



Appeal Decisions

Site visit made on 5 March 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal A Ref: APP/A5270/C/22/3303842

Premises known as 322 Allenby Road, Southall, Middlesex UB1 2HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Manjit Dhaliwal against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 23 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the construction of an additional rear extension.
- The requirements of the notice are to:
 1. Demolish the additional rear extension; and
 2. Clear all debris resulting from compliance with the above step.
- The period for compliance with the requirements is two months before the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

Appeal B Ref: APP/A5270/C/22/3312143

Premises known as 322 Allenby Road, Southall, Middlesex UB1 2HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Manjeet Singh Dhaliwal against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 27 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the building to a mixed use as two separate flats and a small HMO (the "Unauthorised Use"), construction of a boiler storage structure (the "boiler storage structure") and construction of a single storey rear extension (the "second extension").
- The requirements of the notice are to:
 1. Cease the use of the building as separate flats;
 2. Remove two of the three kitchens, including associated cupboards, worktops, cooking equipment, sinks and drainage connections;
 3. Remove internal locks, signs and partitions which facilitate the use as separate flats;
 4. Demolish the boiler storage structure attached the ground floor rear galley kitchen (marked "xx" on the attached plan)¹;
 5. Demolish the second extension (marked "x" on the attached plan);
 6. Make good the rear elevation of the building following demolition of the extensions; and
 7. Remove all resultant debris.

¹ Reference to a plan here and elsewhere in the header is to a plan attached the enforcement notices to which Appeal B relates.

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

Summary Decision: The appeal succeeds in part and planning permission is granted. Otherwise the appeal is dismissed, the enforcement notice is upheld with corrections in the terms set out in the Formal Decision.

Application for costs

1. An application for costs was made by the Council of the London Borough of Ealing against Mr Manjit Singh Dhaliwal. This application is the subject of a separate decision.

Preliminary Matters

2. Although there is a difference in the spelling of the first name of the appellant in each appeal, both appeals are understood to have been made by the same person.
3. With regard to the allegation of the construction of a single storey rear extension in the enforcement notice subject of Appeal B (Notice B), in making his ground (d) appeal it is the appellant's case that the extension was constructed more than 4 years prior to the issue of the notice. The Council acknowledge that 'a version' of the extension was in place in 2013, but suggest that the recent works to it are so substantial as to render it new development. Accordingly, what is in dispute between the parties is whether or not a new extension has been erected. This is a matter that falls more squarely to be considered under a ground (b) appeal, which is that the matters stated in the notice have not occurred.
4. I will, therefore, consider this matter under the ground (b) appeal, rather than ground (d). It has not, however, been necessary for me to seek any further comments on this from the parties as their evidence clearly responds to the matter of whether or not what is on site is new development.

The Notices

5. The enforcement notices subject of Appeal A and B both refer to a rear extension. The parties agree that the appeal property has been enlarged to the rear by three distinct, single storey additions. The first is a single storey enlargement adjoining the main two storey element of the appeal property. This extends across the width of the appeal site. The second is a further single storey enlargement that extends the property further into the rear garden and also extends across most of the width of the site. I will refer to this from here on in as the 'Second Extension'. Attached to this is the third, smaller enlargement, described as having a timber frame with a polycarbonate roof, white plastic cladding and uPVC windows. I will refer to this as the 'Third Extension'.
6. The appellant has provided a sketch plan showing the location and footprint of the above enlargements to the property. Having had regard to this and the evidence before me, I am satisfied that the enlargements described by the parties are consistent with my observations on site and, although physically

connected, the three enlargements described are three separate building operations.

7. The appellant has referred to the powers granted to correct any defect, error or misdescription in an enforcement notice under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act). In doing so, the appellant suggests that the notices target the same extension, which he says is the Second Extension. The appellant suggests that both notices are identical in their reference to the extension and that the 'X' marking the location of the alleged extension is the same on both enforcement notice plans. He also says that if either notice were corrected to include the Third Extension, this would make the notice more 'onerous and punitive'.
8. The Council has confirmed that the notice subject of Appeal A (Notice A) is intended to target the Third Extension, whilst Notice B targets the Second Extension.
9. In view of the above, I have considered whether both notices inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. In doing so I note that in referring to the 'construction of a single storey extension' Notice B specifically refers to this as the 'second extension'. The notice is accompanied by an OS based plan where the beige coloured areas are intended to identify the footprint of built development at a point in time. The 'X' on the plan attached to Notice B is drawn on the beige area towards the rear of the appeal site and extends across most of the width of the appeal site. As such, this fits with both parties' description of the second enlargement. I am, therefore, satisfied that Notice B identifies with sufficient certainty what has been done with regard to this element of the operational development alleged.
10. As for notice A, this describes the enlargement as 'an additional rear extension', but does not refer to this as the Third Extension, in the same manner as Notice B. The plan attached to the notice has the same beige annotation as the Notice B plan, however, the 'X' marking the location of the unauthorised development (as referred to in part 2 of the notice) has been drawn further towards the rear of the site, on land adjacent to the location of the Second Extension, as indicated on the Notice B plan. Indeed, the 'X' has not been drawn on the beige area of the plan, but adjacent to it. Furthermore, as with the smaller Third Extension, the 'X' annotation does not extend across the width of the appeal site.
11. Having regard to this and the location of the Third Extension as I observed it on site, I am satisfied that Notice A identifies with sufficient certainty the target of the notice as being the third and smallest of the three enlargements to the rear of the property. For these reasons I do not find Notice A to be defective and in need of correction. In concluding as such, I have had regard to the appellant's grounds of appeal that accompanied Appeal A. In this he refers to dimensions consistent with the Third Extension and has stated its purpose as a 'second kitchen overseeing the garden'. From this it is clear that, when he made his appeal, the appellant understood that the Third Extension is the subject of Notice A. I will, therefore, determine Appeal A on the basis that the Third Extension is the breach of planning control alleged.
12. On a separate matter, part 2 of Notice B identifies the land to which it relates. It refers to both land edged bold black on the plan attached to the notice, as

well as to land marked with an 'X' and 'XX' on the same plan. Whilst these latter annotations might identify the location of the alleged operational development, the notice as a whole is intended to relate to the whole of the property at 322 Allenby Road, as outlined in black on the plan. Whilst I can see that the appellant has understood this, I find part 2 of Notice B to be ambiguous.

13. The notice would be more precise if it were to refer in part 2 to the land outlined in black alone, and if reference to the location of the operational development were to be within the allegation. I can see that the appellant has understood that the notice should be read in this way. Accordingly, injustice would not be caused were I to make this correction, in the interests of precision.
14. Turning to the allegation in Notice B of a material change of use of the building, the description of the use is of 'a mixed use as two separate flats and a small HMO'. I have concerns with regard to the accuracy of the description of the use as a 'mixed use'.
15. A single planning unit might be in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another. In this case there is no dispute that the appeal property is put to any use (i.e. activity) other than a residential use. There is, therefore, only one activity taking place within the appeal site, which is consistent with its former use as a single dwelling house.
16. However, the notice alleges that there has been 'a material change of use' and it refers to three units of accommodation. This is consistent with section 55(3)(a) of the 1990 Act, which states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The material change of use defined in section 55(3)(a) would result in the subdivision of a single planning unit (i.e. the single dwellinghouse), into two or more planning units, each used as a separate dwellinghouse.
17. Having regard to the above, I have difficulty with the description of the alleged use of the appeal property as a mixed use, as well as the Council's conclusion that the appeal property is still a single planning unit, despite the alleged provision within the appeal property of three units of accommodation and the allegation of a material change of use.
18. As there is a ground (b) appeal that relates to the material change of use, I shall consider this matter further in that part of my decision. I will consider whether, as a matter of fact and degree, the former single residential planning unit has been sub-divided to form separate planning units.
19. On a final matter regarding Notice B, I note that under the appellant's ground (f) appeal he points to the allegation of a use as 'two separate flats and a small HMO', and the corresponding requirement 5.1., which requires only the cessation of the 'use of the building as separate flats'. This is relevant to the matter of the Notice, rather than the ground (f) appeal, and I have, therefore, considered whether there is some inconsistency in Notice B.

20. The requirements of a notice should be consistent with the breach of planning control alleged. For this reason, and putting aside the reference to a mixed use in the allegation, the notice would be more precise if it were to require the cessation of the use of the property as two flats and a small HMO. The appellant could then rely on the provision of section 57(4) of the 1990 Act, which states that, once an enforcement notice has been complied with, planning permission is not required for its use for the purpose for which it could lawfully have been used if the development had not been carried out. In this regard, it is common ground that the former use of the appeal property was as a single dwellinghouse falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). As drafted, the notice does not interfere with these provisions and, for this reason, it is not defective.
21. Notwithstanding this, the requirements of Notice B refer only to the cessation of the use as separate flats. As such, it might be regarded as a notice that underenforces² in respect of the use of the property as a small HMO, which in these circumstances would be permitted by reason of section 173(11) of the 1990 Act, once the notice has been complied with. Indeed, this is how the appellant has understood the notice.
22. If the Council had intended Notice B to underenforce in respect of the small HMO, I do not find there to be any internal inconsistency within the notice, between this and the reasons for its issue, despite those reasons setting out the Council's objection to the material change of use as a whole. I say this because the outcome (i.e. the section 173(11) permission) would be the same as if the section 57(4) provisions were engaged. After all, there is no dispute that a use as a small HMO falls within Class C3 of the 1987 Order, as does a use as a dwellinghouse by people to be regarded as forming a single household; the former falling within criterion (b) of Class C3, whereas the latter falls within criterion (a) of the same class.
23. Whilst the inconsistency between the allegation and the requirements is not ideal, for the above reasons I do not find the notice to be defective because of it. Accordingly, I do not consider there to be a need to make any corrections to requirement 5.1.

Ground (b) – Appeal B

24. 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. In order to succeed on this ground, the appellant must demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred.
25. In addition to the matter of the Second Extension, which I refer to in the preliminary matters, the ground (b) appeal also relates to the allegation of the construction of a boiler storage structure and to the material change of use of the property, but only in respect of the use of the property excluding the

² Section 173(11) of the 1990 Act states that 'Where:

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities'.

alleged flat contained within the rear of the property at ground floor. I deal with each of these matters in turn, as follows.

Second Extension

26. There is no dispute, and the aerial photographs demonstrate, that some form of development is present on the site in the location of the Second Extension in July 2013. The Council suggest that, when originally constructed, this structure had columns and a polycarbonate roof, similar to that at the adjoining 324 Allenby Road. The Council acknowledge that at some point thereafter works were undertaken to construct some external walls, as shown in the appellant's document 7. Whilst this photograph is not dated, the appellant says that it predates works to the heating system undertaken in 2012. I have been given no reason to doubt that the extension existed, as shown in the photograph, in 2012.
27. The roof of the extension in this photograph spans almost the width of the site and is consistent with the roof form visible in the aerial photographs dated from 2013 provided by the Council. The document 7 photograph also shows that most of the extension was enclosed with external walls, save for an open sided section on the right hand side.
28. The Council say that the recent works to the Second Extension include the removal of the rear facing wall of the extension; the removal of part of the side elevation (described as the side return); the construction of new walls to enclose the previously open sided section; and the replacement of the roof.
29. The Council has drawn my attention to the case of *Arnold v SSCLG* [2015] EWHC 1197 (Admin), [2017] EWCA Civ 231; [2017] JPL 923. In doing so it suggests that the circumstances of the case before me compare with those considered in *Arnold*, where it was found that works to an existing dwelling went beyond those of enlargement, improvement, alteration and repair and amounted to the erection of a new dwelling. In that case the inspector found that the only elements of the original structure were parts of walls of the western wing of the property and that the rest of the dwelling was new.
30. If the Council are right, that the vast majority of the original Second Extension has been removed and altered in undertaking the recent work, then I can see that the approach taken in *Arnold* would be applicable to the case before me. I must, therefore, consider the works the Council suggest have been undertaken to the extension.
31. From my observations on site, I could see that the Second Extension retains a side elevation facing No 324. Furthermore, there is only a doors' width opening in the rear ground floor flat between what is the Second Extension and the Third Extension. The location of this accords with that of the window opening in the former rear elevation of the Second Extension, visible in the appellant's document 7 photograph. This suggests that not all of the rear elevation of the Second Extension has been removed and what remains has become an internal wall in the ground floor rear flat. There is also an internal wall separating the ground floor rear flat from the galley kitchen serving the other ground floor flat. The location of this is consistent with the side elevation of the Second Extension, facing 320 Allenby Road, also visible in the document 7 photograph.

32. Whilst the Council suggest that certain elevations of the original extension have been removed, I do not have sufficient evidence to substantiate this. Furthermore, the layout of this part of the property suggests that most of the former elevations are more likely than not to have been retained.
33. With regard to the roof of the Second Extension, whilst the Council suggest that this has been removed and replaced, there is little evidence before me to support this claim. On site there were no obvious signs that the roof had been recently replaced or altered in any way. Furthermore, the Council's September 2022 photographs taken from an elevated vantage point at No 320 show part of the roof of the Second Extension. The materials visible do not appear to be new, unlike those on the roof of the Third Extension, which is also partly visible in this photograph.
34. I acknowledge that the formerly open sided section of the extension has been enclosed, forming new elevations under the existing roof on that part of the extension. However, having regard to all the evidence before me and my observations on site, it is more likely than not that substantial elements of the previous Second Extension still remain in situ. It is clear that certain alterations to the extension have been carried out, which include those necessary for the Third Extension to be erected. The extent of these works, including those necessary to enclose the formerly open sided section, do not amount to the construction of a new enlargement of the property in the place of the former Second Extension. Neither do I consider these works to be a material alteration to the Second Extension, such that permission would otherwise be required for them.
35. For the reasons given above, the ground (b) appeal should succeed insofar as it relates to the Second Extension. I will, therefore, correct the enforcement notice to remove reference to it in the allegations and the requirements. The ground (a), (c), (d), (f) and (g) appeal and the deemed planning application do not fall to be considered insofar as they relate to the Second Extension.

Boiler Storage Structure

36. The appellant suggests that a boiler storage structure has not been erected, rather that there was a previous storage structure on site that has been 'renovated and refurbished'. To support his claim, the appellant refers to his photograph at document 7, which he says shows the storage structure prior to the works to it.
37. The photograph only shows a single elevation of the former structure. Nevertheless, this appears to be a fairly narrow structure that has an oblong or square footprint. In contrast, the structure I observed on site has a stepped side elevation and its depth towards the rear appeared to be greater than that shown on the photograph provided by the appellant.
38. In addition to this, the Council suggests that the former structure was located beneath the roof of the Second Extension to the rear of the property, whereas the current structure is to the side of the Third Extension, and located further into the garden. The Council has referred to a series of aerial photographs taken between 2010 and 2022. Although not all of these are clear, in some I can see the roof of the Second Extension. I am not, however, able to make out any form of structure in the location of the existing boiler storage structure.

39. Having regard to the above, I find it more likely than not that the existing boiler structure is substantially larger, of a different form and in a different location to the previous structure referred to by the appellant in evidence. Accordingly, I find that as a matter of fact and degree the construction of a boiler storage structure in the location indicated on the plan attached to Notice B has occurred. For this reason, the appeal on ground (b) should fail insofar as it relates to the boiler storage structure.

Material Change of Use

40. There is no dispute between the parties that the appeal property was originally used as a single dwellinghouse. Furthermore, the appellant does not dispute that part of the rear of the ground floor of the appeal property is used as a self-contained flat. Having viewed this accommodation, although particularly confined, this has the facilities required for day-to-day private domestic existence and, as such, has the distinctive characteristics of a dwelling. I have reached this conclusion, having regard to the caselaw (*Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307) that has been drawn to my attention. I acknowledge that there is a connecting door between this unit and the other ground floor accommodation. It is, however, suggested that this is locked and that access to the unit is from the rear of the property.
41. Having regard to the evidence of how this unit of accommodation is used and that it is physically and functionally separate from the remainder of the appeal site, I can only agree with the appellant's approach to this unit of accommodation and conclude that this is a planning unit occupied as a single dwelling. The appellant has provided evidence to suggest that this use is immune from enforcement action, which I consider under the ground (d) appeal below.
42. As for the remainder of the building, the appellant's case is that this is used as a single planning unit. On the ground floor I observed a living room area, and next to this a bedroom area with a bed and cupboard space, through which access was gained to a small gally kitchen and internal door leading to the ground floor rear flat. Off the living room was a w.c. and shower room. This accommodation was self contained, in that it was physically divided from the rear ground floor flat by a lockable door and from the first floor accommodation by a lockable door off the shared entrance hallway. There is no dispute that this ground floor accommodation has the characteristics of a dwelling in that it provides to those who use it the facilities required for day-to-day private domestic existence.
43. As for the first floor accommodation, I noted a kitchen, bathroom and two rooms within which there were beds, televisions and other bedroom and living room furniture. Although I noted a lock on some of the first floor doors, there was no other means of physical separation of the first floor accommodation from the rest of the house. By this I mean that there was no other doorway separating these rooms from the shared entrance hallway.
44. Turning to how the accommodation is used, the appellant has provided an affidavit in which he says that he occupies the ground floor (save for the rear ground floor flat) and that the first floor is occupied by two other people who provide care for him when needed. I am mindful of the significant weight that is carried by evidence provided in such affidavits, in view of the sanctions that

could be imposed should these contain false or misleading evidence. Nevertheless, the appellant's claims are contradicted by evidence of the Council, as set out in the investigating officer's site visit notes. The Council say that the officer was told by the appellant that the first floor occupiers were his tenants and that there was no mention of care provided by these occupiers. This casts a degree of doubt on the appellant's claims.

45. Notwithstanding this, the appellant refers to the Class C3 use as set out in Part C of Schedule 1 of the 1987 Order. Class C3 includes use as a dwellinghouse by:
 - (b) not more than six residents living together as a single household where care is provided for residents; or
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
46. It might well be the case that the first floor occupiers provide care to the appellant in the ground floor accommodation that he occupies and that they use the facilities in this part of the property for the purposes of caring for him. There is, however, no suggestion that these individuals use or have access to the ground floor accommodation for their own day-to-day private domestic existence; the evidence indicates that the ground floor accommodation is only used by them in the course of their work as the appellant's carers.
47. The indication is that the first floor and the ground floor are occupied in a way that is functionally separate, where each set of occupiers have access to facilities required for day-to-day private domestic existence in their respective parts of the property. The evidence does not point to the occupiers of the first floor 'living together' with the occupier of the ground floor accommodation 'as a single household'. For this reason, I do not consider the first floor and majority of the ground floor as being used together in a way that is consistent with Class C3(b) or (c), as suggested by the appellant.
48. I acknowledge that there is a lack of physical separation between what I would regard as the shared internal ground floor hallway and the first floor accommodation. Nevertheless, I am satisfied that the two areas of accommodation are otherwise self-contained and that each occupy a planning unit of their own. Having regard to the layout of the first floor accommodation and the presence of lockable doors on the two living room/bedrooms, the description of this accommodation as a small HMO, rather than as a flat, is the most appropriate in these circumstances.
49. Having regard to all the evidence before me, I find that as a matter of fact and degree there has, on the balance of probability, been a material change of use of the appeal property (the building) from a single dwellinghouse to a use as two self-contained flats at ground floor and a small HMO on the first floor. This has resulted in the sub division of the appeal property from a single dwellinghouse to three separate dwellinghouses, in accordance with section 55(3)(a) of the 1990 Act, each used for a purpose falling within Class C3 of Schedule 1 of the 1987 Order. Accordingly, I do not regard the current use of the appeal property as a mixed use.
50. For the reasons given above, the appeal on ground (b) should fail insofar as it relates to the allegation of a material change of use. I will, however, correct

the notice to remove reference in the allegation to a mixed use. Such a correction will not cause injustice to any party. The appellant has approached his appeal in a way that is consistent with the allegation of the material change of use of the appeal property to a use as three self-contained units of accommodation. Furthermore, I see no reason why this correction would undermine the Council's case or its approach to the grounds of appeal made.

Ground (c) – Appeal B

51. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.

The Material Change of Use

52. In his grounds of appeal the appellant suggests that the 'use is permitted by the relevant legislation'. He has not, however, substantiated this claim or pointed to the legislation that might permit the change of use of a single dwelling to two flats and a small HMO, and none is obvious to me. The development does not have the benefit of planning permission and I have been given no reason to find the change of use otherwise permitted. Accordingly, the ground (c) appeal should fail insofar as it relates to the material change of use.

Boiler Storage Structure

53. The appellant suggests that the boiler storage structure has the benefit of the planning permission granted by Class E of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order).
54. Class E grants planning permission for development including any building or a container used for domestic heating purposes. However, to be permitted by Class E, the development must be within the curtilage of a dwellinghouse. The permission granted by the 2015 Order is crystallised when works to construct the development in question commence. Accordingly, the main consideration in this case is whether or not the works to construct the boiler storage structure commenced at a time when the appeal site was used as a single dwellinghouse, such that the development can be regarded as a building that was provided within the curtilage of a dwellinghouse.
55. Whilst I acknowledge that the appellant's case under the ground (b) appeal, is that the works to the boiler storage structure were renovation and refurbishment of an existing structure. I have concluded that these works amounted to the construction of a new structure. As such, whether or not the construction of the former structure was permitted by the 2015 Order is not relevant to this ground (c) appeal.
56. Notwithstanding this, the appellant does not indicate when the works were carried out. In order to determine when the structure was constructed, I have referred to the aerial photographs provided by the appellant. The structure does not appear to be present in any of these images, including the most recent photographs. Accordingly, it is more likely than not that works to erect the structure commenced in the last few years.

57. In his affidavit the appellant refers to the 'ground floor residential unit', which must relate to the unit of accommodation to the rear of the ground floor. Whilst I consider the lawfulness of this unit under the ground (d) appeal, the appellant's evidence indicates that the appeal property has not been used as a single dwellinghouse from as early as 2016. Furthermore, the appellant's evidence indicates that the use of the first floor as a small HMO commenced in 2022.
58. All of the above leads to a conclusion that, on the balance of probability, the works to construct the boiler storage structure commenced at a time when the appeal property was not a single dwellinghouse. Accordingly, the boiler storage structure was not provided within the curtilage of a dwellinghouse and did not, therefore, benefit from the planning permission granted by Class E of the 2015 Order. I have been given no reason to find the development otherwise permitted. The ground (c) appeal must, therefore, fail.

Ground (d) – Appeal A and B

59. Both Appeal A and Appeal B were originally made on ground (d). I have, however, considered the appellant's case as it relates to the Second Extension (subject of Appeal B) under the ground (b) appeal, that being the most appropriate ground of appeal, having regard to the case made by the parties. The appellant has not made a case under ground (b) in respect of the boiler storage structure that is the subject of Appeal B. In view of this, the only remaining matters to be considered under the ground (d) appeal are the material change of use that is the subject of Appeal B, and the operational development that is the subject of Appeal A.
60. Whilst I deal with each of these in turn as follows, as a general point, an appeal on ground (d) 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 those matters. In order to succeed on this ground, the appellant must show that, on the balance of probability, the use of the appeal property had been continuous for a period of four years beginning with the date of the breach³. With regard to the operation targeted by Notice A, he must show that a period of four years has passed beginning with the date on which this operation was substantially completed⁴. The test in this regard is the balance of probability and the burden of proof is on the appellant.

Material Change of Use

61. With regard to the small HMO, the appellant's affidavit appears to indicate that the use of the accommodation on the first floor commenced only recently, since July 2022, when he says the first floor was converted into an annexe. There is no suggestion that the first floor was used in its current form prior to this date. Accordingly, it is more likely than not that the use of the first floor of the appeal property as a small HMO has not been continuous for a period of ten years beginning with the date of the breach.
62. As for the ground floor accommodation, the appellant's ground (d) appeal concentrates on the sub division of the property to provide the rear ground floor flat that is the subject of Notice B. Although particularly confined, this

³ In accordance with section 171B(2) of the 1990 Act.

⁴ In accordance with section 171B(1) of the 1990 Act.

unit has space to sleep and relax, a shower and w.c. and a kitchen that allows for the storage and preparation of food. I have, therefore, already acknowledged that the unit of accommodation I observed on site has the distinctive characteristics of a dwelling, in accordance with *Gravesham*.

63. In his affidavit the appellant refers to the extensions to the property, including the construction of the second single story extension in 2010. He says in the same year 'part of the two rear ground floor extensions were converted into a separate residential unit containing a small kitchen, living area and a bathroom'. He goes on to say that the 'ground floor residential unit has been continuously let out since 2016 to date'. He then says that 'this residential unit was further extended (i.e. the Third Extension) in May 2022'.
64. Having observed the unit of accommodation in question, I noted that only the bedroom/living room and shower room are accommodated within the Second Extension to the property. The kitchen serving the unit is entirely contained within the third and most recent extension. However, the appellant says that the Third Extension had not been constructed until May 2022.
65. The appellant refers to a 'small kitchenette' within the pre May 2022 unit in his appeal statement, not his affidavit, although this claim has not been substantiated with any other evidence. Having regard to the confined space that would have been within the unit before May 2022 (i.e. the accommodation within the Second Extension), it is difficult to envisage where these facilities might have been. Indeed, the part of the unit within the Second Extension is occupied by a bed, which is the minimum required for sleeping, and there is little other space within this part of the unit for any other type of furniture, let alone kitchen facilities which would provide for the storage and preparation of food.
66. Even if the pre May 2022 unit included some means of cooking, these facilities are likely to have been so limited as to render the unit incapable of providing to those who used it the facilities required for day-to-day private domestic existence. Accordingly, the accommodation would not, on the balance of probability, have had the distinctive characteristics of a dwellinghouse, in accordance with *Gravesham*.
67. The appellant has not suggested that the accommodation has been reconfigured during the period of its letting, such that kitchen facilities serving the unit before May 2022 were located elsewhere in the appeal property. On the contrary, the appellant says that 'this flat has been in situ since before 2016'. This cannot, however, be the case since the appellant's evidence demonstrates that the part of the unit that accommodates the kitchen (i.e. one of the principal facilities that is required for day to day private domestic existence) did not exist prior to May 2022.
68. I have had regard to the tenancy agreements that have been provided, which relate to the years from June 2016 to March 2023. Of the first 5 of these, other than reference in the address to '322a Allenby Road' (my emphasis), they do not provide any other description of the property that is the subject of the agreement, including the facilities it comprised and the location within the appeal site of the accommodation in question. The last three agreements refer to a 'flat' in the address of the property, but similarly do not stipulate the facilities this comprises or where in the property this is located. The

inventory referred to in each of the agreements has not been included within the bundle.

69. The evidence indicates that some part of the appeal site has been let to a series of tenants since 2016. It is not, however, sufficiently precise and unambiguous in demonstrating that, on the balance of probability, the ground floor rear flat has been continuously occupied as a self-contained unit of accommodation (i.e. a dwellinghouse) for a period of four years beginning with the date of the breach. As the appellant has been unable to discharge the burden of proof that is upon him in this case, the appeal on ground (d) appeal on Appeal B must fail.

Third Extension

70. Appeal A was not originally made on ground (d); this was added after the appeal had been made. It was, however, added on the basis that Notice A targets the Second Extension and not the Third Extension. I have found Notice A to be sufficiently precise in targeting the Third Extension and I have already confirmed that Appeal A will be determined on this basis.
71. With this in mind, the appellant's affidavit is clear, that the Third Extension was constructed in May 2022. In view of this, it cannot be the case that, on the balance of probability, a period of four years has passed beginning with the date on which the extension was substantially completed. For this reason, the ground (d) appeal on Appeal A should fail.

Ground (a) and the deemed applications for planning permission – Appeals A and B

Main Issues

72. 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.
73. The ground (a) appeal for Appeal A relates to the Third Extension. In view of my conclusions on ground (b) in relation to the Second Extension, the ground (a) appeal for Appeal B relates only to the material change of use and the boiler storage structure. The appellant says that he makes no case under ground (a) for the rear ground floor flat. I have, nevertheless, considered the merits of this development as part of the ground (a) appeal for the material change of use.
74. I note the substantive reasons for issuing the enforcement notices and from these I have identified the following main issues:

For the material change of use:

- The effect of the development on the living conditions of the occupiers of the appeal site, with particular regard to the size of the units, garden space provision, and outlook;
- The effect of the development on the living conditions of neighbouring occupiers;

- Whether or not the development results in inconveniences for road users and is prejudicial to highway safety as a result of any additional demand for on street parking; and
- Whether or not the development makes sufficient provision for cycle parking.

For the boiler storage structure and the Third Extension:

- The effect of the development on the character and appearance of the site and the surrounding area.

Reasons

The Development Plan

75. The development plan for the area includes both the London Plan dated March 2021 (LP) and the London Borough of Ealing's Development Management Development Plan Documents Adopted 10 December 2013 (EDPD). Whilst I note the appellant's comments, that certain policies of the LP are 'primarily applicable to strategic developments and its relevance to minor household developments is limited', I cannot agree. The LP forms part of the development plan and its policies are relevant to any new development within the administrative area it relates to. Having regard to the policies referred to by the parties, most are entirely relevant to the assessment of the development subject of these ground (a) appeals for reasons I will come to.

Living Conditions of Occupiers

- Size of Units and Outlook

76. Although not referred to in Notice B, the Council has referred in evidence to Policy D6 (Housing quality and standards) of the LP, which requires housing development to be of high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures. The Policy and Table 3.1 of the LP set out the minimum that must be achieved for the floor area for private internal space within dwellings.
77. These are the most up to date development plan standards for internal floor space and accord with those set out in the Technical housing standards – nationally described space standard, published 27 March 2015. Whilst Policy 3.5 (Ealing Local Variation – Quality and Design of Housing Developments) of the EDPD requires residential development to comply with the standards set out in Table 3.3, this has been superseded by the more recently published LP and its Table 3.1.
78. The accommodation within the rear ground floor flat comprises a kitchen, space for a bed and relaxation, and a w.c. and shower room. The Council suggest that the internal floor space of the flat is some 15 square metres. This is not disputed by the appellant. For a one bedroom dwelling, used as a studio flat, with one bed space, Table 3.1 of the LP informs that the minimum internal floor area should be 37 square metres. It is clear that the accommodation comprised within the rear ground floor flat is significantly below this standard. This is not, however, surprising. Having viewed the accommodation, I find it to be extremely cramped, with very little space for

circulation and storage. The flat does not provide its occupiers a comfortable place of retreat, as envisaged for new homes in paragraph 3.6.2 of the LP.

79. As for the other ground floor flat, this accommodates a kitchen, living room, w.c. and shower room, and a bedroom. The appellant suggests the floor space of this unit is some 63 square meters, whereas the Council suggest that it is only around 50 square metres. Even if I were to regard the floorspace of this unit as in compliance with the minimum standards set out in Table 3.1 of the LP, the layout is awkward in that access to and from the kitchen is via the only bedroom accommodated within the unit.
80. Furthermore, the bedroom has no means of outlook, save for a roof light providing a limited degree of natural light. Even in the case of a single aspect dwelling, Criterion C of LP Policy D6 informs that they should be avoided and only provided in certain circumstances. Paragraph 3.6.5 of the LP advises that single aspect dwellings 'are more difficult to ventilate naturally and are more likely to overheat'. Whilst the living room and kitchen of the unit may well have sufficient outlook and ventilation, I cannot conclude the same with regard to the bedroom serving the unit. The inadequacies of the layout of the unit also means that it fails to accord with Policy 7B (Ealing Local Policy – Design Amenity) of the EDPD, which requires development to achieve a high standard of amenity for users and adjacent uses by ensuring, amongst other matters, good levels of daylight and sunlight.
81. The first floor accommodation comprises two bedroom/living rooms, a kitchen and a bathroom. The appellant says that this is around 40 square metres in footprint. As the first floor accommodation makes provision for 2 bedrooms, its footprint is significantly below the minimum standard of 61 square metres for a three person dwelling, set out in Table 3.1 of the LP. Even if the accommodation were to provide a single bedroom for two persons, with the other bedroom/living room used as a living room alone, the floorspace of the accommodation would still fall below the 50 square metre standard. The accommodation may well have a dual aspect. However, the confined size of the accommodation does not provide its occupiers with a comfortable place of retreat.

- Garden Space

82. Only the two ground floor units have access to the private outdoor space within the site. Whilst the first floor unit can use the area to the front of the property for some purposes (bin storage, for example), this space is not private and not, therefore, suitable for relaxation, drying clothes, etc.
83. The existing arrangement is, therefore, in conflict with criterion F9) of LP Policy D6 and EDPD Policy 7D (Ealing Local Policy – Open Space), which require a minimum of 5 square meters of private outdoor space for each 1-2 person dwelling. This is also in conflict with DPD Policy BP5 (External amenity space), which states that planning permission will only be granted for 'new dwellings where they provide appropriate external private and/ or communal amenity space to meet the needs generated by the development'.

- Summary

84. The housing standards set out in the LP and EDPD are intended to indicate a minimum for new accommodation to achieve a high quality design that is fit

for purpose and meets the needs of its occupiers. The development fails to achieve these standards and has resulted in accommodation that I find to be wholly inadequate for the health and wellbeing of its occupiers.

85. For these reasons, I conclude that the development has a harmful effect on the living conditions of its occupiers. The development fails to accord with LP Policy D6 and the Technical housing standards, as well as EDPD Policy 3.5, Policy 7B and Policy 7D. In addition, the development also fails to accord with the paragraphs of the National Planning Policy Framework (the Framework) on achieving well-designed and beautiful places. These require development to, amongst other matters, promote health and well-being and be of a high standard of amenity for existing and future users.

Living Conditions of Neighbouring Occupiers

86. The Council refers to noise and disturbance caused by the development, to the detriment of neighbouring occupiers.
87. As the ground floor rear flat is only accessed from the rear of the property, the development has resulted in the comings and goings of two of the households accommodated within the appeal property. I can agree that these movements are likely to be greater when compared to the former single dwellinghouse. However, the appeal site is within a densely populated area where there is likely to be a certain level of activity within the street from residents arriving at or leaving their homes. Within this context, I am unable to conclude that the development results in an increase in activity within the street, including movements to and from the appeal property, that would have an unacceptable effect on the living conditions of neighbouring occupiers.
88. As for the use of the rear garden, both the ground floor flats have access to the garden space and the rear entrance is used to access the ground floor rear flat. The garden space is confined, partly due to the extent of the extensions, and activity within the garden is likely to have intensified with its use by two households. Furthermore, the use of the rear garden as the sole means of access to the ground floor rear flat results in additional activity in the rear garden that is unlikely to be typical in other of the private garden spaces I observed in the adjoining properties. Accordingly, the increase in activity in the rear garden, and associated noise and disturbance that would result from this, is likely to have a detrimental effect on the neighbouring occupiers' enjoyment of their own private garden space.
89. I acknowledge that if used as a single household, the property could be occupied by a similar, if not greater number of residents. However, in these circumstances the activity within the rear garden would be that associated with a single household, where residents would use the garden space together, rather than separately. Furthermore, the garden would not provide the only means of access to the property. In my judgement, the development has resulted in a material change to how the garden space is used.
90. In view of the above, I conclude that the development causes an unacceptable degree of harm to the living conditions of the neighbouring occupiers. For this reason, I find conflict with Policy 7B of the EDPD. The provision of three units of accommodation within the appeal property does not ensure an appropriate level of development on site, which prevents the

development from achieving a high standard of amenity for adjacent uses required by the Policy. The development is also in conflict with EDPD Policy 7A (Ealing Local Policy – Amenity) which, amongst other matters, informs that emissions of any sort from development, including noise, must not erode the amenity of surrounding uses.

91. The development also conflicts with the promotion of health and well-being, and does not achieve the high standard of amenity for existing and future users expected within the paragraphs of the Framework on achieving well-designed and beautiful places.
92. Whilst the Council refer to EDPD Policy 7.4 (Ealing Local Variation – Local Character), it has not explained how there is conflict with this Policy. Any conflict with this Policy is not obvious to me.

Parking

93. The appeal site is within a predominantly residential area and most properties in the area have a hard surfaced parking area to the front. The appeal site is no exception to this; the area to the front of the property appears to already allow for the parking of two vehicles. Whilst the Council suggest that there is a high demand for parking in the area, there appeared to be some opportunity within the highway for some on street parking, including in Verulam Road to the side of the site.
94. Policy T6 (Car Parking) of the LP informs that 'Car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, with developments elsewhere designed to provide the minimum necessary parking ('car-lite')'. The Council indicate that the appeal site is within an area with a PTAL of 2. LP Policy T6.1 (Residential Parking) informs that 'new residential development should not exceed the maximum parking standards set out in Table 10.3'. In an area with a PTAL of 2, Table 10.3 requires up to 0.5 spaces per dwelling.
95. There are three dwellings within the appeal property, for which there would be a requirement of up to 1.5 spaces. As Policy T6.1 informs that the standards should not be exceeded, to comply with both Policy T6 and T6.1, a single parking space should be provided at the site. As the site already accommodates this, I have no reason to conclude that the development would be in conflict with LP parking policies.
96. Having regard to all of the above, whilst the number of vehicles owned by the occupiers of the property might well have increased as a result of the development, I am unable to conclude that this has resulted in an unacceptable degree of harm. For this reason, I conclude that the development does not result in unacceptable inconveniences for road users and is not unacceptably prejudicial to highway safety as a result of any additional demand for on street parking. I find no conflict with LP policies T6 and T6.1. Neither is there conflict with the Framework's chapter on promoting sustainable transport.

Cycle Parking

97. The Council refer to Policy T5 (Cycling) of the LP, which requires development to provide the minimum number of cycle parking places set out in Table 10.2. It also points to the lack of cycle parking within the appeal site.

98. The appellant suggests that provision for cycle parking can be made at the site and, having regard to the outdoor space to the front and rear of the property, I have no reason to doubt that parking provision could be accommodated within the site, even if the requirement for 2 spaces per dwelling were applied. This could be secured by way of an appropriately worded condition.
99. Whilst there is no cycle parking provision at present, I conclude that sufficient provision can be accommodated within the appeal site and secured by way of condition, in compliance with LP Policy T5.

Boiler Storage Structure and the Third Extension

100. As noted earlier in this decision, the appeal property has already been extended with two single storey extensions. The Third Extension adds further depth to the single storey development to the rear of the property, and these series of enlargements now appear disproportionate to what would have been the original two storey element. The Third Extension appears as an ad-hoc addition. It is obvious that little thought has been given to its design and how it integrates with the existing building. For this reason, it is contrary to LP Policy D3 (Optimising site capacity through the design-led approach), which encourages a design led approach to any new development.
101. In addition to this, the materials used in the construction of the extension are unsympathetic to those used in the existing building, in conflict with EDPD Policy 7.4 which requires development in existing built areas to complement their materials and detailing, amongst other matters. This further emphasises the incongruous nature of this development.
102. As for the Boiler storage structure, it is a more confined development and the height of this is limited, so much so that it is lower than the adjoining boundary wall. It has the appearance of an outbuilding and its size is comparable to a garden shed. Although the materials used are similar to that of the Third Extension, they are not so incongruous in this development, it being a domestic outbuilding.
103. As for the garden space taken up by the development, I note that most properties along Allenby Road have been extended in various forms and I observed a number of substantial outbuildings within rear gardens close to the site. The remaining garden space within adjoining properties is modest, No 320 in particular is served with limited outdoor space. Whilst a predominance of built development and limited outdoor space might characterise the grain of development in the area, particularly along Allenby Road, this does not justify the additional built development to the rear of the appeal property that is the subject of these appeals.
104. Although the boiler storage structure occupies an area of the limited garden space at the appeal site, it does provide a space for garden storage, which is otherwise missing from the appeal site. The Third extension does not, however, fulfil a similar purpose and does nothing but further erode the limited garden space remaining to serve the property. The extension does not, therefore, enhance the local context, as required by LP Policy D3, or complement the building pattern, in accordance with EDPD Policy 7.4.

105. I acknowledge that the Third Extension is not particularly visible from public vantage points, or from adjoining properties. Nevertheless, this does not negate the need for good design, as required by the policies of the development plan I have already referred to. Indeed, EDPD Policy 7B informs that new development must achieve a high standard of amenity for its users, as well as for adjacent uses by ensuring, amongst other matters, high quality architecture and coherent development of the site. For the reasons given above, I find the Third Extension to be an unacceptable form of development. It has a harmful effect on the character and appearance of the site and the surrounding area, in conflict with LP Policy D3 and EDPD Policies 7.4 and 7B.
106. As for the boiler storage structure, whilst this does not demonstrate a high quality of architecture, the scale of this development is limited, and its functional design is appropriate to a domestic outbuilding. I have had regard to the representations of interested parties. These are, however, more targeted at the extension and the use of the property, for good reason. On balance, the effect of the boiler storage structure on the character and appearance of the site and the surrounding area is acceptable and I find no conflict with the development plan policies referred to above. Accordingly, I conclude that planning permission should be granted for it.

Other Matters

107. 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.
108. With regard to the material change of use, I acknowledge the Government's aim of significantly boosting the supply of homes and that the development makes a contribution towards that aim. Whilst this is a benefit of the development, the weight I attribute to it is tempered as I am not advised that the Council is failing to achieve its target for the supply of homes in this area.
109. Having regard to the evidence of the appellant's personal circumstances, there is potential for my decision to have an effect on a person who shares a protected characteristic. Accordingly, under the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
110. In this regard, I acknowledge that the first floor accommodation might well allow for the appellant's carers to be close at hand. If permission were refused, this would disrupt the current arrangements. For this reason, I note the appellant's suggestion, which is for a personal permission to be granted. However, I have no reason to conclude that, if permission is refused, the appellant would be unable to have the care he needs. Also, it would not prevent a carer living together with the appellant as a single household.
111. As for the operational development subject of the ground (a) appeals, whilst the appellant does not suggest any benefits of this development, I acknowledge that it does provide additional space within the property for the appellant.

112. Having considered the benefits of the development comprising the material change of use and the Third Extension, I do not, on balance, find the material considerations identified to be of sufficient weight to overcome the harm caused by these developments. I have considered whether conditions would overcome the harm I have identified, including the personal permission suggested by the appellant, but conclude that they would not. As such, my determination of the appeals as they relate to these developments should not be made otherwise than in accordance with the development plan.
113. As for the boiler storage unit, no conditions have been suggested that would be necessary in the event that I grant planning permission for this development and none are obvious to me.

Conclusion

114. For the reasons given above, I conclude that planning permission ought to be granted for the boiler storage structure. The ground (a) appeals succeeds insofar as it relates to this element of the development that is the subject of Notice B. The ground (f) and (g) appeal do not fall to be considered insofar as they relate to this structure.
115. Otherwise, I conclude that the ground (a) appeal for Appeal B should fail insofar as it relates to the material change of use. I conclude the same with regard to the ground (a) appeal for Appeal A.

Ground (f) – Appeal B

116. In view of my conclusions on the ground (d) and (a) appeals with regard to the Second Extension and the boiler storage structure, the ground (f) appeal relates only to the material change of use. The purpose of Notice B is to remedy the breach of planning control alleged. For the appellant to succeed on ground (f), I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control comprising the material change of use.
117. Much of the appellant's case under ground (f) is a repeat of his case made under the grounds of appeal already considered, including that the breach alleged has not occurred or that it is immune from enforcement action. These matters are not, therefore, relevant to the ground (f) appeal.
118. Whilst the appellant suggests that the requirement to remove two of the three kitchens from the appeal property is excessive, the reasons given for this relate to what the appellant might want to do with certain rooms in the property in the future. Whilst it might be the case that permission is not required for the future works suggested, the evidence before me indicates that the kitchens required to be removed were installed for the sole purpose of facilitating the use of the property as two flats and a small HMO. The removal of two of the kitchens is, therefore, the minimum necessary to remedy the breach of planning control. Furthermore, this would not prevent the appellant from undertaking any further works in the future, with the necessary permission should it be required.
119. As for the requirement to remove locks from internal doors, those to be removed are only those that facilitate the use of the property that must cease. Again, as I have no reason to find that the locks have been installed

for any reason other than to facilitate the material change of use, their removal is the minimum necessary to ensure that the use cease.

120. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Ground (g) – Appeal B

121. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. Notice B specifies a period of 6 months from the date the notice takes effect.
122. The appellant suggests that the requirements of the notice, as they relate to the material change of use, would mean that occupiers of the property, other than the appellant, would be made homeless and they may have to rely on social or Council housing. Whilst I have not been provided with the particular circumstances of the other occupiers of the property, I have not been advised that there is a particular difficulty for these individuals to find accommodation elsewhere, such that a period of more than the 6 months given would be necessary.
123. I have already acknowledged that the loss of the first floor accommodation would cause disruption to the appellant's current care arrangements. However, the requirements of the notice would not prevent him from receiving care and it has not been demonstrated that his care needs could not be met by carers who do not reside at the site. Notwithstanding this, as I have also mentioned, complying with the requirements of the notice would not prevent a carer living together with the appellant as a single household.
124. The physical works to the appeal property required by Notice B are not extensive. Whilst I acknowledge that there would, nevertheless, be a cost to complying with Notice B, I am not persuaded that the 6 month period would be insufficient to raise the necessary funds and to find a local contractor to undertake the work.
125. All things considered, I have been given no reason to conclude that the requirements of the notice that relate to the material change of use cannot be complied with within 6 months. As such, I have no reason to find that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Overall Conclusion - Appeal A

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

Overall Conclusion - Appeal B

127. For the reasons given above, I conclude that the appeal should succeed in part on ground (b) insofar as it relates to the Second Extension. I will correct

the notice to remove reference to it in both the allegation and the requirements. In these circumstances, the appeal on grounds (a), (c), (d), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act for the Second Extension do not fall to be considered.

128. Furthermore, I conclude that the appeal should succeed in part only, and I will grant planning permission for the boiler storage structure, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act.

Formal Decision - Appeal A

129. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision - Appeal B

130. It is directed that the enforcement notice is corrected by:

- The deletion of the words "and the approximate position of the unauthorised development marked with an 'X' and 'XX'" from part 2;
- The deletion of the word "mixed" from part 3;
- The deletion of the words "construction of a boiler storage structure (the "boiler storage structure") and construction of a single storey rear extension (the "second extension")" from part 3, and their substitution with the words "and the construction of a boiler storage structure in the approximate location marked with an 'XX' on the attached plan (the "boiler storage structure")"; and
- The deletion of requirements 5. and 6. in their entirety from part 5.

131. Subject to the corrections, the appeal is allowed insofar as it relates to the boiler storage structure and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, for the boiler storage structure at 322 Allenby Road, Southall, Middlesex UB1 2HR.

132. The appeal is otherwise dismissed, the enforcement notice is upheld as corrected and planning permission is refused in respect of the material change of use of the building to a use as two separate flats and a small HMO on the application deemed to have been made under section 177(5) of the 1990 Act.

J Moss

INSPECTOR