



Appeal Decision

Site visit made on 18 August 2026

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 September 2026

Appeal Ref: APP/T5150/C/25/3377160

26 Sidmouth Road, London NW2 5HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Dr Ali Kazim Khamas Al-Rubie against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 21 November 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a three bed single family dwellinghouse to the rear of 26 Sidmouth Road NW2 5HJ comprising a ground floor, basement, lower basement, extension to the side, lightwells, raised platforms and railings.
- The requirements of the notice are to:
 1. Demolish in its entirety the unauthorised three bed single family dwellinghouse, including the ground floor, basement, lower-basement levels, side extension, lightwells, raised platforms, railings, and all associated structures.
 2. Fill in the basement and lower-basement excavations with clean, inert material to existing natural ground level.
 3. Re-instate the land to its former condition prior to the unauthorised development took place [*sic.*].
 4. Remove all resultant demolition materials from the site.
- The period for compliance with the requirements is: 6 months after the notice takes effect.
- The appeal is made on the grounds set out in section 174(2)(a), (b), (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 is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Dr Ali Kazim Khamas Al-Rubie against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

The Enforcement Notice

2. An enforcement notice must inform the recipient with reasonable certainty what they are alleged to have done and what must be done to remedy it. Before determining the appeal, I have a duty to put the enforcement notice ("the Notice") in order.
3. The Notice's central allegation is the erection of a three-bed single family dwellinghouse, without planning permission. It goes on to clarify what that dwelling comprises, and those components include an 'extension to the side'. This is at odds with the overarching allegation that what has occurred is the erection of a dwelling, because, if the built structure was built as one act of development to form a new dwellinghouse, it would not be possible to also have an extension to it. Such could only occur as an addition to an existing structure once it were completed.

The appellant contends that this also introduces uncertainty because it is unclear what part of the structure should be regarded as the extension to the side.

4. The situation appears to have arisen because permission has previously been granted for a dwelling ("the Original Permission") that would have looked similar to the one that has been built, but the as-built structure includes an additional low, small projection to the side. Thus, the Council's intention here may have been to point out differences between the development permitted and what has been built. But that is not relevant when the Notice is against a wholly unauthorised building without planning permission, rather than a deviation from previously approved plans.
5. A simple remedy is to delete the reference to the extension to the side. I have the power to make such a correction to the Notice, provided that no injustice would be caused to either the appellant or the Council. At the site visit, the parties agreed that the part of the building being referred to in the Notice as the 'extension to the side' is the low side projection. It is, in fact, also part of the basement structure that protrudes above the ground. No injustice could arise to the Council from removing reference to the extension, because the basement is listed elsewhere in the constituent parts of the dwelling and it does not change the central allegation anyway.
6. The appellant contends that removing a defect would result in injustice as it would remove an area of uncertainty on which they could challenge the Notice. However, not only does my correction arise from such a challenge to the Notice, removing a defect does not deprive the appellant of their statutory right of appeal against it. In particular, the substance of the appellant's case on ground (a), relating to the planning merits of what has been built, is not dependent on there being ambiguity in the Notice, or some consideration of the so-called 'extension' as something distinct from the rest of the dwellinghouse. The appeal has been made against the structure, as built, as a whole.
7. As previously noted, it is clear that the appellant understands that the alleged breach of planning control is, in fact, the construction of a dwellinghouse. In that regard, it matters not whether its constituent parts are listed at all. It is the central allegation that is important, and that is unaffected by any alteration to the description of its constituent parts. Indeed, they could all be deleted without effect on the operation of the Notice, as drafted, but I will not do that since their existence does not otherwise result in any lack of clarity, obvious defect, error or misdescription.
8. I will, however, correct the Notice through the removal of the words 'extension to the side' from the allegation, and the words 'side extension' from the first requirement.
9. There is remaining dispute as to whether the alleged breach of planning control is properly described. However, regardless of that, the Notice is neither invalid nor null, because, as corrected, it clearly states the alleged breach of planning control and what must be done to remedy it, without ambiguity. Whether what is alleged to have occurred has in fact done so, is a separate matter that I now consider through the appeal on ground (b).

Ground (b)

10. Ground (b) is that the matters alleged in the Notice have not occurred. As previously noted, the central allegation is the erection of a three bed single family dwellinghouse.
11. I understand that there has been no significant change to the structure at the appeal site since the Notice was issued. It is, essentially, a building shell, spread over three floors, comprising two basement storeys and one above ground. Externally, it resembles a house, it is water tight and, in that regard the physical shell building appears to be substantially complete. Alongside the site's planning history, that includes permission for the construction of a house with basement, this all indicates that a dwellinghouse is what is being built at the site.
12. However, the interior still has bare block walls and exposed concrete floors. There are some bathroom items, but no kitchen or toilet facilities. It is, thus, not possible to occupy the building as a dwellinghouse as it does not contain all the necessary facilities to function as such. While caselaw relating to whether buildings are dwellinghouses may stem from appeals relating to the use of buildings, I have been given no reason that those widely accepted concepts could not inform whether the current building is a dwellinghouse, or not. While the erection of a dwellinghouse may be the ultimate intention, in its current condition, the building cannot be described as one.
13. Therefore, as things stood at the time the Notice was served, and now, a dwellinghouse has not been constructed on land subject to the Notice. The matters alleged have not occurred and the appeal on ground (b) must succeed.
14. It does not necessarily follow that success on ground (b) should result in the Notice being quashed. I could, once again use my powers of correction if doing so would not cause injustice to the appellant or the Council, to properly describe the breach of planning control. Two possible corrections appear to be available.
15. The first would be to redraft the Notice as one alleging a breach of condition of the Original Permission, that is the one specifying the plans that the development should accord with. However, while there is a suggestion in the appellant's evidence that this might be what has occurred, that evidence is not sufficiently precise to demonstrate that the appellant first intended to build the development permitted, as opposed to the building now at the site. The current building is materially different to the Original Permission as it has two, instead of one, basement storeys. The onus of proof is on the appellant, and it has not been shown that, on the balance of probabilities, the Original Permission has been implemented.
16. The second route would be to describe the alleged breach of planning control simply as the erection of a building. There is potential for injustice to be caused here because the arguments presented in respect of the grounds (a), (f) and (g) appeals have not fully embraced this allegation.
17. However, I am mindful that S75(3) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that if no purpose is specified, a permission shall be construed as including permission to use a building for the purpose for which it is designed. As noted, both parties believe that a dwellinghouse is being constructed,

so that must be the purpose for which it is designed. The ground (a) appeal could, therefore, still be considered on that basis.

18. Even if that is not correct, the parties have made submissions about the physical effect of the building that I can take into account in deciding whether it would be acceptable or not as a building without a specified use, or as one incidental to the existing use of the land, whatever the case may be.
19. Therefore, I conclude that following success on ground (b), the Notice can and should be corrected to allege the erection of a building comprising a ground floor, basement, lower basement, lightwells, raised platforms and railings. The first requirement will be corrected in the same way to ensure consistency.
20. The remaining grounds of appeal proceed on the basis of the corrected Notice.

Ground (a)

21. Ground (a) is that planning permission ought be granted for the matters alleged in the Notice. The main issues are the effect on the character and appearance of the area and on the living conditions of neighbouring residents.

Character and appearance

22. The surrounding area has a suburban character with a consistent pattern of two-storey dwellings of similar style, scale, spacing and alignment. No 26 is a corner plot with a rear garden that extends along the Alverstone Road frontage. The building subject to the Notice has been positioned at the rear of the garden, close to the boundary with No 23 Alverstone Road, but with a spacing and general siting that respects the existing pattern of development.
23. While having a markedly different design and appearance, with a low profile and flat roof, the building has strong parallels to the design concept subject of the Original Permission. Having granted that permission, the Council have given a clear indication that a design of this nature is acceptable in this location. Indeed, being of a domestic scale, I can see how it continues to reflect the suburban, residential character of the area.
24. There is certainly no substantive evidence that any material change in circumstance has occurred that would make a design ethos considered acceptable in 2019, unacceptable now. Indeed, the Council appear to accept this, with the focus of its case being on comparing differences between the Original Permission and what has been built.
25. Unlike the Original Permission, the building's upper floor stands slightly elevated because the basement storey protrudes above the ground. However, the appellant's 'as built' plans show a slightly lower overall height, possibly due to a lower internal room height. While there could be discrepancies in the actual ground level, even using my somewhat crude measurements at the site visit, any increase would seem to be limited to around 20cm. Thus, what has been built is not appreciably taller than that in the Original Permission.
26. The Original Permission would have seen a building with light-wells around basement level windows. That would have necessitated balustrades of some form along the large window openings above them, and probably around the light wells themselves. Final details were to be agreed via planning conditions. The Council's

Basement Supplementary Planning Document 2017 (“the SPD”) indicates that lightwells and the like can lead to visual clutter and prefers ground level glazing or grilles.

27. However, while I can see that this might be appropriate where a basement is being added to an existing dwelling in an otherwise consistent townscape, this development is newly built and already in architectural variance to its immediate surroundings. Metal railings have been installed against the as-built openings, but their simple-profiled, consistent form complements the overall clean architectural style that does not appear to be particularly cluttered or poorly detailed in relation to this individually designed host building.
28. To the side, the projecting basement creates a raised platform. It can be accessed from an internal door, so could lend itself to a use as a recreational terrace. It is unusual, but it is low and barely visible outside the site. Even if further railings were applied to it, it would remain consistent with the overall building design and would not appear incongruous with the building or intrusive in the street scene. There are two storeys of basement, but the full extent of that development and existence of the lower ground basement level is imperceptible from outside the building.
29. For these reasons, I find the building itself to be visually acceptable in the surrounding area, preserving its overall character and appearance.
30. The Council is concerned that the lower basement results in an over intensification of the site. Whatever use it may be put to, it clearly results in extensive internal floorspace, but it has not been demonstrated how that would result in harm. The SPD gives an indication that, other than in exceptional circumstances, basements should be limited to a single storey. No exceptional circumstances have been presented, but it is unclear why this is necessary as a blanket requirement.
31. If, as per my comments above, any permission granted here for the building, could result in it also obtaining permission for use as a dwellinghouse, that dwelling could provide a greater amount of usable internal floorspace. However, it is unclear how it would meaningfully increase levels of occupancy, as the lower basement has no windows making it unsuitable for use for bedrooms and day-to-day living space. It is more likely to be used for incidental recreation purposes such as the gymnasium and sauna suggested on the as-built plans, or storage. As such it has not been shown that the site cannot support that level of accommodation, such that the intensity of occupation would be uncharacteristic or result in levels of parking that could not be accommodated within the site.
32. The Council suggests that another purpose of the one-storey limit is to prevent excessive excavation on constrained sites. However, while relatively small, the site is not particularly constrained in that it has space around all sides of the building and a sizeable road frontage. The extent of excavation, which can no longer be appreciated, has not therefore been shown to have affected neighbouring residents or the character of the area. Any effect of the basement on the general character and appearance of the area can be appreciated from the light wells, railings, slight protrusion and ground level windows that service the upper basement level. The lower level makes no difference to that.
33. I, therefore, find that the development preserves the character and appearance of the area in terms of both its visual appearance and potential intensity of use. There

is no conflict with those aims of Policy BD1 of the Brent Local Plan 2022 ("LP") that seek to ensure that all development is of the highest architectural and urban design quality that respects historic character.

Living conditions

34. The building itself is far enough from neighbouring dwellings to avoid unacceptable effects on outlook. However, when stood on the raised platform that forms the roof of the projecting basement section, it is possible to see into ground-floor windows of 23 Alverstone Road and across significant parts of the rear garden of 28 Sidmouth Road. Harm could arise to the living conditions of neighbouring residents from a loss of privacy if the entirety of that area were used as a terrace, for example, whatever use the building were put to.
35. I understand that both basements and raised terraces have been refused permission elsewhere in the locality. Nevertheless, having sought the views of the parties, I am satisfied in this case that these adverse effects can be addressed through either screening, or a mechanism to prevent the use of all or part of that area. Without prejudging the extent or type of mitigation required, I can impose a condition on any grant of planning permission to require the submission of a scheme to secure neighbours' privacy from the potential future use of this area.
36. Therefore, I find that there would be no conflict with those aims of LP Policy DMP1 that seek to ensure high levels of external and internal amenity.

Other matters

37. In connection with applications at the site, the Council has expressed some concern about the proximity of such a deep basement to the public highway. However, the SPD indicates that it is not the purpose of the planning system to assess structural stability, and there is no substantive evidence of any adverse effects having been caused since the development was carried out. I further note that this does not form part of the reasons for issuing the Notice. For all these reasons, this is not a matter for which planning permission should be refused.
38. The National Planning Policy Framework, Policy DM8, indicates that significant weight should be given to intentional unauthorised development in considering whether to grant permission. Even if I were to conclude that the development subject of this Notice was intentional, that matter alone is still insufficient to justify the refusal of permission given the absence of demonstrable harm arising from the building.
39. The Original Permission was conditional. Those conditions required matters such as the provision of parking and refuse storage, prevention of any use as a house in multiple occupation, some highway works, landscaping and drainage, as well as clarification of external materials. There is no longer any need to impose a condition relating to external materials because the building is acceptable in this regard.
40. Even though the building is substantially complete, it would still be appropriate to secure details of drainage arrangements in order to prevent any increase in off-site flood risk. While it is customary to agree such details during the groundwork phases of development, the Original Permission required this before above ground work was commenced, by which time the basement could have been formed.

There is no reason, therefore, that it should not be able to be addressed on a similar basis now. Landscaping details, necessary in the interests of the character and appearance of the area, can also be agreed prior to the occupation of the dwelling.

41. The parking, highway and refuse storage conditions are more relevant to a permission for a dwelling. However, it would not be wholly irrelevant to impose them on a permission for a building of this scale within a residential garden, as there could be some increase in use of the site if the building were used for purposes associated with the existing use of the land. Likewise if it were put to some other, hitherto, unknown use.
42. Importantly, if, as I have suggested here, any permission that I grant also means that the building can be used as a dwellinghouse on the provisions of S75(3) of the 1990 Act, then those conditions are clearly necessary. As is the restriction preventing use as an HMO, due to the small size of the site. I shall impose similar conditions here.

Conclusion on ground (a)

43. The building at the site does not have any adverse effect on the character and appearance of the area or living conditions of neighbouring residents, whether or not it is in an active use. In the event that it could be put to use as a dwelling, conditions can ensure that any potential residual harm can be mitigated and sufficient facilities are provided.
44. Subject to the conditions there would be no conflict with the development plan. Material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.
45. Accordingly, I conclude that planning permission should be granted for the matters alleged and the appeal on ground (a) succeeds.

Conclusion

46. For the reasons given above, the appeal succeeds on ground (b) to the extent that the Notice is corrected. Thereafter, I conclude that the appeal should also succeed on ground (a). I shall grant planning permission for the development as described in the Notice as corrected, and the Notice will be quashed.
47. In these circumstances the appeal on grounds (f) and (g) do not fall to be considered.
48. Insofar as the provisions of S75(3) of the 1990 Act may grant permission for the use of the building as a dwellinghouse, that will be for the parties to consider outside this appeal. Any comments within this Decision do not prejudice any consideration of that, including, as the case may be, any application for a Lawful Development Certificate that may be made.

Formal Decision

49. It is directed that the enforcement notice is corrected by:
 - In Schedule 2 – the alleged breach of planning control – the deletion of the words "three bed single family dwellinghouse" and their substitution with the word "building"; and the deletion of the words "extension to the side,"

- In Schedule 4 – what you are required to do to remedy the breach of planning control – STEP1, the deletion of the words “three bed single family dwellinghouse” and their substitution with the word “building”; and the deletion of the words “side extension,”.

50. Subject to the corrections, the appeal is allowed, the enforcement notice 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 building to the rear of 26 Sidmouth Road NW2 5HJ comprising a ground floor, basement, lower basement, lightwells, raised platforms and railings at 26 Sidmouth Road, London NW2 5HJ as shown on the plan attached to the Notice and subject to the following conditions:

- 1) Before the building hereby permitted is brought into any use, details of surface water drainage, facilities for the storage of refuse, parking of cycles and motor vehicles, the vehicle crossover and any works to amend adjoining parking bays shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the building being put to any use and shall thereafter be maintained as such.
- 2) Before the building hereby permitted is brought into any use, a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the building being brought into use; and any trees or plants which within a period of 5 years from the 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.
- 3) Before the building hereby permitted is brought into any use, details of measures to safeguard the privacy of the occupiers of neighbouring properties from views from the raised side platform (above the basement storey) on the side of the building closest to 23 Alverstone Road shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the building is brought into any use and shall thereafter be maintained as such.
- 4) The building shall not be used as a House in Multiple Occupation.

M Bale

INSPECTOR