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## Appeal Decision

Inquiry held on 8, 9 and 18 October 2024

Site visit made on 7 October 2024

**by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 November 2024**

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**Appeal Ref: APP/N5660/C/24/3345272**

**1 Angles Road, London SW16 2UU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeal is made by Mr Tahir Ahmad of Tripple 7 Limited against an enforcement notice (EN) issued by the Council of the London Borough of Lambeth.
- The EN was issued on 19 April 2024.
- The breach of planning control as alleged in the EN is without planning permission, the erection of a single storey outbuilding and associated steps at the end of the rear garden of the premises ('the outbuilding') and its use as a self-contained residential dwelling ('the self-contained dwelling').
- The requirements of the EN are:
  - a) Cease the use of the outbuilding as a self-contained dwelling; and
  - b) Remove all kitchen units, kitchen appliances, and associated electrical and plumbing, fixtures and fittings that facilitate the use of the outbuilding as a self-contained dwelling, from the premises; and
  - c) Remove the fence/boundary enclosure which subdivides the garden and facilitates the use of the outbuilding as a self-contained dwelling, from the premises; and
  - d) Remove the outbuilding in its entirety from the premises and reinstate the rear garden as existed prior to the breach of planning control; and
  - e) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

**Summary Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### Applications for costs

1. An application for costs was made by Mr Tahir Ahmad against the Council of the London Borough of Lambeth. Another application for costs was made by the Council of the London Borough of Lambeth against Mr Tahir Ahmad. These applications for costs are the subject of separate decisions.

### Preliminary Matters and Background

2. The Inquiry commenced on 8 October 2024 and was initially programmed to sit for one day. However, additional sitting days were required to hear all the evidence, and these were held virtually on 9 and 18 October 2024. I undertook an accompanied site visit at the request of the main parties on the 7 October

2024. All the oral evidence given to the Inquiry was given by sworn affirmation.

### **The Notice**

3. On an appeal any defect, error, or misdescription in an EN may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. An outbuilding is normally ancillary to a dwellinghouse whereas here it is clear from the reasons for issuing the EN and the oral and written evidence before me that the alleged breach of planning control relates to the erection of a single storey building, and the steps adjacent to its front elevation, and the change of use of that building to a single dwelling house. Both parties were given the chance to comment on this at the Inquiry.
4. For the purposes of clarity, I consider that the EN should be corrected by deleting the words *'outbuilding and associated steps at the end of the rear garden of the premises ('the outbuilding') and its use as a self-contained residential dwelling ('the self-contained dwelling')* in section 3 of the EN and replace them with *'building, and associated steps, and the use of that building as a single dwelling house'*. Due to this change, to ensure clarity throughout the EN its requirements need to be corrected by deleting the wording *'outbuilding'* and substituting it with *'single storey building'* and deleting the wording *'self-contained dwelling'* replacing it with *'single dwelling house'*. These are minor defects which have not affected the appellant's understanding of the matters alleged at section 3 of the notice. As such, no injustice would result to any party if I corrected these defects using powers available to me under section 176(1) of the 1990 Act.
5. During the Inquiry the matter of whether requirements c) and d) tell the recipient precisely what they need to do to remedy the alleged breach of planning control was discussed. In my judgement, it is vague with respect to the fence/boundary enclosure that would need to be removed to meet requirement c). Even though, the requirement refers to the subdivision of the garden it is not clear, from the EN, what part of the fence/boundary enclosure that separates the single storey building from 1 Angles Road (No 1) is to be removed. The fence/boundary enclosure is not shown on the plan attached to the EN. There was confusion as to whether the railings adjoining the basement to 1B Angles Road (No 1B) were attacked by this requirement.
6. Moreover, it is not apparent why it is necessary for the fence/boundary enclosure to be removed given that there is no requirement to reinstate a fence/boundary enclosure elsewhere within the appeal site between No 1 and No 1B. Requirement d) refers to the reinstatement of the garden as existed prior to the breach of planning control but the reinstatement of previous boundary treatments cannot be implied or inferred from that requirement. As such it is vague and imprecise. To overcome the imprecise nature of requirement d) it will be varied by deleting the wording *'reinstate the rear garden as existed prior to the breach of planning control'* and substitute it with *'return the land to its condition prior to the breach of planning control'*.
7. In my judgement, requirements a), b), d) and e) in combination would remedy the breach of planning control (as corrected). Therefore, I consider that requirement c) is unnecessary and can be deleted without injustice to the main

parties. Subsequently, I therefore intend to change the citation of existing requirement d) to c) and existing requirement e) to d) after the deletion of the requirement currently cited as c).

8. My conclusion is that the corrected and varied notice, which I have found would not cause injustice to either party, tells the recipient fairly what they have done wrong and what they must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds of appeal and make corrections/variations where they have been shown to be justified. For the reasons given above, I conclude that the EN is valid and that no injustice would be caused by correcting the defects and making variations as set out above to the requirements in accordance with my powers under section 176(1) of the 1990 Act.

### **The ground (b) appeal**

9. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation (as corrected) has not occurred as a matter of fact. The appellant states that the single storey building has not been used as a separate single dwelling house to No 1B. This is because they consider that it was used, prior to the EN being issued, as an 'annexe' to No 1B.
10. The single storey building (the appeal building) is sited to the rear of No 1 in an area that once formed the rear garden to No 1. It is adjacent to No 1B, a two storey with basement dwelling, and there is a relatively large hard landscaped area to the front of No 1B and the appeal building. There is no dispute that the appeal building contains all the facilities for day-to-day living and has/is used by someone living in it. I accept in principle, in terms of the caselaw<sup>1</sup> on this issue, that the appeal building could still have been used as ancillary accommodation to No 1B, in other words for purposes integral to the residential use of that dwelling.
11. At a site visit undertaken by a Council Officer on 16 July 2024 the officer noted that the brother of the current tenant of No 1B was living in the appeal building. It is not known how he came to note that. The appellant stated at the Inquiry that he understood that the brother of the current No 1B tenants was occupying the appeal building. Nevertheless, there is no documentary supporting evidence to indicate that the occupier of the appeal building is a family member related to the tenants of No 1B. Even if he is a family member and could form part of a single household as defined within section 258 of the Housing Act there is little evidence before me to indicate how the occupiers of No 1B and the appeal building have functioned/function as a single household.
12. The letting details provided at the Inquiry indicate that the appeal building was included as 'annexe' accommodation with No 1B when it was advertised for let on a website. However, whilst the letting details indicate that it was intended that the appeal building be used as 'annexe' accommodation this does not illustrate how the appeal building has actually been used. The appellant stated at the Inquiry that the appeal building was included within the same Assured Short Term tenancy agreement (AST) as No 1B. Nevertheless, I have not been provided with a copy of that AST.

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<sup>1</sup> *Uttlesford DC v SSE & White* [1992] JPL 171

13. It appears that the utilities for the appeal building are shared with No 1B. I noted that there are white plastic meter housings adjacent to the gate fronting Angles Road. In any case, the appeal building has its own consumer unit therefore any issues with a blown fuse or the electricity supply could be resolved without access to No 1B. The gate fronting onto Angles Road provides pedestrian and vehicular access to both No 1B and the appeal building. It is controlled by a keypad and therefore the occupier of the appeal building could obtain access to that part of the property without going through No 1B or the tenants of No 1B having to provide access if they had the keypad code. The appellant states that the appeal building does not have its own doorbell or post box and that the occupiers use the waste bins associated with No 1B.
14. Given all those factors, in combination with the location of the appeal building in relation to No 1B, it is a possibility that the appeal building could be occupied for purposes integral to the residential use of No 1B and that occupation could be by a single household. Nevertheless, those factors do not preclude its use as a separate single dwelling house to No 1B. Moreover, the Council has provided little evidence to contradict the appellant's evidence in relation to the occupation of the appeal building. Yet, the onus of proof is on the appellant and in my judgement, the evidence before me is insufficiently precise and unambiguous to show on the balance of probabilities and as a matter of fact and degree that the appeal building was not in use as a single dwelling house prior to the EN being issued. As such, the appeal on ground (b) fails.

### **The ground (d) appeal**

15. The appeal on ground (d) is only made on the basis that, at the time the EN was issued, it was too late to take enforcement action against the operational development associated with the erection of the appeal building. Therefore, there is no basis on which the EN could be quashed under ground (d), but there is scope for argument over whether it can require the removal of the appeal building.
16. The relevant time limit within which enforcement action must be taken in respect of that part of the breach of planning control is set out in section 171B (1) of the 1990 Act and as above the burden of proof lies with the appellant. The EN was issued on 19 April 2024 and there is no dispute that at that date the time limit at section 171B(1) of the 1990 Act stated that *"where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed"* and that it applies in this case. Therefore, to succeed on this ground the appellant needs to show, on the balance of probability, that the appeal building was substantially completed by 19 April 2020.
17. Whether operational development is substantially complete and how that is to be assessed was considered by the *Sage*<sup>2</sup> judgment. Lord Hope stated within that judgment *'that the language of the statute is open to a different interpretation and that it makes better sense of the legislation as a whole to adopt the holistic approach which my noble and learned friend has described. What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out.'*

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<sup>2</sup> *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299

*That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.'*

18. In this case the development was undertaken without planning permission and there is no dispute that when first constructed the appeal building was used by contractors as welfare facilities whilst No 1 was being extended/refurbished and the other 2 dwellings were being constructed. Nevertheless, in his oral evidence to the Inquiry the appellant stated he always intended the appeal building to have all the facilities for day-to-day living and be used as an 'annexe' to No 1B. He also stated that he originally intended to live in No 1B and for his mother to live in the appeal building.
19. There is no dispute that the walls and roof of the appeal building were constructed by May 2018, when the roof is clearly apparent on the aerial photograph of that date that is included within the Council's evidence. The appellant's evidence includes an invoice dated 19 November 2019 for the 'supply and fit of: -window installation to outhouse of above property reinstallation of hoarding at above out house'. The appellant stated that the invoice related to the window/door frame/glazing (window frame) that is currently within the front elevation of the appeal building. I heard that the hoarding was reinstalled to protect the window frame. However, the appellant admitted that in late 2019/early 2020 he had not seen the window frame in situ himself.
20. Moreover, on the photograph<sup>3</sup> (the May 2021 photograph) that the Council states dates from 26 May 2021 there is no visible evidence that the window frame was in place at that time. The date of that photograph is not specifically disputed by the appellant and a photograph that the appellant states is dated 13 May 2021<sup>4</sup> appears to corroborate that the timber hoarding was in place at that time. In the May 2021 photograph the timber hoarding and 2 openings through that hoarding are visible. In the version of that image with the brightness and contrast adjusted people sitting on chairs are visible adjacent to one of the openings. I was told at the Inquiry those people were more than likely contractors and that part of the window frame was removed to allow access for the contractors to use the building as welfare facilities.
21. I was also told by the appellant's witnesses that the current kitchen and bathroom installation, tiling, wall and ceiling decoration was carried out prior to the Covid-pandemic lockdown in March 2020. I acknowledge that those features could have been protected whilst the appeal building was being used as welfare facilities. Nonetheless, it is highly unusual for a relatively expensive kitchen<sup>5</sup> to be fitted and the walls and ceilings to be painted to their final specification at a time when it was being used by contractors. At that time the construction of No 1B was about to begin/had just begun therefore the use of the appeal building as part and parcel of No 1B, as intended by the appellant, was not imminent. In addition, in the May 2021 photograph the side of the kitchen units as currently installed are not visible in the one opening. Given their proximity to the window frame and their light colour it is reasonable to

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<sup>3</sup> Exhibit 4/Image 6 – R McGinn PoE

<sup>4</sup> Appendices - page 45 – T Ahmad PoE

<sup>5</sup> Magnet invoice – 29 February 2020

expect that some extent of them would be visible. I heard at the Inquiry that the walls and ceiling had been painted when the kitchen was installed in a light grey colour as they are currently. However, even on the enhanced version of the May 2021 photograph the visible wall and ceiling surfaces appear dark in colour.

22. The gas and electrical installations within the appeal building were inspected and certified as safe in January 2020. However, the May 2021 photograph contradicts the appellant's evidence with regards to the installation of the window frame and kitchen and the appeal building's interior finish. I consider that it is more likely than not and on the balance of probabilities that the window frame was not fully installed, as it is currently, until the works were undertaken on the patio and steps, the rendering and guttering. There is no dispute that those works were undertaken after April 2020. I acknowledge that contractors appear to have used the appeal building as temporary overnight accommodation prior to April 2020. However, when considered holistically, on the balance of probability, it has not been demonstrated with sufficient precision and unambiguity that the appeal building was substantially complete, prior to 19 April 2020. The ground (d) appeal therefore fails.

## **The ground (a) appeal and deemed planning application**

### **Main Issues**

23. The deemed planning application relates to the alleged breach of planning control (as corrected) – *the erection of a single storey building, and associated steps, and the use of that building as a single dwelling house*. As previously stated above, the appellant's case is that the appeal building is in use as an annexe to No 1B but the ground (b) appeal has failed. Therefore, the main issues are:

- The effect of the development on the character and appearance of the area;
- whether the single dwelling house provides acceptable living conditions for its existing and future occupiers;
- The effect of the development on the living conditions of nearby occupiers with regards to noise, disturbance and privacy;

### **Reasons**

#### *Character and appearance*

24. The appeal building is set behind No 1 and has been constructed with similar materials to the adjacent recently constructed dwellings. It is in a mainly residential area and there is a variety of age and style of buildings in the immediate surroundings. However, despite this variety the area is characterised by dwellings situated within a mature green landscape, where hedges, trees and planting in relatively short front and long rear gardens, combine to create a verdant setting. Other than the adjacent recently constructed dwelling, there is little visible evidence of buildings to the rear of those dwellings. The verdant setting contributes a significant, attractive sense of spaciousness to the area.

25. The appeal building is located close to three boundaries with adjacent dwellings and the area in front of it is comprised of a raised patio/steps that are hard landscaped and an area of tarmacked hardstanding. That tarmacked hardstanding extends in front of No 1B as well. As such, the lack of any trees or other planting means that the development appears incongruous in this area and it adversely affects the verdant setting surrounding this site. I acknowledge there are only glimpse views of the development from the public realm through the gateway from Angles Road. However, the appeal building, and its associated areas of hardstanding are likely to be visible from the upper storeys of the nearby dwellings.
26. In 2022 planning permission<sup>6</sup> (the 2022 application) was refused and the associated appeal decision<sup>7</sup> (the previous appeal) for '*an outhouse to the side of 1B Angles Road*' was dismissed earlier this year. The '*outhouse*' considered in that appeal is the appeal building. The Inspector in their decision stated, in relation to character and appearance, that '*The result is a garden area almost entirely made up of hardstanding. This is in stark contrast the verdant surroundings of other dwellings in the area... I therefore conclude that the outhouse and hardstanding adversely impacts on the character and appearance of the appeal site and the surrounding area*'. Based on my observations and my findings above I agree with these conclusions.
27. Policy Q14 (part F) of the Lambeth Local Plan (LLP) states, amongst other things, that '*Domestic curtilage structures such as garden sheds, garages and summer houses should not exceed one storey and should be set back at least 1m from all site boundaries (to allow access for the maintenance and to provide gaps between buildings) unless site circumstances dictate otherwise.*' In this case the appeal building is approximately 0.7m from the site boundaries with 3 Angles Road (No 3) and the properties on Pendennis Road. However, that part of LLP Policy Q14 is not relevant as the deemed planning application relates to a single dwelling house. Nevertheless, parts C and E of that policy state, amongst other things that, new development in rear gardens (or on land last used as rear gardens) will be supported where there would be no unacceptable impacts on amenity. Given my findings above I consider that the development as constructed does not comply with this policy in respect of visual amenity relating to the impact on the character and appearance of the area. The development also conflicts with LLP Policy Q5 which states, amongst other things, that the local distinctiveness of Lambeth should be sustained and reinforced through new development.
28. Nevertheless, at the Inquiry the appellant indicated that he is prepared to remove sections of the hardstanding and replace it with planting/soft landscaping. I consider that the imposition of a planning condition to enable that landscaping to be implemented would overcome the harm to the character and appearance of the area. As such, with that condition imposed the development would then comply with LLP Policies Q5 and Q14.

*Living conditions of existing/future occupiers of the single dwelling house*

29. The appeal building comprises a combined kitchen, dining and living area, a separate bedroom and a shower room. The evidence before me indicates that the gross internal floor area (GIA) of the appeal building is 39.7m<sup>2</sup> which meets

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<sup>6</sup> Ref No: 22/04569/FUL

<sup>7</sup> Ref No: APP/N5660/W/23/3327280

the standards set out in Policy D6 of the London Plan (LP) and LLP Policy H5 for a 1 person 1 bed space dwelling. However, I observed that the bedroom is of sufficient size to cater for and currently has a double bed in it. Therefore the appeal building would need to comply with the standard for a 2 person 1 bed space dwelling which is a GIA of 50m<sup>2</sup>. The appeal building's GIA is appreciably below that required.

30. During my visit, I saw that the bedroom is of a good size, containing a double bed whilst leaving ample space for circulation and the storage of items such as personal effects. Nevertheless, the combined kitchen, dining and living area in one room significantly reduces the space available for circulation as well as for the storage of everyday household items. Furthermore, the restricted size of that room is unlikely to be able to comfortably accommodate some occupiers going about day-to-day activities such as washing clothes, preparing food or eating, whilst other occupiers and /or their guests also relax in part of that area. As a result, the occupiers are likely to experience an uncomfortably restrictive and congested feel when using the combined kitchen, dining and living area. As such, when considered as a single dwelling house independent of No 1B the restricted extent of its internal space means that the living conditions of existing and future occupiers are materially harmed. The development therefore conflicts with LLP Policy H5 and LP Policy D6.

*Living conditions of nearby occupiers with regards to noise, disturbance and privacy*

31. The Council's delegated report relating to the 2022 application indicated that *'the proposal would not be seen to result in any detrimental harm to neighbouring buildings by way of outlook, privacy, loss of light or noise'*. However, as stated previously that application was for an 'outhouse' and not a single dwelling house. The vehicular and pedestrian access to the appeal building is shared with No 1B and any vehicles or cars arriving at the appeal building would pass close to a front corner of No 1B. No 1B has large windows/doors on its front elevation at ground level and on the side elevation facing the appeal building at ground and basement levels.
32. Those movements of vehicles/pedestrians are highly likely to harm the living conditions of the occupiers of No 1B through disturbance from noise arising through the comings and goings of pedestrians and vehicles and lights of vehicles in the hours of darkness. Moreover, when standing on the patio, in front of the appeal building there is a clear view into internal rooms of No 1B through the windows/doors on its side elevation. As such, the privacy of the occupiers of No 1B is highly likely to be unacceptably harmed from the use of the appeal building as a single dwelling house.
33. There is no dispute that the development would not harm the living conditions of any other nearby occupiers with regards to noise, disturbance and privacy. Nonetheless, for the reasons given above the development does not comply with LLP Policies Q2 and Q14 which state amongst other things that development will be supported if acceptable standards of privacy are provided without a diminution of the design quality and there would be no unacceptable impacts on amenity.

## Other Matters

34. The reasons for issuing the EN cite the absence of the formal provision of recycling, refuse and cycle storage, adequate parking provision, drainage and accessibility requirements. Suggested conditions submitted at the Inquiry would ensure that schemes for waste, recycling and cycle storage, hard and soft landscaping and sustainable site drainage could be obtained and implemented. I will return to whether the imposition of planning conditions would mitigate the harm identified in the section below.
35. A partially signed Unilateral Undertaking (UU) was submitted by the appellant with regards to Parking Permit capping. However, that has not been completed within the deadlines set for its completion. Nevertheless, the completion of that UU would not overcome my findings above with regards to the harm to living conditions. Moreover, a second UU was submitted with regards to the residential occupancy of the appeal building. This has also not been completed. However, a condition restricting the residential occupancy of the appeal building has been suggested and I will consider its imposition in the section below. Therefore, I do not consider that I need to delay the outcome of this appeal any further with regard to the completion of these UUs.
36. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

## Conditions

37. One of the agreed suggested conditions relates to restricting the occupation of the appeal building *'for purposes ancillary to the residential use of the dwelling known as 1B Angles Road'*. The Inspector in the previous appeal decision stated that *'I am not persuaded that a condition to restrict its use to one that is associated with the occupation of No. 1B would be enforceable, as there would likely to be no appreciable change whether it was occupied as accommodation integral to the occupation of No. 1B or as an independent dwelling.'* I acknowledge that visually there would be no appreciable change whether it was occupied as accommodation integral to the occupation of No 1B or as a single dwelling house. However, I heard at the Inquiry that diligent investigation through information available to the Council such as Council Tax and street numbering could highlight if the appeal building was independently occupied to No 1B. Moreover, functionally the occupiers of the appeal building could take meals together with the main household, there may be comings and goings between the two, care may be provided for the occupiers of either the appeal building or No 1B by the others such as by a live-in children's nanny/au pair or elderly relatives and that could be ascertained through investigation.
38. As stated previously, given the location of the appeal building close to No 1B, the shared utilities, pedestrian and vehicular access it is possible for the appeal building to be occupied as part and parcel of/ancillary to No 1B. That residential occupation as part and parcel of No 1B would overcome the harm to the living conditions of the occupiers of No 1B. That occupation would also overcome the harm to the living conditions of the occupiers of the appeal building as they would only occupy the appeal building as part and parcel of No 1B. The internal space standards would therefore not apply to the appeal building because it would be occupied in conjunction with No 1B and not as an independent dwelling to which the space standards apply.

39. The appellant's architect also highlighted that in 2021 he submitted a planning application that was granted planning permission<sup>8</sup> for the '*erection of a single storey granny flat to the rear*' of No 3, the next-door property to the appeal site. The occupation of that granny flat is controlled by a planning condition. That granny flat would be significantly further from No 3 than the appeal building is to No 1B. There is no vehicular access to that granny flat and pedestrian access would be via a door on the front elevation of No 3. However, that door is not within the main body of the dwelling but is within a single storey extension that adjoins the side elevation. Therefore, it is possible that separate pedestrian access for the occupiers of No 3 and the granny annexe could be implemented and that would not be visually apparent from the public realm. In that sense it is similar to the case before me and I consider that the enforceability of the condition would require investigation, site visits or enquiries, and diligence by the Council but would not be unenforceable in both of these cases.
40. The appellant has stated throughout the appeal process that he seeks planning permission for a residential annex to No 1B and not a separate single dwelling house. In this instance, therefore the imposition of a condition restricting the residential occupancy of the appeal building to ensure that it is not used as a separate single dwelling house is reasonable.
41. The imposition of conditions with regard to hard and soft landscaping would ensure that the character and appearance of the area is not harmed. Additionally, it would also ensure that the appeal building does not have separate parking facilities to No 1B and that the area to the front of No 1B and the appeal building could have the appearance of a visually cohesive amenity area. As the appeal building would be part and parcel of No 1B accessibility requirements to the appeal building itself and separate waste, recycling and cycle storage would not be necessary.
42. However, the imposition of a condition with regard to sustainable site drainage would be required to ensure adequate drainage and to reduce the impact of rainwater run off on the local sewage network especially given the redesign of the hard and soft landscaping and the unknown nature of the drainage system previously installed.

## Conclusion

43. As a separate single dwelling house the use of the appeal building would conflict with LLP Policies Q2, Q14 and H5 and LP Policy D6. However, in my judgement the imposition of a condition restricting the occupation of the appeal building would mitigate the identified conflict with those policies.
44. Nonetheless, with that imposed condition the appeal building would then be a domestic curtilage structure for the purposes of LLP Policy Q14 (Part F). As stated above the appeal building is not set back at least 1m from the site boundaries. The development would then not be compliant with that part of LLP Policy Q14. However, I heard at the Inquiry that the 0.7m set back from the boundary would allow maintenance to occur to the building. Moreover, the approved granny flat at No 3 has been approved, adjacent to the boundary with the appeal building, with a similar set back, of 0.7m, to that boundary. The set backs from the shared boundary between the appeal building and No 3

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<sup>8</sup> Ref No:21/03172/FUL

would ensure that there are gaps between the appeal building and the granny flat.

45. Therefore, even though the set backs to the boundaries are not a minimum of 1m the aims and objectives of the policy requirement would be met. As such, when considered holistically with the imposition of conditions in my judgement the development would comply with the development plan as a whole.
46. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The EN will be corrected, varied and quashed.
47. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

### **Formal Decision**

48. It is directed that the EN is corrected by:

- the deletion of the words '*outbuilding and associated steps at the end of the rear garden of the premises ('the outbuilding') and its use as a self-contained residential dwelling ('the self-contained dwelling')*' and their substitution with the words '*building, and associated steps, and the use of that building as a single dwelling house*' in section 3 of the EN; and
- the deletion of the word '*outbuilding*' and its substitution with '*single storey building*' throughout the requirements; and
- the deletion of the words '*self-contained dwelling*' and their substitution with '*single dwelling house*' throughout the requirements.

And varied by:

- the deletion of requirement (c); and
- the deletion of the words '*reinstate the rear garden as existed prior to the breach of planning control*' and substituting them with '*return the land to its condition prior to the breach of planning control*'; and
- change the citation of existing requirement d) to c) and existing requirement e) to d) after the deletion of the requirement currently cited as c).

49. Subject to the corrections and variations, the appeal is allowed, the EN is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the erection of a single storey building, and associated steps, and the use of that building as a single dwelling house at 1 Angles Road, London, SW16 2UU as shown on the plan attached to the EN and subject to the following conditions:

- 1) The single storey building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 1B Angles Road.
- 2) The single storey building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be

removed within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 4 months of the date of this decision a scheme for hard and soft landscaping shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 8 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

All planting, seeding or turfing comprised in the approved landscaping scheme shall be carried out in the first planting and seeding season following the grant to the approval of details. Any trees, hedgerows or shrubs forming part of the approved landscaping scheme which within a period of five years from the occupation or substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. Upon implementation of the approved landscaping scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The single storey building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 4 months of the date of this decision a scheme for sustainable site drainage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 8 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved sustainable site drainage scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*D Boffin*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Jonathan Welch                      Counsel instructed by Ross Patterson of  
Benchmark Solicitors LLP

He called:

Tahir Ahmad                      Appellant

Abdul Wahab Syed

Gavin Leckie

Howard McLean

Valentine Ellis

Gerald Hornsby-Odoi

### **FOR THE LOCAL PLANNING AUTHORITY:**

Noemi Byrd                      Counsel instructed by the Council of the London  
Borough of Lambeth

She called:

Ronan McGinn                      Principal Planning Enforcement Officer

## **DOCUMENTS**

1. Partially completed copies of Unilateral Undertakings
2. Suggested Conditions
3. Letting Brochure
4. Decision and landscaping plan – 17/05257/DET
5. Approved Plan, decision notice, google street view photo – 3 Angles Road
6. Appeal Statement relating to previous appeal - APP/N5660/W/23/3327280