
Appeal Decision

Inquiry opened on 13 January 2015

Site visit made on 14 January 2015

by Martin Joyce DipTP MRTPI

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

Decision date: 29 January 2015

Appeal Ref: APP/T5150/C/14/2212722
80 Wood Lane, London NW9 7PA

- 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 M Monagle against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/13/1187.
- The notice was issued on 28 December 2013.
- The breach of planning control as alleged in the notice is the unauthorised erection of a dwelling in the rear garden of the premises.
- The requirements of the notice are to demolish the dwelling in the rear garden, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.
- The Inquiry sat for two days on 13 and 14 January 2015.

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

Application for costs

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

Procedural Matters

2. All oral evidence to the Inquiry was given on oath.
3. During the course of the Inquiry the appeal on ground (g) was withdrawn by the appellant.
4. The Inquiry held on the above dates followed an abortive Hearing which I opened on 22 July 2014. At that Hearing I reached the view that the matters in dispute required evidence that needed to be tested by cross-examination under oath. This could not be done at a Hearing thus an Inquiry was required, the need for which was agreed by both main parties.

Background

5. The appeal property comprises a single-storey building to the rear of No 80 Wood Lane, a semi-detached bungalow that has been extended through single-storey rear extensions and a dormer in the roof space. The appeal structure occupies a position roughly within the extended footprint of a former single-storey garage, although the question of whether it is a new building, or a conversion of the original garage, is in dispute and will be considered below in relation to the appeal on ground (b).
6. The building is currently used, in the main, as living accommodation occupied by the adult son of the occupier of the main dwelling. Internally there is a range of kitchen units and equipment, including an electric oven, gas hob, sink, washing machine and fridge, as well as a single bed and a bed-settee. A separate shower room, with toilet and wash-hand basin has also been constructed towards the rear of the structure. Heating and hot water is provided by a gas combi-boiler and associated radiator and towel rail, and there are various electric power points, two ceiling lights in the main room, and an integral television aerial point. The accommodation is accessed via a single door in the western elevation; the original front up-and-above garage door exists but is not operational, having been fixed shut. It is backed by internal plastered stud partitioning, to which some of the kitchen units have been affixed. The southern end of the building comprises a small garden store, accessed through a single door in the western elevation.
7. The building measures, externally, about 8.8m in length and 2.8m in width, with a height of about 2.5m¹. The store occupies about 1.3m of this length. The front elevation contains the original garage door set between two brick piers. The eastern and southern walls appear to be brick, albeit that the eastern wall of the small store may simply be that of the adjoining garage to No 82. The western wall is rendered externally and painted white. Internally, the room that has been created has a height of between 2.21m and 2.23m. It has a timber laminate floor and is lit by a uPVC casement window. A small obscure-glazed window serves the shower room and toilet. The whole building is covered with a felt roof, slopping gently from east to west, with guttering along the western fascia.
8. The appeal building has no curtilage. There is a small, largely lawned, garden area to the rear of the main dwelling and a patio area leading to a stone pathway along the western edge of the smaller building, which is shared by the occupants of both properties. A wall of about 2.1m in height separates the garden and patio from a driveway, shared with No 82, that is gated to prevent vehicular access. A pedestrian gate is set into the wall close to the front of the appeal building.
9. The appellant completed the purchase of No 80 Wood Lane in March 2013 and then embarked upon a series of alterations to the main dwelling, including the provision of a dormer loft extension and a single-storey infill rear extension. Applications for a Lawful Development Certificate for the loft extension, and planning permission for the infill extension, were submitted, the latter retrospectively. Those applications were granted on 20 August and 29 November 2013 respectively. Works were also undertaken during this period

¹ These measurements were taken by the main parties at the site inspection following the close of the Inquiry.

on the garage building, with a site inspection on 27 November 2013 revealing an apparent residential use.

THE APPEAL ON GROUND (b)

10. The appeal on ground (b) relies upon the essential contention that there has been no erection of a dwelling, or indeed of any building, rather that what has occurred on the site has been the conversion of an existing garage into ancillary residential accommodation used in conjunction with the occupation of the main dwellinghouse. As with all appeals on legal grounds, including ground (b), the burden of proof lies with the appellant. He has to show, on the balance of probabilities, that the matters alleged in the notice have not occurred as a matter of fact². In this context, I am also mindful that it was found, in *Gabbitas*³, that the evidence of an appellant should not be rejected simply because it is not corroborated, provided it is sufficiently precise and unambiguous.
11. The appellant contends that, at the date at which he purchased the appeal property, in March 2013, the former garage building had already been partially converted, in that it had been plastered internally, and appeared to be in some form of residential use. There was a carpet on the floor, an electricity supply, and hot and cold water serving a vanity sink unit attached to the wall behind the front door of the garage, which was fixed shut. An old dressing table was within the garage. To the rear of the original building, an area had been partially enclosed, through the provision of a roof supported by the side wall of the neighbouring garage and a timber upright. It was used for domestic and garden storage purposes.
12. During 2013, the building was refurbished to provide the living and sleeping accommodation now occupied by the appellant's brother. No plans were drawn up, neither was any formal approval sought under the Building Regulations. The work undertaken included the removal of the old asbestos roof from the structure, and its replacement with plywood boards, insulation and felting. This included extension to cover the store at the southern end, which was fully enclosed. New drainage was installed, internally and externally, to serve the kitchen and the shower room, and a gas supply provided. All plasterboard was removed from the inside walls, to allow insulation and new plasterboard to be fitted. A window from the end wall of the original garage was moved to the side wall, facing the garden, and a new opaque-glazed window fitted to serve the shower room. A new pathway was laid externally along the side of the garage linking to a patio area at the rear of the main dwelling.
13. It is submitted that it is arguable that any of this work, in individual terms, constitutes development, as defined in Section 55 of the Town and Country Planning Act 1990 (TCPA), and even if it is, it would be permitted development under the provisions of the General Permitted Development Order 1995 (as amended) (GPDO). What is clear, it is contended, is that there has been no erection of a dwelling, as alleged in the notice, and the ground (b) appeal should therefore succeed.
14. The Council submitted that their case had always been that the unauthorised development began before the appellant's purchase of the property, albeit that

² *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

³ *Gabbitas v Secretary of State for the Environment & Newham Borough Council* [1985] JPL 630.

much of the previous work was undone and not much rests on this fact. Nevertheless, the fact that a brick-built garage under a corrugated sheet roof existed on the site for decades before the enforcement notice was issued is relevant as that building needs to be compared to that which now exists. In this context, the building that is the subject of the notice is substantially larger; it has gas, electricity, drainage, insulated walls and a new roof. It contains a kitchen, bedroom, bathroom, and has all the facilities necessary for day-to-day living. To the ordinary person in the street, this would be considered to be a different building from that which originally existed. Indeed, the only parts of the original building now visible are the brick pillars either side of the garage door and the external wall on the boundary with No 82. Furthermore, the works undertaken include the removal of the rear window and its resurrection in a different place, and a different form of front door, as the up-and-over door mechanism has been disabled so that it no longer functions. It therefore stretches the bounds of probability to say it is the same.

15. There is also a lack of documentary support for the appellant's case. Despite employing those who carried out the work, and stating that he had relevant documents which support such work, nothing has been produced other than assertion. This is neither precise nor unambiguous, especially in respect of the roof, gas installation and drainage work, where the explanation given is less than credible. A decision on this ground of appeal has to deal with matters of fact and degree, as found in *Foy*⁴, and determine whether the works carried out were properly works of repair, alteration or conversion, or whether they produced something substantially different from that which originally existed. The Council's case is that this is what has occurred, and that the appellant's evidence is neither precise nor unambiguous, neither is it corroborated by independent evidence.
16. In considering the above submissions, it is clear to me that the appeal on ground (b) turns on the question of whether, as a matter of fact and degree, a new building, used for residential purposes as a dwelling, has been created at the appeal site, or whether the works that have taken place are those of repair, alteration and conversion. The clear oral and written testimony of the appellant, and his supporting witnesses, is that he has not built a new structure, rather that an existing garage, partially converted by the time of his purchase, has been adapted and refurbished to provide living accommodation for a family member. The Council, however, consider that the alterations that have taken place are such that they amount to the construction of a new building, and that, as this contains primary living accommodation, it is a dwelling.
17. The appellant has produced only a limited amount of documentation, and some photographs, in support of his case. This comprises the sales particulars of No 80 Wood Lane, including photographs of the rear garden showing part of the garage building; further photographs taken in March 2013 by the appellant's architect (Mr Ivie), who was preparing drawings for works to the main dwelling; two photographs taken in April 2013 during construction of the dormer extension; a receipt for the collection of hazardous waste (asbestos) dated 24 June 2013; and further photographs taken after completion of the works. The Council also provide photographs of the appeal building, both

⁴ *Mavis Ann Foy v Secretary of State for the Environment* [1997] EWHC Admin 332, (Document 4 produced by the Council).

internal and external, taken on the site in November 2013 and February 2014, as well as a series of aerial photographs showing the appeal property in May 2010, May 2012 and April 2013.

18. From the photographs and documents I have seen, and from the evidence heard and tested at the Inquiry, it seems to me that, on the balance of probabilities, a number of alterations to the original garage building have taken place, mostly since purchase of the property by the appellant. I shall therefore consider what alterations have occurred and then determine whether, as a whole, they have resulted in the construction of a new building.
19. Firstly, and prior to his purchase, the aerial photographs produced by the Council indicate that a section of roofing was added to the rear of the building at some time between May 2010 and May 2012. This is the storage area shown in the photographs of Mr Ivie taken in March 2013. He did not provide a measurement for the store, but stated that the original garage was 5.5m long. I measured the overall building that now exists at 8.78m, thus this indicates that the roofed storage area would have been about 3.3m in length, a fact that can be roughly confirmed by measuring the section of new roof shown in the May 2012 aerial photograph and comparing it with the section of original roof. The provision of a covered, albeit open-sided, garden store of this size and nature is operational development, and there can be little doubt that it took place within the four years preceding the date of issue of the notice. This extension increased the footprint of the overall structure by about 38%.
20. Secondly, the original garage building has subsequently been extended so as to completely enclose area occupied by the open-sided store, including the provision of a new overall felt roof, with a shallow pitch towards the western elevation. That elevation now contains, in addition to the single door at its northern end, two windows and a further door to an internal store. One of the windows appears to have been relocated from the end wall of the former structure, as a very similar window is shown in Mr Ivie's photographs and the appellant's testimony on this point was not challenged by the Council. The provision of the windows and door would have needed lintels above the openings. The roof includes layers of plywood and insulation. Additionally, it is clear from my measurements, that the original southern end wall of the garage has been removed, and that a new solid wall has been built in its place, as the internal length of the living accommodation, including the shower room, has been extended by about 1.6m.
21. Thirdly, various internal works have been undertaken, including the provision of a new floor, plastered and insulated walls and ceiling, electrical wiring, including five double sockets and ceiling lights, a gas supply, for the hob and boiler, and drainage to serve the kitchen and bathroom. Additionally, the main front up-and-over door of the garage has been fixed shut, and is currently held in place by quadrant moulding, as well as being backed by a stud partition and plastered wall which supports many of the kitchen units.
22. The crucial question, from the above summary of works, is whether or not they amount to such alteration as to amount to the erection of a new building. In this context, therefore, it is necessary to consider the totality of the alterations that have taken place, in comparison to the original garage building.

23. That original building was a basic brick-built structure, with a corrugated asbestos roof, measuring about 1.8m in width and 5.5m in length⁵, with a height of about 2.3m. There is no evidence before me that, prior to May 2012, the structure was used for any purpose other than as a domestic garage, neither have I any evidence before me that any alterations had been made to that building, including any internal work, installation of plumbing and electricity, or even the provision of a side door and rear window. The first indication of any change to the structure is that shown in the aerial photograph of May 2012, when a roof over the area to the rear of the garage can be seen.
24. The sales particulars of early 2013⁶ do not make any reference to either the condition of the garage or its use, other than that there is a garage, with an up-and-over door, measuring 5.5m x 1.8m. The latter measurement is not the same as that made at my site inspection, where I was given an external width of 2.78m, including the brick pillars, by the main parties. I note, however, that, the existing floor plan at Appendix E to Mr Ivie's proof of evidence shows the front of the original garage, at a scale of 1:50. This measures about 1.8m, which suggests that the estate agent sales' particulars are correct, especially as Mr Ivie also confirmed the length of 5.5m. If that is the case, and I have no reason to conclude otherwise, then it is possible that the appeal building has been widened. Moreover, such widening could only have occurred through the provision of a new western wall, as the eastern wall is likely to have remained in situ, and could not, in any event, have been significantly repositioned because of its proximity to the neighbouring garage.
25. At this point I need to say that I cannot be absolutely certain as to the accuracy of the 2.78m width measurement I was given at the site inspection, as an increase of width of 1m over the original garage seems rather unlikely, and should have been visible in a comparison of the aerial photographs. However, I was also given an internal width measurement of 2.21m which, when added to the thickness of the plastered and insulated walls, would certainly give a much greater overall external width than 1.8m. These dimensions thereby lend appreciable support to the Council's suggestion that the western wall was probably rebuilt to a substantial extent.
26. The appeal building as it stands has a length of about 8.8m, which is 3.3m longer than that shown in the sales particulars of 2013. It is, as discussed above, wider than that indicated in 2013 and, whilst of roughly the same overall height, has been provided with a new roof of much more substantial construction than the lightweight asbestos roof that was removed. The appellant stated that the new roof comprised two layers of plywood, with insulation between them, and three layers of felt. The new roof also extends over the former open-sided storage area. The new roof may or may not have used some of the original roof joists, although I note that the appellant, in his oral evidence on oath, stated that they were so used. However, in this context, he also said that joists were inserted into the new rear section of the roof, and that the rear wall was built up using "9 inch brickwork". This implies significant new building work. Moreover, given the fact that the appellant had an opportunity to provide invoices or receipts for such materials, and other materials and equipment (such as bathroom and kitchen fitting and

⁵ These measurements are given in the sales particulars (Appendix 1 to Mr M Monagle's proof of evidence) and confirmed in Mr Ivie's proof of evidence and drawings.

⁶ Appendix 1 to the proof of evidence of Mr M O Monagle. The particulars are undated, but reference is made to an opportunity to book an appointment on Saturday 23 February, which confirms 2013 as the year.

- fitments) but failed to do so, this must be weighed against him in consideration of whether or not he has met the necessary burden of proof.
27. In this context, it is pertinent, at this point, to draw attention to the fact that, at the close of the aborted Hearing in July 2014, I specifically stated to the parties that, in my view, evidence would be required as to the construction and use of the appeal building when it was purchased and as to the works undertaken to make it into the structure that is was at the date of issue of the enforcement notice, and that this may need photographs, plans, drawings and expert architectural or building control evidence. The appellant could have been in no doubt, therefore, as to the need to support his case with appropriate evidence, including documentary evidence. Accurate drawings of the structure showing it before and after the alterations would have been of great assistance in considering matters such as the apparent increased width of the building. However, they were not supplied.
28. The appeal building differs from the original garage not only in the dimensions referred to above, but also in terms of appearance. Whilst the front façade may appear much the same, and the eastern wall also unaltered, albeit largely hidden from any view, the remainder of the building now apparent has several visual differences. There are two new windows on the side elevation and a door to the enclosed storage area. The former rear wall of the garage has, without question, been removed and a new solid wall built, probably of brick, so as to lengthen that dimension of the internal living space to about 7.1m.
29. Taking all of the above matters together, I conclude that the original garage has clearly been altered externally and internally to a significant degree. It has been lengthened by about 60%, from approximately 5.5m to about 8.8m, and has been provided with a completely new roof, additional windows and at least one new door in the side elevation facing the garden. Inside, new walls, floor and ceiling have been fitted, together with a range of equipment and fixtures, including gas, electricity and plumbing to provide a kitchen, separate shower room, living and sleeping accommodation providing all that is necessary for day-to-day independent living.
30. I conclude that, on the balance of probabilities, all that remains of the original garage structure is the eastern wall, the front façade, an indeterminate length of the western wall, albeit that it is possible that the whole of that wall has been rebuilt and, possibly, some roof joists limited to the front two-thirds of the resultant structure. As a matter of fact and degree, I consider that these alterations are so substantial as to amount to the construction of a new building. Moreover, as the building has been constructed so as to provide all of the facilities required for day-to-day living, the operational development undertaken has been the erection of a new dwelling.
31. The appellant has not provided sufficient and necessary evidence including documentation, plans, photographs and expert testimony to show, on the balance of probabilities, that his version of events occurred as a matter of fact, despite the guidance given to him and his advisers at the abortive Hearing into the appeal. Indeed, I find it surprising that no plans of the appeal property have been drawn up, neither have photographs of the work in progress on the building been provided, especially as it seems to me that it was the practice of the appellant to take such photographs of his work. This suggests that any photographs taken may well have shown the full extent of the rebuilding work

that I consider is likely to have taken place, but that they were withheld because they would not support the appeal made on this ground.

32. I accept that the Council has little evidence of its own, but that which it has supplied, in the form of aerial and other photographs, supports their case that a new building has been erected. Having regard to the judgement in *Gabbitas* I am unable to find that the appellant's evidence is sufficiently precise and unambiguous for it to be accepted without question. I find that the matters alleged in the notice have occurred, as a matter of fact and degree and on the balance of probabilities, thus the appeal on ground (f) fails.

THE APPEAL ON GROUND (c)

33. The appeal on ground (c) is also based upon the contention that there has been no erection of a new dwelling, or even a building, rather the conversion of an existing building into a "granny annex", which is permissible having regard to relevant case law, particularly *Gravesham*⁷. However, I have found that the erection of a dwelling has occurred as a matter of fact, therefore it is necessary to consider whether what has been built requires planning permission and, if so, whether this has been granted.
34. Section 55 of the TCPA concerns the meaning of development and new development. Section 55(1) states that development includes building operations, and Section 55(1A) confirms that such operations include rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. Section 55(2) then sets out a number of operations or uses of land that shall not be taken to involve development, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, and (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such. As a matter of fact and degree, however, I consider that the works that have been undertaken, as discussed in relation to the appeal on ground (b), fall outside any of those exceptions set out in Section 55(2)(a), as they are so substantial that they amount to a rebuilding of the original garage structure and thus operational development as defined in Section 55(1A). They are not within Section 55(2)(d) as the development does not involve a change of use of an existing building.
35. It is necessary, therefore, to consider whether the construction of a building for use as a "granny annex" would be "permitted development" under the provisions of Part 1 of Schedule 2 to the GPDO, and, in particular Class E, which relates to the provision with the curtilage of a dwellinghouse of, *inter alia*, any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
36. In this context, the appellant relies upon a number of matters which, it is contended, show that the habitation of the building is ancillary or incidental to the enjoyment of the main dwellinghouse, albeit that this is a matter of fact and degree. In this case, the building forms part of the same planning unit, as it shares the same access, parking area and garden, notwithstanding that it may be considered to have independent facilities. It is sited in close proximity

⁷ *Gravesham Borough Council v Secretary of State for the Environment* [1982] 47 P&CR 142.

to the rear garden and main premises and there is no physical segregation between the two buildings, rather there is a path linking them and the relationship between the two makes it appear far more as an integral part of the residential property than as a separate dwellinghouse. Services and private garden space are entirely shared, and there was little challenge to the occupier's account of the shared nature of his living arrangements. There is no tenancy agreement, no separate metering of utilities or postal address or television licence. Cumulatively, all of these matters establish, on the balance of probabilities, that the building is used for living accommodation ancillary or incidental to the main premises at No 80 Wood Lane as the main premises and the appeal building have a single main purpose which is the provision of residential accommodation to members of the same family.

37. The appellant also submits that any apparent increase in the size of the building and/or the appearance of the building is attributable solely to the replacement of the asbestos roof and the extension of the pre-existing flat roof over the pre-existing timber-roofed store, and the enclosure of a small part of that store so as to provide for continuing use as a store and a toilet. This addition does not conflict with any of the size or locational requirements set out in Class E.1 of the GPDO, thus they would be lawful under Class E rights. This also provides a fall-back position in respect of the appeal on ground (f) as the portion of the building being used for storage is clearly ancillary development.
38. The Council, however, contend that the building has not been provided, improved or altered for incidental purposes, rather the work has been done to create sleeping, washing, cooking and recreational facilities which amount to primary living accommodation. This does not fall within the terms of Class E thus it is not permitted development and planning permission is required.
39. At this point, I note that the closing submissions made on behalf of the appellant related, in the main, to the *use* of the building, and whether a material change of use of a converted garage had taken place. I have concluded that new operational development, rather a material change of use, has occurred on the site. I shall, nevertheless, consider the arguments put forward in the context of new operational development under Class E, as it is clearly the appellant's case that the building was constructed to provide ancillary residential accommodation for a member of the household.
40. The unauthorised development before me is the erection of a new dwelling and it is clear from both the evidence presented to the Inquiry and my inspection of the site, as outlined above, that that is what has been created in the place of the original garage at the appeal property. Indeed the appellant gave clear oral evidence that it was the intention of him and his family to construct a separate dwelling for his brother to occupy, notwithstanding that a letter to the Council, dated 31 December 2013⁸, had stated that the space would be used as a small office/games room or gym. That letter, sent after the issue of the notice, confirmed that a small kitchenette and toilet had also been installed, and photographs taken internally were attached. The date at which those photographs were taken is unclear, but they seem to me to pre-date those taken by the Council on 27 November 2013, as they show little evidence of personal belongings within the living area that was created.

⁸ Appendix 3 to Mr Davies' proof of evidence.

41. The appeal building contains all of the facilities needed for day-to-day living and I am satisfied from the evidence given at the Inquiry that it was clearly intended as a dwelling for the younger brother of the appellant, Mr Anthony Monagle. The latter stated in answers to questioning that he needed accommodation having been in need of somewhere to live after leaving his girlfriend's flat in Fulham in July 2013. He stated that he did not wish to live in the same house as his father, presumably to maintain his independence, thus the use of the appeal building for such purposes clearly suited the needs of both.
42. I accept that there is a degree of overlap between the current living arrangements of both father and son, with the latter stating that he prepares most evening meals and spends time watching television and relaxing with his father in the evenings. However, this does not mean that the appeal building is not occupied as primary residential accommodation, and other meals are likely to be taken there. Above all, however, the appeal property was and is used for sleeping, cooking, washing and laundry purposes which are not, in total, ancillary or incidental to the enjoyment of the main dwellinghouse. The principles established in *Gravesham*, and other cases and appeal decisions drawn to my attention, do not apply here, because the building was constructed for this specific purpose, and there is no evidence that it was used for other purposes before any change of use may have occurred. Construction of a building for primary residential purposes does not fall within the realms of development permitted by Class E, thus planning permission, which has not been sought or granted, is required.
43. I consider that the initial rear extension to the original garage, through the addition of a roof covering of felt apparently supported on the wall of the adjoining garage and a single timber upright, and used for general storage purposes in association with the dwelling, was likely to have been permitted development under Class E of Part 1 of Schedule 2 to the GPDO. It does not breach any of the size requirements, or exclusions set out in Class E.1, neither do the Council allege otherwise. The subsequent alterations, however, have resulted in a completely new building, and the storage element is now a part of that building which cannot be segregated from it. It does not, therefore, constitute a fallback position as operational development cannot be disaggregated in this way in an attempt to show that some elements might be lawful; the building needs to be considered as a whole.
44. Having regard to all of the above considerations, I conclude that, as a matter of fact and degree, and on the balance of probabilities, the development that has occurred has been the erection of a new dwelling, for which planning permission is required. Class E of Part 2 of Schedule 1 to the GPDO does not permit such development as it is not ancillary or incidental to the enjoyment of the main dwellinghouse. The appeal on ground (c) therefore fails.

THE APPEAL ON GROUND (f)

45. The appeal on ground (f) is made on the basis that the required demolition of the appeal building is excessive and goes beyond that which is necessary to remedy the breach of planning control. There is no doubt, on the balance of probabilities, that the building, in substantially the same form, has been on site for a considerable number of years, thus demolition goes beyond that required to return the building to its previously lawful situation. Lesser steps, such as

the removal of the facilities for day-to-day living, would extinguish any alleged use of the building as a separate unit of accommodation, and the toilet could be removed so as to return that portion of the building to its use for storage purposes.

46. The Council, however, point out that the notice has been issued in pursuit of Section 173(4)(a) of the TCPA, thus it is aimed at remedying the alleged breach of planning control, which is the erection of a dwelling. Operational development carried out without planning permission has, therefore, to be undone, and demolition and removal is the only alternative available.
47. The notice is aimed at unauthorised operational development and the requirements make specific reference to Section 173(4)(A) (*sic*) of the TCPA. This provision is that one of the purposes of an enforcement notice is "remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place". In this case the notice is clearly aimed at the latter purpose of restoration to its former condition but that is not possible as the original garage has been removed or rebuilt to such an extent that a new building has been erected in its place. As that new building does not have planning permission the only reasonable requirement is its complete demolition. Use for a different purpose than that for which the building was erected would be tantamount to a grant of planning permission without consideration of the planning merits of the development, and the policy context, as there is no appeal on ground (a).
48. I am mindful of the fact that it would be open to the appellant to erect a new garage, or other building within the curtilage of No 80 Wood Lane under the provisions of Class E of Part 1 of Schedule 2 to the GPDO, for purposes ancillary or incidental to the enjoyment of the dwellinghouse but no indication was given at the Inquiry that he would do so in the event of the notice being upheld. Nevertheless, it remains open to the appellant to make a planning application to retain the building for incidental purposes, having regard to the provisions of Section 180(1)(a) of the TCPA, and the Council also has the power to relax the requirements of the notice, under Section 173A(1)(b). This might be apposite in the event of an enforceable agreement being reached over future use of a retained building.
49. For the reasons given above, however, I conclude that no lesser steps would overcome the breach of planning control that has occurred and the reasons for the issue of the notice. The appeal on ground (f) therefore fails.

Other Matters

50. I have taken account of all other matters raised in evidence at the Inquiry and in the written representations but they do not outweigh the conclusions I have reached in respect of the main issues and the grounds of appeal.

Conclusions

51. For the reasons given above I consider that the appeal should not succeed.

FORMAL DECISION

Appeal Ref: APP/T5150/C/14/2212722

52. The appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonathan Darby	of Counsel, instructed by Mr Martin Crook, Principal of MSC Planning Ltd
He called:	
Mr M O Monagle	Owner of appeal property and Managing Director of 4Mark Construction Limited
Mr A J Monagle	Occupier of appeal property
Mr R C Ivie	Registered Architect, Principal of Redmond Ivie Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks	Instructed by the Chief Planning Officer of the London Borough of Brent Council
He called:	
Mr S Davies BA	Deputy Planning Enforcement Manager with the Council

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

Document 1	Letter of notification of the Inquiry and list of those so notified.
Document 2	Copy of decision notice in respect of planning permission granted on 29 November 2013 for the retention of a single storey rear infill extension to dwellinghouse (Ref: 13/2971).
Document 3	Copy of appeal and costs decisions in respect of appeal ref: APP/R5510/X/09/2118312 dated 8 July 2010, produced by the appellant.
Document 4	Transcript of judgement in <i>Mavis Ann Foy v Secretary of State for the Environment</i> [1997] EWHC Admin 332, produced by the Council in closing submissions .
Document 5	Bundle of reports, transcripts and circulars produced by the appellant in closing submissions.