



Appeal Decision

Inquiry held on 25 September and 1 October 2024

Site visit made on 25 September 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2024

Appeal Ref: APP/U5360/C/24/3344092

11 Northfield Road, Hackney, London N16 5RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by 11 Northfield Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 28 March 2024.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the first floor and attic floor of the Property to a place of public worship or religious instruction (use class F1 (f)).
- The requirements of the notice are to:
 1. Cease the use of the first floor and attic floor as a place of public worship or religious instruction;
 2. Remove all fixtures and fittings and equipment facilitating the use of the Property as a synagogue;
 3. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 4. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its 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), (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 and the enforcement notice is corrected and quashed.

Applications for costs

1. An application for costs was made by the Council of the London Borough of Hackney against 11 Northfield Limited. An application was also made by 11 Northfield Limited against the Council of the London Borough of Hackney. These applications are the subject of separate decisions which will be issued shortly.

Preliminary Matters

2. All witnesses at the inquiry gave evidence after having affirmed. I am, therefore, mindful of the significant weight that this evidence carries, in view of the sanctions that could be imposed should the evidence given be false or misleading.
3. Whilst the land to which the enforcement notice relates is the entirety of 11 Northfield Road (the Property), part 3 of the notice alleges a material change of use of only 'the first floor and attic floor'. There are several levels within the Property. Although I only observed the children's nursery from the front of the Property, I could see that this occupies the basement and first floor. There were another 4 levels above the nursery.
4. Having entered the Property at ground floor from an external flight of stairs, I saw a small lobby where a row of coats were hung. I took a flight of stairs to a room at the rear of the Property that was laid out with a kitchen area and with tables and chairs. Off this there was a small w.c. and storage room. This part of the Property was referred to by the parties as the 'women's room'. Up the next flight of stairs, I saw a landing on which there was a sink. Off the landing and towards the front of the Property I saw a small kitchen area, w.c. and storage.
5. On this level there was also a larger room spanning the depth of the Property. In this room there were a number of book shelves; tables with chairs around them; a raised table covered with embellished fabric; and a cupboard screened with similar embellished fabric.
6. I entered the next flight of stairs via a closed and locked door. At the next level up I saw a small landing providing access to two rooms via lockable doors. Although one room was locked, I saw into the room to the rear of the Property. In this room there were a number of desks, computers and office type furniture. Up the final flight of stairs I saw a landing off which there was a w.c. and a small kitchen area. There were two rooms off this landing, both with lockable doors. In these rooms were desks, computers and office type furniture.
7. Despite the presence of various floors within the Property, all parties were clear that the two levels above the nursery comprise the 'first floor' referred to in part 3 of the notice, and that the top two levels of the Property comprise the 'attic floor'. I will, therefore, refer to these parts of the Property in this way.

The Notice

8. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
9. The notice alleges a material change of use to a place of public worship or religious instruction and paragraph 5.1. requires this use to cease. However,

the second requirement refers to a use as a synagogue. A synagogue might well be a use as a place of worship and religious instruction. Indeed, many of the witnesses referred to the relevant part of the appeal site as a synagogue and I have done the same at times in this decision. Nevertheless, in the interests of consistency, I intend to correct the notice so that all of the requirements refer only to the use alleged.

10. The allegation also mentions 'use class F1 (f)'. As this is a use class within The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order), reference to the Order itself should be added to the allegation. This would be in the interests of clarity and certainty.
11. Having discussed the above with the parties at the inquiry, I am satisfied that no injustice would be caused in making these minor corrections to the notice.

Ground (b)

12. An appeal on ground (b) is that the matters alleged in the enforcement notice, as I intend to correct it, which appears to the Council to constitute the breach of planning control, have not occurred. The burden of proof is on the appellant and the test of any evidence is on the balance of probability.
13. The appellant's case on ground (b) is simply put. They do not dispute that the material change of use has occurred. Instead, their case is that the material change of use has only occurred on the first floor and not on the attic floor.
14. The parties have considered the caselaw of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, which is a leading case for the determination of the planning unit. In doing so the Council conceded¹ that, at the time the notice was issued, only the first floor was in use 'as a synagogue' and agreed with the appellant that the offices on the attic floor are 'physically separate' from the synagogue. The parties agreed that the notice should be corrected to remove reference to the attic floor from the allegation.
15. Whilst I note the agreed position, I myself must be satisfied that the matters alleged in the notice have not occurred. In doing so, I am mindful that section 174(2)(b) of the 1990 Act is worded in the past tense. As such, the use of the Property at the time the notice was issued is not the only relevant matter in this case. I must also consider whether or not the matters alleged in the notice have occurred in the past.
16. With regard to the present use, I heard evidence from interested parties who occupy two of the office rooms on the attic floor. Each party say that they rent only their respective office room from the landlord of the Property, and that their tenancy is also separate to the first floor. They confirmed that the office rooms are used to conduct business (including insurance and property development) that is not associated with the synagogue. The occupiers of the office rooms also confirmed that they do not attend the synagogue at the appeal site.
17. The appellant says that the synagogue is used at present by the Lelov community. The appellant's witnesses and other interested parties included

¹ ID01 – Supplementary Statement of Common Ground.

members of that community, who confirmed that they regularly attend the synagogue at the appeal site. Although they say they have little to do with the use of the attic floor, some were able to corroborate to a degree the evidence given by the occupiers of the office rooms.

18. They confirmed that their use, and their family's use, of the appeal site is as a place of worship and prayer, and as a place for education and the study of their religion. The synagogue is used for communal prayer three times a day for varying periods, and the length of these periods and the prayers said might depend on whether there are any religious holidays.
19. It was explained that those who follow the religion also commit to the study of the religion. This involves the study of the religious books, either in pairs or in groups of all ages, including school age children. On occasion, lectures on various topics of the religion might also be held at the synagogue. It is suggested that the use for education and study would also occur on a daily basis.
20. The witnesses who attend the synagogue confirmed that both prayer and study happen on the first floor of the Property only. Other than occasional meetings and celebrations, all of which are associated with certain religious festivals and the synagogue itself, the first floor of the Property is used for no other purpose.
21. I noted the physical layout of the various floors of the Property above the nursery. Access to each of these floors and, therefore, the various areas or rooms on each floor is via a single set of stairs, accessed from the single main entrance. I noted that the various areas and rooms of the synagogue at first floor are open to this staircase, such that anyone accessing the offices on the attic floor could gain easy access to the synagogue. Notwithstanding this, I noted the locked door at the bottom of the staircase to the attic floor, which physically separates the attic floor and the activities within it from the first floor.
22. With the approach set out in *Burdle* in mind, the evidence demonstrates that there are various occupiers of the Property, where the occupiers of the attic floor are not the same as those that occupy the first floor. Having regard to the evidence of the appellant's witnesses and the interested parties, the activities (or uses) taking place in the parts of the Property that are the target of the notice can be described as offices, for the purposes of worship and prayer, and for the purposes of religious study and education.
23. I am satisfied that the use of the attic floor as offices is not a use that is ancillary or incidental to any other use in the Property. It is a primary use of the appeal site and, despite the shared staircase, it is physically and functionally separate from the remainder of the Property.
24. As for the use of the first floor, the allegation refers to 'a place of public worship or religious instruction'. I can see that this description is taken from class F.1(f) Part B, Article 3, Schedule 2 of the 1987 Order. Although, many of the witnesses referred to a use of the Property for prayer, rather than worship, I am satisfied that 'a place of public worship' is an accurate description of this use. I am also satisfied that 'religious instruction' is an acceptable description for religious education and study.

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25. There is no dispute that both activities take place at the Property. The allegation should, therefore, reflect this, rather than referring to one **or** the other taking place.
26. Notwithstanding this, the Council make a distinction between the two activities. It says that there is a fluctuation between 'any given use'. This point is made in support of its response to the ground (d) appeal.
27. If I were to regard these two activities as two primary uses, I have no reason to conclude that one is ancillary or incidental to the other. Furthermore, the evidence indicates that both occupy the same space and the fluctuation between the two depends on the time of day or date in the religious or school calendar.
28. Even if the use as a place of public worship and religious instruction were to be regarded as two primary uses of the first floor, rather than both being a single primary use, I would not regard them as anything other than a mixed use and I have no reason to conclude that such a use would not fall within class F.1(f) of Part B, Article 3, Schedule 2 of the 1987 Order. Furthermore, I am satisfied that the use is confined to the first floor, being both physically and functionally separate to the other uses in the remainder of the Property.
29. Having regard to the evidence before me, I conclude as a matter of fact and degree that at present the first floor is a planning unit of its own, separate to any of the other planning units within the other parts of the Property, including the attic floor. The use of this planning unit is as a place of public worship and religious instruction, which is a use falling within class F.1(f) of Part B, Article 3, Schedule 2 of the 1987 Order.
30. In addition to the above, neither the appellant's witnesses nor interested parties indicated that the use of the first floor had ever extended to any other part of the Property, including the attic floor. It is suggested that the attic floor was used for residential purposes prior to its use as offices. None of this was disputed by the Council.
31. Bringing all of the above together, it is more likely than not that the matters alleged in the enforcement notice have not occurred in so far as it relates to the attic floor of the Property. The ground (b) appeal succeeds to that extent. I will, therefore, correct the notice to remove reference to the attic floor in the allegation. The parties agree that no injustice would be caused in making such a correction to the notice, pursuant to the ground (b) appeal, and I have no reason to find otherwise.
32. I will also correct the notice to refer to a place of public worship **and** religious instruction, so that this better reflects the use taking place on the first floor. As I mention above, there is no dispute that the first floor is used for both activities and both parties approached the appeal on this basis. As such, no injustice would be caused with such a correction.

Ground (d)

33. 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. Again, the test of the evidence is on the balance of probability and the burden of proof is on the appellant.

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34. Having regard to the case made by the parties, the main issues for me to consider are two fold, namely:
- i. Whether or not a previous enforcement notice prevents my consideration of the ground (d) appeal and, therefore, any success for the appellant on ground (d); and
 - ii. If not, whether the use of the first floor of the Property as a place of public worship and religious instruction has been continuous for a period of ten years beginning with the date of the breach².

Main issue i - The Previous Enforcement Notice

35. An enforcement notice was issued on 10 April 2019 and relates to the first floor and attic floor of the Property. It alleged the 'unauthorised change of use from a self-contained Flat (Class C3) to a School (Class D1)'. I will refer to this as the 2019 Notice.
36. In making its principle point under the ground (d) appeal, the Council says that, as no appeal was brought against the 2019 Notice, it came into force and is extant. It says that the 2019 notice runs with the land in perpetuity and, if not complied with, a prosecution can result. Thus far, the appellant has no dispute with the Council and I have no reason to find otherwise.
37. The Council emphasises that the time to make any appeal against the 2019 Notice has expired and that no challenge can now be brought against this notice under section 174 of the 1990 Act. Again, this is a matter that is not disputed by the appellant and is a point that I can also agree with.
38. The Council rightly points to the need for an appeal against an enforcement notice to be made at the appropriate time, i.e. before the notice comes into effect. Section 285 of the 1990 Act reinforces this by informing that 'the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought'. There are some exceptions to this set out in section 174(2). The appellant does not suggest that these exceptions apply to it.
39. The Council has referred to the case of *Buckinghamshire County Council v North West Estates PLC (and Others)* [2002] EWHC 1088 and points in particular to paragraphs of the judgment that are relevant to all of the above³. As I have agreed with the Council's position so far, I do not find myself at odds with the parts this judgment referred to.
40. With regard to the above, the Council suggest that the ground (d) appeal before me would amount to a challenge to the validity of the 2019 Notice. There is, however, little explanation on how my consideration of the ground (d) appeal, in particular the second main issue identified above, might result in my questioning of the validity of that notice, which is prohibited by section 285.
41. The 2019 Notice alleges a use that is materially different to the use alleged in the notice before me. This does not appear to be disputed by the parties. There are, therefore, two distinctly different notices relating to two

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

³ Paragraph 26 of the Council's closing submissions.

materially different uses. My consideration of the ground (d) appeal against the most recent notice is not, therefore, in respect of the same use that is alleged in the 2019 Notice. In this regard, I cannot see how my consideration of the ground (d) appeal against a notice that alleges a use as a place of public worship and religious instruction would question the validity of a notice that alleges a materially different use, i.e. a use as a school.

42. Whilst the Council refers to a lack of caselaw to support the above, I think this to be a matter of common sense. Even if a site is the subject of an extant enforcement notice, the recipient of a subsequent enforcement notice should be entitled to challenge the notice under all of the grounds set out in sections 174 of the 1990 Act, provided the consequence of doing so would not alter the effect of the earlier notice. The appellant confirms that they do not seek to challenge the validity of the 2019 Notice and acknowledge that it will remain in effect even if its appeal succeeds. The appellant's only challenge is in respect of the notice that is before me.
43. A distinction can be drawn between the *Buckinghamshire* case, and that before me. That case related to land that was the subject of several enforcement notices where injunctive relief was sought to prevent alleged breaches of planning control. The Honourable Mr Justice Jacob summarised that what was sought for by the composite injunction was a single and clear definition of what the defendants must do. The part of this judgment of most relevance to the appeal before me is the unchallenged enforcement notice, referred to as enforcement notice number 4 in that case.
44. Enforcement notice number 4 related to a breach of a condition of a permission for quarrying that required, amongst other matters, the removal of a building following cessation of the quarry use. The use of that building as a workshop had previously been found to be lawful by reason of success on an appeal against an enforcement notice relating to the workshop use. In view of this, Mr Justice Jacob was asked to exercise his discretion to 'withhold an injunction to enforce enforcement notice number 4'. In refusing to do so, I can see that Mr Justice Jacob considered the defendant's point to be a direct challenge to the validity of enforcement notice number 4, which is prohibited by section 285 of the 1990 Act. The challenge being that the notice was invalid because it interfered with the lawful use rights established by reason of the earlier appeal relating to the workshop use of the building.
45. In the appeal before me, the appellant's case under ground (d) does not challenge the validity of the 2019 Notice in this way. Indeed, I can see no other way in which the ground (d) appeal would amount to such a direct challenge to the validity of the 2019 Notice, in conflict with section 285 of the 1990 Act. Regardless of my conclusions on the second main issue I have identified, the 2019 Notice and its requirements will remain intact on my determination of the appeal. The effect of the 2019 Notice will not be altered and, as acknowledged by the appellant, its requirements must be complied with in perpetuity. This is unlike the *Buckinghamshire* case, where the defendant sought a finding that enforcement notice number 4 could not require the removal of the building. To my mind, such a finding would, as a consequence, alter the requirements of that notice.
46. In addition to the above, as my determination of the ground (d) appeal would leave the 2019 Notice unaffected, my decision would not interfere with

the proper operation of section 57(4) as it relates to that notice. This provision of the 1990 Act informs that, where an enforcement notice has been issued, the use of land for the purpose for which it could lawfully have been used does not require planning permission following compliance with the enforcement notice. I can see no reason why the provisions of section 57(4) would be interfered with.

47. In considering whether or not enforcement action could be taken on the date the notice before me was issued, I must consider whether or not the use alleged in the notice is lawful. Section 191(2) of the 1990 Act is relevant. This states:

‘For the purposes of this Act uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.’

48. For development to be lawful, both (a) and (b) must be satisfied.

49. With regard to section 191(2)(a), whilst the appellant has acknowledged that the material change of use of the first floor of the Property involves development and that this development requires the benefit of planning permission, its case is that the time for taking enforcement action has expired⁴. Other than its dispute of these claims, the Council does not point to any of the other requirements of section 191(2)(a) in making its case.

50. The Council refer to the effect of the 2019 Notice as ‘a “new planning chapter” in the history of the site’. It suggests that the effect of the unchallenged notice is a change to the use of the Property in 2019 to a use as a school. Its point on this appears to relate to the appellant’s claim that section 191(2)(a) of the 1990 Act is satisfied because the time for taking enforcement action has expired.

51. The Council refer to the case of *Jennings v Secretary of State for the Environment* [1982] 1 QB 541, and provides an extract of that judgment that defines a new planning chapter as ‘a radical change in the nature of the buildings on the site, or the uses to which they are put’. In the case of the use of a site, this indicates that, when deciding whether or not a new planning chapter has occurred, much will depend on the definable character of the site and the activities taking place upon it. An extant enforcement notice might well prohibit a certain use of the site, in the same way that a planning permission might authorise a use. It does not, however, follow that, because a notice has been issued, there has been a change to the purposes to which the site has been put. For these reasons I cannot regard the 2019 Notice as a new planning chapter within the *Jennings* meaning.

52. As for section 191(2)(b), the appellant says that the use of the first floor of the Property as a place of public worship and religious instruction does not contravene the requirements of the 2019 Notice. This does not appear to be

⁴ Section 171B(3) of the 1990 Act.

disputed by the Council. The requirements of the 2019 Notice are to 'cease the use of the school at first and second floor (attic) levels', along with the removal of fixtures and fittings that facilitate the use and any waste arising from the requirements of the notice. The use of the first floor of the Property as a place of public worship and religious instruction would not contravene any of these requirements, including the requirement to 'cease the use of the school'.

53. Other than the matter of whether or not the time for taking enforcement action has expired, which I move on to consider below, I see no other obvious reason why I could not conclude the use of the first floor of the Property as a place of public worship and religious instruction is lawful by reason of section 191(2) of the 1990 Act.

54. All things considered, I am unable to agree with the Council and can find no reason to conclude that the 2019 Notice prevents my consideration of the ground (d) appeal. I am, therefore, satisfied that I can go on to consider the second main issue I have identified.

Main issue ii – Expiry of the time to take enforcement action

55. Simply put, it is the appellant's case that on the date the notice was issued, the time for the Council to take enforcement action had expired. It says that the use of the first floor of the Property as a place of public worship and religious instruction has been continuous for a period of ten years beginning with the date the material change of use took place.

56. During the inquiry I heard evidence from the appellant's witnesses, Mr M Gold and Mr Lovinger, both of whom attend the Lelov synagogue at the appeal site. The Lelov are a strict orthodox or 'ultra-orthodox' community. Mr M Gold says that he has attended the synagogue since 2008, which at the time used the living room of the former flat that he says occupied the first floor. He says that since 2012 the synagogue has occupied the whole of the former first floor flat, when works of renovation were undertaken, which included the provision of the women's room with an opening between it and the main room, in order for women to hear the prayers said in the main room. To corroborate this, Mr M Gold has provided plans and invoices relating to the works undertaken in 2012.

57. Although Mr Lovinger did not attend the synagogue prior to 2012, he corroborates Mr M Gold's evidence with regard to the use of the first floor of the Property since 2012. He describes hearing about the Lelov community securing the sole use of the first floor in 2012 and that at that time he began attending prayers at the site.

58. The appellant's witness, Mr Posen, explains that a synagogue is not just a place of worship. It is also a place of study and education, as well as providing a place for the community to socialise. As mentioned above, it was explained that there is an obligation to study the religion and that this would include the education of children, group study and lectures. Both Mr M Gold and Mr Lovinger refer to the use of the first floor for study, as well as for prayer.

59. Having regard to all of the above, whilst there is evidence of the synagogue use of part of the first floor taking place prior to 2012, the evidence

demonstrates that, on the balance of probability, the use of the whole of the first floor of the Property (as defined in my preliminary matters above) as a place of public worship and religious instruction commenced in 2012.

60. Turning to the continuity of the use, I heard evidence from two of the appellant's witnesses and interested parties who attend the synagogue at the Property. All refer to the late morning prayer times, which are unique to the Lelov community's religious practices. Both Mr M Gold and Mr Lovinger say that they and their families have attended the synagogue from 2012 to present. For Mr M Gold, whilst he also prays at other synagogues, he says that he attends the Property nearly every week. Mr Lovinger describes his usual attendance as being twice weekly. Both say that their children also attend. They also refer to religious study and lectures at the Property, with Mr M Gold stating his preference to study before morning prayer.
61. I heard the evidence of two interested parties who also attend the synagogue, Mrs Gyter and Mr A Gold. Mrs Gyter says that both her husband and children regularly attend the synagogue and that she attends occasionally, particularly on certain holidays and special occasions when she would take the children. Mr A Gold referred to his preference for praying at this synagogue, which he says he has done for the past 12 to 13 years.
62. Despite none of the above witnesses indicating that they attend the synagogue every day, all referred to it being used daily by members of the community for the three daily prayers, as well as for religious study and education. They also refer to occasional celebrations at the Property following certain religious occasions and holidays.
63. In addition to the above, the appellant has provided a number of editions of the Hayom Yom and Kol Mevasser, which are publications that are distributed to members of the orthodox Jewish community in an area of London within which the appeal site is located. These announce communal events and family news taking place that week or month, giving the times and location of these events. I can see that all of the copies provided refer to the appeal site and I am told⁵ that the events publicised at the Property are 'prayer services, bar mitzva ceremonies and celebrations, circumcisions, etc'.
64. The publications span from September 2012 to December 2022. Although there are only 15 publications, these corroborate the evidence of the witnesses who attend the synagogue with regard to the continuity of the use since 2012.
65. At the inquiry the Council's witness agreed that, on the balance of probability, there has been a continuous use of the Property as a synagogue throughout the relevant 10 year period. Despite this, the Council point to the site visits its officers have undertaken. In October 2018 the investigating officer notes the presence of a school (a Yeshiva) at the site and the photographs show young men in the main area of the synagogue that appear to be studying. It also refers to the April 2021 visit where the investigating officer was told that there had been a previous use as a school, but that it is now a synagogue. The Council also suggest that the decision

⁵ A translation of the relevant parts of the publications has been provided by a Hebrew, Yiddish and English translator.

not to challenge the 2019 notice is an indication that the use of the Property as a school was taking place at that time.

66. I have no reason to doubt what the investigating officers were told at the site visits. However, those present at the visits did not give evidence to the inquiry. Whilst the investigating officer may have had a degree of knowledge about the Jewish community's means of worship and education, I can see how there may have been some misunderstanding on both sides by those present at the site visits.
67. I do regard this as evidence that contradicts the appellant's claims under ground (d). However, given the evidence of the appellant and interested parties with regard to the continuity of the synagogue use since 2012, which was given under oath and tested at the inquiry, the Council's records of the site visits to the Property are not sufficient to make the appellant's version of events less than probable.
68. As for the lack of an appeal against the 2019 Notice, I am persuaded by the appellant's evidence that, rather than this being an admittance to the use alleged taking place, there was considered to be no need to appeal a notice that alleged a use that was not taking place. I am also persuaded by the evidence that the use of the first floor has remained largely unchanged since it first commenced in 2012, save for a period when it was also being used as a place of prayer and worship by the Pnei Menachem community. Indeed, the site visit photographs of the site show a layout similar to that observed on my site visit. This includes the layout of the landing area, including the hand washing and kitchen facilities; the layout and religious objects in the main room of the synagogue; and the layout of the women's room. There is, therefore, little evidence of there being a material change or fluctuation of the use since 2012, such that the use as a place of public worship and religious instruction could not be regarded as continuous in this case.
69. All things considered, I find that the use of the first floor of the Property as a place of public worship and religious instruction has, on the balance of probability, been continuous for a period of ten years beginning with the date of the breach in 2012.

Conclusion

70. For the reasons given above, I conclude that the appeal should succeed in part on ground (b) and that it should succeed in its entirety on ground (d). The enforcement notice will be corrected and quashed.
71. In these circumstances, the appeal on ground (a), (f) and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

72. It is directed that the enforcement notice is corrected by the deletion of the words "and attic floor of the Property to a place of public worship or religious instruction (use class F1 (f))" from part 3. and their substitution with the words "of the Property to a place of public worship and religious instruction falling within Class F.1(f) of Part B, Article 3, Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 as amended".

73. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Streeten	Counsel
Mr Posen	Witness for the Appellant
Mr M Gold	Witness for the Appellant
Mr Lovinger	Witness for the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Rokad	Counsel
Mr Cunningham	Council of the London Borough of Hackney

INTERESTED PERSONS:

Mrs Ostreicher	Interested Party
Mr Fink	Interested Party
Mrs Gyter	Interested Party
Mr A Gold	Interested Party

INQUIRY DOCUMENTS

ID1 Statement of Common Ground Addendum