

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES) RULES 2000**

John Sheehy

**PROOF OF EVIDENCE
FOR PUBLIC INQUIRY COMMENCING ON 4th of June 2019**

APPEAL SITE

1A Highgate Road London NW5 1JY

APPELLANT

IDM Land Limited

SUBJECT OF APPEAL

- Enforcement notice issued for construction of a residential development providing 13 residential units.

COUNCIL REFERENCE:

EN18/0177

PLANNING INSPECTORATE REFERENCE:

APP/X5210/C/18/3203085

PROOF OF EVIDENCE OF JOHN SHEEHY

QUALIFICATIONS

- i. I have a Bachelor of Arts Degree in History from Trinity College Dublin, Ireland and a Masters Degree in Regional and Urban Planning from University College Dublin, Ireland. I am eligible for membership of the Royal Town Planning Institute. I have worked in the Council's Planning Service since October 2005. I am a Senior Planning Officer in the Enforcement Team. I also worked in Camden's Planning Site Development Team for over 2 years and Development Management Team for 4 years.
- ii. Prior to my employment with the London Borough of Camden I worked for Slough Borough Council as a Planning Policy Officer for 6 months.
- iii. During the period in which I have worked in the Planning Enforcement Team of the London Borough of Camden I have dealt with numerous sites in Kentish Town and Highgate.

STRUCTURE OF THIS PROOF

- i. In my evidence I provide a summary of the enforcement case which is the subject of this appeal.

- ii. My evidence is divided into five sections:

In Section 1 (Site and Surroundings) I will describe the appeal site and surrounding area.

In Section 2 (Relevant Planning History) I shall provide a summary of the planning history relevant to the appeal scheme.

In Section 3 (Investigation History) I will set out details of the investigation that led to the issuing of Planning Enforcement Notice in April 2018.

In Section 4 (Planning policy and guidance) I shall highlight national, regional and local planning policies and guidance pertinent to the issues raised in my assessment.

In Section 5 (Submissions) I will explain the Council's decision to issue the Enforcement Notice with reference to the Planning Act. In this section I will also outline the Council's response to the appellant's Grounds of Appeal.

1.0 SITE AND SURROUNDINGS

- 1.1 The appeal relates to a backland site to the west of Highgate Road. A warehouse stood on this land before it was demolished in Summer 2017. The last use of this building was as a piano factory and storage premises. As a result, the authorised planning use of the site is Class B8 Storage and Distribution.
- 1.2 The building which has replaced the warehouse occupies the same footprint, covering most of the site, with a small yard area to the front. The new building seeks to match the external appearance of the warehouse building. It has a similar footprint. It is two storeys in height with elongated roof lanterns and is finished in brick with a slate roof.
- 1.3 The site is accessed via a narrow cobbled alleyway leading from Highgate Road which passes between the Bull and Gate public house and the residential terrace 1-7 Highgate Road. This terrace is made up of four properties of 3 - 4 storeys in height dating from the 1780s, all of which are Grade II listed. The Bull and Gate pub is also Grade II listed.
- 1.4 Access to the appeal site is also possible via the rear, through a yard behind the Forum music venue.
- 1.5 At the rear of the site is a deep wide railway cutting used by mainline and Overground trains to Euston and St Pancras Stations.
- 1.6 The high flank wall of the Forum music venue, the railway cutting and the rear of the Bull and Gate pub are key local features in the photographic evidence presented as part of this appeal.
- 1.7 The site is not located in a Conservation Area and the previous warehouse building was not listed.

2.0 RELEVANT PLANNING HISTORY

2.1 The planning history of this site is convoluted and so to assist the inspector I have prepared a report including schematic diagrams setting out the alterations that have been granted permission and when. This is appended at **JS1**. This report takes as a base drawings of the warehouse building dating from 2014 (**JS10**) (existing roof plan, ground floor plan, elevation and section drawings of the premises). The red lines/areas show what each application proposed to retain, the blue show what was proposed to be demolished and the green show the differences (what has changed) between each application.

2.2 **April 2015** Planning permission for demolition of existing warehouse buildings (Class B8) and redevelopment to provide 5 dwelling houses (2 x 2-bed and 3 x 3-bed) and a two storey office building (Class B1), with associated landscaping, refuse and recycling storage, and cycle parking. Application **refused**, ref. 2014/1689/P (**JS10**, not shown in JS1), reasons:

1. The proposed development by reason of the proximity of Unit 5 and its proposed roof terrace to the rear boundaries of neighbouring residential premises, would result in an unreasonable sense of enclosure, loss of light, loss of privacy and increased noise nuisance to these premises which would be detrimental to the amenities of adjoining occupiers, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden LDF Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the LB Camden LDF Development Policies.

2. The proposed development, in the absence of a legal agreement to secure car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and

monitoring the Core Strategy) of the London Borough of Camden LDF Core Strategy and policies DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the LB Camden LDF Development Policies.

3. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden LDF Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the LB Camden LDF Development Policies.

4. The proposed development, in the absence of a legal agreement -securing a design stage and post-construction sustainability review achieving at least a minimum Level 4 of the Code for Sustainable Homes would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards), CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden LDF Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) of the LB Camden LDF Development Policies.

2.3 **February 2016** GPDO Prior Approval Class P Change of use of B8 to C3- Change of use from warehouse (Class B8) to 16 x residential units (Class C3) - **refused** on insufficient evidence and lack of S106, ref. 2016/0091/P (not shown in JS1). There were 8 reasons:

1. The gross floor space of the existing building exceeds 500 square metres and therefore the proposal the fails to accord with the provisions of paragraph P.1 (d) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.

Nos. 2-8: these reasons for refusal related to the absence of the following:

- A statement on the use of the building solely for a storage/ distribution on 19th March 2014, and for 4 years before the development;
- Legal Agreement securing Car Free Development;
- Legal Agreement securing Construction Management Plan;
- Legal Agreement securing a Highways Contribution;
- Contaminated Land Assessment;
- Air Quality Assessment;
- Noise Insulation measures.

2.4 **June 2016** GPDO Prior Approval Class P Change of use of B8 to C3 - Change of use from warehouse (Class B8) to 11 self-contained residential units (Class C3) granted subject to S106, ref. 2016/2279/P (not shown in JS1).

Legal Agreement Requirements:

- Car free housing
- Construction Management Plan
- Highways contribution

2.5 **November 2016** Application to discharge details required by conditions 2 (noise assessment), 3 (sound insulation), 4 (building vibration levels), 5 (contamination assessment), 6 (contamination investigation), 8 (cycle storage) and 9 (drainage strategy) of application ref. 2016/2279/P – granted, ref. 2016/4862/P.

2.6 **November 2016** GDPO prior approval granted subject to S106 Legal Agreement for change of use from warehouse (Class B8) to 13 self-contained residential units (Class C3), ref. 2016/5336/P (**JS1** pages 3 to 6).

The legal agreement secured the following:

- Car-free housing;
- Construction Management Plan and Implementation Contribution, *discharged on 10-3-2017*;
- Highways Contribution, *discharged on 1-1-2017*; and
- Level Plans, *outstanding*.

2.7 **December 2016** Planning application for alterations to roof and elevations of building, including changes to roof profiles, new rooflights, new doors and windows in front and rear elevations, plus new paving and fencing in front entrance courtyard – granted, ref. 2016/4663/P (**JS1** pages 7 to 10)

2.8 **November 2017** Permission granted for variation of condition 4 (development in accordance with approved plans) of planning permission ref 2016/4663/P dated 20.12.16 (for Alterations to roof and elevations of warehouse building (Class B8), including changes to roof profiles, new rooflights, new doors and windows in front and rear elevations, plus new paving and fencing in front entrance courtyard), namely to allow further design alterations to roof, facades, fenestration and courtyard, ref. 2017/3428/P (**JS1** pages 11 to 14) .

- 2.9 The combined effect of these permissions is shown in **JS1** pages 15 to 18.
- 2.10 **April 2018** Following an investigation by the Council into operational development at the site, on 11 April 2018 a planning enforcement notice was issued in respect of the unlawful construction of a residential development providing 13 residential units (appended at **JS13**). The requirement of the notice was to “*completely cease the use of building for residential purposes*”. The enforcement notice only requires the use to cease and does not require the operational development to be removed. This is because the majority of the operational development benefits from permission as alterations to the warehouse building (see paragraphs 2.7 and 2.8 above). Additional works have been carried out, as set out in detail in paragraph 5.9 below. However, on the basis of its scale, appearance and location this additional operational development has resulted in limited planning harm which it would not be expedient to take enforcement action against. **JS1** pages 19 to 22 show the development that has actually taken place at the site (as of April 2019).

3.0 INVESTIGATION HISTORY

3.1 In December 2016 and November 2017 the Council granted permission for works to the warehouse building. These permissions did not involve any change of use to the building and were solely concerned with physical works. The decisions are set out at paragraphs 2.7 and 2.8 above and JS1. A history of the Council's investigation is set out below.

3.2 A report that the warehouse building was being demolished was received by Camden Planning Department on 30th of June 2017.

3.3 On that date enforcement officers visited the site. When officers arrived late in the afternoon the site was closed but officers gained access to a nearby property with views over the premises. Officers noted that:

- More than half of the rear wall of the warehouse was demolished;
- Over the central part of the building the roof was removed;
- Over the eastern and northern part of the building the roof was retained;
- At the western end the roof and lantern were partly dismantled, many of the tiles were stripped, some of the rafters were still in place;
- Some of the internal walls and piers were removed.

Photographs of this visit are appended at **JS2**.

3.4 On the 5th of July 2017 officers visited the site and noted that:

- The part of the roof over the western end of the building was completely removed.

Photographs of this visit are appended at **JS3**.

3.5 On 16th of July 2017 photographs of the site taken by a local resident were forwarded to the Council. These show:

- The roof of the warehouse building is completely removed
- All internal walls and piers of the building are removed;
- The rear wall of the building is completely removed;

- The part of the front wall that faces the rear of the Bull and Gate pub is removed at first floor level apart from three metal and brick piers. At ground level the wall is intact;
- The part of the front wall that faced onto the access courtyard is completely removed;
- The party walls to both sides have props made of steel beams which are fixed flat against the wall at ca. 2.0m H. These are supported by steel beam stanchions set into the ground at an angle. The props and stanchions continue around to the part of the front wall facing onto the Bull and Gate;
- On the western part of the site are nine pallets fully stacked with light brown bricks.

The photographs are appended at **JS4**.

3.6 On 5th of September 2017 a local resident forwarded to officers photographs of the site taken that day. These show:

- The ground level of the site has been lowered by approx. 0.75m;
- Foundations for internal walls have been laid

These photographs are appended at **JS5**.

3.7 On 3rd of October officers visited a neighbouring site and took photographs of the appeal site. These show:

- The footings of internal walls are in place on the lines formed by the foundations;
- The nine pallets of brown brick are located on the road to the rear of the site near the railway cutting.

These photographs are appended at **JS6**.

3.8 An officer visit took place on 4th of December 2017. Officers noted:

- The ground floor level of the site had been lowered and the building that was under construction was at a lower level on the site than the original warehouse building by a margin of approx. 0.75m, as shown on the 5th September photos (**JS5**);
- Internal walls made of blockwork with cavity insulation were under construction;

- In addition to the light brown brick noted on the photos of the 16th of July red brick was also being used for the construction of internal spaces.

These photographs are appended at **JS7**.

3.9 Following the completion of the building works in early 2018 the Enforcement Notice was issued on 11 April 2018. From this point on there were no report of further works at the site. There were also no reports of occupation of the building.

3.10 In preparation for this Proof officers visited the site on 11th of April 2019. During this visit the following was noted:

- The roof has been finished to a watertight standard and windows and doors have been fitted to external openings;
- The side wall of the part of the building near the rear of the Bull and Gate pub has been fitted with a tarpaulin. Other than this the building is watertight;
- Building materials are being stored in the area protected by tarpaulin;
- The front courtyard area has not been surfaced;
- Drainage pipes terminate in the front courtyard and are closed with manhole covers;
- The building is not completed internally – floors, walls and staircases have not been finished and there are no internal doors;
- The building has not been divided into separate units;
- The side walls of the building which are shared with other properties are visible in parts of the interior. These are set out in **JS1**;
- On the eastern side a new wall has been built just inside the party wall along the length of that side with the original party wall visible for a length of ca. 2.0m at the south-eastern corner;
- The lower part of the wall and the three piers facing onto the rear of the Bull and Gate are still in place. This is set out in **JS1**;
- The steel beams which formed part of the propping structure that reinforced the party walls during construction have been retained on both sides and on the wall near the rear of the Bull and Gate pub which has been part-retained. The angled stanchion beams set into the ground have been removed;
- The building is not occupied.

Photographs of this visit are appended at **JS8**.

4.0 PLANNING POLICY AND GUIDANCE

4.1 There is one ground of appeal, Ground (c) (no breach of planning control). The site owner has not appealed Ground (a) nor has the fee been paid in respect of the deemed application. As a result, the planning merits of the works cannot be considered as part of this appeal.

4.2 As the planning merits cannot be considered in this appeal, it is not necessary to provide a commentary on the planning policies. The text of the policies has been submitted with the questionnaire and the merits of the case have been considered in detail and assessed in the officer's delegated report which was submitted with the questionnaire and is appended at **JS9**. Nevertheless, the Local Plan policies that the works were assessed against in the delegated report are listed below for completeness.

- A1 Managing the Impact of Development
- A4 Noise and Vibration
- D1 Design
- D2 Heritage
- H1 Maximising Housing Supply
- H4 Maximising the Supply of Affordable Housing
- H6 Housing choice and Mix
- H7 Large and Small Homes
- C2 Community Facilities
- T1 Prioritising Walking, Cycling and Public Transport
- T2 Parking and Car Free Development
- CC1 Climate Change Mitigation
- CC2 Adapting to Climate Change
- CC3 Water and Flooding
- CC4 Air Quality
- CC5 Waste

Supplementary Planning Guidance

4.3 For completeness, the following is the list of SPGs that the works were assessed against in the delegated report:

- CPG 1 Design 2015
- CPG 2 Housing 2015
 - Draft Interim Housing CPG 2017
- CPG 3 Sustainability 2015
- CPG 6 Amenity 2011
- CPG 7 Transport 2011
- CPG 8 Planning obligations 2015

4.4 This Supplementary Planning Document was adopted following extensive public consultation.

4.5 The full text of the guidance document has been sent with the questionnaire.

Other policy documents

4.6 For completeness, the following is the list of other policy documents that were considered prior to service of the enforcement notice:

- National Planning Policy Framework (2012) – this was superseded by the NPPF adopted in February 2019
- London Plan (2016)
- Draft New London Plan (2017)

5.0 SUBMISSIONS

- 5.1 The appellant has appealed against the Enforcement Notice on the following ground (c) that there has not been a breach of planning control.
- 5.2 The enforcement notice that is the subject of this appeal was issued because what has actually been built exceeds what would constitute permitted development under Class P.
- 5.3 The appellant, however, submits that what has been built is either: in compliance with the planning permissions that have been granted or; outside of planning control (as internal works) or; alternatively that it is permitted development under Class P.
- 5.4 The questions for the decision maker to consider in the ground (c) appeal are therefore:
- a) What operational development has been granted planning permission?
 - b) What works have actually been carried out?
 - c) Are the works that have been carried out materially different from the development granted planning permission?
 - d) If yes, do they constitute operational development?
 - e) If yes, is the development that has been carried out permitted development under Class P?

What operational development has been granted planning permission?

- 5.5 JS1 pages 7 to 14 show the development that has been granted planning permission.

What works have actually been carried out?

- 5.6 The layout of the building and what was on site before the various building works took place are shown in:

a) Existing Plans, Elevations and Sections and the Design and Access Statement submitted under 2014/1689/P, **JS10**.

b) Photographs taken by officers in June 2016 which show the condition and layout of the site on that date (before the works started in June 2017), **JS11**.

- 5.7 The development that has been carried out between summer 2017 and early 2018 is shown in the photographs of the works appended at **JS2-JS8**, discussed in detail in section 3 above.

- 5.8 In my view this evidence demonstrates the following:

a) The warehouse building at the site was demolished between June and September 2017;

b) During this period the site was cleared apart from the party walls to both sides that have been retained;

c) The lower part of the wall that faces the rear of the Bull and Gate public house has been retained to a height of ca. 2.0m with piers of ca. 4.0m H;

- d) The site has been redeveloped and a new building has been constructed comprising:
- i. new external walls to the rear and front;
 - ii. new internal walls;
 - iii. a new roof;
 - iv. a new floor level 0.75m lower than the level of the warehouse building;
 - v. New window and door units inserted to external openings.

Are the works that have been carried out materially different from the development granted planning permission?

5.9 The evidence set out shows the following differences between the planning permission and the development that has actually taken place:

- a) The rear wall was indicated on the approved drawings to 2017/3428/P as “Rear elevation to be rebuilt in matching brick”. This has not been carried out as the brick is not matching;
- b) The walls fronting onto the entrance yard are shown on the approved drawings as not being altered. However, these have been demolished and new walls have been built;
- c) The walls near the Bull and Gate Pub at first floor level is shown on the approved drawings as not being altered. However, this has been demolished and a new area of wall has been built;

- d) The front elevation of the building has been finished with yellow brick. This differs from the original brown brick near the Bull and Gate Pub and the original white-painted brick to the walls of the entrance courtyard;
- e) The floor level of the building has been lowered by 0.75m compared to the level of the warehouse building;
- f) In addition to being different of a colour and appearance none of the external finishes of the property have the patina of age of the previous warehouse building;
- g) The courtyard entrance has a slate roof rather than the glazed canopy/ roof that was approved.

5.10 In my view, these differences are material and cannot be said to be *de minimis*.

Do the works carried out constitute operational development?

5.11 Section 55 (1) of the Town and Country Planning Act 1990 defines development as follows:

The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Section 55 (1A) clarifies that building operations include the following:

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on

business as a builder.

- 5.12 Section (2) (a) (ii) states that works of repair and maintenance and any building works “that do not materially affect the external appearance of the building” do not comprise development requiring planning permission;
- 5.13 In my view the works set out above, fall within the definition of development set out in Section 55 (1) in that:
- a) The construction of new front and rear walls in yellow brick results in the building having a different appearance to the previous warehouse. These alterations materially affect the external appearance of the building;
 - b) The works to the front and rear walls would normally be undertaken by a person carrying on business as a builder;
 - c) The works to the front and rear walls comprise rebuilding;
 - d) The lowering of the level of the floor by ca. 0.75m is an engineering operation.
- 5.14 Properties in the B8 use class do not have any permitted development rights for operational development. As a result, any works to a property in this use class falling within S55 (1) need planning permission, provided that the works are material.
- 5.15 The evidence set out in section 3 and the analysis above demonstrate that the works are material and that they constitute development under four categories of S55, namely as works that materially affect the external appearance of the building; as operations normally undertaken by a person carrying on business as a builder; as rebuilding; and as an engineering operation.
- 5.16 As a matter of fact and law the works that have been carried out at the site significantly and materially exceed what was granted permission. Taken as a

whole, the combined impact of the works that were approved and those that were carried out without permission have resulted in the demolition of the original warehouse building and the construction of a new building in its place. The works carried out materially exceed the permission granted.

Is the development that has been carried out permitted development under Class P?

5.17 Class P of Part 3 to Schedule 2 of the GPDO states:

Class P – storage or distribution centre to dwellinghouses

Permitted development

P. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.

Development not permitted

P.1 Development is not permitted by Class P if—

(a) the building was not used solely for a storage or distribution centre use on 19th March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

(b) the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins;

(c) the use of the building falling within Class C3 (dwellinghouses) of that Schedule was begun after 15th April 2018;

(d) the gross floor space of the existing building exceeds 500 square metres;

(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

- (f)less than 1 year before the date the development begins—*
- (i)an agricultural tenancy over the site has been terminated, and*
- (ii)the termination was for the purpose of carrying out development under this Class,*
- unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;*
- (g)the building is within—*
- (i)an area of outstanding natural beauty;*
- (ii)an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;*
- (iii)the Broads; or*
- (iv)a National Park;*
- (v)a World Heritage Site;*
- (h)the site is, or forms part of—*
- (i)a site of special scientific interest;*
- (ii)a safety hazard area;*
- (iii)a military explosives storage area;*
- (i)the building is a listed building or is within the curtilage of a listed building; or*
- (j)the site is, or contains, a scheduled monument.*

5.18 Part P.1 (a) refers to ‘the building’, meaning the existing building, i.e. the warehouse building which has been demolished. As set out above, in my view the works carried out amount to demolition of the warehouse which benefitted from permitted development rights under Class P and construction of a new building. As a result the building currently on site does not meet conditions (a) & (b) attached to Class P requiring the building to be in prior use as a distribution centre.

5.19 In the recent case of *Oates v SSCLG* [2018] EWCA Civ 2229 the court of Appeal clarified the approach to be taken in cases where it is alleged that demolition and rebuilding has taken place; In paragraph 18 of that judgment, the Court endorsed

the findings of the Inspector who stated in her report that the “*New buildings cannot benefit for any consent for a change of use because that consent applies to buildings which had existed before the operational development took place but which no longer exist. The prior approval is therefore not capable of implementation*”.

5.20 As to the test to be applied, paragraph 37 of the judgment of Lindblom LJ states:

“[37] Put simply, the principle here is unsurprising: that a building constructed partly of new materials and partly of usable elements of previous structures on the site, after other elements of those previous structures have been removed through demolition, may in fact be a “new” building; or it may not. The facts and circumstances of every case will be different. But, in principle, the retention of some of the fabric of an original building or buildings within the building that has been, or is being erected, does not preclude a finding by the decision-maker, as a matter of fact and degree, that the resulting building is, physically, a “new” building, and that the original building has ceased to exist. This, in effect, is what the inspector found here. In doing so she made no error of law. She was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, “new buildings”. That suggestion is untenable”.

5.21 The provisions of the GPDO change of use in part P are identical to those part J in that the change of use does not allow for operational development.

5.22 A change of use is normally considered to have taken place when occupation has occurred. Because of the difficulty of taking effective enforcement action, the Notice was issued before residential occupation of the appeal site could take place. However, if occupation had proceeded there would be no actual change of use of any building. Rather what would take place would be demolition of one building and the construction of another, to be used in a different use class. This is the same situation as in the Oates case which the Court found was inconsistent with the criteria for a GPDO change of use.

- 5.23 As noted in **JS1** a small amount of building fabric from the original warehouse has been retained. This is in the form of shared walls on both sides and at the rear of the terrace 1-7 Highgate Road. If changes to these party walls were proposed a party wall agreement would need to be negotiated with the owners of all of the adjoining properties. The Council is not aware that any party wall agreements are in place between the appeal site and neighbouring properties. Alterations to the party wall with 1-7 Highgate Road would, in addition, require listed building consent. The wall near the Bull and Gate pub, which has been part-retained and part-demolished, is not a party wall but it has important structural piers that have been retained.
- 5.24 During the site visit in April 2019 officers observed that the steel beams which were part of the reinforcements put in place for the construction phase were, in fact, permanent beams which support the roof structure. This is set out in paragraph 3.10 above. The angled stanchions that were placed under the steel beams during the construction phase were removed. In their absence internal walls and other steelworks carry structural weight.
- 5.25 In terms of quantity, the retained elements form a very small part of the overall building that has been constructed on site. The retention of some of the outer walls does not indicate that this is the same building as the one which previously stood at the site. Rather it would appear that the external party walls were retained by default, as the most expedient solution because of the constraints associated with their demolition or alteration. While some of the original walls have been retained they have a limited structural role as internal walls and steelwork carry structural weight.
- 5.26 With regard to the material significance of the party walls in forming part of the works at the site, it is important to note that party walls and other pre-existing structures are often used as part of extensions to existing buildings. However, the use of these features does not mean that such an extension is not a new element. The works that have been carried out at the appeal site have resulted in the demolition of the original building and its replacement with a new building.

- 5.27 Because of the scale of the works they go far beyond works of repair and maintenance under Section 55 (1A) (2) (a) (ii) of the Town and Country Planning Act.
- 5.28 The operational development that has been carried out at the site brings the change of use outside of the scope of the permitted development rights set out in Part P of the GPDO. The change of use from B8 to C3 cannot be carried out under these rights. Instead, planning permission is needed for this development.
- 5.29 Therefore, based on the evidence and analysis above a GPDO Class P change of use from Class B8 to Class C3 cannot be carried out at the site for the reasons set out in paragraphs 5.22-5.32 above. As a result, the Inspector is respectfully requested to find that the appeal on Ground C is not established.

Response to the appellant's Ground C comments

- 5.30 The evidence presented by the owner as part of the Ground C appeal is in the form of a Grounds of Appeal Statement prepared by Lara Carneiro of IDM Land Limited. This covers the planning history of the site and discusses the operational development that has taken place (paras 24 – 30). There is a section on whether permitted development allows for physical development (paras. 41 – 42)
- 5.31 Officer comments are offered on the sections dealing with operational development and whether permitted development allows for physical alterations.
- 5.32 Paragraph 25: *In all material respects the removal and replacement of the rear wall (including installation of Crittal style windows with larger apertures) was carried out in accordance with drawings 075-P2.*
- 5.33 Officer Response: the rear elevation has been demolished and rebuilt in a yellow brick construction. Drawing 075-P2 states “Rear elevation to be rebuilt in matching

brick". This has not been carried out as the brick is not matching. This change of material requires planning permission, however permission has not been granted.

5.34 Paragraph 28: *The installation of the floor slab is an operation which affects only the interior of the building. In the alternative the installation of the floor slab does not materially affect the external appearance of the building. As provided by Section 55(2)(a)(i) TCPA 1990 those works are not to be taken to involve development of the land.*

5.35 Officer Response: a new floor level has been created by excavation of the site by approx. 0.75m. This is an engineering operation under Section 55(2)(a)(i) TCPA 1990 and, as a result, requires permission.

5.36 Paragraph: *All the operational development was authorised by the planning permission granted by the Council.*

5.37 Officer response: the operational development was granted permission as alterations to the warehouse, not in the context of a GPDO Part P Change of Use. The appellant was advised on this in the decision for application 2017/3428/P dated November 2017 where informative 4 states: *You are advised that this permission only relates to external changes to the existing warehouse building shown on the plans hereby approved and does not imply any approval for a future change of use of this building to flats.*

5.38 Paragraphs 24-30 deal with each of the building elements in turn and argue that each one has been permitted individually. However the combined effect of the works that have been carried out is the demolition of the building and its replacement with a new building. The original Class B8 warehouse was the one the Part P GPDO rights related to. As it no longer exists a change of use cannot be carried out at the site under Part P of the GPDO.

- 5.39 Paragraph 41: *Some permitted development rights for change of use allow for limited physical works to carry out the change. Full details can be found in Part 3 of Schedule 2 to the General Permitted Development Order.*
- 5.40 Officer response: it is not clear which paragraph within this section the appellant is referring to. However, the operational development that has taken place at this site essentially comprises total demolition and rebuilding and cannot be characterised as “limited physical works”.
- 5.41 Paragraph 43: *the operational development that has been carried out at the Appeal Site... was authorised by the planning permission granted by the Council. Insofar as the allegation relates to a material change of use from warehouse (class B8) to residential (class C3) that change of use was authorised by the GPDO.*
- 5.42 Officer response: as noted in paragraph 5.40 above the original Class B8 warehouse was the building that the Part P GPDO rights related to. As the original warehouse no longer exists the change of use from Class B8 to Class C3 cannot be carried out at the site under the Part P of the general permitted development order.

6.0 CONCLUSION

- 6.1 For the reasons set out above, the Inspector is respectfully invited to dismiss the Ground C appeal.

APPENDICES

JS1	Diagrams of approved and implemented works
JS2	30 th June 2017 site photos
JS3	5 th July 2017 site photos
JS4	16 th July 2017 local resident photos
JS5	5 th Sept 2017 local resident photos
JS6	3 rd Oct 2017 site photos
JS7	4 th Dec 2017 site photos
JS8	11 th April 2019 site photos
JS9	Enforcement Delegated Report for EN18/0177
JS10	Existing plans, sections, D&A from 2014/1689/P
JS11	June 2016 site photos
JS12	<i>Graham Oates v Secretary of State for Communities and Local Government v Canterbury City Council</i> [2018] EWCA Civ 2229
JS13	Enforcement notice dated 11 April 2018
JS14	Existing and proposed drawings and decision notice for 2016/4663/P
JS15	Existing and proposed drawings and decision notice for 2017/3428/P