Appeal Decision

Inquiry held on 21 April 2004
Site visit made on 22 April 2004

by J G Roberts BSc(Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date

25 MAY 2004

Appeal Ref: APP/B5480/C/03/999584
240-242 St Mary's Lane, Upminster, Essex RM14 3DH

- 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 J M Green against an enforcement notice issued by Council of the London Borough of Havering.
- The Council's reference is TP 2926.
- The notice was issued on 12 November 2003.
- The breach of planning control as alleged in the notice is without planning permission, the erection of the following:
  (i) Mansard style roof with dormers over the rear storage building (shown marked 1(a) and 1(b) on the plan attached to the notice);
  (ii) First floor rear flat roofed addition (shown marked 2 on the plan attached to the notice);
  (iii) Second floor rear flat roofed addition (shown marked 3 on the plan attached to the notice);
  (iv) A single storey ground floor infill extension (shown marked 4 on the plan attached to the notice).
- The requirements of the notice are:
  (i) Remove the mansard style roof with dormer windows over the rear storage building (shown marked 1(a) on the plan attached to the notice) and reinstate with a plan pitched roof to a maximum height above ground level of 4.3 metre ridge and 2 metre eaves;
  (ii) Remove the mansard style roof with dormer windows over the rear storage building (shown marked 1(b) on the plan attached to the notice) and reinstate with a pitched roof to a maximum height above ground level of 5.9 metre ridge and 2.5 metre eaves;
  (iii) Remove first floor rear addition (shown marked 2 on the plan attached to the notice) and reinstate the original ground floor flat roof;
  (iv) Remove second floor rear addition (shown marked 3 on the plan attached to the notice) and reinstate the roof to the original pitch of the main original building;
  (v) Remove ground floor infill extension (shown marked 4 on the plan attached to the notice);
  (vi) Remove from the land all building and associated materials and rubble arising from compliance with requirements (i) to (v) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Summary of decision: the notice is corrected and its requirements are varied; subject thereto the appeal is dismissed and the notice is upheld.

Procedural Matters

1. At the Inquiry an application for costs was made by the Council of the London Borough of Havering against Mr J M Green. This application is the subject of a separate decision. The evidence was taken on oath.

Background

2. Nos 240-242 St Mary's Lane are a pair of semi-detached buildings between The Clockhouse (a Listed Building) to the east and a medical clinic to the west, with frontage shops on the ground floors and residential accommodation above. No 240 has workshop and storage accommodation extending almost to the rear boundary, beyond which is the publicly accessible Clockhouse Gardens.

3. In 1975 planning permission was granted for motorcycle sales and accessories from No 240. The use began. Three enforcement notices were issued in 1978. One related to the use of the premises for storage, maintenance, servicing and repair of motorcycles. A second concerned sales from the forecourt in breach of Condition 3 subject to which the 1975 permission had been granted. The third alleged that the height of a building at the rear had been increased, and required it to be reduced by 'approximately 5 ft maximum'.

4. Appeals were made against all 3 notices. They were determined simultaneously on 12 December 1979 (Ref: T/APP/5017/C/78/5055, 6 & 7/G4). The third appeal was allowed on planning merits, the notice was quashed and planning permission was granted on the deemed application.

5. In 1989 planning permission was granted for extensions and alterations to No 240, subject to conditions. The accompanying plans show the property, but not all elevations, as then existing and as proposed. None of the operations now enforced against have been undertaken in accordance with that planning permission.

The enforcement notice and the grounds of appeal

6. The enforcement notice refers to both Nos 240 and 242. The plan attached to it indicates that the alleged breaches of planning control are confined to No 240. None relate to No 242 or any of the land with it. The local planning authority requests me to correct the notice to remove the references to No 242, and as this can be done without injustice to either party the correction is made in the formal decision below.

7. The appeal was made on ground (b) only – that the matters alleged in the notice have not taken place as a matter of fact. However, as recognised by the Council in its pre-inquiry statement, the substance of the appeal includes, in some cases, ground (d) – that at the date of the notice it was not possible to take enforcement action against the works concerned. The materiality of the alterations that have taken place arose as an issue at the inquiry also. This may be relevant to ground (c) – that the matters referred to did not amount to a breach of planning control. I take all these matters into account where relevant, and also any consequential effects upon the requirements of the notice.

8. The notice is directed to 5 distinct operations, as described in paragraph 3 of the notice. As the grounds of appeal relate to these in different ways I deal with them each in turn, using the reference numbers as shown on the plan attached to the notice.

Building 1a

Ground (b)

9. As a matter of fact this building had, at the date of the notice, and has now, a simple ridged roof with no dormer windows. The appeal on ground (b) succeeds in this respect. The notice is corrected accordingly in the formal decision below.

Ground (c)

10. Some works of alteration have taken place over the years. Whether such works amounted to material alterations is a matter of dispute. An old aerial photograph, said to date from before 1989, appears to show a simple ridged roof in the centre, with a lean-to attached to the east and an open yard extending to the western boundary. Building 1a now extends across the width of the plot, as shown on the aerial photograph taken, apparently, shortly before Mr Green's meeting with Mr Keyes in May 2002.

11. However, the 1989 survey drawings indicate that by then Building 1a extended across the whole plot width. It was about 4.4m to the ridge. That is remarkably similar to the measurement taken on my visit. Unfortunately the 1989 drawings do not show a cross-section of the roof, and there is some confusion over the meaning of the markings on the ground and first floor plans. It seems likely to me that they are intended to show a ridge, with one slope to the east and two (presumably different) slopes to the west of it, as shown on one of the black and white photographs submitted by the appellant at the inquiry. The Council's 1991 photographs appear to support this view. The structure as it was in 1991 had probably become lawful by March 1993, as the 1991 Act had come into force by then.

12. A further alteration to the roof followed, evidently without increasing the height of the ridge, but repositioning it roughly centrally, as it is now. Though the definition of development contained in section 55 of the 1990 Act is very wide, operations which do not materially affect the external appearance of a building are excluded from what is to be taken to be development for the purposes of the Act by section 55(2). The practical meaning of this was clarified in *Burroughs Day v Bristol CC [1996] EGCS 126*. To constitute development the works must be visible from a number of vantage points, not just from a single building or from the air. The external appearance of the building must be materially affected, not just altered, and this should be judged in relation to the building as a whole, not just part of it taken in isolation.

13. The evidence suggests to me that the alterations to Building 1a that have taken place since March 1993 did not materially affect the external appearance of Building 1a or the buildings comprising 240 St Mary's Lane as a whole, partly because of their limited nature and partly because of their relative invisibility. For this reason, in my opinion, they did not amount to development. Consequently they did not constitute a breach of planning control. It is not necessary to consider ground (d).

Building 1b

Ground (b)

14. At the date of the notice there is no doubt that this building had a mansard roof and dormer windows. The appellant has no case on ground (b). The extent, nature and materiality of the works of alteration are, however, matters of dispute. I deal with this under ground (c).

Ground (c)

15. A photograph dating from the late 1940s shows a simple pitched-roofed building on the site of 1(b). It appears to be narrower than the building now present, as confirmed on my visit. Evidently it had been altered by 1978 when enforcement action was taken against its increase in height. The pre-1989 aerial photograph shows that the shape and size of the building had been altered substantially by that time. It had a flat central roof section on top with a pitch either side, but in shape it was not what I would describe as a mansard roof because of the relatively shallow angle of pitch.

16. The 1989 survey drawings do not show its shape in section. The markings on the first floor plan suggest 2 simple pitches and a central ridge. The maximum height is shown as about 5.9m. One 1996 photograph seems to confirm that there had been little change by then, but by 2 August 1999 the structure had been much altered and included the frames of the dormers, apparently boarded up.

17. Measurements taken on my visit indicate that the height of the building to the ridge is not dissimilar to that measured in the 1989 survey. However, in my opinion the shape of the building is markedly different. Even if the building as it existed in 1989 had become lawful when the 1991 Act came into effect, the subsequent alterations have been material ones which affected the external appearance of the building and the group comprising 240 St Mary's Lane as a whole. They are visible from several vantage points, and are not excluded from the definition of development by virtue of section 55(2)(a) of the 1990 Act. There is no evidence that they were permitted by any General Development Order. Specific planning permission was required but not obtained. Therefore I conclude that the alterations amounted to a breach of planning control.

Ground (d)

18. The next question is whether, at the date of the notice, no enforcement action could be taken against the alterations. If they had been substantially completed before 12 November 1999 they would be immune from enforcement action and now lawful. The appellant went abroad in 1999. He claims that the alterations were substantially complete by that time. The Council disagrees. So do I.

19. Photographs taken on 2 August 1999, little more than 3 months before the relevant date, seem to show the roof without its final covering, and the basic structure of the dormers with boards roughly fixed to the outside leaving some gaps and with plastic sheeting draped over some of them. On the appellant's own evidence certain works, such as battening, felting and boarding, remained to be done before the intended final result, shown in the photographs of 10 November 2000, was achieved.

20. Whilst in some circumstances such operations may not amount to development if they are undertaken for the purposes of maintenance or repair of a previously completed structure, that is not the point here. In my view the outstanding works were an integral and important part of the development as a whole (which comprised the construction of the mansard roof with dormers) and necessary to its substantial completion. There is no evidence that these works were completed between 2 August 1999 and 11 November of that year. Therefore, on the balance of probability, I consider that on 12 November 2003 it was not too late for the local planning authority to take enforcement action against this breach of planning control. The implied appeal on ground (d) fails.

Additions 2 and 3 – the scope of the notice

21. The external appearance of the first and second floors of the building may have altered over the years. The sides of the external stair leading to the second floor accommodation have been boxed in, painted white and black timber decoration added. The elevations have been faced in a similar manner. However, the notice alleges the erection of first and second floor flat-roofed additions and requires their removal and the re-instatement of the roofs below to what the Council believes to be their former conformation. The Council clearly believes that both the first floor and second floor accommodation has been extended in size in recent years, and it is to this that the notice, in my view, is directed. In my opinion the scope of the notice cannot be extended to include other external alterations without injustice to the appellant. I therefore confine my conclusions to the alleged extension of the building at first and second floor level.

Addition 2 – rear 1st floor

22. The rear of No 240 St Mary's Lane does not appear to be as originally built. At some stage an addition has been made at first floor level as alleged in the notice. Such an addition existed at the date of the notice. The appeal on ground (b) must fail.

23. The earliest aerial photograph does not show the first floor rear addition clearly. However, it is agreed that the 1989 survey drawings form a useful benchmark. This shows a first floor addition projecting about 7.4m from the rear elevation of the main part of the building which fronts the road. Photographs of the appellant's daughter, which probably date from the period spanning the late 1980s and early 1990s, are consistent with the Council's photographs of 1991. Those of 1996 seem to indicate that the addition was then similar in length to that shown on the 1989 survey drawings. Measurements taken on site during my visit indicated that it remains similar. There is no indication that its height has been increased significantly during this period.

24. I conclude that the first floor addition has not been extended significantly beyond that which existed in 1989. It is not known whether this was lawful or otherwise at that time, but it would have become so at least by some time in 1993 under the new provisions introduced by the 1991 Act. Therefore, on the balance of probability, the first floor addition to which the notice is directed is not in breach of planning control. The appeal succeeds on ground (c) in this respect, and there is no need to consider ground (d).

Addition 3 – rear 2nd floor

Grounds (b) and (c)

25. A second floor addition existed at the time of the notice also. The appeal on ground (b) must fail for similar reasons. However, a similar analysis of the evidence suggests that the second floor addition has been extended since the survey drawings of 1989. These show a second floor addition projecting about 2.7m rearwards of the rear wall of the main part of the building which fronts the road. This had increased by the time of my visit to about 4.2m.

26. I regard this as a material alteration to the building which affects the external appearance of the building as a whole. It has caused a significant increase in the bulk of the building at this level which is clearly visible form several vantage points. The residential accommodation did not fall within the definition of a dwelling house for the purposes of

the General Development Orders in force since 1989. The addition enforced against was not permitted by any such order. Specific planning permission was required but not obtained. Therefore the development was undertaken in breach of planning control. The implied appeal on ground (c) fails also.

Ground (d)

27. The photographs of 1991 suggest that the structure had by then altered little since 1986. However, those of 1996 show a larger structure, similar in size and shape to the present one. Windows had been installed in the felted southern elevation but the door had not. There were battens over the felt covering on the western elevation. The structure was not, in my view, substantially complete at that time. Significant further works needed to be undertaken before it became the finished article shown in the photographs of more recent date.

28. By 2 August 1999 the felt on the southern elevation appears to have been covered and the door had been fitted. The windows were curtained and the structure had the appearance of an extension in use as residential accommodation. The steps up to it had been enclosed and decorated in black and white, as they are now. The south and east elevations were evidently decorated in a similar manner at some time between 2 August 1999 and 10 November 2000.

29. From the evidence before me it seems that this external decoration was the only significant work still to be completed. I regard this as essentially cosmetic. There are no other discernible differences between Addition 3 as it appeared on 2 August 1999 and as depicted in 2000 and 2002. On this basis I have concluded on the balance of probability that Addition 3 was substantially complete before 12 November 1999. At the date when the notice was issued it was no longer possible for enforcement action to be taken against it. Therefore the appeal on ground (d) succeeds in respect of Addition 3.

Addition 4 – side infill

30. Side infill has been erected as alleged in the notice. The appeal on ground (b) fails. According to the appellant it was made necessary in order to comply with the Waste Disposal Act of 1992, as by then waste tyres fell within its scope. He claims that this Act and other related statutory provisions override the need for planning permission. In my opinion it does not. In such circumstances both sets of statutory provisions may apply. The requirement for some means of secure containment of waste tyres does not absolve the operator from the need to obtain any necessary consents under the Planning Acts for any such structure proposed to be erected to achieve that containment.

31. It is clear to me that specific planning permission was required for the infill that has been erected. No such planning permission has been obtained. Therefore the side infill enforced against was erected in breach of planning control. The appeal on ground (c) fails. As the appellant now accepts that, as suggested by comparison of the photographs of 2 August 1999 and 10 November 2000, the structure was not substantially complete before 12 November 1999, the appeal against the notice on ground (d) fails also.

The requirements of the notice

32. I have concluded above that the appeals fail in respect of alleged breaches 1b and 4, and succeed in respect of alleged breaches 1a, 2 and 3. It is not possible to quash a notice in part and uphold it in other respects. Therefore I uphold the enforcement notice but vary its

requirements to take account of the successful grounds of appeal. These variations are made in the formal decision below.

Formal decision

33. I direct that the enforcement notice be corrected by:

(i) the deletion of the words '240-242 St Mary's Lane' from the title of the notice and from paragraph 2 of the notice and the substitution therefor of the words '240 St Mary's Lane';

(ii) the deletion of the text of subparagraph (i) of paragraph 3 of the notice and the substitution therefor of the words 'an alteration to the roof of the rear storage building marked 1a on the attached plan and a mansard style roof with dormers over the rear storage building marked 1b on the attached plan'.

I further direct that the requirements of the enforcement notice be varied by:

(i) the deletion in their entirety of subparagraphs (i), (iii) and (iv) of paragraph 5 of the notice;

(ii) the deletion of the words '(i) to (v)' from subparagraph (vi) of paragraph 5 of the notice and the substitution therefor of the words '(ii) and (v)'.

Subject thereto I dismiss the appeal and uphold the enforcement notice.

Inspector

APPEARANCES

FOR THE APPELLANT

Mr John Green — Appellant.

FOR THE LOCAL PLANNING AUTHORITY

Mr Patrick Keyes BA DipEP MRTPI — Planning Control Manager, Havering LBC.

DOCUMENTS

1. Attendance list.
2. Letter of notification and list of persons notified.
3. Appendices to Mr Keyes' proof of evidence.
4. 2 sketches illustrating headroom over stairs.
5. Photograph of Clockhouse Gardens, late 1940s.
6. Black & white aerial photograph submitted by the appellant.
7. Photograph of roof of Building 1a.
8. 3 photographs of appellant's daughter showing rear additions incidentally.
9. Colour copies of 3 aerial photographs included in Document 3.
10. Colour copies of 4 photographs of 1996.
11. Colour copies of 12 photographs of 2 August 1999.
12. Colour copies of 11 photographs of 10 November 2000.
13. 5 photographs dated 15 March 1991.

PLANS

A. The plan attached to the notice.

NB: other plans are included in Document 3.

The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and we cannot amend or change them once they have been issued. Decisions are therefore final unless successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal, it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions. For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area consent enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65, you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again, but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

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Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices, by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655.

Council on tribunals

If you have any comments on appeal procedures, you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200,
However, it cannot become involved with the merits of individual appeals or change an appeal decision.

The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens, we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why, and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint, we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply, we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. However, the law does not allow us to amend or change the decision.

Who checks our work?

The Government have said that that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report to them on our performance. APOS regularly examines the way we deal with complaints and we must satisfy them that our complaints procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint, you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman, you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Why can't the decision be reviewed if a mistake has happened?" – The law does not allow us to do this because an appeal decision is a legal document that can only be reviewed following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted, but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to their planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. They can investigate and have discretionary powers to take action if a condition is being ignored.

Further information

Every year, we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with, and how we plan to meet the targets which Ministers set for us. At the end of each financial year, we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by phoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

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The Parliamentary Ombudsman
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Helpline: 0845 0154033
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memo

London Borough of Havering
Town Hall

LEGAL & DEMOCRATIC SERVICES
Committees and Overview & Scrutiny

Telephone: (01708) 432430

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My Ref: SB/TP 2926

Your Ref: Patrick Keyes

Date: 1 June 2004

From LEGAL AND DEMOCRATIC SERVICES

To HEAD OF PLANNING (M.H.)
HEAD OF STRATEGIC PLANNING & TECHNICAL SERVICES (B.C.)
HEAD OF LEGAL SERVICES (Ballards Chambers)
Dave Vicary, ENVIRONMENT & DEVELOPMENT SERVICES (M.H.)
Paul Ekers, REGENERATION & PARTNERSHIPS (M.H.)

ENFORCEMENT APPEAL – INQUIRY 14 APRIL 2004
240-242 ST. MARY'S LANE, UPMINSTER

Enclosed for your information and attention is a copy of the Inspector's decision letter on this appeal dated 25 May 2004.

The appeal has been **DISMISSED and the enforcement notice UPHELD with a number of corrections**

The Council's application for an award of costs has been refused.

A copy of the decision has also been sent to the respective Ward Councillors. A copy will also be provided, if required, to the Chairman & Vice-Chairman of Regulatory Services Committee.

SBridgeman

Stan Bridgeman, Committee Officer

Costs Decision

Inquiry held on 21 April 2004
Site visit made on 22 April 2004

by J G Roberts BSc(Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
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Date

25 MAY 2004

Costs application in relation to Appeal Ref: APP/B5480/C/03/999584
240-242 St Mary's Lane, Upminster, Essex RM14 3DH

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Council of the London Borough of Havering for a partial award of costs against Mr J M Green.
- The inquiry was in connection with an appeal against an enforcement notice alleging alterations and extensions at the rear of the premises.

Summary of decision: the application is refused.

Submissions for the local planning authority

1. The appellant has good knowledge of the planning system. At best there is a conflict between his reply to the Planning Contavention Notice issued by the Council and his evidence at the inquiry. At worst the former was misleading, and wilfully so. The appellant has now sold the property. The local planning authority is duty bound to make an application for an award of costs on the basis of the appellant's lack of evidence to support the appeals concerning the dormer windows and the side infill extension. He put forward no evidence on these matters to support his case.

Response by the appellant

2. The appellant has acted totally legally. The Council's view of the replies to the Planning Contravention Notice is disputed; it is ridiculous. If the appeal decision is in the Council's favour he would be happy to pay its costs, but the appellant has a case. The question of the dormers has never been disputed, so the is no reason why the appellant should possibly be liable for the Council's costs on this matter. Matters were brought forward at the inquiry that had not previously been put, not only by the appellant but by the Council also.

Conclusions

3. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

4. The application is concerned with the appellant's behaviour in relation to 2 of the alleged breaches: (i) the rear storage building 1a and 1b, and (iv) the side infill extension. On the first matter I concluded that the alleged breach required correction because at the date of the notice there was neither a mansard roof or dormers on Building 1a as alleged, nor had it

ever sported such features. The appellant provided cogent evidence to support his successful appeal on ground (b) on the point.

5. As to Building 1b, there was at the inquiry a clear difference of understanding on 2 important matters – the nature of an alteration that requires specific planning permission and the meaning of the term 'substantially completed'. In the past the appellant may have had some dealings with the planning system. He does not seem to be intimidated by the enforcement process. However, he was not professionally represented during the appeal process, and in my opinion the differences of understanding appear to derive from his partial understanding of the finer points of planning law and relate in any event to matters of fact and degree which involve an element of judgement on the part of the decision maker. In these circumstances, I do not consider that that his appeal against alleged breach (i) amounted to unreasonable behaviour.

6. I turn now to alleged breach (iv) concerning the side infill extension. In his grounds of appeal and pre-inquiry statement the appellant relied on what he regarded, erroneously, as over-riding statutory requirements concerning waste storage and disposal. The substance of his appeal could only be interpreted as relating to ground (c). At that time there was no need for the local planning authority to answer appeals on grounds (b) and (d).

7. The first indication of an appeal on ground (d) in relation to the infill was in the appellant's evidence-in-chief, by which time Mr Keyes' proof of evidence and appendices had already been prepared and distributed. The appellant conceded the 4-year point to the Mr Keyes during the latter's very short cross-examination of Mr Green on the matter. The inquiry time spent on the question was insignificant. Even if the appellant's initial stance on breach (iv) was an unreasonable one to take, it should not have caused more than negligible unnecessary or wasted expense to the local planning authority. Therefore I conclude that an award of costs is not justified.

Formal decision

8. The application for an award of costs is refused and no award is made.

Inspector