The single storey rear extension

53. The appellant claims this development did not require an express grant of planning permission because it was permitted by Class A of Part 1 of Schedule 2 ("Class A") to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order").
54. No. 15 is an end of terrace house. Paragraph A.1.(f) of Class A grants planning permission for a single-storey rear extension to such a house if, among other things, it does not extend beyond the rear wall of the original dwellinghouse by more than 3 metres. While paragraph A.1.(g) of Class A might permit a deeper extension, there is a prerequisite of prior submission of details to the Council. As no such details were submitted before the extension was built, the permission granted by paragraph A.1.(g) cannot apply.
55. Published guidance⁷ confirms that the depth of an extension being considered against paragraph A.1.(f) should be measured "from the base of the rear wall of the original house to the outer edge of the wall of the extension". While the appellant contends the depth of the extension does not exceed 3 metres, this appears to be based on an internal measurement of a recessed section. However, the wording in paragraph A.1.(f) is clear: the relevant measurement is the depth of "the enlarged part of the dwellinghouse", not the depth of a recessed section.

⁷ Permitted development rights for householders: technical guidance at <https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>

56. Using this methodology, the depth of the extension must be measured from the rear wall of the original house to the furthest projecting part of the extension. This dimension was found to be approximately 3.5 metres in depth at the site visit, significantly exceeding what paragraph A.1.(f) permits. That variance is not de minimis, non-material, or within a margin of error.
57. Accordingly, the single storey rear extension was not permitted by paragraph A.1.(f) of Class A and, because there was no prior submission of details, it was not permitted by paragraph A.1.(g) of Class A.

The shed type structure

58. Class E of Part 1 of Schedule 2 to the Order permits the erection of buildings that are incidental to the enjoyment of a dwellinghouse. However, the structure in question was removed after the notice was issued and very little evidence was presented in respect of it.
59. Paragraph E.1 of Class E includes limitations on the grant of permission conferred by Class E. Owing to the absence of evidence concerning the shed type structure, it has not been demonstrated that none of those limitations applied and that it was therefore permitted by Class E.
60. For these reasons, the appeal on ground (c) cannot succeed.

Appeal B – the appeal on ground (d): the rear extension and the shed type structure – and Appeal C: the rear extension

61. Appeal B would succeed in whole or in part on ground (d) if the appellant can demonstrate, on the balance of probability, that the rear extension and/or the shed type structure were substantially completed on or before 21 February 2018, 4 years before the date on which the notice was issued.
62. The description of development the subject of the LDC application, to which Appeal C relates, excludes the shed type structure. Appeal C would succeed in respect of the rear extension if the appellant can demonstrate, on the balance of probability, that it was substantially completed on or before 1 July 2017, 4 years before the date the LDC application was made.
63. Substantial completion of the rear extension on or before either date is impossible because work on it did not begin until May 2018. There is no evidence to indicate when the shed type structure was substantially completed.
64. For these reasons, the appeal on ground (d) in Appeal B must fail in respect of the erection of the rear extension and the shed type structure and Appeal C must fail in respect of the rear extension.

Appeal B – the appeal on ground (a)

65. The shed type structure has been removed and it is understood that planning permission is not sought for it. Consequently, the main issues in this appeal are the effects of the rear extension on:
- The character and appearance of the premises and the area.

- The living conditions of the occupiers of the premises and nearby dwellings.

Reasons

Character and appearance

66. Photographs taken by the Council 12 days before the notice was issued show exposed insulation material on part of the outer surfaces of the rear extension. It is unclear whether the other parts of the extension were in the same condition at that time. The external surfaces of the walls of the extension are now rendered but there is no evidence to suggest it was applied before the notice was issued.
67. Nevertheless, with the added render finish, the extension respects the character and size of the house and matches the terrace it forms part of, thereby complementing the locality.

Living conditions

68. While the reasons for issuing the notice state the extension is "to the detriment of the amenity of the neighbouring premises", this appears to concern its appearance. When asked in the Inquiry what effect there has been on neighbours' living conditions, Mr Wicks referred to the effect of the separate residential use the subject of Appeal A, not the extension.
69. In view of the limited evidence presented and noting the degree by which the permitted development limits of paragraph A.1.(f) of Class A are exceeded, it has not been demonstrated that the extension has caused an unacceptable increase in disturbance to any neighbouring occupier.

Conclusion on ground (a)

70. For these reasons, the rear extension accords with policy DM1 of the Brent Local Plan 2019 – 2041 and the Council's Supplementary Planning Document on residential extensions and alterations. The rear extension is therefore acceptable and the appeal on ground (a) should succeed to that extent.

Appeal B – the appeal on ground (f)

71. An appeal may succeed on this ground if the steps required to comply with the notice are excessive. The notice states, in Schedule 4, that its objective is to remedy the breach of planning control, meaning the erection of the single storey rear extension and the shed type structure. It must therefore be demonstrated that lesser steps could remedy that breach.
72. No lesser steps that would remedy the breach have been identified, so it has not been shown that the requirements of the notice are excessive. The appeal on ground (f) must fail, therefore.

Appeal C: the hardstanding to frontage

73. Although limited information has been provided, the Council confirms that the hardstanding was substantially completed in 2016, more than 4 years before

the date on which the LDC application was made. It therefore concedes that it appears to be lawful.

74. Appeal C should therefore succeed in this respect.

Appeal A – Conclusion

75. For the reasons given above, I conclude that the appeal fails on all grounds. I shall uphold the notice.

Appeal B – Conclusion

76. For the reasons given above, I conclude that the appeals on grounds (e), (b), (c), (d) and (f) fail and that the appeal on ground (a) succeeds in part. I shall grant planning permission for the single storey rear extension, but otherwise I shall uphold the notice and refuse to grant planning permission.

Appeal C – Conclusion

77. For the reasons given above, I conclude, on the evidence now available, that the Council's decision to refuse to issue an LDC was well founded in respect of the existing use of a single storey building as a self-contained dwelling (15A) in rear garden and the existing rear extension to dwellinghouse (15 Wyborne Way). The appeal fails in these respects, and I will exercise the powers transferred to me under section 195(3) of the Act.

78. I further conclude, for the reasons given above, on the evidence now available, that the Council's decision to refuse to issue an LDC was not well founded in respect of the area of hardstanding to frontage. The appeal succeeds in that respect, and I will exercise the powers transferred to me under section 195(2) of the Act.

Appeal A – Formal Decision

79. The appeal is dismissed and the enforcement notice is upheld.

Appeal B – Formal Decision

80. The appeal is allowed and planning permission is granted insofar as it relates to the erection of a single storey rear extension to the premises on the application deemed to have been made under section 177(5) of the Act for the development already carried out at 15 Wyborne Way as shown on the plan attached to the notice and in the photographs forming **Appendix A** to these Decisions.

81. The appeal is dismissed and planning permission is refused insofar as it relates to the erection of the shed type structure on the application deemed to have been made under section 177(5) of the Act for the development already carried out at 15 Wyborne Way as shown on the plan attached to the notice.

82. The enforcement notice is upheld.

Appeal C – Formal Decision

83. The appeal is dismissed insofar as it relates to the existing use of a single storey building as a self-contained dwelling (15A) in rear garden and the existing rear extension to dwellinghouse (15 Wyborne Way).

84. The appeal is allowed insofar as it relates to the area of hardstanding to frontage and attached to this decision is an LDC describing the existing development which is found to be lawful.

Mark Harbottle

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 July 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operational development comprising the formation of a hardstanding between Wyborne Way and the building annotated '15' on the plan attached to this decision was substantially completed more than 4 years before the date the application was validly made.

Signed

Mark Harbottle

Inspector

Date: 07 June 2023

Reference: APP/T5150/X/22/3290487

First Schedule

The formation of an area of hardstanding to frontage

Second Schedule

Land at 15 & 15A Wyborne Way, London NW10 0TE

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 June 2023

by **Mark Harbottle BSc MRTPI**

Land at: 15 & 15A Wyborne Way, London NW10 0TE

Reference: APP/T5150/X/22/3290487

Scale: Not to scale



APPEARANCES

FOR THE APPELLANT:

Kamaran Shiwani
He called
Hiba Marouf Abed
Sherzad Shiwani
Kamaran Shiwani

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks
He called
Nigel Wicks BTP, Dip Law, MRTPI, Director, Enforcement Services Ltd.
Tim Rolt BA (Hons), MRTPI, Planning Enforcement Manager, Brent LBC

Documents submitted at the Inquiry

1. Letter of notification of Appeal C and a list of the people notified
2. Letter of notification of the Inquiry and a list of the people notified
3. Enforcement Notice E/19/0019 – 15A Wyborne Way
4. Appeal decision APP/P2935/X/15/3035953 – Stable Cottage
5. Appeal decision APP/T5150/C/19/3219780 - 42 & 42A Norwood Avenue
6. Extract from Harrison Clark Rickerbys solicitors' blog
7. Certified copy of the Statutory Declaration of Kamaran Shiwani
8. Certified copy of the statement of Bashir Zeno and Shamsa Ashur Nur
9. Certified copy of the statement of Hiba Marouf Abed
10. Certified copy of the statement of Mohammed Khalid
11. Certified copy of the statement of Ismail Agane
12. Certified copy of the statement of Iqraa Abid
13. Certified copy of the statement of Sherzad Shiwani
14. Letter confirming payment of rent by Bashir Zeno and Shamsa Ashur Nur

Documents submitted following the Inquiry

15. The appellant's photographs and description of the rear extension
16. The Council's photographs and description of the rear extension

Appendix A: photographs of the single storey rear extension to the premises

