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# Appeal Decision

Inquiry held on 10 May & 22 June 2011

Site visits made on the same days.

**by Stephen Brown MA(Cantab) DipArch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 November 2011**

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**Appeal Ref: APP/T5150/C/10/2140281**

**Nos. 7A & B Humber Road, London NW2 6EG.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Blue Moon Property Group (BVI) against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/08/0573.
- The notice was issued on 6 October 2010.
- The breach of planning control alleged in the notice is the change of use of a domestic garage into a self-contained flat.
- The requirements of the notice are to:
  - 1 Cease the use of the domestic garage as a self-contained flat.
  - 2 Remove the kitchen/cooking facilities, the bathroom and any other facilities in association with the unauthorised change of use from the building used as a self-contained flat.
  - 3 Restore the building used as a self-contained flat back to a domestic garage so that it is restored back into its original condition before the unauthorised change of use took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

**Summary of decision: the appeal is invalid, and no further action is taken.**

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## Applications for costs

1. At the Inquiry applications for costs were made by the Council against the appellants, and by the appellants against the Council. These applications are the subject of separate Decisions.

## The inquiry

2. Evidence at the inquiry was taken under oath or solemn affirmation.

## Procedural matters

3. In December 2010, about 8 weeks after the appeal was lodged, the Council wrote to the Inspectorate questioning whether the appellants' company - Blue Moon Property Group (BVI)<sup>1</sup> - had the right to appeal under the provisions of Section 174(1) of the Act<sup>2</sup>. This was on the basis that they did not believe

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<sup>1</sup> For the purposes of this decision I shall refer to the appellants as BMPG.

<sup>2</sup> The Town and Country Planning Act 1990 as amended.

BMPG held a legal interest in the land, and were not a relevant occupier. Furthermore, there were no address details for BMPG and the company appeared to be anonymous. The background to this dispute is as follows.

4. The Inspectorate forwarded the Council's initial query to the appellants' agent, who responded that the appellants had an interest in the land, and that this could be explored further at the inquiry. Furthermore, BMPG had owned the land since before 2002, when there was no statutory requirement for registration with the Land Registry.
5. The Council then pointed out that the land had in fact been registered since 1984 in the name of Basehome Ltd, and requested sight of a deed of transfer; sales particulars, and names and addresses of directors of the company and company secretary in order to demonstrate BMPG's standing.
6. A letter - purporting to be from Basehome Ltd - said that BMPG have an interest, but did not set out what that interest was. This was further queried by the Council, and on 2 March 2011 the Inspectorate made a final request to the agent for clarification of BMPG's legal interest. A letter from TWM Solicitors followed saying that they had been instructed by Basehome Ltd to confirm that BMPG has a legal interest in 7B Humber Road by virtue of a long lease. BMPG then repeated their assertion that they had a long lease from before 2002, and that this did not need to be registered with the Land Registry.
7. In March 2010, the Inspectorate requested copies of either the long lease referred to, or other documents that might be relied upon to demonstrate their ownership of, or other interest in the land. However, the appellants responded in much the same terms as previously, effectively restating that they had a long lease. They were prepared to submit a copy of the lease provided it was only seen by the Inspectorate, and not sent on to the Council.
8. At the inquiry the matter was discussed further. The Inspectorate's request for documentation had not resulted in any significantly different response from BMPG, and I requested that a copy of the lease or other documentation be provided that might give objective verification of a legal interest, independent of assertions made by or for the appellants.
9. On resumption of the inquiry, following an adjournment of approximately 6 weeks, the appellants offered sight of the purported long lease, but refused to allow it to be put in as an inquiry document. This was on the basis that the appellants suspected the Council of pursuing a vendetta against BMPG. In the event a document purporting to be a lease was presented for inspection in the inquiry room.

### **Inspector's reasons**

10. The law regarding who has a right of appeal against an enforcement notice is set out in Section 174(1) of the Act. This provides that a person having an interest in the land to which an enforcement notice relates, or a 'relevant occupier' may appeal to the Secretary of State. The wording of the section requires the interest in the land to exist at the time the appeal is made. A 'relevant occupier' is defined in Section 174(6) as someone with a licence, either written or oral, who occupies the land both at the date the enforcement notice was issued and at the date the appeal was made.

11. Considering the material put forward, the initial correspondence is contradictory – BMPG claim at first to own the property, but then say that it is leased from Basehome Ltd on a long lease. The letter from Basehome Ltd – described on the letterhead as ‘Dress Rehearsal Specialists’ - give their address as c/o 7 Humber Road, rather than the registered company address. The letter is not attributable to any individual, and it appears to be an anonymous company itself. I am not convinced that this letter is from a reliable source that is independent of the appellants. In any case, in saying that BMPG have an interest in the land referred to in the enforcement notice, it provides no more information about the nature of that lease than had previously been submitted.
12. The solicitor’s letter says they have been instructed by Basehome Ltd to confirm the existence of a long lease to BMPG on 7B Humber Road. There is no information at all about the nature of that lease, or whether BMPG have any rights over other parts of the appeal site than 7B (the converted garage) - for instance, a right of way to gain access to that building from within the site. I give very little weight to either the Basehome letter or the solicitor’s letter.
13. As to the copy of the purported lease shown to the inquiry, it was undated, and unsigned by either party or by witnesses. I concur with the Council’s view that this document was incomplete and does not provide proof of a legal interest in the land.
14. The converted garage is very clearly in use for residential purposes. As a corporate entity, rather than an individual or group of individuals, as a matter of fact and degree BMPG cannot be said to occupy this residential property in any sense, and indeed do not claim to do so. They cannot therefore be considered as a ‘relevant occupier’.
15. The notice was served on BMPG, amongst others, at their ‘virtual office’ address. On this basis it was argued that the Council must have considered that BMPG had an interest in the land that would be materially affected by the notice. The Council submitted that they had been acting on information contained within a letter of complaint, and had considered it advisable to serve the notice on BMPG for the sake of completeness, even though they had established that BMPG were not named as the proprietors on the Land Registry Title. In my view the serving of the notice on a person does not demonstrate that they would necessarily have an interest in the land.
16. Regarding the anonymity question, the Council’s argument was essentially that the director(s) of BMPG were taking advantage of hiding behind a corporate veil. However, BMPG present themselves as a corporate entity – albeit with un-named directors - and apparently using premises operated as a ‘virtual office’ as an accommodation address. As such BMPG might be considered a legal ‘person’ for the purposes of Section 174(1).
17. The appellants appear to have gone to inordinate lengths to conceal the identity of any individual, and any details of BMPG from the inquiry, and this was unhelpful. However, the Council presented little in the way of firm evidence to demonstrate their contention that the veil of corporate entity was being used to conceal the true facts pertaining to the case.

18. The appellants referred to the High Court cases of *Bucks CC v Brown and SSE*<sup>3</sup>, where the question of *locus standi* had arisen. However, in those cases the relevant arguments centred around whether an identified individual – purporting to be the appellant – and a lease-holding company of which he was a director, could be regarded as one-and-the-same legal person, and whether he could be regarded as a relevant occupier. It was also argued that the case of *Benham-Crosswell*<sup>4</sup> demonstrated the appellants' standing. Again, the arguments relied to a great extent on detailed information about the relationship between the purported appellants and the company concerned.
19. However, in all these cases there was detailed information available concerning the identity of, and relationship between the purported appellant(s) and their companies. There was no such information available here. In these circumstances, I can reach no firm conclusion on this particular matter. Nevertheless, this does not affect my finding with regard to the proof of legal interest in the land.
20. Regarding the matter of the alleged 'vendetta' by the Council against BMPG, except to say they did not want the unregistered lease to be available for public viewing, this was not substantiated in any way by the appellants – for instance by showing that they would be significantly prejudiced by such an action. On the other hand, the Council might well have been significantly prejudiced had they not been forwarded a copy of the lease from the Inspectorate. In any case, a dispute concerning the Council's behaviour would be a matter for the appellants to pursue through other means than a Section 174 inquiry.

### **Conclusions**

21. Overall, I have come to the view that as a matter of fact and degree the evidence put forward by the appellants is ambiguous, and fails to demonstrate their interest in the land. I have come to the conclusion that on the balance of probabilities they do not have such an interest. For the reasons given above, I consider the appeal is therefore invalid.

### **Other matters**

22. The notice came into force on the date of issue, and has remained so since then. However, under the provisions of Section 175(4) of the Act the effects of the enforcement notice were suspended during the appeal process. The effects of a notice come into play at the effective date given in the notice – in this case 15 November 2010 – and are essentially the obligation to comply with the requirements within the given compliance period.
23. Due to invalidity I have found there is no appeal in this case. The effects of the notice are no longer suspended, and the obligation to comply with the requirements within a specified period must bite. For the avoidance of doubt, the 6 month compliance period now runs from the date of this decision.

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<sup>3</sup> *Bucks CC v SSETR and J Brown* - QBD 19.12.97 and QBD 23.2.01.

<sup>4</sup> *R on application of Benham-Crosswell v SSETR* [2001] EWHC Admin 146.

**Decision**

24. The appeal is invalid, and I take no further action.

*Stephen Brown*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Brian Woods BA(TP) MRTPI  
(as advocate and witness)

Chartered Town Planner, Managing Director of,  
WS Planning & Architecture.

### FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks BTP MRTPI

Chartered Town Planner,  
Enforcement Services Ltd.

He called:

Michael Wood BSc

Planning Enforcement Officer,  
The London Borough of Brent Council.

## **DOCUMENTS**

- 1 Attendance lists for both inquiry days.
- 2 The Council's letter of notification of the appeal, dated 10 May 2011 with the circulation list.
- 3 Appendices 1-5 to Brian Woods' proof of evidence.
- 4 Appendices 1-9 to Michael Wood's proof of evidence.
- 5 Draft Statement of Common Ground submitted for the appellants.
- 6 Planning Contravention Notice served on 7A Humber Road, with the covering letter dated 5 February 2009.
- 7 Letter from the Council to BMPG dated 1 October 2010.
- 8 Transcript of the High Court case *Benham-Crosswell v SoS [2001] EWHC Admin 146*.
- 9 Letter from Ms Elizabeth Enright, 5 Humber Road, dated 5 May 2011.
- 10 E-mail from Lisa Warren of British Telecom to the Council, dated 28 April 2011.
- 11 Council Tax record for nos. 7 & 7a Humber Road.

## **PHOTOGRAPHS**

- 1 View of interior of the garage adjacent to 7B Humber Road.