The Planning Inspectorate

Appeal Decision

Inquiry held on 29 and 30 April 2014

Site visit made on 30 April 2014

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 22 May 2014

Appeal Ref: APP/T5150/C/13/2208180
Harrowdene House, 86 Harrowdene Road, Wembley, London, HA0 2JF

- 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 made by Mr H S Roopra against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/12/0053.
- The notice was issued on 30 September 2013.
- The breach of planning control as alleged in the notice is without planning permission:
  1. The change of use of the building to a house in multiple occupation for more than six people and three self-contained units of residential accommodation;
  2. The erection of single storey extensions to the south-east and north-east corners of the building;
  3. The change of use of the rear part of the premises to a storage yard; and
  4. The construction of unauthorised hardstanding to the front of the premises.
- The requirements of the notice are to:
  1. Cease the unauthorised use of the building as a house in multiple occupation and three self-contained units of residential accommodation.
  2. Cease the use of the premises by more than one household.
  3. Do not use for any purpose except as a single family dwellinghouse.
  4. Remove all but one kitchen and all but four bathrooms from the premises.
  5. Cease the unauthorised use of the rear part of the premises for storage, remove all items or debris associated with the unauthorised storage use, and do not use the rear part of the premises except in association with the residential use of the premises.
  6. Remove the fence that separates the two parts of the property.
  7. Demolish and remove the northern side and south-east corner ground floor extensions (in the approximate locations shown hatched on the plan attached to the notice) and make good the exposed surfaces using matching materials.
  8. Remove the unauthorised hardstanding (as identified by comparison of photograph 1 and photograph 2 attached to the notice) and restore the affected ground surface to soft landscaping (such as lawn).
  9. Remove any waste or debris arising from compliance with the above steps.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 also falls to be considered.

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

Application for costs

1. At the Inquiry an application for costs was made by the Council against the Appellant. This application is the subject of a separate decision.

Procedural matters

2. Oral evidence was given to the Inquiry after the witnesses had either taken the oath or made an affirmation.

3. The Appellant withdrew the ground (c) appeal at the Inquiry but he made submissions with regard to the fallback position and permitted development rights which I will consider below.

4. Although there was no appeal on ground (f), I have a duty to ensure that the notice is correct and, at my request, submissions were made by both Parties as to whether the requirements of the notice complied with the purposes of the requirements as provided for by s.173(4) of the 1990 Act. That subsection provides that those purposes are - remedying the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or remedying any injury to amenity which has been caused by the breach.

5. It is therefore my view that Steps 2, 3 and 4 in their entirety and the second parts of Steps 5, 7 and 8 do not comply with s.173(4) as they require positive steps to be taken and possible improvement of the property.

6. Although there was no appeal on ground (f) the Appellant submitted with regard to Step 6 at the Inquiry that the erection of the fence would be permitted development in accordance with Article 3 and Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended and that the requirement serves no useful purpose as it could be re-erected after compliance. However, s.181 provides that the compliance with a notice shall not discharge the notice and s.191(2) provides that operations are lawful if they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The re-erection of the fence after compliance with the notice would therefore require planning permission. I consider that as the fence could facilitate the alleged storage yard use it is a valid requirement, although it would be clearer if it referred to the rear part of the property rather than two parts[1]. The Appellant is fully aware of the fence in question and I am satisfied that he would not be caused any injustice by this amendment, or indeed by any other corrections to the requirements I will correct the notice accordingly pursuant to the powers contained in s.176 of the 1990 Act.

The appeal property

7. The appeal site is within a wholly residential area some 400m south of North Wembley underground/overground station. The site has an area of about 0.12 hectares. The original detached house had three storeys and is now in use as a house in multiple occupation. There are three self-contained flats in the single storey side extension on the south side of the house.

[1] As suggested by the Council

8. In addition to the house, the site comprises a large area of hardstanding at the front; there is a driveway leading to the rear of the premises; the back garden is divided by a fence into an area covered in shingle close to the back of the building and an area of neglected and unkempt land.

The appeal on ground (d)

9. The Appellant purchased the appeal premises in late 2011. There is no dispute that he erected the single storey extensions and constructed the hardstanding that are the subjects of the notice; at the time of the Inquiry there was no use of the rear part of the site as a storage yard (save for a number of bricks that were said to be for the construction of a boundary wall at the front of the property) and, save for the Appellant saying that he had not used the rear part of the premises as a builders' yard, there was no case put forward by the Appellant that the rear part of the premises had been in use as a storage yard prior to his purchase. The ground (d) appeal was therefore confined to the allegation that there had been a change of use of the building to a house in multiple occupation for more than six people and three self-contained units of residential accommodation. It is for the Appellant to prove on the balance of probability that the appeal site has been in this alleged use for a continuous for a period of ten years from on or before the date on which the notice was issued, that is, on or before 30 September 2003.

Planning history from the planning register

10. Information from the Council's planning register provides some information about the history of the appeal site. On 3 January 1987 planning permission was granted for the 'erection of single storey side extension and change of use to homeless families' hostel' at the appeal premises[2]. It is unfortunate that the plans for this permission are not available but condition 2 limits the permission to 31 August 1991 'at the end of which period the garage shall be reinstated for the storage of a car and … the premises must revert to permanent residential use'. By an appeal decision dated 18 August 1992 an application for the renewal of the permission was refused[3]. It is again unfortunate that the only version of the decision available is missing the page on which the Inspector sets out his main reasons for dismissing the appeal. On 4 December 1995 an enforcement notice was issued alleging the change of use of the premises to use as a house in multiple occupancy and required the unauthorised use to cease and the removal of equipment and materials associated with the use[4]. An appeal against the notice was made but withdrawn and the Council closed its file in 1996, presumably because the notice had been complied with.

11. The planning register has no record of any matters affecting the appeal property from 1996 until January 2012 when the current enforcement investigation and proceedings began.

The Appellant's evidence

12. Mr Dhimar gave evidence in an unsworn statement[5] that in 1999 he was the proprietor and manager of Ellis & Co Estate Agents[6] and that he had surveyed

[2] Ref:86/2274
[3] T/APP/T5150/A/92/206281/P8
[4] Ref:E/95/0101
[5] Dated 27 March 2014 - Appendix 17 to Mr Keen's proof

the property in 1999 when he was instructed by the then owner to rent the three studio flats on the ground floor and rooms in the main house. The statement goes on to say that over the years he arranged for couples and single people to live in the studio flats and the main house and that he visited the property two or three times a year in connection with re-letting the units. The number of tenants in the property varied between 12 and 16 and that he was aware that the property had been re-possessed in early 2011.

13. Mr Dhimar gave oral evidence in which he expanded on his statement. He confirmed that all the paperwork had been left with Ellis & Co when he set up his current business in 2008 and that although he had tried to get information and documentation from that Company it had not been forthcoming. He had no documentary evidence of his own. The owners of the property, comprising two brothers and their parents, occupied a room on the ground floor, a room on the first floor and the two rooms in the loft. Mr Dhimar would find tenants for the rooms/flats and refer them to the owners, he would have no other involvement and, in particular, he did not collect rent. Although Mr Dhimar said he let a few rooms and the rear studio from 2008 onwards, he also said that he had last let a room in 2006/2007 and that was when he last visited the premises. In response to a question from me he confirmed that the relevant date was 2007. However, the Appellant produced tenancy agreements dated early 2014 on the second day of the Inquiry headed with Mr Dhimar's company name and signed by Mr Dhimar on behalf of the Landlord[7].

14. Shortly prior to his purchase of the property the Appellant said that he drew a plan of the layout of the inside of the property[8]. Mr Dhimar confirmed that the layout shown on the plan was as it was when he knew the property up to 2008 and he also confirmed that the Estate Agent's particulars for the sale of property[9] reflected that layout. It was not clear to me when Mr Dhimar first saw the plans and the particulars; but even if he had had seen them in about the middle of 2011 when they were produced, that means that three years or so had elapsed since he said he had last visited the property. In the circumstances I consider it is questionable whether his detailed recollection of the layout was accurate.

15. Mr Dhimar would appear to be in some form of business relationship with the Appellant which was not disclosed by him in his evidence, either written or oral. His written evidence included no reference to the owners and their family living in the premises and both his written statement and his oral evidence he was unclear about which rooms and/or flats were let and when. Save for what I have set out above with regard to him finding tenants and his assertion that the lettings were under assured shorthold tenancies[10], his knowledge about how the property was used was negligible. His evidence was lacking in coherence and vague and I give it little weight.

16. Mr Banawa attended the Inquiry on short notice due to Mr Grey being ill and unable to attend. Mr Grey had produced the particulars of sale for the property in May/June 2011 and Mr Banawa had assisted him. The property was vacant when he visited the property and the layout was as described on the particulars

[6] He started his current practice in 2008
[7] Document 6
[8] Appendix 1 to Mr Keen's proof
[9] Appendix 16 to Mr Keen's proof
[10] but no documentation has been produced

and reflected in the Appellant's plan. Mr Banawa explained the discrepancy of not recording the shower room in Unit 8[11] on the particulars because it was 'hidden' inside what appeared to be a cupboard and its existence was not noticed until after the particulars had been produced. He confirmed that, as shown on the Appellant's plan, there was a door between Units 1 and 8 and that there was no wall blocking off the kitchenette in Unit 8. Mr Banawa said that he had visited to premises on two occasions to prepare the particulars and in total about 30 times to secure it and show prospective purchasers around.

17. Mr Banawa said he had no knowledge of the history of the property and did not know how long it had been empty prior to him first visiting the property in May/June 2011. But he understood that the property had been a HMO and that there were three self-contained units. He did not explain how he acquired that information and he did not know why the particulars did not describe the property as having three self-contained units. Mr Banawa's evidence was of little assistance as to the use of the property for the relevant period because he only had knowledge of the property from when it was empty in 2011.

18. The particulars describe a detached house with, among other things, a lounge, a reception, bedrooms, a side annex which includes two bedrooms and two kitchenettes and a separate rear studio apartment. No indication is given about the use of the premises and the particulars note 'The property offers extensive accommodation on three floors and would be suitable for a variety of uses including large family dwelling, guest house/bed and breakfast, HMO, residential care home, homeless hostel or residential development subject to any necessary planning consents that may be required' which indicates to me that that the Agents had no idea what the use of the property was.

19. The Appellant's knowledge of the property dates from mid-2011 when he first saw it with a view to purchasing it, which he eventually did in November 2011. His drawing of the existing floor plans[12] was made during his negotiations for the property and he did not have the particulars when he drew it. There are a number of differences in the drawing from the particulars and from the Appellant's description of the premises as given in his evidence. These include: what is now Unit 2 was not a room with a door as shown but an open plan room into the hall with an archway; the studio kitchen was a kitchen and it did not have a bed in it; and the bath kitchen was a utility room, not a kitchen. Some time was taken up with an explanation about what appears on the drawing to be a wall between the kitchenette and the room in Unit 8. The Appellant said that the drawing indicated a square opening not a wall, whereas the particulars refer to an archway. This unit has been extended since 2011 and I noted on my visit that there was what appeared to me to be a door frame leading to a space used for storage which had a considerably higher ceiling than the main room in Unit 8 and also that there was an archway over the shower in the 'hidden' shower room.

20. Whether the drawing is accurate or not, the layout of premises is merely that, and on its own it provides no evidence of the use of the premises. This is particularly so in this case where, among other things, the Appellant has provided no evidence at all about who, other than the owners and their family, lived in the premises and which part of the premises they occupied for the relevant period and there is no documentary evidence whatsoever save for the

[11] Numbering of units as shown on the plan at Appendix L to Mr Davies' proof
[12] Appendix 1 to Mr Keen's proof

tenancy agreements provided by the Appellant which only date from 1 June 2012.

21. Mrs Finnegan has lived next door to the appeal premises since 1983. Her main concerns were the location and state of the rubbish bins which have resulted in noxious smells and her property being infested by vermin and the condition and use of the rear garden where she says rubbish from the property and rubbish brought onto the property from elsewhere has been burnt. She knew that in 1999 the property was occupied by a Sri Lankan family comprising two elderly parents and three sons and there were also two daughters who came and went. Mrs Finnegan spoke to both Mr and Mrs Rajapasa and she was aware that the family came and went but she did not see lots of people coming and going. But she also said that she had a busy life and did not notice such things. Mrs Finnegan was surprised to hear Mr Dhimar's evidence that it was a house in multiple occupation. Mrs Finnegan had never been inside No.86 and although she could not be definite she thought the property had been vacant for about two years before the Appellant purchased it.

22. The Appellant sought to dismiss Mrs Finnegan's evidence because, among other things she had not been inside the property and because 'people's memory is not good evidence'. In my opinion, this latter comment could equally apply to the evidence given by the Appellant and on his behalf by Mr Dhimar and Mr Banawa. Whilst I accept that Mrs Finnegan had no actual knowledge of the use of the property, given that she used to talk with Mr and Mrs Rajapasa and that she lived next door and that she is certainly aware of the current use of the property, I find it surprising that she had not noticed the 12 to16 tenants in the property at one time that Mr Dhimar referred to.

23. The Council has no evidence of its own as to the use of the property prior to 2012 save for the information that the property had been registered for Council Tax purposes as a 'B&B'[13].

24. I note that the HMO licence did not come into effect until 13 October 2012[14] and that that licence does not differentiate between the main house and the self-contained units but only refers to nine rooms.

25. I also note that when Mr Davies visited the property on 20 February 2013 Unit 6 was a self-contained unit[15] as there was then a kitchen where the plan by the Appellant and the particulars said there was a separate w.c. and there was a door separating this unit from the rest of the building[16]. The Appellant said that that kitchen had become a communal kitchen at the request of the Council in respect of the HMO licence but I have not been directed to any evidence in respect of this and the licence came into effect some four months before Mr Davies' visit. At the time of my visit Unit 6 was not self-contained, the door separating it had been removed and the kitchen door did not have a lock. The current tenancy agreement for Room 6 is dated 18 March 2014 for a term of 12 months with a six month break clause and merely refers to Room 6 without stating what the accommodation is.

26. Mr Davies did not see Unit 7 on the second floor on his visit in February 2013 but he was told it was self-contained. I saw that there was a lockable door at

[13] Paragraph 3.2.4 of Mr Davies' proof
[14] Appendix 7 to Mr Keen's proof
[15] Comprising bed-sitting room, shower room/w.c. and kitchen
[16] Appendix F to Mr Davies' proof

the top of the stairs leading to a unit comprising two rooms (living room and a bedroom) with a separate shower/w.c. There were cooking facilities in the living room and there was a fridge in the storage area under the roof. It seemed to me that the unit had all the facilities required for day-to-day living and that it was a self-contained unit. The tenancy agreement commenced on 1 January 2014 for a term of six months and refers to Room 7 without stating the accommodation provided but it does state that the occupants have use of shared facilities of the driveway, the downstairs main kitchen and the rear garden; the occupant also has use of a parking space. The maximum occupancy of the room was three persons and it appeared to me that it was occupied by a couple and a child.

27. The information provided by Mr Davies from his visit and what I saw indicate to me the current fluid nature of the accommodation provided at No.86. Whilst the layout of the various units may have changed within the past few years as a result of the Appellant's refurbishment and otherwise, and in particular what is now Unit 8 has been extended by the new extension, I am of the view that layout does not necessarily equate to the use of the property and the use of the property prior to the Appellant's purchase remains uncertain.

28. It may be that the self-contained flats, in particular the rear studio, now Unit 9, were created separately from the main house and that the four year rule applies to them. Mr Dhimar referred to letting Unit 9 as a separate unit and it appears as a separate unit in the particulars in 2011. However, there is no evidence whatsoever about when these units were created and the evidence of the use of the rear studio, and the other units in the annex, was so vague and anecdotal that I am not satisfied that the Appellant has proved on the balance of probability that these flats are immune from enforcement action.

29. It is for the Appellant to prove his case on the balance of probability. The Appellant's evidence, and that called on his behalf, does not need to be corroborated by independent evidence in order for it to be accepted[17], however, the Appellant's evidence alone must be sufficiently precise and unambiguous to satisfy the burden of proof on the balance of probabilities. I accept that the Council has little if any relevant evidence of its own in respect of the use of the property over the past ten years and that Mrs Finnegan's evidence is limited, but I do not consider for the reasons set out above that the Appellant's evidence, and that on his behalf, was sufficiently precise to establish the continuous use of the building as a house in multiple occupation for more than six people and three self-contained units of residential accommodation as required.

The 1995 notice

30. In an appeal under s.174(d) of the 1990 Act the Appellant has to prove 'that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters', in shorthand, the breach is immune from enforcement action.

31. A breach of planning control becomes immune from enforcement action if no such action has been taken within certain time limits which, for the purposes of this appeal, are set out in s.191(2). This says that for 'the purposes of this Act uses and operations are lawful at any time if (a) no enforcement action may

[17] F W Gabbitas v SSE and Newham LBC [1985] JPL 630

then be taken in respect of them and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.'

32. The planning unit that is the subject of the enforcement notice issued on 30 September 2013 (the 2013 notice) is the same planning unit that was the subject of an enforcement notice issued on 4 December 1995 (the 1995 notice). The breach of planning control alleged in the 1995 notice was the change of use of the premises to use as a house in multiple occupancy and the requirements were, firstly, to cease the [use as a house in multiple occupancy] and, secondly, to remove from the premises any equipment and materials associated with the unauthorised use. An appeal in respect of the 1995 notice was withdrawn and it would appear that the notice was complied with, however, s.181 of the 1990 Act provides that compliance with a notice shall not discharge the notice.

33. By virtue of s.191(2) the use of the premises as a house in multiple occupancy cannot become lawful because of the requirement to cease the use and remove materials and equipment associated with the use as set out in the 1995 notice.

34. S.285 of the Act prevents any challenge in this appeal as to the validity of the 1995 notice.

35. The Appellant sought to distinguish 'a use as a house in multiple occupancy' as stated in the 1995 notice from the allegation in the 2013 notice, that is, 'a house in multiple occupation for more than six people and three self-contained units of residential accommodation'. He submitted that the breaches alleged were substantially different in that, among other things, the 1995 notice alleged a primary use of multiple occupancy whereas the 2013 notice alleged a mixed use of an HMO and self-contained flats. Whilst I accept that there can be material changes of use between different categories of residential uses[18] it seems to me that a 'house in multiple occupancy' can encompass a mixed HMO use and self-contained flats because, as a matter of fact and degree, the building is 'in multiple occupancy'.

36. The Council chose to issue the 2013 notice and did not choose to prosecute the Appellant in respect of the 1995 notice. Why the Council chose to act in the manner it did is not a matter for this appeal but, whilst acknowledging that that 1995 notice precluded the use of the building for multiple occupancy, Mr Davies explained that the Council chose to issue the 2013 notice because of the additional breaches that had taken place rather than proceed with the 1995 notice alone.

37. I therefore consider as a matter of law that the use of the building as a house in multiple occupation for more than six people and three self-contained units of residential accommodation cannot be immune from enforcement action and that an appeal under ground (d) must fail.

38. However, even if I had not come to that conclusion I have found that the Appellant's evidence did not prove, on the balance of probability, that there has been a continuous use of the building as a house in multiple occupation for more than six people and three self-contained units of residential accommodation for the relevant period.

39. The appeal on ground (d) fails.

[18] Paragraph P55.36 of the Encylopedia of Planning Law and Practice

The appeal on ground (a) and the deemed planning application

40. In the appeal on ground (a) and in the deemed planning application the Appellant is seeking planning permission for what is alleged in the notice which in this case is the change of use of the building to a house in multiple occupation for more than six people and three self-contained units of residential accommodation; the erection of single storey extensions to the south-east and north-east corners of the building; the change of use of the rear part of the premises to a storage yard; and the construction of hardstanding to the front of the premises. It is possible for a split decision to be issued granting permission for some of the developments only and I will take that into account.

41. From the reasons for issuing the notice and from the evidence and submissions presented at the Inquiry I consider that the main issues are:
    1) the effect of the extensions on the character and appearance of the host building and the area;
    2) whether the accommodation provided is sub-standard and whether there is adequate light to the internal parts of the building and adequate amenity space;
    3) whether there is safe and convenient pedestrian access;
    4) the effect of the storage use and the hardstanding on the character and appearance of the surrounding area; and
    5) whether there is satisfactory bin storage and cycle parking.

First issue: Character and appearance

42. The area in which the appeal property is located is wholly residential. The dwellings are predominantly large two/three storey buildings set in large plots; some of these buildings appeared to have been converted into either flats or HMOs but there were some that appeared to be single family dwellings. There are purpose built blocks of flats opposite the appeal site and there has been what appeared to me to be some infill development of more recently built flats/houses near-by.

43. No.86 is a traditionally designed house with a brick ground floor and render above; it has a hipped gable roof which includes the windows for the second floor. The brick side extension, which was presumably erected following the 1987 permission, is a flat roofed structure. Although it is speculation, condition 2 of the permission refers to the garage being reinstated for the storage of a car and this may account for the extension's utilitarian design.

44. The extension to the side extension built by the Appellant is some 3.7m deep and fills in a gap that existed between the single storey extension and the original rear extension to the building. It is brick built and painted white to match the side and back of the remainder of the building and it has a flat roof. The extension can be glimpsed in views from Harrowdene Road. The extension to the other side of the building is also a brick built flat roofed structure just under 4m deep. It is not visible from the public highway.

45. Both of the extensions are utilitarian in design and whilst that may reflect the previous single storey extension, that does not justify their box like and unattractive shape. The extensions have areas of some 14.4 sq m and

8.7 sq m[19] and, including the original extension, result in a considerable amount of flat roofed development surrounding the original building which is out of scale with the ground floor of the original building and results in the original building being encircled by unattractive flat roofed development that is apparent on the ground and which can also be seen from the aerial photograph[20].

46. Policy CP17 of the London Borough of Brent Core Strategy[21] seeks to ensure the protection of the distinctive suburban character of Brent from inappropriate development and saved policies BE2 and BE9 of the Brent Unitary Development Plan seeks to ensure that development makes a positive contribution to the character of an area and that extensions are of a scale appropriate to their setting. The fact that a development cannot be seen from the public highway does not justify the grant of planning permission and for the reasons given above I conclude that the extensions have a harmful effect on the character and appearance of the host building and the area and that they do not comply with the policies of the development plan referred to above.

Second issue: The accommodation

47. The whole of the building, including the three self-contained flats, comprising nine rooms, has been licensed by the Council as an HMO for up to 18 people. However, the criteria used in that legislative process are different from those that I have to consider in this appeal.

48. There is no dispute between the Parties that the original building at No.86 had a floor area in excess of 110 sq m and that its conversion into flats would be within the terms of saved policy H17 of the UDP. However, only one of the self-contained flats at the premises is located within the original building; the other two are in the annex and the new extension. Therefore policy H17 does not apply.

49. Nevertheless there has been conversion of part of a building to flats and in those circumstances saved policy H18 of the UDP, which requires acceptable standards of accommodation for future residents, does apply. Among other things the policy requires that regard is had to room sizes, that the flats should have adequate circulation and storage space and that rear gardens should be retained without sub-division.

50. The three flats are extremely small and it was agreed by the Parties that they did not comply with the minimum space standards set out in either the Council's Design Guide for New Development or Policy 3.5 of the London Plan. They each comprise a living/bed sitting room, a shower room/w.c. and, in the case of Units 1 and 9, kitchenettes; Unit 8 has a kitchen in the new extension.

51. The construction of the extension has resulted in the main window for Unit 9 facing onto the decking at the rear of the kitchen of the main building; this means that if the window is not covered by a blind or curtains the occupier of the Unit has no privacy and by covering the window the room lacks daylight.

52. Unit 8 has no window in the main room but there are two windows in the kitchen. This results in part of the living room being gloomy. The living room

[19] Paragraph 7.21 of Mr Keen's proof
[20] Appendix H to Mr Davies' proof
[21] Adopted 12 July 2010

is an awkward shape with little useable space because of the layout leading to the kitchen and the location of the shower/w.c. The tenancy agreement provided by the Appellant shows that this Unit is currently occupied by a couple and their two children but I noted on my visit that there was a single bed only and the appearance of the Unit was not one indicating the presence of children. I consider that a Unit of this size is unacceptable for family occupation.

53. The access to Unit 1 is from inside the building into a gloomy internal 'hallway' which leads to the shower/w.c. and the kitchenette. Although there are windows in the bedsitting room and kitchenette the flat was generally poorly lit and, because of its small size, had an oppressive feel.

54. All the self-contained units have access to the rear garden. The Appellant advised that the fence had been erected around part of the garden nearest the main building at the request of the tenants. There was no indication that the garden was not available to everyone living in the premises although it did not appear to me to be inviting due to its poor and neglected condition.

55. I am not aware of any specific policies directed to HMO use but I note that Policy 3.5 of the London Plan states that housing developments should be of the highest quality internally and I accept that the HMO at No.86 may have, for the purposes of the Housing Acts, the requisite number of bathrooms and kitchens for the number of bedsitting rooms. But in that respect the licensed HMO use includes the self-contained flats. I accept that it is often the case that HMO bedsitting rooms have their own shower/w.c. facilities and that occupants may have such items as fridges and toasters in their rooms so that they are virtually self-contained and in this respect the difference between a HMO room and self-contained unit is a fine one. In this case the HMO use of the main building may be acceptable, despite the intensive use of the premises and the rather dark aspect of the original part of the kitchen which lacks natural light because of the new extension, but the three self-contained units do not provide satisfactory living accommodation for the reasons I have given.

56. Even if the HMO use was acceptable, either for the main building itself or for the building as a whole, that is not what is alleged in the notice and what the Appellant is seeking planning permission for. On this basis I do not consider that it is possible to issue any form of split decision because it is not possible to do so with any certainty and because of the fluidity of the accommodation which, as I have mentioned above with regard to Units 6 and 7, could result in parts of the HMO becoming self-contained and vice versa.

57. I have taken into account that the use of the property as a HMO and three units makes a contribution to the need for housing, particularly affordable housing, and that the loss of the HMO use may be contrary to policy H6 of the UDP. But any contribution to housing should provide a satisfactory standard of accommodation which these units do not for the reasons I have given and I cannot speculate what use the property may have in future as a result of this decision.

58. The insertion of windows and roof lights in the relevant units and kitchen may alleviate the harm caused by lack of daylight and this could be required by the imposition of a planning condition. However, this would have no effect on the small size of the units and would not be sufficient to render the use acceptable.

59. I therefore conclude that although there is adequate amenity space, the accommodation provided is sub-standard and there is inadequate light to the internal parts of the building and that the change of use is contrary to saved policy H18 of the UDP, policy 3.5 of the London Plan and guidance in the Council's Design Guide for New Development.

Third issue: Pedestrian access

60. The access to the two units at the side and back of the building is across the track leading to the rear of the property. The Council was concerned that this unevenly laid track could be used by vehicles and that this could be a hazard. Whilst this may be the case, I consider that, given the likely use of the track, any risk to the safety of residents would be minimal.

61. A planning condition could be imposed to improve the surface of the track and to provide that the security lighting currently in place over the doors was operative and maintained. In the circumstances, this issue is not of itself a reason for the refusal of planning permission.

62. I therefore conclude that the pedestrian access is not in breach of policy H19 of the UDP which requires that conversion schemes should have safe and convenient pedestrian access.

Fourth issue: Storage use and hardstanding

63. At the time of my visit the only storage taking place at the rear of the premises was a pile of bricks. However, photographs taken by the Council on 20 February 2013 and 4 July 2013 show some storage use which is corroborated by Mrs Finnegan's evidence. I accept that any storage use may have been connected with the refurbishment of the premises by the Appellant after his purchase, but since the erection of the fence the rear area is a distinct separate area with a separate access and any ongoing use for storage would be out of place within this residential area, both from a visual point of view and because of the likely comings and goings of commercial vehicles.

64. The hardstanding at the front of the premises is poorly laid concrete. It covers the whole of the front and is unsightly. I appreciate that other front gardens in the area have hard-surfaces for parking but these tend not to cover the whole area, leaving some space for planting, and are not of such a hard, unattractive surface as concrete. There is currently no front boundary and the open aspect of the property from the street with the expanse of hardstanding does not reflect the pattern of development in the area. The hardstanding is currently used for parking and I have considered whether a planning condition, requiring details of landscaping could be imposed. But given the likely amount of work that would be required to address the unacceptable impact of the hardstanding I do not consider that a planning condition would be appropriate in this case.

65. I therefore conclude that any storage use would be contrary to policy H22 of the UDP which does not permit incompatible non-residential uses and the hardstanding is currently contrary to policy BE7 of the UDP which seeks to prevent the loss of front walls and hardsurfacing occupying more than half of a front garden area. I also conclude that the hardstanding currently has a harmful effect on the character and appearance of the area and that any storage use would have a harmful effect on the character of the surrounding area.

Fifth issue: Bin storage and cycle parking

66. There is currently no designated bin storage area and at the time of my visit the bins were stored against the boundary with No.84. Although they were clean and tidy on my visit, photographs taken by the Council on 20 February 2013 and 4 July 2013[22] show over-flowing and unsightly bins and Mrs Finnegan gave evidence that this was a regular occurrence. A proper storage area is therefore necessary and there appeared to be room within the property for one to be located. This could be achieved by the imposition of a planning condition and the lack of bin storage is not in itself a reason for the refusal of planning permission.

67. Similarly, there is no designated cycle parking but there appeared to be room for such and this could be achieved by the imposition of a planning condition.

68. Saved policy H18 of the UDP requires flat conversions to have bin stores and screening and cycle storage and although these are not currently present they could be provided following the imposition of planning conditions and I so conclude.

The fallback

69. It was the Appellant's case that the extension to the kitchen in the main building and the hardstanding would be permitted development if the property was in use as a single dwelling house[23]. Permitted development rights cannot be acquired retrospectively and in his evidence Mr Keen said that the Appellant would not willingly revert the property back to a single dwelling. Therefore the likelihood of the property acquiring permitted development rights in the future seems to me to be remote.

Other matters

70. I note that the Appellant has had pre-application discussions with the Council about the possible conversion of the property into four flats and that an application was made but withdrawn[24]. I cannot speculate about what may happen in future with regard to this property and I give the information that was provided to the Inquiry in this respect no weight.

Conclusions on the ground (a) appeal and deemed planning application

71. Although I have found that safe pedestrian access, bin storage and cycle parking could be achieved by the imposition of planning conditions, this does not outweigh the harm that I have found with regard to the change of use of the premises to a HMO and three self-contained units, the erection of the extensions and the change of use to a storage yard and the construction of the hardstanding. In the circumstances a split decision is not appropriate and the appeal on ground (a) fails and the deemed planning application is refused.

The appeal on ground (g)

72. The Appellant maintains that three months is too short a period in which to comply with the requirements and he seeks six months because of the amount of work involved.

[22] Appendix G to Mr Davies' proof
[23] By virtue of Article 3 and Class A of Part 1 of Schedule 2 to the GPDO
[24] Documents 2 and 3

73. From the tenancy agreements provided by the Appellant, most tenancies will come to a natural end by the end of July 2014, one has a break clause in August 2014[25] and two have a break clause at the end of September 2014[26]. Given the timing of this decision it may well be that some tenancies will have come to an end within the three month period and if not, or if the tenants have not vacated the premises, the Council has powers in s.173A to extend the period for compliance.

74. The Appellant took possession of the premises in November 2011 and it was let to Ms Debora Aparecida on 1 June 2012 after the refurbishment works had been carried out. The Appellant is a builder and the amount of work required to demolish the extensions and to remove the hardstanding is unlikely in my opinion to take as long as the works of their erection and construction. I therefore consider that the period of three months for compliance with the notice is reasonable but should it not prove possible to carry out the works within that time frame the provisions of s.173A are available to the Council.

75. The appeal on ground (g) fails.

Conclusions

76. For the reasons given above, and taking all other matters into account, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Decision

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

i) In Schedule 4, the deletion of Steps 2, 3 and 4 in their entirety.

ii) In Schedule 4 Step 5, the deletion of the words 'and do not use the rear part of the premises except in association with the residential use of the premises'.

iii) In Schedule 4 Step 6, the deletion of the words 'two parts' and the substitution therefor of the words 'rear part'.

iv) In Schedule 4 Step 7, the deletion of the words 'and make good the exposed surfaces using matching materials'.

v) In Schedule 4 Step 8, the deletion of the words 'and restore the affected ground surface to soft landscaping (such as lawn)'.

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

Gloria McFarlane

Inspector

[25] Units 2 and 4 - both let to the same person - Document 6
[26] Room 3 and Room 6 - Document 6

APPEARANCES

FOR THE APPELLANT

Mr A Keen BA MSc DipTP DipPhil MRICS MRTPI	Chartered Surveyor and Chartered Town Planner, acted as advocate and witness

He called

Mr R Dhimar	Lettings Manager
Mr D Banawa	Sales Manager
Mr R Roopra	The Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr N Wicks MRTPI	Enforcement Consultant

He called

Mr S Davies BA	Deputy Planning Enforcement Manager

INTERESTED PERSONS

Mrs M Finnegan	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1 - The Council's letter of notification of the Inquiry

Document 2 - Pre-application advice notes, submitted by the Appellant

Document 3 - Plans for withdrawn application, Ref: DC/14/0267, submitted by the Appellant

Document 4 - Email from Planning Officer, submitted by the Appellant

Document 5 - Photographs of the site, submitted by the Appellant

Document 6 - Bundle of tenancy agreements, submitted by the Appellant

Document 7 - List of suggested conditions, submitted by the Council

Document 8 - Notes of the Council's closing - ground (d)