The Planning Inspectorate

Appeal Decisions

Inquiry held on 4 and 5 September 2012
Site visit held on 4 September 2012

by Ahsan U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 18 October 2012

Appeal A Ref: APP/X5210/C/12/2173656
Appeal B Ref: APP/X5210/C/12/2173657
Appeal C Ref: APP/X5210/C/12/2173658
Appeal D Ref: APP/X5210/C/12/2173659
Appeal E Ref: APP/X5210/C/12/2173660
Land at 8 St Marks Crescent, London NW1 7TS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Richard J Holland (Appeal A), Mrs Irena Holland (Appeal B), Ms Argelina Bernedo (Appeal C), Ms Sasha Holland (Appeal D) and Ms Christina Escanellas (Appeal E) against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN09/0209.
- The notice was issued on 28 February 2012.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from four self contained flats to a single family dwellinghouse.
- The requirements of the notice are stated as follows: the use as a single family dwelling shall cease and the property shall be either converted to three flats in accordance with planning permission reference 2007/0253/P dated 09/03/2007, implementing that permission in its entirety or the property shall be restored to its previous condition as four flats.
- The period for compliance with the requirements is 12 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeals B, C, D and E are proceeding on the grounds set out in section 174(2) (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for these Appeals, 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.
- The Inquiry sat for two days.
- All of the evidence was given under oath.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction and a variation.

Preliminary Matters

1. The appeal parties agreed that the word *'family'* in the allegation is superfluous and for greater precision it should be deleted. The envisaged correction would not fundamentally alter the meaning of the allegation and would not cause injustice to any party. I raised concerns about the steps required to comply with the notice, which I will return to later. Some of the appellants' ground (b) arguments overlap with ground (c) and I have dealt with them accordingly.

The site and relevant planning history

2. The site is located within the Primrose Hill Conservation Area (CA). The description of the site, the surrounding area and full planning history is set out in the statement of common ground. An aspect of this planning history, relevant to the consideration of these appeals, is outlined below.

3. On 20 April 2006, planning permission was refused for what is described in the decision notice as *'change of use from 1 x self-contained ground floor flat and 2 x non self-contained flats at first and second floor levels to 1 x self-contained maisonette at ground, first and second floor levels (Class C3) and minor alterations at rear ground floor level…'* A subsequent appeal against the Council's refusal of planning permission was dismissed on 5 October 2006[1].

4. On 9 March 2007, planning permission was granted for the change of use from three self-contained and one non-self-contained flat to one three bed maisonette, one two bedroom maisonette and one two bedroom flat to include the erection of a single storey rear extension at lower ground floor level with terrace over (planning permission ref: 2007/0253/P (the 2007 permission)).

Appeals A to E - grounds (b) and (c)

5. For the appeals to succeed under these grounds of appeal, the onus is upon the appellants to show, on the balance of probability, that the alleged breach has not occurred as a matter of fact and, if it has occurred, the matters alleged do not constitute a breach of planning control.

6. There is no dispute between the appeal parties that the building was previously used as four flats. The evidence suggests that each unit contained viable facilities for day-to-day living and constituted separate planning units, because of their physical and functional separateness. The appellants' evidence was that when they purchased the building it was not subdivided into four dwellings, because the property had been totally gutted for refurbishment. The Council had no first hand evidence of its own to make that version of events less than probable. On the other hand, the nature and scale of the physical work involved in the actual conversion of the building into a single dwelling resulted in the amalgamation of four dwellings into a single dwelling. The appellants do not dispute that when the notice was issued the property was, in fact, in use as a single dwellinghouse.

7. Section 55 (1) of the Town and Country Planning Act 1990 as amended (1990 Act) includes in the definition of the word *'development'* the carrying out of any material change in the use of any buildings or other land. Converting one dwelling into two or more constitutes a material change of use requiring express planning permission by virtue of S55 (3) of the 1990 Act. Whether development requiring planning permission occurs in the converse situation is a matter of fact and degree for the decision-maker based upon the facts of an individual case.

8. The most relevant Case Law is the case of *Richmond*[2]. In short, that case involved the conversion of a house divided into seven flats into a single dwellinghouse. The Deputy High Court Judge found that a change of use can

[1] Planning application ref: 2006/0952/P and appeal ref: APP/X5210/A/06/2017093 dated 5 October 2006 (2006 application).
[2] See the case of Richmond-Upon-Thames LBC v Secretary of State for the Environment, Transport and the Regions [2001] JPL 84 transcript in the Council's bundle of evidence.

occur even when there are no changes to the external manifestations, and even if the new use is within the same classification set out in the UCO[3], so long as the change gives rise to planning considerations. In reviewing some of the most relevant legal authorities, the Deputy Judge cited Saville LJ's judgment in *Mitchell v Secretary of State for the Environment* [1994] 2 PLR 23 who stated: *'…It is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact and that the need for housing in a particular area is a material consideration…'*[4]

9. Further assistance is found in the case of *Panayi v Secretary of State for the Environment* [1980] P & CR 109. That case suggests that the change could give rise to important planning considerations and could affect, for example, the residential character of the area; welfare services; reduce the stock of private residential accommodation available for renting and so forth. The extent to which a particular use fulfills a legitimate, or recognised, planning purpose is relevant in deciding whether a change from that use is a material change of use.

10. The assertion was that the use as a single dwelling has no adverse impact upon the residential character of the area; it preserves the character or appearance of the CA; it does not put a strain on welfare services and on the stock of private residential accommodation available for renting. It was submitted that the removal of multiple doorbells and numbers, refuse storage areas, and the reduction of demand for on-street car parking spaces are all relevant planning considerations. However, this line of argument overlooks the fact that the amalgamation of the four dwellings into a single dwelling has resulted in the loss of three dwellings, which may have implications upon the availability of housing in the Borough. Such a factor should also be taken into account when considering whether or not the change is material.

11. In this context, the relevant local planning policy is Policy DP2 of the London Borough of Camden Local Development Framework Development Policies 2010 – 2015 (DP) November 2010. Amongst other matters, it states that the Council will seek to maximise the supply of additional homes in the Borough especially homes for people unable to access market housing. The Policy also states that the Council will seek to minimise the loss of housing in the Borough by: *'(f) resisting developments that would involve the net loss of two or more homes'*. The justification text for the Policy indicates that it fulfills a legitimate planning purpose, due to the housing stress which the Borough is under.

12. The building is occupied for residential purposes with very little, if any, external manifestations of the change from four dwellings into a single dwelling. However, the use as a single dwellinghouse has resulted into the loss of three dwellings, the nature and scale of which materially conflicts with DP Policy DP2 and, as a matter of fact and degree, amounts to a material change in the use of no. 8.

13. The submissions were that even if the alleged breach amounted to a material change of use, it would be a change for which planning permission is granted by virtue of S55 (2) (f) of the 1990 Act and Article 3 of the UCO. Effectively, the argument was that since each dwelling falls within Class C3 of the Schedule

[3] See the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).
[4] See paragraph 38 of the *Richmond* judgement.

to the UCO, and they are amalgamated into a single dwellinghouse, which is also a Class C3 use, such a change is permitted by Article 3 (1) of the UCO.

14. The relevant parts of S55 (2) (f) states the following: *'The following … uses of land shall not be taken … to involve development of the land … in the case of buildings … which are used for a purpose of any class … the use of the buildings … or… of any part of the buildings … for any other purpose of the same class'*. The phrase '*which are used for a purpose of any class'* relate to what can reasonably be assumed as the *'before'* situation, and the phrase *'the use of the buildings … or… of any part of the buildings'* to the *'after'* position. The word *'buildings'* in the first part of S55 (2) (f) does not refer to part of a building.

15. The relevant part of Class C3 of the Schedule to the UCO states the following: *'Use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household…'* On this basis unless the before use of the building fell within Class C3, the UCO does not operate. Class C3 relates to the use as *a dwellinghouse* [my emphasis] and does not apply in this case. This is because no. 8 was divided into four dwellings and was not in use as a single dwellinghouse. On this particular construction of the relevant statutory provisions, my findings are supported by the commentary *Richmond* in the JPL, which states that a building in use as more than one dwelling does not fall within the Schedule of the UCO[5].

16. I have reviewed and evaluated the facts of this appeal against the Inspectorate's decisions in *Charlotte* Place, which is located within the London Borough of Camden, and *16 Arundel Gardens*[6]. Nothing in those decisions alters my findings above. In any event, the particular circumstances of the appeal before me differ from those in these decisions. For example, in *Charlotte Place* the loss was of two units of accommodation, the bedsits were of poor quality, the case focused upon the conversion of bedsits into self-contained flats and was determined prior to the adoption of DP Policy DP2.

17. Taking all of the above points together and as a matter of fact and degree, I conclude that the matters alleged in the notice have occurred as a matter of fact, which constitutes a breach of planning control. Therefore the appeals on grounds (b) and (c) must fail.

Appeals A to E - ground (d)

18. In these appeals, the onus of proof is upon the appellants. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is, on the balance of probability, sufficiently precise and unambiguous.

19. The claim was that the material change of use is immune from enforcement action due to the passage of time. It was contended that the change of use from four flats to a single dwelling occurred on or before 28 February 2008, which is the relevant date, and that it has been continuously used as a single

[5] Journal of Planning & Environmental Law (JPL) January 2001 pages 84 – 93.
[6] The appeal decisions submitted in Mr Murdock's GAM2 and GAM3 11 Charlotte Place appeal ref: APP/X5210/X/10/2124828 allowed LDC on 25 November 2010 (Charlotte Place). *16 Arundel Gardens* appeal ref: APP/K5600/A/07/2057962 dated 12 March 2009 located in the Royal Borough of Kensington & Chelsea.

dwelling since then. The assertion was that the building was substantially completed, and that Mr and Mrs Holland moved in, on 14 December 2007.

20. In deciding when the four-year period for the purposes of S171B (2) of the 1990 Act will begin to run, it is first necessary to look at the physical works. I have considered the legal submissions regarding the case of *Gravesham*[7]. However, it was found in that case that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence. In this case, for the purposes of the legislative provisions, the evidence should show when the whole building became a single dwelling and when/how it was occupied.

Whether or when a single dwellinghouse

21. The appellants' assertion was that the building was capable of providing viable facilities for living on 14 December 2007, that the building and garden were used for residential purposes, and that Mr and Mrs Holland moved in comfort on the upper floors of the property. It was claimed that the upper floors contained a bathroom, kitchen and living areas including an office in the attic. Two boilers were installed. However, there are no specific details or description of the arrangement and layout of the whole building. In cross-examination, Mr Holland acknowledged that the upper floor was temporarily used for residential purposes, due to the ongoing renovation project. The kitchen on the upper floor was temporary in nature and it had been removed once the lower ground floor had been completed. The lower ground floor included an extension that began around March 2008 and was completed a year later.

22. Mr Smart inspected the property on 13 July 2007. He recalled a flat pack kitchen which Mr Holland bought for the upper floors and *'…intended to fit temporarily while the lower ground floor was awaiting the construction of an extension'*. After the refurbishments, Mr Smart revisited the property on 11 January 2008 and stated that by that time the *'…house was habitable…,'* and that *'…all of the rooms were decorated and in use either as storage for their possessions or bedrooms for Mr and Mrs Holland'*[8]. In cross-examination, he conceded that the lower floors were uninhabitable, which casts considerable doubt as to whether the whole building was capable of providing viable facilities for living around January 2008.

23. Mr Buzhala, a structural engineer who could not attend the Inquiry, submitted a written proof of evidence. His evidence is limited and does not assist in showing when the building was capable of providing viable facilities for living. On the other hand, the information confirmed that he attended the site on 29 March 2007 and at that time the roof was damaged and there were no internal walls, panelling, fireplaces or floorboards. The submitted photographic evidence is consistent with this description.

24. The letter from Sturdy Project Limited, who carried out the physical building work, itemises the type of work but it is undated; the correspondence probably dates back to early 2007. Although these details are suggestive of the materials purchased for the property's conversion and the nature of the works carried out, they do not sufficiently show as to when the building was ready for occupation as a single dwelling.

[7] See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.
[8] See page 2 of Mr Paul Richard Smart's proof of evidence.

25. Additionally, the electrical installation certificate shows that safety tests were carried out around 4 February 2008. However the extent of the installation covered by the certificate does not show that it specifically relates to the building as a single dwelling.

26. In my view, the totality of the evidence about when the building was a single dwellinghouse is incomplete and lacks precision. The information does not show that the whole building provided viable facilities for living on 14 December 2007. For completeness, I will next review the evidence about when and how the building was occupied as a single dwelling.

When and how occupied

27. In this context, it is not uncommon for evidence to be adduced to show continuous occupation of a dwelling for a certain period from documentary information. This could take the form of utilities' connection charges and bills, local Council taxation and Electoral Register records. Although there appears to be no details for the usage of gas, details of electric and water services were submitted. Mr Holland attempted to merge the electric and water for the individual flats into a single account. However, the difficulty for the appellants is that there are no details to show the scale of the utility usage for the four individual flats and comparisons with the single dwelling use cannot be made. In any event, the submitted bills seem to be addressed to individual flats.

28. Mr Holland asserted that the property was used for correspondence and that he worked from home. He held business meetings and a letter from Bishopsgate Iron & Steel confirms that its director visited the property. However, this information lacks specific details of when, where or how the meeting was held and in which part of the building.

29. The claim was that the impression given by all of the documentary evidence is that the building was in use as a single dwelling. Bank statements were also submitted, which show that considerable funds were expended between January 2008 and January 2010. This information shows that the property was used for official correspondence but it does not show how or when the building was used as a single dwelling.

30. Various copies of emails to the Council's local taxation section, and the Valuation Office, were submitted which contained information that contradicted the appellants' claim that the building was used as a single dwelling on or before the relevant date. In cross-examination, Mr Holland accepted that these were deliberate untruths; they were explained by an attempt to avoid paying excess Council tax together with other pressures. It was common ground that the property was rated as a single dwellinghouse from October 2009, yet there was no satisfactory explanation given as to why it was considered necessary to mislead the Council about the circumstances in emails sent after that time.

31. Even if the building was physically de-converted to create a single dwelling on or before the relevant date, the evidence about the continuity of the use is in doubt. This is because a fire occurred at the property in February 2010. Mr Holland confirmed that all electric, gas and water services were lost as the house fire started in the fuse box and spread causing smoke damage to the whole building. While the work was carried out, the appellants stayed at The Marriott Hotel in Regent's Park until around 25 September 2010. As a matter of fact and degree, the period of non-occupation is not sufficiently *de minimis*

because the scale of the non-occupation significantly interrupted the continuous use of the whole building as a single dwelling.

32. On behalf of the appellants the assertion was that there was no intention to abandon the unauthorised use. However, I agree with the Council's argument that it could not have served a notice during the period in which the appellants stayed in The Marriot Hotel. This is because the site was a total wreck and was not in use as a single dwelling. Even if a site visit was carried out during this period, it would have been apparent that the whole building was not in use as a single dwellinghouse due to significant fire damage. On an objective basis, occupation was not continuous and the Council could not have served a notice during that period.

Conclusions on ground (d)

33. Taking all of the above points together, the evidence does not sufficiently show when the building became a single dwellinghouse and from when and how it was occupied. On the balance of probabilities, I find that the corrected material change of use of the building from four flats into a single dwellinghouse did not occur on or before 28 February 2008. The submitted evidence does not show that the building was continuously used in the subsequent four-year period as a single dwellinghouse. In this appeal, the onus has not been discharged.

34. For all of the above reasons, I conclude that the appeals on ground (d) fail.

Appeal A - ground (a)

35. The Council's assessment is that development does not have a harmful impact upon the character or appearance of the Primrose Hill CA. I concur with that evaluation. The terms of the deemed planning application are directly derived from the allegation. Planning permission is sought for the change of use of the building from four flats into a single dwellinghouse. Therefore, the main issue to consider is the effect of the development upon the provision of residential accommodation in the Borough.

36. Policy 3.3 of The London Plan July 2011 (The London Plan) relates to the increase of housing supply. This Policy sets an annual average of at least 32,210 net additional homes across London. The aim is to deliver affordable and quality housing choices. The relevant local planning policy is DP Policy DP2, which relates to the Borough's capacity for housing and seeks to resist developments that would involve the net loss of two or more dwellings. Policy CS6 of the Camden Core Strategy 2010 (CS) is also relevant; it relates to the provision of quality homes. These Policies are broadly consistent with guidance contained in the National Planning Policy Framework (NPPF).

37. The nature of the Borough's housing stock varies and some neighborhoods have a much higher concentration of large single dwellings than others. A mixture of dwelling types can create balanced communities and assist in social cohesion. The supporting text to DP Policy DP2 indicates that the Council would favorably consider proposals which create large dwellings out of smaller ones in areas where there are a relatively low proportion of large dwellings. For example, in nearby Regent's Park. In this case, however, Primrose Hill is not included in such a ward.

38. CS Policy CS6 sets a target for the provision of 5,950 new homes from 2007 to 2017 and aims to minimise the net loss of existing homes. On the other hand, The London Plan's revised figures set a minimum 10 year target of 6,650 homes and an annual monitoring target of 665 homes 2011 - 2021. Nonetheless, the most recent housing trajectory published as part of the annual monitoring report 2010 – 2011 suggests that the expected number of self-contained housing to come forward between 2011 – 2012 and 2020 – 2021 is 6,179. This figure is higher than The London Plan's target of 5,000 for the same period[9]. However, 31% of the homes are expected to come from non-allocated housing sites. Due to the geographical location and make up of the Borough, a significant proportion of its housing is expected to come forward from non- allocated sites the delivery of which is inherently more difficult to predict and plan.

39. Additionally, the housing trajectory does not take account for all of the housing demand in the Borough and projections predict over 1,000 additional households each year[10]. Therefore, it is important that the existing housing capacity is maximised by resisting the net loss of homes in order to exceed the Council's housing targets, which in my view would be sufficiently put at risk should planning permission be granted for the loss of three dwellings. Accordingly, the development conflicts with DP Policy DP2 and CS Policy CS6, due to the net loss of two or more homes. The development is at odds with the main aims and objectives of Policy 3.3 of The London Plan, and guidance contained in section 6: *'Delivering a wide choice of high quality homes'* of the NPPF. In principle, there is a strong local and national planning policy objection to the development.

40. The appellant advanced arguments as other material considerations which he considers should overcome the identified local and national planning policy objections. In this context, the gist of these arguments will be underlined, discussed and evaluated below.

41. <u>The four flats were substandard and the notice requires the restoration of flats that would not meet with current space standards and would not be affordable:</u> The London Plan sets out the minimum space standards for such developments and the Council's own requirements are set out in its residential development. However, the gist of this argument is similar to the one considered by the previous Inspector in 2006. The Inspector stated the following:

> *'The appellant maintains that the flats are substandard because they are not self contained and share a staircase. However, I am not persuaded that this factor justifies the loss of the units and the appellant concedes that it would be possible to provide a segregated access. It is clear that Policy H3* [which was similar to DP Policy DP2] *seeks to resist the unjustified loss of residential units and the explanatory text suggests that the exception relating to the amalgamation of substandard units is related to achieving residential space standards, although I accept that accommodation can be substandard for other reasons. In this respect, it seems to me that the units are satisfactory in terms of room sizes and placement and indeed, larger than many. I also consider they would remain so even if a segregated*

[9] See paragraph 2.12 of Cem Erkmen's proof of evidence.
[10] See paragraph 6.17 to CS Policy CS6.

access was installed. The fact that they are single bed units does not lessen in my mind, their contribution to the housing stock'[11].

42. I have considered all of the submissions regarding the arrangement, layout and internal configuration of the previous flats and affordability arguments. However, the evidence is that the previous flats provided a reasonable degree of self-containment and privacy. There is no information to show that the flats were marketed for a considerable time and could not be tenanted, because of access or other space deficiencies. In any event, the notice requires either the creation of three self-contained flats or the restoration of the building to four flats, to which I will return to below. In contrast, the development has resulted in the loss of housing units in this part of the Borough. Although the street is made up of a mix of single dwellings and flats, the loss of three dwellings at no. 8 is unjustified. Therefore, I attach minimal weight to these arguments.

43. The change of use from four flats to a single dwelling does not harm the character or appearance of the CA and has other planning benefits such as decrease in on-street parking and refuse storage areas: There are very little, if any, external manifestations of the development and it is common ground that the change of use preserves the character or appearance of the CA. In addition, there is likely to be a reduced demand for on-street car parking and refuse storage spaces. In my view, these considerations are not strong enough reasons to overcome local and national planning policy objections to the loss of three dwellings in this particular location. This is because the development conflicts with the main thrust of Policies that seek to minimise the unjustified loss of dwellings in a Borough that is under housing stress. To these arguments, I attach slight weight.

44. The Council are selling off their own housing stock: This was put down to other financial pressures on its budgeting and in any event, these properties remain as dwellings[12]. Little weight can be given to this argument.

45. The appellant's housing need, efficient use of the building and financial circumstances: The family is an extended single household requiring a large dwelling. Significant amount of funds have been expended in the purchase and refurbishment of the building. The claim was that it is possible for the family to remain in the building should the notice be upheld, but that would require compliance with the terms of the notice. Nevertheless, while sympathetic to the appellant's predicament, these considerations do not outweigh the harm caused by the development because of its conflict with DP Policy DP2 and CS Policy CS6.

46. 16 Arundel Gardens appeal decision: Nothing in that case alters my findings in this particular ground (a) appeal. The reason is that there are significant differences between the appeal before me and the facts in *16 Arundel Gardens*, which is not located within the Borough and where there appears to be no local planning policy resisting developments involving the net loss of two or more homes. In addition, on the basis of the limited information, it appears that *16 Arundel Gardens* is located in an area where there was a low proportion of family housing[13] and where there was a trend towards de-conversion. I attach limited weight to the appeal decision.

[11] See paragraph 2 of the appeal decision found in HP2 of the Council's bundle of evidence.
[12] Information obtained under the freedom of information provisions and submitted as the appellant's additional documents at the Inquiry.
[13] See paragraph 16 of *16 Arundel Gardens* appeal decision.

Conclusions on ground (a)

47. For all of the above reasons, I conclude that the development has a materially harmful effect upon the provision of residential accommodation in the Borough. The other considerations advanced by the appellant in this case do not outweigh the planning policy objections to the development. Therefore, the appeal on ground (a) fails.

Appeals A to E - ground (g)

48. The ground of appeal is that the period for compliance is too short. It is contended that the provision of self-contained accommodation requires fire and acoustic separation. Gas, water and electricity services need to be physically separated. The ground and first floors of the property would need to be gutted and new partitions, floors and drain runs installed. At the same time, the works would need to be undertaken to minimise disruption to the nursery and primary education of Mr Holland's grandchildren who currently reside at the property.

49. Given the personal circumstances of the appellants, a reasonable period should be allowed in order to afford sufficient time to carry out the notice's requirements and to find alternative accommodation. On the other hand, the unauthorised development should not be allowed to continue for longer than is absolutely necessary, given the impact of the development upon the provision of housing in the Borough, a legitimate planning concern in the public interest.

50. Two years is too excessive given the nature of the work required by the notice. I consider that a period of 12 months would strike the appropriate balance between these two conflicting interests. This would not place a disproportionate burden upon the appellants to result in a violation of their rights under Article 8 of the European Convention on Human Rights. The 12 month period for compliance is reasonable and will not be varied. Therefore, the appeals on ground (g) fail.

The requirements of the notice

51. Although there is no ground (f) appeal, the notice's requirements are worded in the alternative and I raised concerns as to whether or not the 2007 permission had been lawfully implemented. On behalf of the appellants, the submissions were that the 2007 permission had not been lawfully implemented, because the rear extension had been built without a staircase to one side and there was no privacy screen as required by condition 3. Effectively, the argument was that the development was carried out not in accordance with the approved plans. On the other hand, the Council's approach to this matter was that the 2007 permission had been implemented and, in any event, it contended that enforcement action would not be taken[14].

52. In my view, the development carried out is significantly different to what was approved in 2007, because the design and appearance of the extension is radically different to the approved plans. There is no staircase from the raised terrace, the balustrade is dissimilar and the fenestration details are also different. In such circumstances, I am not satisfied that the notice can require the implementation of an expired planning permission. For greater precision, I intend to vary the notice by deleting reference to the 2007 permission.

[14] This is from oral evidence given by the Council's witnesses at the Inquiry.

53. On this specific point the Council's submission was that the requirement should state the following: *'Cease the use of the building as a single dwellinghouse and restore the building to its previous condition as four flats'*. This seems sensible given that such a requirement is derived from S173 (4) (a) of the 1990 Act. The wording is similar to the second alternative requirement as first issued and the variation would not make the notice any more onerous. The appeal parties agreed that such a variation would not cause injustice. Using the powers available to me under S176 (1), I shall vary the requirements accordingly.

Overall conclusions

54. For the reasons given above, and having considered all other matters, I conclude that the appeals should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application in relation to Appeal A only.

Decision - Appeal A Ref: APP/X5210/C/12/2173656

55. It is directed that the enforcement notice is corrected by the deletion of all of the words in paragraph 3 and the substitution therefor of the following words: *'without planning permission, the change of use from four self contained flats to a single dwellinghouse'*.

56. It is directed that the enforcement notice is varied by the deletion of all of the words in paragraph 5, except for the words **'compliance due date: within 12 months from the date of the notice taking effect,'** and the substitution therefor of the following requirement: *'Cease the use of the building as a single dwellinghouse and restore the building to its previous condition as four flats'*.

57. Subject to the correction and variation, 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.

Decision - Appeal B Ref: APP/X5210/C/12/2173657, Appeal C Ref: APP/X5210/C/12/2173658, Appeal D Ref: APP/X5210/C/12/2173659 & Appeal E Ref: APP/X5210/C/12/2173660

58. It is directed that the enforcement notice is corrected by the deletion of all of the words in paragraph 3 and the substitution therefor of the following words: *'without planning permission, the change of use from four self contained flats to a single dwellinghouse'*.

59. It is directed that the enforcement notice is varied by the deletion of all of the words in paragraph 5, except for the words **'compliance due date: within 12 months from the date of the notice taking effect,'** and the substitution therefor of the following requirement: *'Cease the use of the building as a single dwellinghouse and restore the building to its previous condition as four flats'*.

60. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Ahsan U Ghafoor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Scot Bailey MRTPI, MBA
He called

Paul Smart	On behalf of the appellants
Richard Holland	Appellant
Graham Murdoch	Murdoch Associates

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas Ostrowski
He called

Hannah Parker	Senior Planner – appeals & enforcement
Katrina Christoforou	Planner Policy & Implementation team

DOCUMENTS

1 Letter of notification
2 Copy of appendix 1 to Mr Richard Holland's proof of evidence
3 Signed statement of common ground
4 Richard Holland – additional documents
5 Letter dated 2 September 2012 to The Planning Inspectorate
6 Email dated 21 September 2010
7 Email dated 6 June 2012
8 Witness statement – Allen Gillespie
9 Extract copy of residential development standards

PLANS

A Elevation & floor plans of the 2007 planning permission