



The Planning  
Inspectorate

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Mr R Furneaux  
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Your Ref:

CSS/GAO/TP/7/1/2073 &  
ENF/0546/09

Our Ref:

APP/J1535/C/10/2128535  
**Further appeal references at  
foot of letter**

Date:

17 January 2011

Dear Mr Furneaux

**Town and Country Planning Act 1990**

**Appeals by IGAR LIMITED George Aganangelou and Mr G Aganangelou  
Site at 35 Denny Avenue, Waltham Abbey, EN9 1NT**

I enclose a copy of our Inspector's decision on the above appeals.

If you have queries or complaints about the decision or the way we handled the appeals, you should submit them using our "Feedback" webpage at [www.planning-inspectorate.gov.uk/pins/agency\\_info/complaints/complaints\\_dealing.htm](http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm). This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

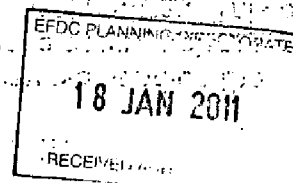
Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

Yours sincerely

pp Thomas Watkins

EDL1

Further appeal references:- APP/J1535/A/10/2128524



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You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button.



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## Appeal Decisions

Site visit made on 29 November 2010

by **G P Bailey MRICS**

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

Decision date: 17 January 2011

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### **Appeal A: APP/J1535/C/10/2128535**

**35 Denny Avenue, Waltham Abbey, EN9 1NT**

- 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 G Aganangelou against an enforcement notice issued by Epping Forest District Council.
- The Council's reference is PL/8812/ENF/0546/09.
- The notice was issued on 31 March 2010.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the property to a house in multi-occupancy ('HMO').
- The requirements of the notice are to cease the use of the property as a house of multi-occupancy and restore it to a dwellinghouse.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). The application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) also falls to be considered.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal B: APP/J1535/A/10/2128524**

**35 Denny Avenue, Waltham Abbey, EN9 1NT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr G Aganangelou against the decision of Epping Forest District Council.
- The application (ref: PL/EPF/2376/09), undated, received by the Council on 7 December 2009, was refused by notice dated 17 February 2010.
- The development proposed is described as "*change of use to HMO*".

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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### **The Notice**

1. No appeal has been made in Appeal A on ground (f). However, by requiring the recipients of the notice to restore the property to a dwellinghouse, they would be compelled to instigate an alternative use, that is, use as a dwellinghouse. That could cause future uncertainties if, for example, the property were to remain unused for some length of time. Such requirement would exceed what would be necessary to remedy the breach which would be

achieved simply by the cessation of the use as an HMO and, if the notice is upheld, I intend to vary this element of the requirements accordingly.

### **Appeal A on Ground (a) and the Deemed Application for Planning Permission; and Appeal B**

2. The use in each appeal relates to the same activity, the HMO use in Appeal B having commenced and being the subject of the later enforcement notice now the subject of Appeal A. I am able to consider the planning merits of the two appeals taken together.

### **Main Issue**

3. The main issue in these cases is, in the light of the Council's policies, the effect of the scheme on the living conditions of nearby residents with particular reference to the availability of kerbside parking.

### **The Development Plan and Other Policy Provisions**

4. The development plan for the locality includes the "saved" policies<sup>1</sup> of the Epping Forest Local Plan adopted in 1998, including Local Plan Alterations adopted in 2006.
5. In seeking to achieve sustainable development objectives, by Local Plan Policy CP1, the Council will, among other matters, avoid, or at least minimise, the impacts of development upon the environment and to secure the provision of sufficient types and amounts of housing accommodation to meet the needs of the local population. By Policy CP3, the criteria against which new development will be considered include requiring its scale and nature to be consistent with the principles of sustainability and to respect the character and environment of the locality.
6. Policy DBE3 adds that development will be required to ensure that spaces around buildings are created to be functional, attractive and safe for their intended users. The Council seeks to ensure by Policy DBE9 that a change of use does not result in excessive loss of amenity for neighbouring properties having regard to a number of factors including visual impact and noise or other disturbance. Policy ST1 seeks to direct the location of housing development to existing urban areas and to make to best use of land that is highly accessible to public transport and close to services and employment. Policy ST6 seeks the provision of on-site parking in accordance with adopted standards.
7. Reference has also been made to Essex County Council's "*Parking Standards: Design and Good Practice*" (2009) as a relevant material consideration.

### **Reasons**

8. The appeals site lies in an extensive urban area close to the commercial hub of Waltham Abbey, including a large supermarket nearby. The site comprises one of a pair of semi-detached two-storey houses (No.35/36) situated on one side of and at the end of a cul-de-sac that is fronted on both sides by other pairs of closely-spaced, semi-detached houses, all of similar age, original design and scale, set back behind front gardens of modest depth, in a regular pattern of

<sup>1</sup> By s.119 of and Schedule 8 to the Planning and Compulsory Purchase Act 2004, policies of the Local Plan including Local Plan Alterations no longer have effect unless "saved" by Direction of the Secretary of State. Policies relied on by the main parties in these cases have been so saved.

rectangular plots. The appellant's property includes a single-storey rear extension, but significantly differs from most others hereabouts inasmuch as it comprises a wider plot which has enabled the construction, in addition, of a two-storey side extension and detached single garage at the rear; also, the irregular alignment of the front boundary reflects the location of the plot abutting a turning area at the end of the road, from which an accessway passes along the side boundary to serve blocks of lock-up garages at the rear.

9. The building has been converted to use as a HMO providing seven bed-sitting rooms, the occupants sharing two bathrooms, dining room and kitchen. The rear garden comprises two separate areas, divided by fencing, one part containing the garage, the other, larger, area accommodating a detached outbuilding on the rear boundary used for storage.
10. The HMO would be potentially capable of accommodating up to fourteen persons, depending on the extent to which rooms are shared. Hence, the change of use would be materially different in character from that as a four-bedroom dwellinghouse in single family occupation. As such, the levels of activity likely to result from the proposed use would be greater than the coming-and-goings likely to be generated by use of the property as a commodious extended dwellinghouse.
11. Nevertheless, despite the use having commenced, no clear evidence has been adduced to indicate that the use has led or would lead to increased noise to an extent that would be materially different from use as a dwellinghouse that would, as a consequence, adversely affect the living conditions of nearby residents; moreover, no external alterations to the building would be necessary to accommodate the use. Thus, the scheme would comply with Policy DBE9. Indeed, the Council raises no concerns about the impact of the use as a HMO on the character of the locality and, to that extent, the scheme would accord with Policies CP1 and CP3.
12. Concerns have been expressed by interested persons that the use would set a precedent for others to follow, but the size of the building in the present case would distinguish it from most others in this locality and, in the absence of any identified harm to the character of the area resulting from such a use, those concerns would not be well-founded. The appeal site is located conveniently to local services and use as a HMO would increase the range of types of residential accommodation to meet the needs of a particular sector of the community; in accord with Policy CP1.
13. The main objection of the Council, echoed by the Waltham Abbey Town Council and those who live nearby, is the impact of the scheme on kerbside parking.
14. Despite the blocks of lock-up garages adjacent to the appeal site, many of the residents in this road have utilised front garden areas, either wholly or in part, to provide off-street parking accommodation. But not all have done so. Moreover, not all parking needs would be met in these ways, particularly for the accommodation of visitors.
15. Kerbside parking space was readily available at the time of my visit to the site early on a Monday afternoon. But the evidence available indicates, and I can readily understand that, at other times, particularly in the evenings and at weekends, the demand for on-street parking would be substantial and impose considerable demand on the available parking accommodation provided by the

kerbside space, interrupted as it is by the vehicular accesses to front gardens. Such demand would be particularly acute at this end of the cul-de-sac where a number of properties are grouped around the very limited kerbside comprising the turning head.

16. The latest version of the Council's parking standards to which Policy ST6 refers does not contain specific parking standards for a HMO; instead, the Council avers that parking requirements for such a use would be based on those for a dwellinghouse – in this case, a minimum of two spaces. However, the Council is right to consider that use as a HMO, potentially, would give rise to a need for additional parking accommodation over-and-above that level of provision, though much would depend on the needs and aspirations of the individual occupiers for the time being. Nevertheless, an appropriate level of off-street car parking would be appropriate in this case.
17. Neither the appellant nor the Council has specified the number of parking spaces that should be provided, but reference is made to guidance contained in the Council's Parking Standards indicating that reductions of the vehicle standard may be considered in respect of development in an urban area that has good links to sustainable transport. Given the proximity of the site to the commercial hub and public transport of Waltham Abbey, this would be a location where reliance by future HMO residents on a car would not be critical, thus limiting the number of spaces that would be required to meet reasonable needs.
18. The front garden and the area at the side of the building leading to the garage at the rear are wholly hard-surfaced, but photographs show that the front boundary wall of the front garden area was continuous, save for a pedestrian gate. Thus, although the Council accepts that planning permissions granted in previous years for developments at this property have included a new vehicular access and a garage, it is the Council's case that at the time of the Council's decision to refuse planning permission in February 2010, no off-street parking was available. The appellant makes no claim that the lock-up garages adjacent would be available to him to fulfil an off-street parking need. Hence, the potential needs of the occupants of the HMO would be dependant entirely on kerbside parking.
19. Moreover, notwithstanding any such planning permission, the Council points out that a covenant requires permission of the Council's Housing Services to park a private motor vehicle in the front garden and, under other legislation, a vehicular crossover of the footway would need to be provided on application to and approval by Essex County Council as highway authority. However, The requirements of covenants and other legislation would not be relevant to the consideration of the planning merits of the proposal. Nevertheless, since the date of the Council's decisions to refuse planning permission and issue the enforcement notice, the appellant has sought and obtained the necessary consents of the Council's Housing Services and of Essex County Council and a vehicular access has now been provided, in direct line with the driveway serving the garage.
20. The space provided by the garage, its driveway and the surfaced front garden area would be capable of accommodating several cars, though turning movements between the access in the front boundary wall, in to and out of the front garden area, would be tight and tandem parking would be prevalent.

21. Nevertheless, such awkwardness and inconvenience of the arrangements would not be so great such as to be likely to deter future occupants from making use of the available space for car parking. As a consequence, the site would be capable of meeting the reasonable needs of the use as a HMO without placing further demands on the limited supply of kerbside parking hereabouts, thereby safeguarding the interests of those who live nearby who are compelled to rely on the continuing availability of such kerbside parking. To this extent, the scheme would fulfil the requirements of Local Plan Policy ST6. The appeal on ground (a) will succeed and planning permission on the deemed application will be granted; Appeal B will succeed.

### **Conditions**

22. I have considered the Council's suggested condition in the light of national guidance in Circular 11/95. Although parking provision within the site presently exists, it would be necessary to quantify its extent and the number of vehicles accommodated and to safeguard it for continuing future parking use, in order to reduce the demands placed on kerbside parking; the details of a parking scheme would need to be approved by the Council so that it could be enforced in future if necessary to do so.

### **Conclusions**

23. For the reasons given above, I consider that, on balance, the Appeal A should succeed on ground (a). I shall exercise the powers transferred to me accordingly and planning permission will be granted. As the notice will be quashed, no need arises to vary its requirements as referred to in paragraph 1 above.

24. For the reasons given above and having regard to all other matters raised, Appeal B should be allowed.

### **Decision**

#### **Appeal A: APP/J1535/C/10/2128535**

25. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely, the change of use of the land and buildings at 35 Denny Avenue, Waltham Abbey, EN9 1NT, as shown on the plan attached to the notice, to a house in multi-occupation, subject to the following conditions:

- 1) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
  - i) within 3 months of the date of this decision a scheme for the parking of motor vehicles on the site (hereinafter the 'parking scheme') shall have been submitted for the written approval of the local planning authority and the parking scheme shall include a timetable for its implementation.
  - ii) if within 11 months of the date of this decision the local planning authority refuse to approve the parking scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted parking scheme shall have been approved by the Secretary of State.
  - iv) the approved parking scheme shall have been carried out and completed in accordance with the approved timetable.
- 2) The parking arrangements contained in the parking scheme referred to and provided in accordance with Condition No.1 hereof shall be retained free of obstruction and shall not be used at any time thereafter except for the parking of motor vehicles.

**Appeal B: APP/J1535/A/10/2128524**

26. I allow the appeal, and grant planning permission for a change of use to HMO at 35 Denny Avenue, Waltham Abbey, EN9 1NT in accordance with the terms of the application, (Council ref: PL/EPF/2376/09), undated, received by the Council on 7 December 2009, subject to the following conditions:

- 1) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
  - i) within 3 months of the date of this decision a scheme for the parking of motor vehicles on the site (hereinafter the 'parking scheme') shall have been submitted for the written approval of the local planning authority and the parking scheme shall include a timetable for its implementation.
  - ii) if within 11 months of the date of this decision the local planning authority refuse to approve the parking scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted parking scheme shall have been approved by the Secretary of State.
  - iv) the approved parking scheme shall have been carried out and completed in accordance with the approved timetable
- 2) The parking arrangements contained in the parking scheme referred to and provided in accordance with Condition No.1 hereof shall be retained free of obstruction and shall not be used at any time thereafter except for the parking of motor vehicles.

*G P Bailey*  
INSPECTOR