Hearing Statement on behalf of Alon Zakaim (Appellant)
relating to

Enforcement Notice reference ENF/0898/18 issued by London Borough of Barnet dated 24 October 2018 in respect of 31 Ingram Avenue, Golders Green, London, NW11 6TG

Planning appeal reference number APP/N5090/C/18/3216722

Dated 24 October 2019

Our Ref: skjw/tt/240736/1
LPA Ref: ENF/0898/18
PINS Ref: APP/N5090/C/18/3216722

1 INTRODUCTION

1.1 The Appellant's 'Statement of Facts and Grounds' is provided at **Appendix 1** together with the enforcement notice appeal form at **Appendix 2**.

1.2 We refer the Inspector to those two documents, particularly paragraphs 1-3 (inclusive) of the 'Statement of Facts and Grounds' which set out the planning history and background to this appeal.

1.3 The definitions referred to in the Appellant's 'Statement of Facts and Grounds' will be used throughout this document.

1.4 On 21 November 2018 the Appellant lodged his appeal against the Enforcement Notice and on 4 April 2019 the Planning Inspectorate validated that appeal giving it reference number APP/N5090/C/18/3216722.

1.5 As required by PINS, this Hearing Statement has been prepared to provide full details of the appellant's case, including the supporting evidence (appended).

2 EXPEDIENCY

2.1 Section 172(1) of the 1990 Act states as follows:

> "172. **Issue of enforcement notice**
> (1) The local planning authority may issue a notice (in this Act referred to as an "*enforcement notice*") where it appears to them-
> (a) that there has been a breach of planning control; and
> (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

2.2 It is not disputed that following the refusal of the 2018 Application, the Gates and associated stone piers are unlawful. Therefore, part (a) of S172(1) above is satisfied to the extent that there has been a breach of planning control in respect of the Gates and associated stone piers. However, in order for a local planning authority to be entitled to issue an enforcement notice, both part (a) and the requirement for expediency under part (b) of S172(1) need to have been satisfied.

2.3 Regulation 4(a) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002/2682) states as follows:

> "4. **Additional matters to be specified in enforcement notice**
>
> An enforcement notice issued under section 172 of the Planning Act shall specify –
>
> (a) the reasons why the local planning authority consider it expedient to issue the notice..."

2.4 It is a legal requirement by virtue of Regulation 4 of the regulations set out at sub-paragraph 2.3 above for a local authority to specify in an enforcement notice the reasons why it considers it expedient to issue the enforcement notice.

2.5 Paragraph 4 of the Enforcement Notice has the heading "Reasons for Issuing This Notice". One would expect therefore to see here the Council's reasons why it considered it expedient to issue the Enforcement Notice under that heading. However, what we see at paragraph 4 is essentially a restatement of the Council's reasons for refusing the 2018 Application.

2.6 The Council's reasons for issuing the Enforcement Notice cannot be the same as its reasons why it considered it expedient to issue the Enforcement Notice. The former are given in response to an exercise of planning judgement in the determination of a planning application in accordance with the development plan unless material considerations indicate otherwise

under Section 38(6) of the Planning and Compulsory Purchase Act 2004. The latter are given in response to an exercise of discretion as to whether there has been a breach of planning control and the expediency or otherwise of the decision to take enforcement action under Section 172(1) of the 1990 Act.

2.7 The High Court in the case of *R (Ardagh Glass Ltd) v Chester CC* [2009] Env. L.R. 34 (**Appendix 3**) considered the meaning of "expediency". The court held [at 47] that as a test it suggests the balancing of the advantages and disadvantages of a course of action.

2.8 The fact that the Council has simply "cut and pasted" the reasons for refusal from the 2018 Application decision notice suggests on the face of the Enforcement Notice that the Council failed to carry out a balancing exercise to consider the advantages and disadvantages of their chosen course of action in issuing the Enforcement Notice. A failure to carry out such a balancing exercise suggests that both requirements of S172(1) of the 1990 Act have not been satisfied. In such circumstances, a local planning authority should not issue an enforcement notice. However, the Council has done so here.

3 VALIDITY AND NULLITY

3.1 Commentary on S173 of the 1990 Act in the Planning Encyclopaedia refers to the distinction between nullity and invalidity of an enforcement notice. Nullity can be described as the situation where an enforcement notice is so defective on its face that it is without legal effect. Invalidity can be described as the situation where an enforcement notice is flawed in some way, and so invalid, but yet not so defective on its face as to be a nullity.

3.2 The fact that the Enforcement Notice failed to adequately set out the reasons why the Council considered it expedient to issue the Enforcement Notice may render the Enforcement Notice invalid. The Inspector does of course have available to him/her the powers under S176 of the 1990 Act to correct defects, errors or misdescriptions in the Enforcement Notice, or to vary the terms of the Enforcement Notice provided to do so would not cause injustice to the Appellant or the Council. However, it is difficult to see how, without knowledge of the Council's reasons for considering it expedient to issue the Enforcement Notice, the Inspector would be able to correct the Enforcement Notice such that it becomes valid. Further, the Inspector may consider that this failure by the Council is so defective as to mean the Enforcement Notice is without legal effect and as such, is a nullity. We respectfully ask the Inspector to decide this preliminary issue as the Inspector sees fit.

GROUNDS OF APPEAL

4 <u>Ground (a)</u> –*planning permission ought to be granted*

4.1 Section 174(2)(a) of the 1990 Act states that an appeal against an enforcement notice may be brought on the following ground:

> "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted..."

i) Height and Design

4.2 The Property has a double entry driveway at the front with hedges in between the two entrance ways. One pair of Gates has been placed across one of the entrances to the Property and another pair across the other entrance. A photograph of the Gates is attached at **Appendix 4**.

4.3 The Council refused the 2018 Application and subsequently issued the Enforcement Notice (**Appendix 5**) because it considers that the Gates and associated stone piers are "inappropriate and intrusive features" by reasons of their "height and design". We address each of those issues below.

Height

4.4 The Appellant's Gates are just 89cm in height. They are considerably lower than most, if not all, of the gates of neighbouring properties. They are also lower than height of gates which would ordinarily be permitted under the GPDO 2015.

4.5 In order to be "inappropriate and intrusive" by reason of their height, the Gates must be assessed in their proper context. The table below sets out the heights of the gates which have been installed on a selection of neighbouring properties, four of which are on Ingram Avenue. Photographs of those gates are provided at the Appendix as listed in the final column.

	PROPERTY	GATE HEIGHT*	PHOTOGRAPHS
i)	30 Ingram Avenue	155 cm	**Appendix 6**
ii)	37 Ingram Avenue	167 cm	**Appendix 7**
iii)	38 Ingram Avenue	165 cm	**Appendix 8**
iv)	41 Ingram Avenue	190 cm	**Appendix 9**
v)	90 Winnington Road	157 cm	**Appendix 10**

**Gate height measurements taken (to the nearest centimetre) from the pavement to the top of highest point of the gate.*

4.6 In planning terms, therefore, the Council's statement that the Gates are an "inappropriate and intrusive feature" by reason of their height is unsupportable. The Gates are neither obtrusive nor overbearing. They are low compared to other gates in the immediate area and lower than 'standard' height gates. Objectively, it is the Appellant's considered opinion that the 89cm gates are neither inappropriate (because there are other taller gates in the immediate vicinity) nor intrusive (because they are only 89cm tall).

Design

4.7 The 2018 Application was accompanied by a Design Statement prepared by Wolff Architects at **Appendix 11**. This statement confirms as follows:

"*The gate design is based on those at 89 Winnington Road. Pedestrian gates of a similar design [to those at No 89] have been approved and installed at 31 Ingram Avenue, as can be seen on drawing 1113-PL-200-0 which accompanies our application. The proposed gates and associated piers are no higher than 1 metre. The gates are proposed to receive a black finish in line with other gates in the area. When viewed obliquely this will help them blend in with relatively dark flowerbeds and planting beyond. The existing low walls and holly hedges adjacent to the driveway entrances are unaffected by the proposal.*"

4.8 It is relevant to note that the Property has always had two full height side gates at either side of the front/western elevation, with one gate being on the far side of the garage ("**the Side Gates**"). The Appellant did not need planning permission to replace the old Side Gates with new ones which have been installed. Prior approval was given by the Hampstead Garden Suburb Trust ("**the Trust**") on 2 February 2018. A copy of the email from David Davidson, Architectural Adviser to the Trust, granting that prior approval is enclosed at **Appendix 12.** A copy of the drawings which show the design of the new Side Gates, as approved by the Trust and being two full-height black painted metal gates of a smart, geometric and relatively modern design, is enclosed at **Appendix 13**.

4.9 The Gates themselves, as explained in the Design Statement, comprise two pairs of black painted metal gates of a smart, geometric and modern design attached to new stone piers. They are exactly the same design as the new Side Gates, the design of which was approved by the Trust in February 2018. The only difference between the Side Gates and Gates is their size/height.

4.10 The overall angular shape and geometric design of the Side Gates and the Gates is neither extreme nor unsightly, but is gently modern. Further, the open nature of the design retains light and visibility. The black finish is in keeping with other gates in the area. When viewed obliquely, this finish enables them to blend in with relatively dark flowerbeds and planting beyond.

4.11 In addition, the Property has been subject to extensive renovations over recent years both to the interior and exterior. A new driveway has recently been installed which gives the Property a more modern feel compared to other neighbouring properties of a similar age which have not undergone such substantive, recent renovations/modernisations. Consequently, the design of both the Side Gates and the Gates very much suits the look of the Property and provides the 'finishing touch' to the updated frontage of the Property.

4.12 In the Officer's Report for the 2018 Application (**Appendix 14**), the Officer states as follows:

"*This part of Ingram Avenue is not characterised by gates and it is considered that the addition of gates and piers at the application site would not be based on an understanding of local characteristics and neither enhance nor protect the character of the conservation area or the individual locally listed dwelling house. They would result in alien features to the streetscene that would not maintain the openness of the road or the original design concept of the conservation area as detailed above.*"

However, in terms of design, the approval of the Side Gates by the Trust confirms that in aesthetic terms, the design is acceptable within the Conservation Area. Therefore, the issue of design is not so much the styling of the Gates but rather the "fact" of them existing at all. This is less a design issue and rather a question of the impact of the Gates on the character of the Conservation Area, which is addressed below.

ii) Character of this part of the Conservation Area

Hampstead Garden Suburb Conservation Area

4.13 The Property is located within the Hampstead Garden Suburb which was designated as a Conservation Area (the Hampstead Garden Suburb Conservation Area ("the **Conservation Area**")) in 1968. The Conservation Area is divided into 17 'Character Areas'. The Property is situated in the southeast part of the Conservation Area within Character Area 14.

4.14 The 'Hampstead Garden Suburb – Ingram Avenue – Area 14 – Character Appraisal' document describes Ingram Avenue at Section 1 – *Overall character of the area* as follows:

> "The serpentine roads of Ingram Avenue and its associated closes are lined with trees and hedges, with large houses standing behind carriage drives... The overall impression is of a leafy, contained, residential community where large houses sit comfortably in generous plots."

Legal Duty

4.15 Section 72 of the Listed Buildings Act 1990 states as follows:

> "General duty as respects conservation areas in exercise of planning functions
>
> 72. – (1) In the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
>
> (2) The provisions referred to in subsection (1) are the Planning Acts..."

4.16 The Council therefore has a legal duty under section 72(1) above when exercising its functions under the Planning Acts to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Open Nature of frontages in this part of Ingram Avenue

4.17 The Council served the Enforcement Notice because it considers the Gates would "significantly detract from the open nature of the frontages in this part of Ingram Avenue".

4.18 Enclosed at **Appendix 15** is a plan which shows the split of different types of property frontages (gated, closed or open) along Ingram Avenue, Wildwood Road and Winnington Road. Those results are set out in the table below:

Colour of Edging	Type of Frontage of Property	Number	Percentage	
red	gated	27	25%	40%
blue	closed (i.e. behind fences/walls/hedges)	16	15%	
green	open	67	60%	
		Total: 110		

4.19 This table shows that of the properties surveyed, while 60% have open frontages, 40% have gated or closed frontages.

4.20 The Council clearly thinks that the Gates would not just detract from the open nature of the frontages in this part of Ingram Avenue, but would significantly do so. It is not clear what "part of Ingram Avenue" the Council is referring to here. However, the inclusion of the word "part" strongly suggests that the Council is not considering the potential impact/harm of the Gates on the whole of Ingram Avenue here.

4.21 Whilst some properties on Ingram Avenue have open frontages, other homes (including the home immediately opposite the Property and the home two doors away from the Property) have gates at the entrance to their driveways. Still others that are not gated have fences and/or tall hedges marking their boundaries and providing privacy/security. It is inaccurate, therefore, for the LPA to describe the frontages of this part of Ingram Avenue (assuming the immediate vicinity is the part the Council is referring to) as having an open nature. In fact, Ingram Avenue has a mixed character of open and closed frontages, each of varying degrees.

4.22 The Council refused the 2018 Application and subsequently issued the Enforcement Notice because it considered that the Gates and piers, by reason of their height and design, would be inappropriate and intrusive features which would "significantly" detract from the "open nature" of the frontages in "this part of Ingram Avenue".

4.23 However, on a proper analysis, the Gates cannot be said to have a negative impact on this part of the Conservation Area. Rather, the design protects the character, defined as it is by the mixed and varied character of the frontages in this part of the Conservation Area. Furthermore, the low height of the Gates makes them non-intrusive whilst the styling of the Gates is acceptable in design terms (as shown by the approval of the Side Gates). In addition, the existence of other gates in the local area makes the Gates appropriate. For all these reasons, the planning reasons set out in the Enforcement Notice are not a reasonable basis for refusing the appeal.

iii) Crime, and the perception of fear and crime

4.24 In addition to the acceptability of the Gates in terms of their design, height and their preservation of the character of the Conservation Area, an important land-use justification for the Gates is their need in terms of ensuring safety and minimising the fear of crime for the occupiers of the Property. The planning arguments in support of establishing this need is set out in detail below.

Planning Policy and Guidance

4.25 Policy CS5 of the Council's Core Strategy states as follows:

"*All development should maximise the opportunity for community diversity…and should contribute to people's sense of place, safety and security.*"

4.26 NPPF at paragraph 69 states:

> "*Planning policies and decisions, in turn, should aim to achieve places which promote:*
>
> ...
>
> - *safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion*"

4.27 National Planning Practice Guidance (paragraphs 10 and 11 of the guidance on Design) states (emphasis added):

> **"Planning should address crime prevention**
>
> Designing out crime and designing in community safety should be central to the planning and delivery of new development. Section 17 of the Crime and Disorder Act 1998 requires all local authorities to exercise their functions with due regard to their likely effect on crime and disorder, and to do all they reasonably can to prevent crime and disorder. The prevention of crime and the enhancement of community safety are matters that a local authority should consider when exercising its planning functions under the Town and Country Planning legislation. Local authorities may, therefore, wish to consider how they will consult their Police and Crime Commissioners on planning applications where they are Statutory Consultees and agree with their police force how they will work effectively together on other planning matters.
>
> Crime should not be seen as a stand alone issue, to be addressed separately from other design considerations. That is why guidance on crime has been embedded throughout the guidance on design rather than being set out in isolation.
>
> It is important that crime reduction-based planning measures are based upon a clear understanding of the local situation, avoiding making assumptions about the problems and their causes. Consideration also needs to be given to how planning policies relate to wider policies on crime reduction, crime prevention and sustainable communities. This means working closely with the police force to analyse and share relevant information and good practice. Further information can be obtained from the Police.uk website."
>
> **"Planning should promote appropriate security measures**
>
> Taking proportionate security measures should be a central consideration to the planning and delivery of new developments and substantive retrofits. Crime includes terrorism, and good counter terrorism protective security is also good crime prevention."

4.28 The delegated report which sets out the Council's assessment of the 2018 Application makes no reference to crime, the fear of crime or disorder in the area. The Council had a legal duty under section 17 of the Crime and Disorder Act 1998 in determining the 2018 Application to have due regard to the likely effect on crime and disorder, and to do all they reasonably can to

prevent crime and disorder. It is the Appellant's case that the Council did not comply with this legal duty.

4.29 The Police and Crime Commissioners are a non-statutory consultee and should be consulted in accordance with the guidance on Design set out in the NPPG (see above). It is unclear from the Council's website whether or not the Police and Crime Commissioners were consulted in connection with the determination of the 2018 Application. Had the Council consulted the Police and Crime Commissioners as a non-statutory consultee, the information provided below in relation to the serious crime issue which exists in the area would have been relevant to the determination of the 2018 Application.

4.30 The Officer's Report also makes no mention of CS5, paragraph 69 of the NPPF or the relevant section of the PPG. It may be that the Officer was not aware of the significant issues relating to crime and the fear of crime in the local area. If that is the case, the omission of this issue from the Report is understandable. However, that omission does not negate the relevance of the policies and guidance set out above, all of which seek to ensure that places are safe, the fear of crime is minimised and safe environments are created and supported by the planning system.

Public safety concerns as a material consideration

4.31 The ever-present crime threat in this part of London is fundamental to a proper understanding of the appeal. Paragraph 69 of the NPPF expressly states that planning decisions should promote places where "crime and disorder, and the fear or crime, do not undermine quality of life". This paragraph makes it clear that it is not just the *actual* crime and disorder that exists in the area which should be taken into consideration in the determination of the 2018 Application but the *fear* of crime as well. For perhaps understandable reasons, these factors were considered when the 2018 Application was determined. However, the Inspector is respectfully asked to consider them in the determination of this appeal.

4.32 The Court has confirmed on a number of occasions that public safety, including "fear of crime", is a material consideration to be taken into account in the determination of planning applications.

4.33 In *West Midlands Probation Committee v Secretary of State for the Environment, Transport and the Regions* (1998) 76 P. & C. R. 589, (**Appendix 16**) the Court of Appeal held that well-founded concerns and apprehension of neighbouring residents to a proposed extension to a bail and probation hostel was a material consideration.

4.34 In *Newport BC v Secretary of State for Wales* [1998] Env. L.R. 174 (**Appendix 17**) the Court of Appeal held that it was a material error of law to conclude that a genuinely held public perception of danger which was unfounded could never amount to a valid ground for refusal. Therefore, even fears that have been shown to be unjustified may continue to be a material consideration.

4.35 In this particular case, for the reasons set out in detail below, crime, and the perception and fear of crime, is a material consideration which supports the grant of planning permission in this appeal.

Evidence of Crime

4.36 The Appellant's witness statement is included at **Appendix 18**. This document is essential reading. We do not propose to repeat its contents here but refer the Inspector to it for a very clear statement of the Appellant's experiences of crime in the area, how he and his family constantly lives in fear for their safety and what a difference having the Gates as a deterrent makes to their mental wellbeing and therefore, quality of life.

Local Examples

4.37 Below is an example of a serious crime which was committed in the immediate area.

15 WINNINGTON ROAD

4.38 On 5 September 2014, the owner of 15 Winnington Road, Mr Gerrard, was refused planning permission for the installation of two pairs of automatic metal gates and gates pilasters to both existing entrances to his property (Ref: F/04940/14).

4.39 Mr Gerrard submitted a planning appeal against that refusal. That appeal was dismissed by the Planning Inspector on 23 April 2015. (Ref: APP/N5090/D/15/3004968). At paragraph 5 the Inspector stated (emphasis added):

> "Although the harm would be considerable, it would be less than substantial and, in these circumstances, the National Planning Policy Framework (NPPF) indicates that public benefit can be taken in account. In this case, crime prevision is put forward by the appellant, but it is not clear whether other less obtrusive approaches that may have similar benefits have been explored or what the risk of crime is in the area. Nevertheless, while I attach some small weight to the provision of gates, as the appellant views them as a deterrent, this would be insufficient to outweigh the harm arising from the scheme."

4.40 On 21 June 2017, Mr Gerrard drove his car onto his driveway and waited for the garage to open as he had done on many occasions. When Mr Gerrard left his car in the garage he was brutally attacked by person or persons unknown who had followed him onto his property on mopeds. The result of the attack was significant with Mr Gerrard being hospitalised and treated for a broken cheek bone along with CT scans to investigate a possible brain haemorrhage. Enclosed at **Appendix 19** are less graphic photographs to demonstrate the severity of this incident along with a related newspaper article at **Appendix 20**.

4.41 Mr Gerrard and a number of his neighbours have CCTV cameras on their properties but clearly, this did nothing to dissuade the attackers, who were disguised by their crash helmets, from carrying out the assault. Mr Gerrard also had security lights but this attack took place in broad daylight on a summer's day. Clearly, less intrusive approaches such as CCTV and security lights had not been effective in the prevention of crime.

4.42 Following the attack, Mr Gerrard made a further planning application for the installation of two pairs of automatic metal gates and gates pilasters to both existing entrances to his property (Ref: 17/6494/HSE). The Case Officer, Joe Mari, recommended the application be refused. However, Councillor Marshall called for the application to be determined by the area planning committee as "it might be considered an interesting attempt to improve security in an aesthetically acceptable way".

4.43 Consequently, the 2017 application was determined by the area planning committee who voted, 7-0, in favour of the application and planning permission for Mr Gerrard's gates was granted on 5 December 2017.

Further Examples

4.44 We set out below some further examples of crime which have happened in the locality.

Confidential	• April 2019 – Front door of a property in Middleway was jemmied open. The owners were at home but did not hear anything. The alarm then went off. The owner came down, the burglars grabbed him and said, with the iron bars in their hands: "you have three minutes to open the safe". The burglars emptied the entire safe and left. The police came a minute later. Both intruders' faces were covered. The couple were extremely shocked and shaken.

Mr & Mrs Segal	• Owners of 7 Ingram Avenue (no gates). Robbed on 29 November 2018 whilst they were in the house.
Mati Sinai	• Owner of 7 Church Mount (no gates) and the appellant's cousin. Robbed at approximately 7.45pm on Monday 26 November 2018, whilst no one was home, involved break in, lots of damage and theft of property. Third robbery in 5 years.
Anonymous muggings posted on Facebook	• Mother of child at Kerem School was mugged in June 2016 on Southway in broad daylight at 6pm. In the same week there was a mugging on Denman Drive. Another mugging took place on Wildwood Road at 4pm the next day. • Perpetrators appear to be the same group: 2-4 young black males wearing black jackets, black trousers, and black baseball caps.
Neighbourhood Watch	• Janine Oppenheim – Neighbourhood Watch contact. Captured video via her Ring device of a man with a large bag on his back knocking on her front door in the dark. When she spoke to the man through the intercom, he asked for "the big boss of the house". When she said he wasn't home, he asked "what are you lying for?" When she said "goodbye", he then used extremely offensive expletives and walked away.

Freedom of Information Request to the Metropolitan Police

4.45 In the appeal decision for 15 Winnington Road, the Inspector stated the extent of crime in the area had not been explained or evidenced. It is accepted that without such evidence, the weight which can be given to this issue would be low.

In order to address this point, therefore, a Freedom of Information ("FOI") request was made to the Metropolitan Police for the following:

> *REQUEST 1:*
> *1. the number of crimes reported on Ingram Avenue, Winnington Road, Wildwood Road, Hampstead Way and Spaniards Close [the **"listed streets"**] for each of the years 2015-2016, 2016-2017 and 2017-2018; together with,*
> *2. a breakdown showing the types of crime committed during those years on those roads.*
>
> *REQUEST 2:*
> *1. the number of crimes reported in Hampstead Garden Suburb Conservation Area (as defined by the boundary map of the Hampstead Garden Suburb Conservation Area available on Barnet LBC's Conservation area webpage) for each of the years 2015-2016, 2016-2017 and 2017-2018; together with,*
> *2. a breakdown showing the types of crime committed during those years within that area.*

4.46 We attach at **Appendix 21** the letter from the MPS dated 18 February 2019 acknowledging receipt of our FOI request and summarising the terms on which the requested information was disclosed.

4.47 We attach at **Appendix 22** the FOI response from the MPS. The results can be summarised as follows:

- Total crimes in the Listed Streets (excluding drug offences): 251
- Total crimes in Hampstead Garden Suburb area (excluding drug offences): 2,037

- **Percentage of crimes in the Listed Streets as a proportion of crimes within Hampstead Garden Suburb (excluding drug offences): 12.3%**

- Number of houses on Ingram Avenue and Spaniards Close: 51
- Number of robberies/thefts/criminal damage/vehicle offences in last 3 years (2015-2018) on Ingram Avenue and Spaniards Close: 21
- **Percentage of homes on Ingram Avenue and Spaniards Close that have been victims of crime (excluding drug offences): 43%**

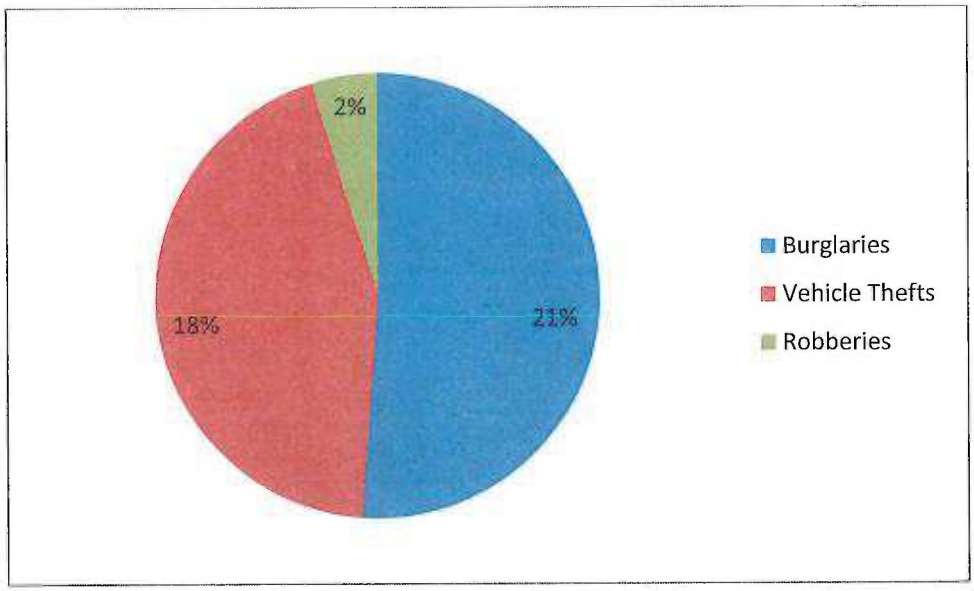
4.48 The figures for robbery, burglary and vehicle theft only are as follows:

- Number of burglaries on Ingram Avenue and Spaniards Close between 2015-2018: 11
- **Percentage of homes on Ingram Avenue and Spaniards Close that have been the victims of <u>burglary</u>, on average: 21%**

- Number of robberies on Ingram Avenue and Spaniards Close between 2015-2018: 1
- **Percentage of homes on Ingram Avenue and Spaniards Close that have been the victims of <u>robbery</u>, on average: 2%**

- Number of vehicle thefts on Ingram Avenue and Spaniards Close between 2015-2018: 9
- **Percentage of homes on Ingram Avenue and Spaniards Close that have been the victims of <u>vehicle theft</u>, on average: 18%**

4.49 These figures are shown as a pie chart below:



4.50 In summary, the above figures demonstrate that 1 in 5 houses in Ingram Avenue and Spaniards Close have been burgled in the last 3 years. 43% of the homes in these two streets have been affected by crime, with the Listed Streets themselves accounting for 1 in every 10 crimes (excluding drug offences) committed within HGS.

4.51 These statistics and examples paint a very clear and alarming picture of the reality of the crime situation in this area. Not only are crime levels high in HGS but the risk of crime in Ingram Avenue and its nearby streets is even greater. The types of crime – burglary, robbery, car theft – all create a real sense of fear that homes will be robbed and cars stolen. That is the unfortunate reality of living in these streets in 2019.

4.52 It is also important and relevant to place the statistics in a wider London context. The relative rates of burglaries Hampstead Garden Suburb, Barnet and London for the periods Aug 2015 – Aug 2018 are attached at **Appendix 23**. The relative rates are as follows:

- London – 17.26 burglaries per 1,000 population
- Barnet – 20.69 burglaries per 1,000 population
- Hampstead Garden Suburb – 27.72 burglaries per 1,000 population

Assuming a population of 204 in the Listed Streets (an average of 4 people per household), the equivalent rate for burglaries within the Listed Streets for the same period (2015-18) is 52.48 burglaries per 1,000 population (ie 10.71 burglaries per 204 people, grossed up to 1,000 people).

4.53 The fear of crime is also exacerbated by the low levels of policing within Hampstead garden Suburb. Due to cutbacks, police are rarely seen patrolling the area and only one Police Officer has been allocated for managing the area. This lack of resources, though understood, also leads to inadequate investigations of crime when it is committed. It is noteworthy that as a direct response to the lack of police resources, private security firms frequently patrol the local area.

4.54 The evidence above confirms the real position within the Listed Streets, namely, that the rate of burglaries within these starts is three times higher than the average rate within London and two times higher than the average rate within Hampstead Garden Suburb. Objectively, therefore, it is clear on the evidence that the fear of crime is underpinned by the actuality of crime. As such, significant weight should be given to this issue as a material consideration in the determination of the appeal.

Secured by Design

4.55 Established in 1989, Secured by Design ("**SBD**") is the official UK Police flagship initiative that is founded on the principles of designing out crime and crime prevention. At its core, SBD aims to bring together elements of physical security with design, layout and construction and is committed to reducing crime.

4.56 The SBD website contains advice on how to secure one's home or business. SBD has created a guide for home security (all available on their website). Enclosed at **Appendix 24** is a screenshot from SBD's guide to home security: "Secure your Perimeter". The guidance states:

> "Gates and fences are the first signs of a secure home and act as a good deterrent to intruders. Make sure they are in good repair.
>
> 1. Keeping your front gate closed sends a psychological message of privacy, so consider investing in a gate spring..."

Professional Opinions

4.57 On 8 October 2018, at the request of the Appellant, Ian Dickinson, a Director of IP Fire & Security Limited, an independent company specialising in fire and safety systems, visited the Appellant's home to discuss security installations at the Property. Mr Dickinson followed up his visit with a letter to the Appellant dated 11 October 2018. A copy of that letter is enclosed at **Appendix 25**. The letter states that the installation of perimeter fencing and gates would significantly increase the level of security at the Appellant's property.

4.58 Also enclosed at **Appendix 26** is a report commissioned by the Appellant and prepared by Aspen Security Consultants dated April 2018 "Perimeter Gates as a Crime Prevention Measure". The report states at paragraph 3.1 (page 5) as follows:

> "The first line of defence against crime to any property is the perimeter fencing and gates. Having a good secure perimeter with secure gated access of any size will reduce foot traffic/unauthorised vehicles to the premises and help to prevent any potential crime. The overt presence of such measures may stop an act of criminality at the outset, presenting an image of good security that might dissuade those seeking unauthorised access. Deterrence is perhaps the most desired effect

from any physical security measure, as stopping a crime before it has begun is safest for all involved. Having access to controlled points such as gates, residents can also feel they are living in a safer environment."

4.59 The report concludes (page 6) as follows:

- "36% of all burglaries are crimes of opportunity.
- There has been a 5.35% crime increase in the 12 months to February 2018 compared with the previous 12 months for the borough of Barnet. Burglary is a problem in the borough.
- Having good secure perimeter fencing and gates can be an aid to crime prevention.
- Gates play an immense role when it comes to the safety of your children and pets.
- A number of Police forces and professional bodies recommend the use of perimeter gates as a crime prevention measure."

4.60 The report recommends (page 6) as follows:

> "It is recommended that:
>
> The 1 metre high metal gates be installed to the property to assist in crime prevention to the property".

4.61 A further report has been prepared by SQR Group (October 2019) (**Appendix 27**). In the Report, the author (a retired police officer) refers to "the marked increase in crime since the start of the year with 140 incidents recorded in May alone". These figures are both staggering and deeply concerning for the appellant. The Report also highlights some of the reasons for the high incidence of crime, including the escape route offered by the main A1 and the perceived wealth of many of the residents. The Report states that "the first line of defence in any home are the key physical features of the property itself...[with] gates at the entrance to the property affording a measure of protection against moped enabled robberies". The Report concludes that "it is my considered opinion that gates carry out an extremely important function in the safety and security of the occupants of this address".

4.62 As mentioned above, a violent robbery took place in June 2017 at 15 Winnington Road. In response to that attack, DC Daniel Llewellyn from the Metropolitan Police wrote to the victim (**Appendix 28**). The professional opinion of DC Llewellyn is set out in unequivocal terms in his letter: *"[the viciously violent robbery] may well have been prevented if you had security gates outside your home address. Not only would this have been a visible deterrent but there is also a good possibility that it would also have put off any potential opportunist thieves. I do believe there would be a benefit of security gates and could potentially help prevent you being the victim of crime in the future*".

4.62 The consistent, collective view of professionals working within the crime prevention sector is that security gates mitigate against the risk of violent crime. They operate as first line of defence, without which the property is vulnerable to both violent and opportunistic crime.

Insurance

4.63 Enclosed at **Appendix 29** is a guide called 'Insurance Advice on Home Security' prepared by the Association of British Insurers ("ABI") in conjunction with the Home Office.

4.64 The guide states (page 3):

> "Insurers often use information on how secure a property is when they are deciding whether to offer cover, on what terms and conditions, and what premium to charge. Improving the security on your home can help make sure you get the best possible deal from the insurance market when you buy or renew your cover".

4.65 The guide states "there are many ways you can reduce the risk of an intruder breaking into your home". It gives some ideas for protecting your property from a potential intruder. These include, inter alia, the installation of fencing and gates.

4.66 The Appellant is a fine art dealer and runs a permanent gallery – Alon Zakaim Fine Art in London. As part of his business, from time to time it is necessary to keep stock at the Property. The Appellant contacted his insurers, Blackwall Green, one of the leading insurance brokers providing bespoke insurance cover for museums, exhibitions, art dealers and private clients, to enquire as to whether they would be willing to provide cover in respect of the stock the Appellant keeps at the Property.

4.67 The Appellant received a written response from Blackwall Green on 29 March 2018 to this enquiry. A copy of that letter is enclosed at **Appendix 30**. Blackwall Green confirmed that, in principle, the insurers were willing to cover the stock subject to receiving satisfactory security information and set out certain minimum security requirements. Further, the response stated:

"*If you plan to hold significant values at this address then you should consider CCTV with a recording function and perimeter security, including securing any walls, fences, gates, &c, and an entryphone system, as well as a remotely monitored fire alarm.*"

It is clear that the insurers consider perimeter security, including securing any walls, fences and gates, to be essential security requirements if the Appellant plans to hold items of significant value at the Property.

5 Ground (f) – *the steps required to be taken by the notice are excessive*

5.1 Section 174(2)(f) of the 1990 Act states that an appeal against an enforcement notice may be brought on the following ground:

> "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach."

5.2 It is the Appellant's case that complete removal of the Gates, as required by the Enforcement Notice, is excessive when mitigation measures such as planting on the Gates (for example, ivy or similar leafy climbing plants) to camouflage the Gates amongst the adjacent hedges could have been considered. Such measures would help to mitigate any potential adverse impacts on the Conservation Area while allowing the Appellant to retain the Gates.

5.3 The Appellant would be prepared to camouflage the Gates with planting should the Inspector consider this to be appropriate, provided such planting would not affect the mechanical operation of the Gates. Such a requirement could be included in a planning condition.

6 CONCLUSION

6.1 This appeal raises legitimate planning considerations far beyond those of a "normal" design-based householder appeal. The Appellant has not installed the Gates with abandon, nor has he adopted any sense of entitlement for the erection of the Gates or disregard for the importance of preserving the character of the Conservation Area. On the contrary, the Gates have been designed to reflect the area's aesthetic, replicating a design that the Trust approved for the Side Gates.

6.2 In planning terms, the justification for the installation of the Gates is not only the suitability of the design but, more importantly, the fear of crime which would exist in the absence of the Gates. As the evidence set out in this Statement has demonstrated, this fear is based on evidence: the homes in Ingram Avenue are at high risk of being burgled, their owners attacked and their cars stolen.

6.3 The Appellant would respectfully request that significant weight is given to this fear and actuality of crime when the Inspector reaches a decision on the appeal. The provision of gates is recommended by security companies, insurers and the police as an effective means of deterrent. Without them, genuine fear will remain and more homes and lives will be damaged.

6.4 The Appellant would respectfully request that the appeal is allowed. If the Inspector considers it necessary, the Appellant would also accept the imposition of a planning condition requiring the Gates to be "greened".

Foot Anstey LLP

Index of Appendices

Appendix Number	Appendix Description
1	Appellant's Statement of Facts and Grounds (21 November 2018)
2	Enforcement Notice Appeal Form (21 November 2018)
3	*R (Ardagh Glass Ltd) v Chester CC* [2009] Env. L. R. 34
4	Photograph of the Gates
5	Enforcement Notice (24 October 2018)
6	Photographs of gates at 30 Ingram Avenue
7	Photographs of Gates at 37 Ingram Avenue
8	Photographs of Gates at 38 Ingram Avenue
9	Photographs of Gates at 41 Ingram Avenue
10	Photographs of Gates at 90 Winnington Road
11	Design Statement (Wolff Architects)
12	Email from David Davidson, Hampstead Garden Suburb Trust to Jason Oliver, Wolff Architects (2 February 2018)
13	Design of the Side Gates
14	London Borough of Barnet (Officer's Report) (8 October 2018)
15	Frontages Plan (Ingram Avenue, Wildwood Road and Winnington Road)
16	*West Midlands Probation Committee v Secretary of State for the Environment, Transport and the Regions* [1998] 76 P. & C. R. 589
17	*Newport BC v Secretary of State for Wales* [1998] Env. L. R. 174
18	Appellant's Statement (24 October 2019)
19	Photographs of applicant's injuries following attack on 21 June 2017
20	Mail Online article (18 February 2015)
21	Freedom of Information response (Metropolitan Police Service) (18 February 2019)
22	'Information & Insight' (Metropolitan Police Service)
23	Burglary rates in London, Barnet and Hampstead Garden Suburb (Metropolitan Police Service)
24	'Secure your Perimeter' (Secured by Design)
25	Letter from Ian Dickinson, IP Fire & Security Limited to Alon Zakaim (11 October 2018)

26	Report (Aspen Security Consultants) (April 2018)
27	Report (SQR Group) (October 2019)
28	Letter from DC Daniel Llewellyn (Metropolitan Police Service) to Bradley Gerrard (22 November 2017)
29	'Insurance Advice on Home Security' (Association of British Insurers)
30	Letter from Robert Hepburne-Scott at Blackwall Green to Alon Zakaim (29 March 2018)

Appendix 1

Statement of Facts and Grounds
Appeal against Enforcement Notice on behalf of Alon Zakaim (Appellant)
relating to

Enforcement Notice (reference ENF/0898/18) issued by London Borough of Barnet dated 24 October 2018 in respect of 31 Ingram Avenue, Golders Green, London, NW11 6TG

Dated 21 November 2018

Our Ref: skjw/tt/240736/1
LPA Ref: ENF/0898/18
PINS Ref: APP/N5090/C/18/3216722

1 BACKGROUND

1.1 On 8 February 2018, Mr Alon Zakaim, ("**the Appellant**") began works for the installation of two pairs of low driveway gates ("**the Gates**") at their property, 31 Ingram Avenue, Golders Green, London, NW11 6TG ("**the Property**").

1.2 On 20 April 2018, the Appellant submitted a planning application to the London Borough of Barnet ("**the Council**") in respect of the installation of the Gates with associated stone piers (reference 18/2436HSE). This application was withdrawn on 7 June 2018.

1.3 On 13 August 2018, the Appellant submitted a further planning application to the Council in respect of the installation of the Gates and associated stone piers (reference 18/5011/HSE) ("**the 2018 Application**"). This application was refused on 8 October 2018. A copy of that decision notice is enclosed at **Appendix 1**.

1.4 On 24 October 2018, the Council served an enforcement notice on the Appellant in respect of an alleged breach of planning in respect of the Gates and stone piers (reference ENF/0898/18) ("**the Enforcement Notice**"). A copy of the Enforcement Notice together with the covering letter is enclosed at **Appendix 2**. A plan is appended to the Enforcement Notice.

1.5 This document sets out the Appellant's facts and grounds in his appeal against the Enforcement Notice and is made on grounds (a) and (f).

1.6 The Appellant will not be submitting a planning appeal against the Council's refusal of the 2018 Application because the Appellant's case for why the 2018 Application should be granted will be made under his ground (a) submissions in relation to this Enforcement Notice appeal.

2 ENFORCEMENT NOTICE

2.1 The Enforcement Notice states that the matters which appear to constitute the breach of planning control are:

> "Without planning permission the erection of two pairs of low driveway gates and associated stone piers at the front of the property".

2.2 The Property is located within the Hampstead Garden Suburb which is subject to the Hampstead Garden Suburb Conservation Area ("**the Conservation Area**"). The Conservation Area is subject to an Article 4 Direction and therefore, permitted development rights have been removed. The Appellant does not dispute that the erection of the Gates and piers constituted development requiring planning permission under section 55 of the Town and Country Planning Act 1990 ("**the 1990 Act**").

2.3 The Council's reasons for refusing the 2018 Application as stated on the decision notice are as follows:

> "1. The proposed gates and piers, by reasons of their height and design, would be inappropriate and intrusive features which would significantly detract from the open nature of the frontages in this part of Ingram Avenue to the detriment of the character and appearance of this part of the Hampstead Garden Suburb Conservation Area, contrary to Policies DM01 and DM06 of the Local Plan Development Management Policies; and the Supplementary Planning Guidance in the form of the 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals (October 2010)."

2.4 The Council's "Reasons for Issuing This Notice" are set out as follows at paragraph 4 of the Enforcement Notice and are almost identical to the reasons for refusing the 2018 Application:

"It appears to the Council that the above breach of planning control has occurred within the last four years.

1. The gates and piers, by reason of their height and design, would be inappropriate and intrusive features which would significantly detract from the open nature of the frontages in this part of Ingram Avenue to the detriment of the character and appearance of this part of the Hampstead Garden Suburb Conservation Area, contrary to Policies DM01 and DM06 of the Local Plan Development Management Policies; and the Supplementary Planning Guidance in the form of the 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals (October 2010)."

3 GROUNDS OF APPEAL

3.1 The Appellant makes this appeal on the following grounds:

Ground (a) ***planning permission ought to be granted***

3.2 Section 174(2)(a) of the 1990 Act states that an appeal against an enforcement notice may be brought on the following ground:

> "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted..."

Ground (f) the steps required to be taken by the notice are excessive

3.3 Section 174(2)(f) of the 1990 Act states that an appeal against an enforcement notice may be brought on the following ground:

> "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach."

3.4 The Appellant will set out his case fully in relation to the above two grounds of appeal in his Hearing Statement which is to follow.

4 CHOICE OF PROCEDURE

4.1 Annexe G to the Planning Inspectorate's procedural guide to enforcement notice appeals, England (dated 23 March 2016) sets out the criteria for determining the procedure for enforcement notice appeals.

4.2 Having considered the criteria as set out in the above guidance carefully, we respectfully suggest and request that the most appropriate method for determining this appeal is by way of a **hearing,** for the reasons set out in paragraphs 4.3 to 4.7 (inclusive) below.

4.3 *The Inspector is likely to need to test the evidence by questioning or to clarify matters*

There will be a significant amount of evidence submitted by the Appellant in support of his appeal in the form of statements from relevant professionals and local residents. It is likely the Inspector will need to question some who have given statements in order to clarify matters raised in that evidence.

4.4 *There is no need for evidence to be tested through formal questioning by an advocate or given on oath*

The subject matter of the enforcement notice is not such as to warrant a public inquiry. Consequently, it would be sufficient for the Inspector to clarify any concerns over the

evidence submitted through informal questioning as opposed to formal questioning by an advocate or given on oath.

4.5 *The case has generated a level of local interest such as to warrant a hearing*

Security risk has become a matter of concern for many residents of Hampstead Garden Suburb and many other local residents have/are in the process of/would like to install similar security provisions at their own properties. Many have shown a strong interest in the Appellant's case and would like to participate in the appeal and attend a hearing to show their support.

4.6 *It can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them*

The appeal will need to carefully consider the question of whether crime, and the perception and fear of crime, is a material consideration which should be taken into account in the determination of the appeal such that any potential harm to the Conservation Area is outweighed by that material consideration. The issues in question are relatively straightforward as there are no complex legal arguments to be pursued. Consequently, it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses where required) without the need for an advocate to represent them.

4.7 *In an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.*

As referred to in paragraph 4.6 above, the alleged breach and requirements of the Enforcement Notice are relatively straightforward. The appeal will be made on two grounds only.

The ground (a) submissions will address the following: i) the height and design of the Gates ii) the character of this part of the Conservation Area iii) the significance of any impact on this part of the Conservation Area and iv) crime, and the perception of fear and crime, constituting a material consideration in the determination of the appeal.

Similarly, the ground (f) submissions will focus on how mitigation measures such as planting on the Gates (for example, ivy or similar leafy climbing plants) to camouflage the Gates amongst the adjacent hedges could have been considered by the Council such that the complete removal of the Gates (as required by the Enforcement Notice) was an excessive remedy and should not have been imposed.

5 FEE

5.1 The fee of £412.00 as specified in the covering letter serving the Enforcement Notice on the Appellant in respect of the deemed planning application under ground (a) has been paid to the Council.

6 CONCLUSION

6.1 We consider that the Enforcement Notice should be quashed and planning permission granted for the Gates.

Foot Anstey LLP

21 November 2018

Appendix 2

For official use only (date received): 21/11/2018 09:55:42

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/N5090/C/18/3216722

A. APPELLANT DETAILS

Name	Mr Alon Zakaim
Address	31 Ingram Avenue Golder's Green LONDON NW11 6TG
Phone number	020 7287 7750
Fax number	020 7287 7751
Email	alon@alonzakaim.com
Preferred contact method	Email ☑ Post ☐

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice? Yes ☐ No ☑

B. AGENT DETAILS

Do you have an Agent acting on your behalf? Yes ☑ No ☐

Name	Mrs Suzanne Walford
Company/Group Name	Foot Anstey LLP
Address	Foot Anstey Solicitors, Senate Court Southernhay Gardens EXETER EX1 1NT
Phone number	01392685227
Fax number	01392685220

Email	suzanne.walford@footanstey.com
Preferred contact method	Email ☑ Post ☐

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority	London Borough of Barnet
LPA reference number (if applicable)	ENF/0898/18
Date of issue of enforcement notice	24/10/2018
Effective date of enforcement notice	29/11/2018

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes ☑ No ☐

Address

31 Ingram Avenue
Golder's Green
LONDON
NW11 6TG

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes ☐ No ☑

What is your/the appellant's interest in the land/building?

Owner ☑

Tenant ☐

Mortgagee ☐

None of the above ☐

E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? Yes ☐ No ☑

(a) That planning permission should be granted for what is alleged in the notice. ☑

The facts are set out in

☑ see 'Appeal Documents' section

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact. ☐

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development"). ☐

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. ☐

(e) The notice was not properly served on everyone with an interest in the land. ☐

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. ☑

The facts are set out in

☑ see 'Appeal Documents' section

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why. ☐

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☐

2. Hearing ☑

You must give detailed reasons below or in a separate document why you think a hearing is necessary. The reasons are set out in

☐ the box below

☑ see 'Appeal Documents' section

Is there any further information relevant to the hearing which you need to tell us about? Yes ☐ No ☑

3. Inquiry ☐

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes ☑ No ☐

a) the date of the relevant application 13/08/2018

b) the date of the LPA's decision (if any) 08/10/2018

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes ☐ No ☑

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes ☐ No ☑

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☑ see 'Appeal Documents' section

02. Plan (if applicable and not already attached)

☑ see 'Appeal Documents' section

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledege.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature	Mrs Suzanne Walford
Date	21/11/2018 09:55:56
Name	Mrs Suzanne Walford
On behalf of	Mr Alon Zakaim

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018. Further information about our Data Protection policy can be found on our website under Privacy Statement.

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:

  https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below are to follow by post:

Relates to Section:	GROUNDS AND FACTS
Document Description:	Facts to support that planning permission should be granted for what is alleged in the notice.
Relates to Section:	GROUNDS AND FACTS
Document Description:	Facts to support that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
Relates to Section:	CHOICE OF PROCEDURE
Document Description:	Document containing detailed reasons why a hearing is necessary.
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	01. The Enforcement Notice.
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	02. The Plan.

Completed by	MRS SUZANNE WALFORD
Date	21/11/2018 09:55:56

Appendix 3

*698 Ardagh Glass Ltd v Chester City Council

Queen's Bench Division (Administrative Court)

H.H. Judge Mole Q.C. :

April 8, 2009

Development; Enforcement; Environmental impact assessments; Local authorities; Planning permission; Retrospective permission;

H1 *Environmental assessment—planning permission—enforcement action—whether local authority required to take enforcement action—time when operations "substantially completed" for purposes of enforcement action limitation—whether retrospective planning permission lawful for developments requiring environmental impact assessment*

H2. The claimant (AG) was a company which sought the grant of a mandatory order for enforcement action against the interested party (Q) and also prohibiting planning permission by the defendants (C). Q had commenced development of a very large glass container factory without planning permission in 2003, but applied for permission when the plant was already under construction in 2004. The Secretary of State called in those applications in 2005, by which stage much of the plant was functioning. After the Secretary of State refused planning permission in 2007, Q submitted a retrospective planning application, accompanied by an Environmental Statement. The Secretary of State issued a direction to C not to grant planning permission without express authority. In judicial review proceedings brought by AG, the two questions asked of the court were whether C should be required to take immediate enforcement action and whether planning permission could lawfully be granted for the development. It was common ground that the development was currently unlawful and that if effective enforcement action was to be taken the enforcement notices had to be served within four years of the "substantial completion" of the development. It was also common ground that the development could not be lawfully granted planning permission without an environmental impact assessment (EIA). The main issues were (a) when the operations were "substantially completed" and (b) whether retrospective "development consent" was lawful in such cases. AG contended that to grant retrospective planning permission would undermine the preventive objectives of Directive 85/37 , of which the principal one was that effects on the environment should be taken into account at the earliest possible stage and before works were carried out (Commission v Ireland (C-215/06) relied upon). C submitted that retrospective planning permission might properly ***699** be granted as, on its true interpretation, Community law did not preclude the regularisation of existing EIA development in exceptional cases.

H3. **Held,** in granting the application:

H4. (1) It would be a betrayal by C of its responsibilities, and a disgrace upon the proper planning of the country, if the development were to achieve immunity because enforcement action was not taken in time. C had made errors of law in considering when a large and complex development, made up of several distinct, though physically and functionally connected, elements was "substantially complete", and so whether it was expedient to issue an enforcement notice. Accordingly, a mandatory order would be made requiring C to issue an enforcement notice in respect of the unlawful development requiring the removal of the buildings and works, and cessation of activities.

H5. (2) On a literal analysis, art.2(1) of the Directive did not appear to rule out the possibility of retrospective development consent, provided it was preceded by a full and genuine opportunity for the public to understand the proposals, express their views, and have them taken into account. Whilst that may be much harder to achieve where the development in question was an accomplished fact, it was not impossible and not beyond the reach of a fair-minded decision maker.

H6. (3) The enforcement procedures under English law were effective and well able to take into account and protect the fundamental objectives of the Directive. Whilst English law did leave open the possibility that a pre-emptive developer might achieve immunity without any proper EIA, a purposive interpretation of art.2(1) strongly suggested that for C to permit the development to achieve immunity, whether by a positive decision not to take enforcement action or by mere inaction, would amount to a breach of the UK's obligations under the Directive.

Positive/Neutral Judicial Consideration

Court
Queen's Bench Division (Administrative Court)

Judgment Date
8 April 2009

Report Citation
[2009] EWHC 745 (Admin)
[2009] Env. L.R. 34

H7. (4) There was a distinction to be drawn between the Irish statutory provisions and procedures that were the subject of the Commission v Ireland case and those in England. Retrospective planning permission could lawfully be granted, as long as the competent authorities paid careful regard to the need to protect the objectives of the Directive. The procedures adopted were a matter for the State and once an enforcement notice was issued, the existing procedures were able to ensure compliance with the Directive.

H8 Legislation referred to:

Town and Country Planning (General Interim Development) Order 1946
EC Treaty arts 10 and 249
Directive 85/337 (Environmental Assessment) arts 1, 2, 4 and 6 and Annex II
Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199)
Town and Country Planning Act 1990 ss.55, 57, 73A, 171B, 172, 174, 175, 177, 178, 179, 183 and 191
Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) arts 4 and 14 and Sch.2
Directive 97/11 ***700***
Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293) reg.25

H9 Cases referred to:

Aannamaersbedrijf PK Kraaijveld BV v Gedeputeerde Staten van Zuid-Holland (C-72/95) [1997] All E.R. (EC) 134; [1996] E.C.R. 5403; [1997] 3 C.M.L.R. 1; [1997] Env. L.R. 265
Amministrazione delle Finanze dello Stato v Simmenthal SpA (C-106/77) [1978] E.C.R. 629; [1978] 3 C.M.L.R. 263
Berkeley v Secretary of State for the Environment, Transport and the Regions (No.1) [2001] 2 A.C. 603; [2000] 3 W.L.R. 420; [2000] 3 All E.R. 897; [2001] 2 C.M.L.R. 38; [2001] Env. L.R. 16
Commission v Germany (C-431/92) [1995] E.C.R. I-2189; [1996] 1 C.M.L.R. 196
Commission v Ireland (C-215/06) [2009] Env. L.R. D3
Francovich v Italy (C-6/90) [1991] E.C.R. I-5357; [1993] 2 C.M.L.R. 66; [1995] I.C.R. 722
Marleasing SA v La Comercial Internacional de Alimentacion SA (C-106/89) [1990] E.C.R. I-4135; [1993] B.C.C. 421; [1992] 1 C.M.L.R. 305
R. (on the application of Hammerton) v London Underground Ltd [2002] EWHC 2307 (Admin); [2003] J.P.L. 984; [2002] 47 E.G. 148 (C.S.)
R. (on the application of Prokopp) v London Underground Ltd [2003] EWCA Civ 961; [2004] Env. L.R. 8; [2004] 1 P. & C.R. 31
R. (on the application of Wells) v Secretary of State for Transport, Local Government and the Regions (C-201/02) [2005] All E.R. (EC) 323; [2004] E.C.R. I-723; [2004] 1 C.M.L.R. 31; [2004] Env. L.R. 27
Rheinmuhlen-Dusseldorf v Einfuhr- und Vorratsstelle fur Getreide und Futtermittel (166/73) [1974] E.C.R. 33; [1974] 1 C.M.L.R. 523
Sage v Secretary of State for the Environment, Transport and the Regions [2003] UKHL 22; [2003] 1 W.L.R. 983; [2003] 2 P. & C.R. 26

H10 Representation

Mr R. McCracken Q.C. , Mr J. Pereira and Mr G. Jones , instructed by DLA Piper UK LLP, appeared on behalf of the claimant.
Mr V. Fraser Q.C. and Mr I. Ponter , instructed by Denton Wilde Sapte LLP and Hammonds LLP, appeared on behalf of the first and second defendants.
Mr N. King Q.C. and Mr R. Taylor , instructed by CMS Cameron McKenna LLP, appeared on behalf of the interested party.

Judgment

H.H. Judge David Mole Q.C. sitting as a Deputy High Court Judge:

1. In this "rolled up" application the claimant company, Ardagh Glass Ltd, seeks permission to seek and the grant of first a mandatory order that enforcement action be taken by each defendant council against Quinn Glass Ltd, the interested party, before April 2009 and secondly an order prohibiting the grant or the making of a resolution to grant planning permission, ***701*** alternatively a declaratory order that it would be unlawful for the defendants to grant a planning permission for the proposed development.

2. Throughout this judgment I refer to Chester City Council and Ellesmere Port and Neston BC as the "defendant councils". I am aware that on April 1, 2009 those councils' responsibilities devolve upon another authority, Cheshire West and Chester BC. It was, I think, agreed by all counsel that the burden of any order I were to make would fall upon that council as successor to the defendant councils and there was no need to make any specific reference to the new body. I therefore do not do so.

History

3. This case is a further chapter in the history of the Quinn Glass works at Elton, near Chester. Quinn Glass is a major manufacturer of glass and wished to set up business in England. The Elton works were designed to be the largest glass container factory in Europe. The site had previously been occupied by a power station. It lies partly within the area of Chester City Council and partly within that of Ellesmere Port and Neston BC. The construction and operation of this plant required, amongst other authorisations, the grant of planning permission. Those authorisations were not obtained in advance.

4. Quinn Glass acknowledges that it took a calculated risk in commencing the development without permission. There is a difference between the parties about the degree of risk that was involved. There was permission for a smaller development. It was thought that could be amended to permit the proposed development, which Quinn Glass was, by then, carrying out. The local planning authorities purported to amend the permission but that amended permission was ultimately quashed following an application by the claimant, Ardagh Glass Ltd (formerly known as Rockware Glass Ltd), another glass manufacturer and competitor to Quinn Glass.

5. Site enabling works for the development began in October 2003. New applications for planning permission were made in July 2004 when the plant was already under construction. The Secretary of State called in these applications for determination on March 2, 2005. By this stage much of the plant was functioning. Mr O'Reilly, the Health and Security Manager of Quinn Glass, in his written statement dated June 16, 2005 records that the furnace was fired up on April 11, 2005 and produced the first glass for customers on May 2, 2005.

6. An inquiry was held over various dates from November 22, 2005 to March 27, 2006. The inspector produced a comprehensive report on July 13, 2006 and recommended that planning permission should not be granted. The Secretary of State ultimately accepted that recommendation and refused planning permission on January 22, 2007. The Secretary of State agreed that the application site should be should be treated as if it were yet to be built, on a cleared brown field site (decision letter, para.19). Like the inspector, and for the same reasons, the Secretary of State did not weigh in the planning decision the fact that Quinn Glass had constructed the development without first securing planning permission or an IPPC permit. However the Secretary of State did give some ***702** limited encouragement to the proposition that the matters that had led to refusal could be addressed in a new application.

7. At the beginning of 2008 Quinn Glass submitted a retrospective planning application, accompanied by an Environmental Impact Statement, to the defendant councils. In June 2008 the Secretary of State used her power under art.14 to direct the defendants not to grant planning permission without express authorisation.

The Issues — Summary

The first issue — the timing of enforcement action.

8. It is common ground that the Quinn Glass development is currently unlawful development. If effective enforcement notice action is to be taken against Quinn Glass the enforcement notices must be served within four years of the substantial completion of the development. In the claimant's view, and the council's view until recently, that means by April 2009. In the defendants' view, on a proper interpretation of the law, that means by November 2009, at the earliest. The claimant says that, because there is a real risk that April 2009 is the correct date, a precautionary approach should be taken. The defendants are unwilling to issue enforcement notices. They should be ordered to do so. The defendants say that it is for them to decide whether and when it is expedient to take enforcement action against Quinn Glass. It cannot be said that their decision not to take immediate action is beyond the range of choices open to them on the facts.

The second issue — whether the Defendants or the Secretary of State may lawfully grant planning permission for the Quinn Glass development.

9. It is common ground that the Quinn Glass development is such that it cannot lawfully be granted planning permission without an environmental impact assessment (EIA).

10. A new application for planning permission, supported by an EIA, is currently before the defendants. The defendants intend to determine that application shortly. The Secretary of State has issued a direction to the defendants prohibiting them from granting permission without express authorisation. Given that the development has already taken place and is in operation, such a permission would be retrospective.

11. The claimant submits that to grant retrospective permission would undermine the preventive objectives of Directive 85/337 , of which the principal one is that effects on the environment should be taken into account at the earliest possible stage and before the works are carried out. The UK domestic provisions that permit the grant of retrospective permission do not properly incorporate the Directive. The defendant planning authorities are obliged to take the measures necessary to remedy the failure to carry out an EIA before undertaking works. That means taking enforcement action and issuing a stop notice. To grant permission would be unlawful. The claimant relies upon the case of Commission v Ireland (C-215/06) .

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12. The defendant councils and Quinn Glass submit that retrospective planning permission may properly be granted. On its true interpretation Community law does not preclude the regularisation of existing EIA development in exceptional cases. It is for the local planning authorities to decide if the case is exceptional. It would be disproportionate to require the removal of every EIA development that had failed to get consent in advance, without regard to its circumstances and in particular whether it would be detrimental to the objectives of the directive.

The First Issue

The Law

13. The starting point is that by virtue of s.57 of the Town and Country Planning Act 1990 planning permission is required for development. Development is defined in s.55 and includes "building and engineering operations". What amounts to an operation is a matter of fact and degree. As has often been observed, it is unlawful to develop without permission in the United Kingdom and the development that is thus carried out is unlawful development. It is not, however, a criminal offence. Parliament expressly considered and rejected such a course in drafting the legislation.

14. The power to issue an enforcement notice is found in s.172(1):

> "The local planning authority may issue a notice (in this Act referred to as an 'enforcement notice') where it appears to them -
>
> (a) that there has been a breach of planning control; and
>
> (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

15. A time limit for enforcement action is set by s.171B :

> "(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
>
> (2) ...
>
> (3) ...
>
> (4) The preceding subsections do not prevent-
>
> (a) .. or
>
> (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach."

16. Operations will become lawful if no enforcement action may be taken in respect of them because time has expired. (See s.191(2)(a)).

17. An enforcement notice may be backed up by a Stop Notice:

> "183 (1) Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the ***704** enforcement notice or afterwards, serve a notice (in this Act referred to as a 'stop notice') prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice."

18. Section 73A(1) confirms that development will become lawful development if it is permitted retrospectively.

> "73A Planning permission for development already carried out

(1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out-

(a) without planning permission;"

19. On an appeal to the Secretary of State under s.174 , there is a deemed application under s.177(5) for planning permission and power under ss.177(1)(a) and (3) to grant planning permission for the matters constituting a breach of planning control. However, where the development in question is EIA development, there is no power to do so without first undertaking an EIA. (See Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 reg.25(1) .)

20. In the present case, therefore, the Quinn Glass development would become immune from enforcement action and lawful if no enforcement notices were served before the end of four years beginning on the date on which operations were "substantially completed". The question is, when were the operations in connection with the Quinn Glass development "substantially completed"?

21. In the case of *Sage v Secretary of State for Environment, Transport and the Regions [2003] 1 W.L.R. 983, the House of Lords considered* the meaning of the phrase in s.171 B (1) of the 1990 Act "the operations were substantially completed". The building in question in that case was said by Mr Sage to be an agricultural building. The inspector who saw it rejected that proposition. He thought it best described as a dwelling house in the course of construction. It was, however unfit for habitation. The ground floor was rubble, there were no service fittings or staircase, the interior walls were not plastered and the windows were unglazed.

22. Lord Hobhouse said:

"[23] When an application for planning consent is made for permission for a single operation, it is made in respect of the whole of the building operation. There are two reasons for this. The first is the practical one that an application for permission partially to erect a building would, save in exceptional circumstances, fail. The second is that the concept of final permission requires a fully detailed building of a certain character, not a structure which is incomplete….. As counsel for Mr Sage accepted, if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the *whole* operation is unlawful. …

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[24] The same holistic approach is implicit in the decisions on what an enforcement notice relating to a single operation may require. Where a lesser operation might have been carried out without permission or where an operation was started outside the four-year period but not substantially completed outside that period the notice may nevertheless require the removal of all the works including ancillary works: …

[25] These decisions underline the holistic structure of planning law and contradict the basis upon which the Court of Appeal reached its decision in favour of Mr Sage."

23. Lord Hope said (in [6]),

"… it makes better sense of the legislation as a whole to adopt the holistic approach which my noble and learned friend has described. What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design."

The "Substantial Completion" of the Quinn Glass development

24. The development Quinn Glass applied for retrospectively is described in the application as "the construction of a glass container manufacturing, filling and distribution facility and associated works". I was taken to the Quinn Glass "Proposed Illustrative Master Plan" dated January 25, 2008 and two aerial photographs taken prior to the end of April 2005. Together they enable the identification of some of the elements of the development such as the production

building, the batch plant, the tank farm, the warehouse building, the filling hall and its storage, the new administration building and the pre-existing retained office buildings.

25. Useful elaboration on the function of these buildings was provided by Mr Adrian Curry's statutory declaration. He has been the Operations Director and General Manager of Quinn Glass Ltd since 2004. He explained that the production building was split into two bays, each housing one furnace and each serving its own production lines, six on one furnace and seven on the other. The first furnace (Furnace B) was in production by May 2005. In January 2006 glass production had reached 43 per cent of its total capacity. The second (Furnace A) was in production by February 2006.

26. A document headed Site Inspection Notes from the building surveyors Mr Large, Mr Rogers and Mr Courtney was produced by the defendant councils following a request by the claimant. It revealed a series of inspections starting on March 22, 2004 and continuing with several visits every month until the end of November 2004. There was then a gap, whether in the inspections or in the records was unclear but the latter seems more likely. The next record of a visit was on March 24, 2005 and discussed "temporary walling to divide the existing ***706** construction work to the first-floor". After that, the only note of an inspection was on June 16, 2005. It was recorded that "production hall phase 1 oven in operation and glass bottles being produced and stored in the phase 2 side at first-floor". (This accords with the statement of Mr O'Reilly mentioned above, which, it will be noted, was made on the same day.) It was also noted that "offices at first-floor now being partly utilised ...".

27. No explanation has been given for the absence of any notes for December 2004 and January, February, April and May 2005. This is a particularly unfortunate absence, given the potential importance of April and May for the defendant councils' consideration.

28. Mr Brian Hughes is Chester City Council's Development Coordination Manager and a Senior Planning Advisor to the Council, with responsibility, amongst other things, for advising the council on matters relating to the determination of planning applications and enforcement. He set out in his witness statement of February 23, 2009 his recollection of consideration of enforcement action by Chester City Council.

29. He said that the question of the four-year rule and the possibility that the Quinn Glass development would achieve immunity was first raised in a Report of April 25, 2007. He had taken the view then that the point at which production of glass containers started would be a relevant and appropriate date. This would be April 2005. He recorded Quinn Glass's view, based on the Sage judgment that, the start date would not be before January 2006 but he said that did not persuade him. He recommended to the council that it was not expedient to take immediate action but the council must nevertheless be careful that it did not lose the ability to control the operation of the site. The position must be kept under regular review. Mr Hughes explained that he felt that this was a sufficiently precautionary approach. He did not examine the matter further at that stage.

30. In the autumn of 2008 he reconsidered the need for enforcement action again. He took counsel's advice and discussed the matter with his colleagues at Ellesmere Port Council. He said that it was at that stage that the question of what constituted "substantial completion" in the light of Sage emerged. He said that he,

> "formed the view that as the development to be enforced against consisted of three distinct but integrated operations within a single planning unit, it may well be that substantial completion would only take place once all the constituent elements were completed to a point where it was possible to carry out all of the operations — ie the manufacture of glass containers, filling of glass containers and distribution".

31. My attention was drawn by Mr McCracken Q.C. to Mr Hughes's letter of August 12, 2008 to the claimant's solicitors in which he said,

> "discussions on the implications of the assertion by Quinn Glass that the date for substantial completion should be January 2006 were held between officers of the Council and counsel but no records were retained of that discussion".

***707** Mr Fraser Q.C., on behalf of Chester City Council told me that statement was simply wrong and offered Mr Hughes' apologies. He did not offer any explanation how Mr Hughes came to say it.

32. The letter continued,

> "the decision to establish April 2005, and by this I am taking it to mean the beginning of April, as the date for substantial completion was based on the operational knowledge of officers who have been

> involved with the site. While I appreciate that the point of substantial completion may be open to interpretation, I am satisfied that in adopting this date, the Council is taking a proper precautionary approach to this matter. As you will note, Quinn are on record, and this was set out in the report of the 25 April 2007, that in their view substantial completion was January 2006."

33. He said that if the council considered it expedient to take enforcement action, "action will be taken before April 1, 2009".

34. In his report to committee dated January 28, 2009 he recalled his earlier advice and Quinn Glass's response to the PCN. He reported the advice he had received from counsel, Mr Ponter and Ms Reid on December 17 thus,

> "substantial completion (and therefore the beginning of the four-year period for taking enforcement action) will occur when the totality of the works necessary to give the structure its character as a glass manufacture, filling and distribution facility have taken place".

He continued (para.4.4),

> "having considered the Quinn Glass's response to the PCN, the statutory declaration supplied by Quinn Glass, the Council's building control records, and third party material (press articles associated with contractors involved in the construction process) officers are satisfied that substantial completion will not occur before November 2005. Therefore the development will not achieve immunity from enforcement action until November 2009."

35. Mr Hughes then proceeded to consider the need for enforcement action and reminded members that the outcome of the planning application was not yet resolved. Members might decide against it. The Secretary of State might call it in. There could be significant delay, so it was imperative for the council to keep the need for enforcement action under review.

36. Mr David Rees, Senior Planning Officer in the Development Control Unit at Ellesmere Port and Neston BC, made a witness statement. He explained that the position of that borough was very similar to that of Chester City Council. The report dated June 12, 2007 to the planning committee set out (at para.6.13) Mr Rees' then view that the development was substantially completed when production started, which was understood to be April or May 2005. If so, he said it would be possible to take enforcement action at any time before May 2009. He repeated this view in his report to committee dated October 14, 2008. However, in his report of February 10, 2009, Mr Rees told his committee that "(Quinn's) response to the PCN, together with other available information, had shown there was clear evidence to indicate that the substantial completion of the ***708*** development had not taken place before November 2005" and therefore the development would not become immune until the end of October 2009. He also advised that it was essential to keep the matter under review. The committee resolved not to take enforcement action at that time.

Submissions

37. Mr McCracken submitted on behalf of the claimant that the Quinn Glass Works is EIA development, carried out "at risk" in breach of domestic planning control and in breach of EIA Directive 85/337 art.2 (1) , which requires that before consent is given, projects likely to have significant effects on the environment must be subject to environmental assessment and obtain development consent. That means that an applicant cannot lawfully commence the works in question before he carries out the EIA and obtains development consent, if the requirements of the Directive are not to be disregarded. (See Commission v Ireland (C-215/06) at [51].)

38. The court and the defendant councils are required to take enforcement action to nullify that breach of law. (See Francovich v Italy (C-6/90) [1991] E.C.R. I-5357 at [36].) The appropriate enforcement action is the issue of an enforcement notice and a stop notice. While it would normally be a matter for the defendant councils to decide whether it is "expedient" to issue an enforcement notice (see s.172 (1) (b) Town and Country Planning Act 1990) the defendant councils or the court must interpret that discretion as a duty in order to achieve the purposes of the directive. (Marleasing SA v La Comercial Internacional de Alimentacion SA (C-106/89) [1990] E.C.R. I-4135 at [8].) The defendant councils have clearly been contemplating enforcement action for some time and the claimant has been holding back in the hope that they would take it. Now the time limit for enforcement action is rapidly approaching. There is a strong case for saying that on a proper interpretation of Sage at least part of the building works were completed when glass manufacture began in April or May. This was until recently regarded as being a tenable view, at least, by the councils.

39. The documents and statutory declaration provided by Quinn Glass in response to the planning contravention notice do not justify the view that substantial completion cannot have taken place until November 2005. On the service of the

enforcement notice, Quinn Glass, or perhaps their successors, cannot be prevented from appealing to the Secretary of State on the ground that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of one or more breaches of planning control constituted by the matters stated in the notice. (Section 174(1)(d) .) That will then be a matter to be determined, as a matter of fact and degree, by the Secretary of State or his inspector on the evidence put before them. Nothing now said by Quinn Glass can prevent that company or its successors from claiming on appeal that one or more of the component structures had been substantially completed at an earlier date than the date Quinn Glass currently asserts and that structure has therefore achieved immunity from enforcement action. The noticeable and unexplained gaps and contradictions in the evidence so far produced by Quinn Glass and the defendant *709 councils leave open the real possibility that records or witnesses may be put forward later to support a different evidential case for the date of substantial completion of components of the development.

40. The only safe and "precautionary" approach that would prevent a serious breach of the objectives of the Directive, is to issue an enforcement notice immediately, before the defendant councils resolve whether to grant planning permission or not.

41. It was difficult to see how the defendant councils could first resolve to grant permission and then take enforcement action. To issue and then withdraw an enforcement notice in the expectation that this would start the four-year countdown running again, as counsel had advised, would be a most uncertain manœuvre. Enforcement action must be taken first.

42. Mr Vincent Fraser Q.C. submitted that the law left to the defendant councils the function of deciding whether it was expedient to issue an enforcement notice. It was clear that both authorities had considered the issue of enforcement action very carefully. Both authorities clearly understood the importance of keeping the question of timing under review. The councils had examined all the material available to them and had taken legal advice about the meaning of "substantially completed". It could not be said that either authority had misdirected itself or acted irrationally. The conclusion both councils had reached, namely that it would not be necessary to take enforcement action before October 2009, was well within the range of their discretion. Indeed, Mr Fraser went further and submitted that on the basis of the objective information before the court any concern that substantial completion had occurred before October or November 2005 could be excluded.

43. Mr Fraser did, however, end his submissions by saying that if I were to conclude that, contrary to his submissions, there was a risk that Quinn Glass might acquire immunity before November 2009, the councils would not resist any indication from the court as to the action they should take.

44. Mr Neil King Q.C., on behalf of Quinn Glass, adopted Mr Fraser's submissions on this issue. He submitted that it was wrong to suppose that it would necessarily take many more months before planning permission would be granted. Both Quinn Glass and the defendant councils wished to take the applications to committee before the end of the month, if they were allowed to do so. It was perfectly possible that the Secretary of State would not decide to call the application in. Such matters should be left to the discretion allowed by statute to the planning authorities.

45. I asked Mr King to assist my understanding of the disadvantages to Quinn Glass that would flow from the issue of an enforcement notice. After taking instructions he told me that Quinn Glass had already been contacted by a number of its major customers who had been concerned by reports that they had seen in the newspapers about the company's planning difficulties. It had been necessary for Quinn Glass to hold meetings to reassure its customers that no interruption in business was anticipated. In addition, some employees had recently started to ask whether they should turn up for work. The issue of an enforcement notice would further undermine both the confidence of its customers in the company's ability *710 to service them and the stability of jobs at the plant. A bundle of documents were put in evidence in support of these contentions. They included solicitors' letters directed to various newspapers that had published reports that Quinn Glass found objectionable.

Consideration

46. Mr Rose, a concerned local resident, in his witness statement, said that it would be disgraceful if the Quinn Glass development were to achieve immunity because enforcement action was not taken in time. I entirely agree with him. It would be a betrayal by the planning authorities of their responsibilities and a disgrace upon the proper planning of this country. Although the defendant councils have not expressed themselves in such emphatic terms they also, it seems to me, acknowledge that immunity must not be permitted to arise. This is an important factor in the planning authority's consideration of the expediency of taking enforcement action and one which strongly suggests a cautious or precautionary approach.

47. Expedience as a test suggests the balancing of the advantages and disadvantages of a course of action. The advantage of taking enforcement action by issuing an enforcement notice is that it will at once prevent immunity arising at least for another four years and it will avoid the need for certainty about the date of substantial completion of the plant.

48. It is to the Sage case and its application to the Quinn Glass plant that I now turn. The view of the councils is that " *substantial completion … when the totality of works necessary etc* " this view is said to be distilled from the speeches of their Lordships in Sage .

49. The starting point is s.171B . No enforcement action may be taken against a breach of planning control consisting in the carrying out of building engineering, mining or other operations on land after the end of the period of four years beginning with the date on which the operations were "substantially completed". The first issue will be what are "the operations" in question? That will depend upon the facts and circumstances of each development. In the case of a simple development, the erection of a single dwelling house for example, the answer may be clear: in such a case the operations are the operations to build a house.

50. But even a straightforward development can involve several elements that are or may be distinct operations; for example, a single dwelling, with a quarter-mile long access road and a 4-metre high, 100-metre long planted noise bund along the edge of the nearby motorway, might well be regarded as one building operation and two engineering operations. A complex development, a housing or an industrial estate, a shopping centre or a manufacturing plant is highly likely to have the potential to be regarded as many operations, even though they are comprehended in one planning application. This is well recognised. The possible need to tie the various operations together, so that the local planning authority does not end up faced with incomplete development but a number of completed but immune elements, is something commonly addressed in planning conditions.

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51. It is important not to lose sight of what the Sage case was about. The development in question was a single incomplete dwelling house. In such a straightforward case it is easy to apply the holistic approach described by Lord Hobhouse. That, it seems to me, is clearly what Lord Hobhouse was saying. In [23] he said:

> "When an application for planning consent is made for permission for a *single operation* , it is made in respect of the whole of the operation." (emphasis added)

52. In [24] he said,

> "the same holistic approach is implicit in the decisions on what an enforcement notice relating to a *single operation* may require" (emphasis added).

53. What Lord Hope of Craighead said at para.6 of his speech must also be read in that light:

> "What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all."

54. I do not read that as meaning that in every case the totality of all the operations included in the planning application must be substantially completed before any element becomes immune. That is not what Lord Hope said. He said *regard* must be had to the totality of the operations. In the straightforward case that he was considering, having such regard to the totality of the operations Mr Sage contemplated, it was found to be clear that those operations were intended to produce one dwelling house. Those operations had not been substantially completed. Neither Lord Hope nor Lord Hobhouse were saying that, faced with a complex development, and having regard to the totality of the operations contemplated and intended to be carried out, the conclusion would still necessarily be that it all amounted to one set of operations all of which needed to be substantially completed before time began to run. Nothing they said rules out the possibility that having regard to the totality of the development leads to the conclusion that the development is made up of several distinct elements, each one of which is carried out by means of its own separate and distinguishable operations and each element of which is capable of being substantially completed and (in the absence of a condition to the contrary) acquiring its own immunity.

55. Whether on appeal that would or would not be the right analysis of the development would, I repeat, be a matter of fact and degree for the inspector or Secretary of State. The point is not that the inspector or Secretary of State would necessarily find that a holistic approach would lead to identifying different elements as having been substantially completed at different times. The point is that, in my view, nothing said in Sage would prevent the Secretary of State from reaching that view as a matter of fact and degree.

56. In my judgement Sage does not support the proposition that, in respect of a very large and complex development, made up of several distinct, though *712 physically and functionally connected, elements, substantial completion cannot be achieved for any part of it until the totality of all the operations are complete. And yet this appears to me to be at the heart of the defendant councils' consideration of the timing of enforcement action. That involves an error of law.

57. It is not necessary to go that far, however. It is enough that the view I have expressed of the law may be right and that therefore on an appeal against an enforcement notice served before October 2005 the Secretary of State may reasonably hold on the law and the facts that components of the Quinn Glass development have become immune. Mr McCracken is right, in my view, both in his submission that this, as a matter of law is a possibility and that if substantial components—Furnace B and its immediate ancillary development, for example—were found to be immune, that could change substantially the planning balance in favour of granting permission. It does not appear to me from the committee reports that the defendant councils have contemplated that there is a real possibility that the legal advice they have received may prove to be wrong. They have not considered what action they should take to guard against that eventuality.

58. Mr Fraser says that there is really no need to guard against it because it is objectively clear as a matter of fact that the Quinn Glass development is all one totality of which substantial completion cannot have been reached as early as April 2005. That is not a conclusion that I would be prepared to reach on the facts. It is unrealistic to look at an aerial photograph of a development of this enormous size, to observe that various edges of the development are plainly not complete and to infer that therefore there is no separately distinguishable element substantially completed beneath the visible shell. On the contrary, there are clear indications that important parts of the business were functioning. Furnace B was producing glass for sale by May 2005. The warehouse was not complete by then but the glass produced was being stored somewhere. The note of June 16, 2005 records that the bottles were "stored in the phase 2 side at first-floor" and "the offices at first-floor" were "being partly utilised". (See [26] above.) The ability, beneath the roof, to wall off the works of construction while other activity gets going is demonstrated by the comment on March 24, 2005 about temporary walling. It was not suggested that the councils have access to any significant additional information that has not been disclosed and which would paint a clearer picture.

59. Mr McCracken also argues that the councils should issue a stop notice. This, as it seems to me, relates more to his second point based upon EC law, to which I shall shortly turn, rather than this first issue. It is not necessary, in order to ensure that the Quinn Glass development does not become immune, that a stop notice be issued; an enforcement notice is enough.

Timing

60. It is submitted by Mr Fraser on behalf of the defendant councils that the application is premature. It is for the councils to determine when enforcement action should be begun. They are plainly considering the matter in a way that cannot be said to be unreasonable. They are fully aware of their responsibilities. The court *713 does not need to intervene. Mr King, for Quinn Glass, supports this contention and adds in the alternative that the challenge is already over four years out of time. He points out that the claimant has been attempting to persuade the defendant councils and the Secretary of State to exercise their enforcement powers for years. The same arguments were raised long ago. The claim could have been brought at any time since the purported amendment planning permission was quashed in July 2004. To allow it now would give rise to significant prejudice to Quinn Glass, as set out in Mr Kitson's written statement.

61. Mr McCracken responded that it is not easy to say from when the time for a challenge for a failure to take enforcement action can be said to run. This challenge was made promptly once it was obvious that the defendant councils were to further defer a decision on enforcement action beyond the date when it was arguable that immunity might begin to arise. It would not have been sensible to start proceedings while there was still a prospect that either the councils or the Secretary of State might take timely enforcement action. Quinn Glass had obtained far more advantage from the delay than it had suffered disadvantage. The application raises a difficult and very important point of general application that should be resolved.

62. I am not persuaded that it would have been sensible for the claimant to bring this action earlier. I see that the point of law was always there but there was a real possibility that the practical issues would be resolved by action by the planning authorities, casting the point of law into a different light and making its litigation premature. In such circumstances I adopt with gratitude the flexible and commonsense approach of Ouseley J. in R. (on the application of Hammerton) v London Underground Ltd [2002] EWHC 2307 (Admin) :

> "199. If I had been of the view that there had been a lapse of more than three months since grounds arose, I would have extended time. Mr Clayton would be either too early because he ought to await a reviewable decision of the planning authorities, which might help this defendant today whilst storing up trouble for the future, or too late because he had to start proceedings by 9th May or in relation to those arguments which arise from the listing of the viaduct, 8th June. I do not consider that where there is such a dilemma, courts should be astute to penalise the claimant; rather a flexible and commonsense approach is called for. This case also raises issues of importance and it is much more

sensible for them to be resolved now rather than perhaps later. In saying that, I do recognise that a decision not to take enforcement proceedings could be couched by the councils in such a way as to avoid expressing any concluded view on whether the planning permission had lapsed. But the possibility of that perhaps tactical decision does not alter my view."

Discretion

63. In considering the exercise of my discretion to order the commencement of enforcement action it seems to me that the balance of advantage is all one way. I have in mind the points made by Mr King on behalf of Quinn Glass. I ***714*** do not find them persuasive. They show firstly that the issue of enforcement notices at this stage is unlikely to make much difference to Quinn Glass's customers and employees, who are already aware of the company's possible difficulties. But so far as it does, it is a foreseeable consequence of the decision to run the risk of developing without consent. They also show that Quinn Glass is capable of looking after itself so far as the press is concerned. (Whether their solicitors' letters would be more effective if they were more legally accurate, I cannot say.) It seems to me that there are pressing reasons for taking enforcement action now.

Conclusion on the First Issue

64. I conclude that the councils have made errors of law in their consideration of whether it is expedient to issue an enforcement notice on the Quinn Glass development. Time is now short. I grant permission for the application. There will be a mandatory order to both councils and their successors to issue within 14 days of this judgment an enforcement notice in respect of the unlawful Quinn Glass development.

65. In written representations in response to the draft judgment my attention has been drawn to the provisions of s.173 (11) of the 1990 Act. These provide that where an enforcement notice could have required any buildings or works to be removed or any activity to cease, but does not do so, and the notice is complied with, planning permission is to be treated as having been granted for those buildings, works or activities not required to be removed. I must acknowledge the theoretical possibility that the enforcement notices I have just ordered might fail to require the removal of the glass container manufacturing, filling and distribution facility and its associated works and fail to require the cessation of the activities of glass manufacturing and filling and distribution, with the effect that retrospective development consent would follow in flagrant (because conscious) breach of the Directive. Such enforcement notices would defeat the whole purpose of the order I have just made so comprehensively that they not only be unlawful for the reasons I set out but would almost certainly amount to a contempt of court.

66. Lest there be any doubt I order that the enforcement notices require the removal of the Quinn Glass buildings and works and the cessation of the Quinn Glass activities. No less than that would meet the point. To that extent there is no avoiding interference with the defendant councils' discretion under s.173 . Subject to that, it is not for me to draft the enforcement notices. I expect the defendant councils or their successor, as responsible bodies, to respect the tenor of this judgment and to draft their notices in the light of it. It will be for them to word their notices and determine those matters left to them under s.173 .

The Second Issue

67. The starting point for Mr McCracken Q.C.'s submissions was that the Quinn Glass project was acknowledged to be development requiring an assessment of its environmental affects before the grant of development consent, falling as it ***715*** did within Appendix 2, Sch.2 of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 . (It was EIA development.) By virtue of reg.4(2) planning permission may not be granted for such development unless the decision maker has first taken into consideration the EIA and any representations made in respect of it. Those regulations purport to be the means whereby the United Kingdom transposed into domestic law the requirements of the EIA Directive 85/337 . The United Kingdom was obliged to bring about this transposition by virtue of arts 10 and 249 of the EC Treaty . There further arises upon the State, which includes a local authority or a court, the obligation to take such action as will nullify any breach of community law. (See Francovich v Italy (C-6/90) [1991] E.C.R. I-5357 at [36].) This may be achieved by the interpretation of national law in the light of the wording and purpose of the directive, if possible. If it is not possible, then it is European law that must be applied. (*Marleasing [1990] E.C.R. I-4135* at [8].) A national law in conflict with the directive must be set aside. (*Amministrazione delle Finanze dello Stato v Simmenthal SpA [1978] E.C.R. 629* at [21]–[22].)

68. I was taken to EC Directive 85/337. Article 2 (1) requires member states to adopt all measures necessary to ensure that before consent is given projects likely to have significant effects on the environment are made subject to an assessment. A glass works is such a project by virtue of art.4, Annex II 5(2) . This assessment may be incorporated into existing procedures for obtaining consents to projects (see art.2(2)). The procedures are to ensure not only that the public is given the opportunity to express an opinion about the development but also that the opportunity should be given before the development is carried out (art.6(2)). While it is for the authorities of the Member State to take necessary measures to ensure those projects that require it are subject to an assessment, those measures may include revocation or suspension of a consent already granted (see R. (on the application of Wells) v Secretary of State for

Transport, Local Government and the Regions at [65]). The only way to achieve that purpose where EIA development has already been carried out is to require it to be removed or to stop. That means, in England, the service of an enforcement notice backed by a stop notice. It is possible to exempt a specific project in exceptional circumstances (art.2(3)). That provision is subject to a number of conditions. In the present case, no authority has yet given its mind to the question of exemption under art.2(3) , let alone to the satisfaction of the conditions laid down. Those conditions are to be applied strictly (see *Berkeley v Secretary of State for the Environment, Transport and the Regions (No.1) [2001] 2 A.C. 603 HL*). If there were to be an exception made for retrospective planning permission it should have been transposed into the regulations. References to possible "regularisation" were to be read in that light. In the absence of any such provision, the inevitable result must be that the offending project would have to be physically removed. In answer to my question, he confirmed that his submission would be the same in a case where it was evident, because of a full and persuasive post-development EIA and a thorough consideration by the planning authority, that development consent and rebuilding could immediately follow demolition. Such a strict approach was justified by the deterrent effect it would have and the difficulties of reaching ***716*** a judgement that was genuinely unaffected by the existence of the unpermitted development.

69. Mr McCracken's central submission was that on its proper interpretation EC law does not permit the grant of retrospective planning permission for EIA development. It would be even more offensive to EC law for the defendant authorities to allow Quinn Glass to obtain immunity through their inaction. This submission was based upon the case of Commission v Ireland (C-125/06) , which considered the enforcement regime in that country. While there are important differences between the legislation of the Republic of Ireland and the United Kingdom, the Irish regime is the stricter and the authority of Commission v Ireland is even more compelling under UK law. The case of *R. (on the application of Prokopp) v London Underground Ltd [2003] EWCA Civ 961* is distinguishable; if it is not distinguishable it ought not to be followed, as it is manifestly incompatible with European law, in which case this court is not bound by the decision of a higher domestic court. (*Rheinmuhlen-Dusseldorf v Einfuhr- und Vorratsstelle fur Getreide und Futtermittel [1974] E.C.R. 33* .)

70. Mr McCracken's conclusion was that I should order the issue of an enforcement notice backed by a stop notice directed to Quinn Glass and I should make a declaration that neither defendant and authority (nor, indeed, the Secretary of State) had the power to grant retrospective planning permission.

71. Mr Vincent Fraser Q.C. submitted that, as a matter of domestic law, it was plainly lawful to grant retrospective planning permission and there were powerful reasons for doing so, both in general and in this particular case. The current application is now the subject of a comprehensive environmental statement which covers both the development already undertaken and certain proposed new development. As for Commission v Ireland , it is important to appreciate that it was the Irish system that was under challenge and that case ought not to be read as establishing some broader principle. There were significant differences between the English and Irish legislation and it would be unsafe to equate them.

72. Commission v Ireland accepts that retrospective regularisation of EIA development is permissible. The existing English statutory provisions, such as s.73A , are the rules that permit regularisation. Nothing more is needed.

73. To insist on removal in every case would be quite disproportionate. It is clear that this was a point raised in Commission v Ireland , less clear how the European Court dealt with it, unless it was by permitting regularisation in an appropriate case. In the current case, if it were necessary to determine that there were exceptional circumstances, there were good grounds for so doing. These grounds were matters of which the defendant councils and the Secretary of State were well aware. Therefore the question becomes whether, at this stage, the court could hold that neither the defendant councils (nor the Secretary of State) could reasonably conclude that exceptional circumstances justifying retrospective regularisation exist. On the evidence it is not possible to reach such a view.

74. Mr King Q.C. adopted Mr Fraser's submissions on this point while helpfully elaborating them. He emphasised that a decision not to enforce was not a "development consent"; it does not entitle the developer to proceed with the ***717*** development in question and therefore the procedural requirements of the directive would not be engaged by it. Prokopp was binding on this court. It was not distinguishable, nor is it inconsistent with Commission v Ireland .

The Law

75. The relevant Articles of Directive 85/337 as amended are these:

Article 1

"(2) For the purposes of this Directive:

'project' means the execution of construction works or of other installations or schemes ...,

'development consent' means: the decision of the competent authority or authorities which entitles the developer to proceed with the project."

76. Article 2 provides, so far as relevant:

> "2(1) Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.
>
> 2(2) The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive ...
>
> 2(3) Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.
>
> 6(2) Member States shall ensure that: any request for development consent and any information gathered pursuant to Article 5 are made available to the public, the public concerned is given the opportunity to express an opinion before the project is initiated."

77. The preamble to Directive 97/11 includes:

> "Whereas projects for which an assessment is required should be subject to a requirement for development consent; whereas the assessment should be carried out before such consent is granted;"

(Not, it will be noted, "before the project is initiated".)

The Irish Legislation

78. The Commission's complaint was that Ireland had not taken all the measures necessary to comply with Directive 85/337 . This was based on three points. The first was that "Ireland has not taken the measures necessary in order to ensure that checks are made to ascertain ... whether proposed works are likely to have significant effects on the environment, and, if that is the case, in order to render it obligatory that an environmental impact assessment be carried out .... before ***718*** the grant of development consent." Secondly, and importantly for this case, "the Irish legislation which allows an application for retention permission to be made after a development has been executed in whole or in part without consent undermines the preventive objectives of Directive 85/337 as amended". Thirdly, the Commission claimed that the enforcement regime established by Ireland does not guarantee the effective application of the directive and put forward a number of examples of alleged deficiencies.

79. The decision summarised (in paras 23–29) the provisions of the Planning and Development Act 2000 . Section 32 (1) says that permission shall be required:

> "(a) in respect of any development of land, ...and in the case of development which is unauthorised, for the retention of that unauthorised development."

80. Section 34 provides in detail for the way applications are to be dealt with and applies in subs.(12) those provisions to retention applications. To carry out unauthorised development is a criminal offence (s.151) and it is not a defence to prove (the burden being upon the defendant) a subsequent permission obtained as a result of an application made after the initiation of proceedings, the sending of a warning letter under s.152 or the issue of an enforcement notice under s.154 (see s.162). The planning authority shall investigate and consider enforcement action under s.153 and may decide to take it. An enforcement notice may require development to cease or not continue and may require the demolition or removal of development (s.153(5)). Non-compliance is also a criminal offence. If the steps required are not taken the planning authority may enter and take them and recover its expenses from those on whom the notice was served (see ss.153 (6),(7) and (8)). Enforcement action, including an application under s.160 to the court for an order, is not stayed or withdrawn by reason of an application for or the grant of retention permission (s.162(3)).

81. I pause at this stage to note that a reading of the Irish Planning and Development Act 2000 reveals both similarities to the English legislation and substantial differences. The equivalent of Irish s.34(12) is English s.73A , for example. Once an enforcement notice is effective, an English planning authority has the same sort of powers to enter and do the work and prosecute for breach as an Irish one (see ss.178 and 179). However, so far as enforcement is concerned, there are significant differences. Mr McCracken submits that it is clear that the Irish legislation is notably stricter than the English

and that therefore Commission v Ireland is an a fortiori case. An English planning authority also has a broad discretion under s.172 in deciding whether to issue a notice and it is not apparent to me that there is an equivalent in the Irish statute to the time limits on enforcement action found in s.171B in the English. There may be less scope in Ireland for EIA development to achieve immunity without an EIA and become lawful.

82. As in Ireland, an English planning authority must not consider EIA development without an EIA but, with such an assessment, there is nothing in the legislation to prevent the grant of retrospective permission without taking enforcement action. In England if a notice is issued, there is a right of appeal under s.174 , which, if exercised, does suspend the notice (see s.175). In ***719*** determining such an appeal the Secretary of State will consider whether retrospective planning permission ought to be granted for the development enforced against but cannot grant it for EIA development without an EIA (see s.177).

83. It is not my purpose in this judgment to attempt a detailed comparison of the two systems. It is enough to say that on the basis of no more than my own superficial reading of the Irish legislation and in the absence of any submissions on Irish law from counsel, other than those based on the references in Commission v Ireland [1] , I do not think it would be right for me to say more than that the two systems are significantly different and that I should be very cautious about drawing conclusions on the basis of supposed differences or similarities between them.

84. Against that brief background I shall set out the arguments. The Commission claimed that since it is possible, under the national legislation, to comply with the obligations imposed by Directive 85/337 as amended during or after execution of a development, there is no clear obligation to subject developments to an assessment of their effects on the environment before they are carried out.

> "41. In accepting that projects can be scrutinised, in an environmental impact assessment, after their execution, when the principal objective pursued by Directive 85/337 as amended is that effects on the environment should be taken into account at the earliest possible stage in all planning and decision-making processes, the national legislation in question recognises a possibility of regularisation which results in the undermining of that directive's effectiveness.
>
> 42. The Commission adds that the rules relating to retention permission are incorporated within the general provisions applicable to normal planning permission, and that there is nothing to indicate that applications for retention permission and the grant of such permission are limited to exceptional cases."

85. The Irish response was recorded as follows:

> "43. Ireland contends that the Commission's analysis of the Irish legislation which transposes Directive 85/337 as amended is not accurate. Ireland states that Irish law expressly requires that permission be obtained for any new development before the commencement of works and that, as regards development which must be subject to an environmental impact assessment, the assessment must be carried out before the works. Failure to comply with those obligations is, moreover, a criminal offence and may result in enforcement action.
>
> 44. Ireland contends, in addition, that retention permission, established by the PDA and the Planning and Development Regulations, 2001 , is an exception to the general rule which requires permission to be obtained before the commencement of a development, and best meets the objectives of Directive 85/337 as amended, in particular the general objective of protection of ***720*** the environment, since the removal of an unauthorised development may not be the most appropriate measure to achieve that protection.
>
> 45. According to that Member State, the requirements of Directive 85/337 as amended are wholly procedural and are silent as to whether there may or may not be an exception by virtue of which an environmental impact assessment might, in certain cases, be carried out after commencement of works. Ireland adds that nowhere in the directive is it expressly stated that an assessment can solely be carried out before the execution of a project, and refers to the definition of the term 'development consent' given by Directive 85/337 as amended to argue that the use of 'proceed' is significant, that term not being confined to the commencement of works but also applying to the continuation of a development project.
>
> 46. Ireland contends, in addition, that retention permission is a reasonable fall-back mechanism to be resorted to in exceptional circumstances, designed to take account of the fact that some projects will inevitably, for various reasons, commence before the grant of development consent within the meaning of Directive 85/337 as amended.

47. On that point, Ireland relies on Case C-201/02 *Wells [2004] ECR I-723* to argue that a remedial assessment may be carried out at a later stage, by way of exception to the general rule that the assessment must be carried out at the earliest possible stage in the decision-making process."

86. It may be helpful to recall the case of Wells at this point. An old mining permission had been granted for Conygar Quarry under the Town and Country Planning (General Interim Development) Order 1946 . When Mrs Wells bought her house nearby, in 1984, the quarry use was long dormant and the site had become extremely environmentally sensitive. In 1991 the owners sought to reactivate the permission. Registration of the old permission was granted but no development was to be undertaken unless new planning conditions were imposed. Eventually the Secretary of State approved a number of new conditions but without considering whether it was first necessary to carry out an EIA. The matter came before the European Court on a reference from the Administrative Court to determine, amongst other things, whether the approval of new conditions on the old permission amounted to "development consent". The European Court decided that it would undermine the directive to regard as a mere modification of an existing consent the taking of decisions that replaced the very substance of a prior consent such as an old mining permission. Hence it concluded that such a decision must be considered to amount to "development consent", the renewed working should have been subject to an EIA and it was for the relevant authorities to "take all general or particular measures for remedying the failure to carry out such assessment". The European Court's conclusion was summarised in the last sentence of [70] in the following words,

"...it is for the National Court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of Directive 85/337 , or alternatively, *721 if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered."

87. On that basis the submission of Ireland seems not unreasonable. The next submission was:

"48. That Member State considers also that it would be disproportionate to order the removal of some structures in circumstances where, after consideration of an application for retention permission, retention is held to be compatible with proper planning and sustainable development."

88. These submissions seem to me not only to carry significant weight but also to be very much the same sort of submissions that might be made about the English law, so far as it relates to EIA development and enforcement. Indeed Mr McCracken makes exactly that point and invites careful attention to what happened to them in the Findings of the Court.

89. After reciting the duty to implement the Directive having regard to its fundamental objective and noting the definition of "development consent" the court continued:

"51. Given that this wording regarding the acquisition of entitlement is entirely unambiguous, Article 2 (1) of that directive must necessarily be understood as meaning that, unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded."

90. Adding that this analysis was valid for every project that fell within the Directive, the court said.

"53. A literal analysis of that kind of Article 2(1) is moreover consonant with the objective pursued by Directive 85/337 as amended, set out in particular in recital 5 of the preamble to Directive 97/11 , according to which 'projects for which an assessment is required should be subject to a requirement for development consent [and] the assessment should be carried out before such consent is granted'.

54. As the Irish legislation stands, it is undisputed that environmental impact assessments and planning permissions must, as a general rule, be respectively carried out and obtained, when required, prior to the execution of works. Failure to comply with those obligations constitutes under Irish law a contravention of the planning rules.

55. However, it is also undisputed that the Irish legislation establishes retention permission and equates its effects to those of the ordinary planning permission which precedes the carrying out of works and development. The former can be granted even though the project to which it relates and for which an environmental impact assessment is required pursuant to Articles 2 and 4 of Directive 85/337 as amended has been executed.

56. In addition, the grant of such a retention permission, use of which Ireland recognises to be common in planning matters lacking any *722 exceptional circumstances, has the result, under Irish law, that the obligations imposed by Directive 85/337 as amended are considered to have in fact been satisfied.

57. While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58. A system of regularisation, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects."

91. The court turned to Ireland's point based on Wells .

"59. Lastly, Ireland cannot usefully rely on Wells . Paragraphs 64 and 65 of that judgment point out that, under the principle of cooperation in good faith laid down in Article 10 EC, Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

60. This cannot be taken to mean that a remedial environmental impact assessment, undertaken to remedy the failure to carry out an assessment as provided for and arranged by Directive 85/337 as amended, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, as required by and governed by that directive.

61. It follows from the foregoing that, by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4 (1) and (2) of Directive 85/337 as amended, projects for which an environmental impact assessment is required must be identified and then before the grant of development consent and, therefore, necessarily before they are carried out must be subject to an application for development *723 consent and to such an assessment, Ireland has failed to comply with the requirements of that directive.

62. Consequently, the first two pleas in law are well founded."

92. The decision then turned to the Third Plea in Law. There is, unsurprisingly, some overlap with the second plea. Again, to understand the matter it will be necessary to set out the arguments and findings in full.

"63. According to the Commission, there are shortcomings in the Irish legislation relating to enforcement measures and in the resulting enforcement practices which undermine the proper transposition and implementation of Directive 85/337 as amended, when, under that directive, an effective system of control and enforcement is mandatory.

64. First, the Commission claims that the enforcement measures provided for by Irish planning legislation do not offset the absence of provisions requiring compliance with the obligations as to an environmental impact assessment before development is carried out.

65. Secondly, the Commission claims that enforcement practices undermine the proper transposition of Directive 85/337 as amended. The Commission refers to specific situations which illustrate, in its opinion, the deficiencies of the Irish legislation regarding supervising compliance with the rules established by that directive.

66. As regards the procedure relating to enforcement, Ireland contends the choice and form of enforcement is a matter within the discretion of Member States, in particular as there has been no harmonisation at Community level of planning and environmental controls.

67. In any event, Ireland states that the system of enforcement established by the Irish legislation is comprehensive and effective. The Member State adds that, under environmental law, the applicable provisions are legally binding.

68. Thus, the legislation places planning authorities under the obligation of sending a warning letter when they learn that an unauthorised development is being carried out, unless they consider that the development is of minor importance.

69. Once the warning letter has been sent, the planning authorities must decide whether it is appropriate to issue an enforcement notice.

70. The warning letter is intended to enable the persons responsible for unauthorised developments to undertake remedial action before the enforcement notice and the other stages of enforcement proceedings.

71. If an enforcement notice is issued, that sets out obligations and failure to comply with its requirements constitutes an offence.

72. Ireland adds that the enforcement regime must take account of various competing rights held by developers, landowners, the public and individuals directly affected by the development, and the weight of those various rights must be measured in order to reach a fair result.

*724

73. Lastly, Ireland does not accept that the examples reported by the Commission prove the alleged failure to fulfil its obligations, since the Commission limits itself to general assertions."

93. I interpose at this point to draw particular attention to [68]–[73] because they may shed some light upon what is understood by the court as the "remedial" action, described in [60]. As portrayed in those paragraphs it is possible to see how it might be regarded as allowing rather too much latitude to sit comfortably with a strict enforcement of art.2 (1) into the Irish procedures. This impression is reinforced by the paragraphs that set out the court's findings on this plea.

"74. It is undisputed that, in Ireland, the absence of an environmental impact assessment required by Directive 85/337 as amended can be remedied by obtaining a retention permission which makes it possible, in particular, to leave projects which were not properly authorised undisturbed, provided that the application for such a permission is made before the commencement of enforcement proceedings.

75. The consequence of that possibility, as indeed Ireland recognises, may be that the competent authorities do not take action to suspend or put an end to a project that is within the scope of Directive 85/337 as amended and is being carried out or has already been carried out with no regard to the requirements relating to development consent and to an environmental impact assessment prior to issue of that development consent, and that they refrain from initiating the enforcement procedure provided for by the PDA, in relation to which Ireland points out that the powers are discretionary.

76. The inadequacy of the enforcement system set up by Ireland is accordingly demonstrated inasmuch as the existence of retention permission deprives it of any effectiveness, and that inadequacy is the direct consequence of the Member State's failure to fulfil its obligations which was found in the course of consideration of the first two pleas in law.

77. That conclusion is not affected by the fact that, according to Ireland, the enforcement regime must take account of the various competing rights held by developers, landowners, the public and individuals directly affected by the development. The need to weigh those interests cannot in itself provide justification for the ineffectiveness of a system of control and enforcement.

78. Accordingly, it becomes superfluous to analyse the various examples put forward by the Commission to illustrate the deficiencies in application of the enforcement measures, since those deficiencies are the direct result of the inadequacies of the Irish legislation itself.

Consequently, the third plea in law is also well founded, and therefore the first complaint must be upheld on all of the pleas in law."

Consideration

94. The EC's findings start ([51]) with the declaration that the wording regarding the acquisition of entitlement in art.2 (1) is entirely unambiguous. It must be understood as meaning that unless a developer has first conducted his assessment ***725*** and obtained consent, "he cannot commence the works" unless the requirements of the directive are to be disregarded. I do not find this an easy passage. It evidently does not mean that the developer cannot physically start the works. It must mean that he cannot lawfully do so. Such development would be unlawful under UK domestic law since an EIA must be carried out before development consent is given. The pre-emptive development would be vulnerable to an enforcement notice and stop notice. The only requirement of the Directive that might be said to be "disregarded" is that in art.6(2) . Giving art.2(1) a literal analysis, would not appear to rule out the possibility of retrospective development consent, so long as it is preceded by a full and proper EIA and full and genuine opportunity for the public to understand the proposals, express their views and have them taken into account.

95. It is here that the authoritative guidance of Lord Hoffmann in Berkeley v Secretary of State [2001] A.C. 603 at 615 is particularly helpful. He said:

"I said in *R v North Yorkshire County Council, Ex p Brown [2000] 1 AC 397* , 404 that the purpose of the Directive was 'to ensure that planning decisions which may affect the environment are made on the basis of full information'. This was a concise statement, adequate in its context, but which needs for present purposes to be filled out. The Directive requires not merely that the planning authority should have the necessary information, but that it should have been obtained by means of a particular procedure, namely that of an EIA. And an essential element in this procedure is that what the Regulations call the 'environmental statement' by the developer should have been 'made available to the public' and that the public should have been 'given the opportunity to express an opinion' in accordance with article 6(2) of the Directive."

96. Lord Hoffmann referred to the cases of *Commission v Germany (C-431/92) [1995] E.C.R. I-2189* , 2208–2209 at [35]: and continued:

"The directly enforceable right of the citizen which is accorded by the Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues."

97. He then quoted from *Aannamaersbedrijf PK Kraaijveld BV v Gedeputeerde Staten van Zuid-Holland (C-72/95) [1996] E.C.R. I-5403* , 5427 at [70], before saying:

"Perhaps the best statement of this aspect of an EIA is to be found in the UK government publication ' *Environmental Assessment: A Guide to the Procedures* ' (HMSO, 1989), p.4:

'The general public's interest in a major project is often expressed as concern about the possibility of unknown or unforeseen effects. By providing a full analysis of the project's effects, an environmental statement can help to allay fears created by lack of information. At the same time it can help to inform the public on the substantive issues which the local ***726*** planning authority will have to consider in reaching a decision. It is a requirement of the Regulations that the environmental statement must include a description of the project and its likely effects together with a summary in nontechnical language. One of the aims of a good environmental statement should be to enable readers to understand for themselves how its conclusions have been

reached, and to form their own judgments on the significance of the environmental issues raised by the project.'"

98. The significance of the public having the opportunity to understand and comment on the environmental effects of the proposals is evident from these passages. A very important part of that objective is that the public should have the opportunity to understand and comment at a stage where they have a genuine chance to be heard dispassionately and to influence the decision. This may be much harder to achieve, and it will certainly appear so, where the development in question is an accomplished fact. But although the task of ensuring that the public's voice is properly and fairly heard may be harder, it is not impossible and it is not beyond the reach of a fair-minded decision-maker. Such a purposive interpretation of art.2(1) , giving due weight to art.6(2) , justifies the conclusion that the possibility that development could be given consent after it has taken place, even after an EIA has been carried out, would risk subverting the purposes of the Directive and ought not to be accepted by domestic procedures, save in exceptional circumstances if they are to "ensure" the proper incorporation of the Directive.

99. Paragraph 60 of the Commission v Ireland decision also requires careful attention, remembering that it is to be read in the context of consideration of the Wells case. If it simply meant that the Directive does not contemplate a "remedial" post-development assessment, meaning one that only assesses the work necessary to put things right after the event, as a possible equivalent of pre-development assessment, it is easily understood. If the only EIA undertaken post-development puts undue weight upon the existence of the project and insufficient weight upon the extra damage caused by proceeding without an EIA and development consent, or the prejudice to proper public participation, it will indisputably undermine the purposes of art.2(1) . Such an EIA will plainly not be equivalent to a pre-development EIA. However, [60] can hardly have meant that an EIA, carried out post-development, could not be done on exactly the same basis in terms of assessing the pre-development position as a pre-development EIA and be equivalent to it in that sense. That sort of exercise is well within the skills of those who undertake such assessments in the United Kingdom and well within the expertise of the Planning Inspectorate and the Secretary of State to judge. It is the basis upon which the experienced inspector in this case proceeded, as did the Secretary of State. Indeed, given that the purpose of the EIA is to assess the impact on the environment, a post-development assessment is likely to be more comprehensive and more accurate since it will rely more on observation and measurement and less on hypothesis and judgement. Such a comparative judgement between an assessment carried out post-development and the position ***727*** if an assessment had been carried out pre-development would lie at the heart of the question of whether or not to grant a retrospective permission. It would enable a determination to be made whether the initiator of the project did stand to gain anything by breaching the domestic rules contrary to the objectives of art.2(1) . It would enable the decision maker to be clear as to the central purposes of the Directive, namely whether the unlawful commencement of the development had meant any extra impact upon the environment or had made less effective the representations of those who wished to make them. It would enable the decision-making authority to insist that the central objectives of the Directive were respected. If, on proper analysis, it were to become plain that a developer would achieve an advantage by his unlawful action in the sense, for example, that if he were to be given retrospective consent, the environmental measures he would be required to undertake would be less rigorous than those he would have had to undertake to get consent after a pre-development EIA, that might well be conclusive against the grant of consent. This approach has the benefit that development consent is unlikely to be granted, save in exceptional circumstances.

100. This approach would also be proportionate. It would not require the removal, simply "pour encourager les autres" [2] as Mr McCracken put it in response to his opponents' characterisation of his argument, of a development that could be seen by post-project analysis to have always been acceptable. I do not read the court's judgment as an approval of draconian deterrence as opposed to a proper insistence that the competent authorities defend the objectives of art.2(1) in a strict, but proportionate, way.

101. I read the decision as focussing upon the possibility of circumvention and the danger that it will be encouraged ([56]–[58]). The court feared that if retention permission were given in anything other than exceptional circumstances, the Directive would be got round and was concerned that the use of retention permission in Ireland was "common in planning matters lacking any exceptional circumstances". The court did not say whether it was referring to retention permission in general or retention permission for EIA consent only. (I have no reason to think that the grant of retrospective planning permission where an EIA is required is common in England, although the grant of retrospective permission in other cases certainly is.) Easy regularisation would encourage developers to ignore the criteria of art.2(1) and the Directive.

102. This proper concern is at the heart of the court's decision. It may be met by making it plain that a developer will gain no advantage by pre-emptive development and that such development will be permitted only in exceptional circumstances. Such an approach, it seems to me, could preserve and protect the objectives of the Directive. It is one that would be accommodated easily within the procedures for judging whether planning permission ought to be ***728*** granted for development subject to an enforcement notice. It is an approach that the Secretary of State would be able to take in deciding an appeal against an enforcement notice on ground (a), namely that planning permission ought to be granted for the development enforced against.

103. I am clear that, with one reservation, the enforcement procedures under English law are effective and are well able to take into account and protect the fundamental objectives of Directive 85/337 . Once an enforcement notice is issued, either there will be no appeal, in which case the development ought to be removed by one method or another; or there will be an appeal and the Secretary of State will consider whether planning permission ought to be granted for the development enforced against. In that case permission will not be granted unless the Secretary of State is satisfied that a satisfactory EIA has been undertaken. The Secretary of State can and in my view should also consider, in order to uphold the Directive, whether granting permission would give the developer an advantage he ought to be denied, whether the public can be given an equal opportunity to form and advance their views and whether the circumstances can be said to be exceptional. There will be no encouragement to the pre-emptive developer where the Secretary of State ensures that he gains no improper advantage and he knows he will be required to remove his development unless it can demonstrate that exceptional circumstances justify its retention.

104. The reservation I have is that English law does leave open the possibility that the pre-emptive developer might achieve immunity without any proper EIA.

105. Here it is necessary to say something about the decision of the *Court of Appeal in R. (on the application of Prokopp) v London Underground Ltd [2003] EWCA Civ 961* . It is not necessary to set out the facts of that case in any great detail. There was an application to build a railway line extension. It was fully supported by an EIA, examined in public inquiry and permitted by the Secretary of State subject to conditions. Condition 21, which was perhaps not well thought out, was not complied with. Instead a unilateral obligation was offered to control the relevant works in a satisfactory way. The planning authority resolved to refrain from taking enforcement action if work proceeded in accordance with that obligation. The applicant was concerned about one aspect of the development, although not one that had anything to do with the broken condition, and argued that the decision not to take enforcement action was "development consent" and should have been preceded by an EIA.

106. Schiemann L.J. said (at [38]):

> "I would accept for the purposes of the present appeal that if a project which falls within the Directive goes ahead without there having been an Environmental Impact Assessment and the national authorities simply stand by and do nothing then this might well amount to a breach of our obligations under the Directive. That is not this case."

107. However, it might be the current case.

108. Schiemann L.J. identified the decisive question as whether the absence of enforcement proceedings were properly characterised as development consents. He observed that the resolutions in question had simply decided not to take *729 enforcement action at that time; it was not ruled out for the future. Therefore the resolutions of the local authority did not amount to development consent (see [47]–[50]).

109. Buxton L.J. approached the matter more generally. He declared himself satisfied as to the following points, amongst others:

> "(i) A failure to take, or a deliberate decision not to take, enforcement action by a planning authority does not constitute 'development consent' in the terms of article 1(2) of the Directive. The appellant's case therefore necessarily fails.
>
> (ii) Even if the general proposition in (i) were incorrect, whether a particular failure constitutes development consent in the terms of the Directive must be determined on the basis of a purposive approach to the objectives of the Directive. On that basis, the environmental control objectives of the Directive do not require a further environmental assessment by reason of the breach of condition 21, and therefore a decision taken in relation to condition 21 cannot be a relevant development consent." ([57])

110. In my judgement, a purposive interpretation of art.2(1) strongly suggests that for the defendant councils to permit the Quinn Glass development to achieve immunity, whether by a positive decision not to take enforcement action or by mere inaction, would, as Schiemann L.J. contemplated, amount to a breach of the UK's obligations under the Directive. It may be that the provisions of s.171B need to be re-examined and perhaps disapplied in the case of EIA development so that for such development immunity would never arise and pre-emptive EIA development could only become lawful by, after full public participation, undertaking a comprehensive EIA comparing both initial and current circumstances and establishing exceptional justification. However, the circumstances of the Prokopp case are very different from the present case and, in my view, distinguishable. Whether the correct analysis would be to say that action or inaction on behalf of the planning authorities in the present case would be equivalent to development consent, is not a matter I

need to decide. That is because there is no doubt that once enforcement notices are issued, as I order, and there is an appeal to the Secretary of State, as I anticipate there will be, any consent that might be given on the deemed application for permission would certainly be "development consent".

Conclusion on the second issue

111. I therefore decline to make a declaratory order in the terms sought. In my judgement there is a distinction to be drawn between the Irish statutory provisions and procedures that were the subject of Commission v Ireland and those in England. I do not find that retrospective planning permission cannot lawfully be granted; it can, as long as the competent authorities pay careful regard to the need to protect the objectives of the directive. The procedures adopted are a matter for the State. I am clear that, once an enforcement notice is issued, the existing procedures are able to ensure compliance with Directive 85/337 .

*730

Footnotes

1 Mr McCracken did take me to the action taken by the Irish Government following the decision of Commission v Ireland .

2 I felt constrained to observe that this famous phrase does not come from some approving revolutionary zealot but from a French wit (Voltaire in "Candide") mocking the folly and hypocrisy of the British in shooting the unfortunate Admiral John Byng on his own quarterdeck. (The newly appointed Admiral was blamed for the loss of the battle of Minorca on May 20, 1756.) Voltaire was not recommending shooting Admirals as sound strategy.

Appendix 4

31 Ingram Avenue

Gate height = 89 cm

Notes: Gated double entry driveway

Appendix 5

Development Management & Building
Control Service
Barnet House
1255 High Road
London
N20 0EJ

The Owner
31 Ingram Avenue
London
NW11 6TG

contact: Helen Peristiani
tel: 020 8359 4725
email: helen.peristiani@barnet.gov.uk
website: www.barnet.gov.uk
date: 24 October 2018
reference: ENF/0898/18

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT 1990
Site: 31 Ingram Avenue, London, NW11 6TG,
Complaint: Without planning permission the erection of two pairs of low driveway gates and associated stone piers at the front of the property

This local planning authority, the London Borough of Barnet, has issued an enforcement notice relating to the above land and I now serve on you a copy of that notice as you have an interest in the land. Copies of the notice are also being served on the parties listed on the attached schedule who, it is understood, also have an interest in the land.

There is a right of appeal to the Secretary of State (at The Planning Inspectorate) against the notice. Unless an appeal is made, as described below, the notice will take effect on 29 November 2018 and you must then ensure that the required steps, for which you may be held responsible, are taken within the period(s) specified in the notice.

Please see the enclosed information sheet from The Planning Inspectorate which tells you how to make an appeal.

If you decide that you want to appeal against the enforcement notice you must ensure that you send your appeal soon enough so that normally it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before 29 November 2018.

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of **£412.00**. You should pay the fee to the London Borough of Barnet (made payable to the London Borough of Barnet) and quoting Ref: ENF/0898/18

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

The text of the Town and Country Planning Act is available at the following website: http://www.legislation.gov.uk/ukpga/1990/8/contents Your attention is particularly drawn to sections 171A, 171B and 172-177 of this Act. Please note that the Act may be amended from time to time and the details above may not fully reflect the latest version.

If you do not appeal against this Enforcement Notice, it will take effect on 29 November 2018 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in this Notice.

Yours faithfully,

Helen Peristiani
Technical Support Officer
Planning Enforcement Team

LONDON BOROUGH OF BARNET
TOWN AND COUNTRY PLANNING ACT 1990
PLANNING NOTICE

SITE: 31 Ingram Avenue London NW11 6TG

Schedule of persons served with Notice: -

Karen Zakaim
63 Kingsley Way
London
N2 0EL

Karen Sakaim
C/o Teacher Stern LLP
37-41 Bedford Row
London
WC1R 4JH

The Owner
31 Ingram Avenue
London
NW11 6TG

The Occupier
31 Ingram Avenue
London
NW11 6TG

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT, 1990
(as amended by the Planning and Compensation Action, 1991)

ENFORCEMENT NOTICE

ENF/0898/18

ISSUED BY THE Council of the London Borough of Barnet ("the Council")

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important addition information.

2. **THE LAND TO WHICH THIS NOTICE RELATES**

Land at 31 Ingram Avenue London NW11 6TG , shown edged and hatched black on the attached plan (hereinafter called "the Property").

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission the erection of two pairs of low driveway gates and associated stone piers at the front of the property

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last four years.

1 The gates and piers, by reason of their height and design, would be inappropriate and intrusive features which would significantly detract from the open nature of the frontages in this part of Ingram Avenue to the detriment of the character and appearance of this part of the Hampstead Garden Suburb Conservation Area, contrary to Policies DM01 and DM06

of the Local Plan Development Management Policies; and the Supplementary Planning Guidance in the form of the 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals (October 2010).

5. WHAT YOU ARE REQUIRED TO DO

1 Demolish the unauthorised two pairs of low driveway gates and associated stone piers and reinstate the property boundary of previous design, size and specifications shown in existing plan 1113-EX2-200 of planning permission 18/5011/HSE dated 08.10.2018

2 Permanently remove from the property all constituent materials resulting from the works in 1. above

6. TIME FOR COMPLIANCE

2 Months after this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 29th November 2018, unless an appeal is made against it beforehand.

DATED: 24th October 2018

Signed:

Fabien Gaudin
Service Director – Planning and Building Control

Barnet House, 1255 High Road, Whetstone, N20 0EJ

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Secretary of State **before** 29th November 2018. The enclosed information sheet from The Planning Inspectorate explains the appeal process and advises on appeal-making procedures. Read it carefully.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 29th November 2018 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the Notice. Failure to comply with an Enforcement Notice which has taken effect can result in prosecution and/or remedial action by the Council.

BARNET
LONDON BOROUGH

Land at:

31 Ingram Avenue
London
NW11 6TG

Fabien Gaudin

Service Director – Planning and Building Control, Barnet House, 1255 High Road, London, N20 0EJ

ENF/0898/18

N

↑

Title: SITE PLAN.

SCALES 1 : 1250 **Date:** 24.10.2018

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The Planning Inspectorate

CST Room 3/13
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0303-444 5000

Fax No 0117-372 8782

THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at enquiries@pins.gsi.gov.uk

You MUST make sure that we receive your appeal before the effective date on the enforcement notice.

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.

Appendix 6

30 Ingram Avenue

Gate height = 155 cm

Notes: Gated double entry driveway.

Appendix 7

37 Ingram Avenue

Gate height = 167 cm

Notes: Gated double entry driveway.

Appendix 8

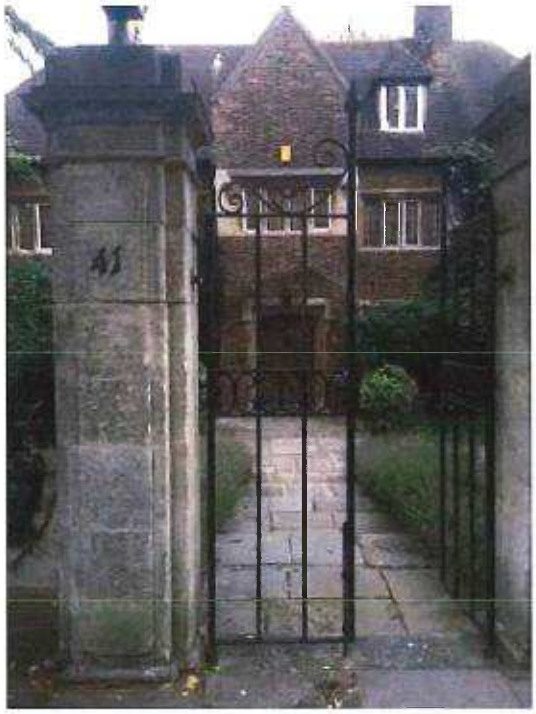
38 Ingram Avenue

Gate height = 165 cm

Notes: Gated double entry driveway.

Appendix 9

41 Ingram Avenue



Gate height = 190 cm

Notes: Gated single entry footpath.

Appendix 10

90 Winnington Road

Gate height = 157 cm

Notes: Gated entry on Ingram Avenue.

Appendix 11

wolff ARCHITECTS

16 lambton place notting hill london w11 2sh

tel: 02072293125 fax: 02072293257 e-mail: info@wolffarchitects.co.uk

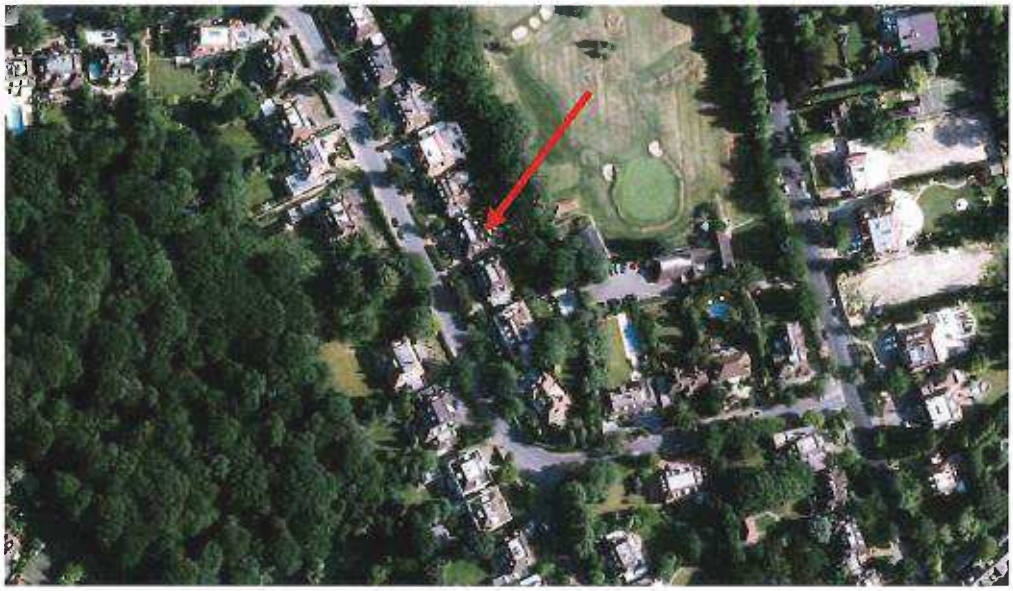
Application for installation of two pairs of low driveway gates and associated stone piers

Design Statement

31 Ingram Avenue
London NW11 6TG

Rev. 0
Date: 20.04.2018

Wolff Architects Limited trading as: wolff ARCHITECTS
Directors: Mr D P Wolff BArch(Rand) RIBA, Mr A C Goodchild BSc(Hons) MArch RIBA
Registered in England: No. 5113405 Registered Office: 16 Lambton Place London W11 2SH



Photograph 1 Existing aerial view

Photograph 2 View from Ingram Avenue

Introduction

31 Ingram Avenue is located to the eastern side of Ingram Avenue, in the London Borough of Barnet, within the Hampstead Garden Suburb Conservation Area. The Site backs onto Hampstead Golf Course to the north east. The existing dwelling was constructed circa 1930.

The original driveway entrance and exit were open and defined by low stone piers between low stone walls – see Photograph 2. The Applicant is the new occupant of the property. There will also be four children living in the property.

This application is for the installation of two pairs of low driveway gates and associated stone piers.

Requirement

The Applicant is extremely concerned about the ease with which opportunist or planned attacks can be mounted with the current open access from the public realm. There have been several violent burglaries and thefts in houses in this part of the Suburb recently, including Ingram Avenue and adjacent Winnington Road, that have involved such access. These crimes include a traumatic attack on a member of the applicant's family. In many cases these occurred in daylight with perpetrators wearing helmets i.e. the CCTV and security lights present proved ineffective. The advice of a Security Consultant has been sought in connection with measures that might be effective and their report is included with this application. The recommendation by them and by the Applicant's insurer is to install gates at the boundary line. They would act as a deterrent to people who might opportunistically walk up and try the doorbell or look through the windows to see if anyone was in. The location for the proposed gates is overlooked by a number of other properties and someone climbing over them would therefore be likely to attract attention. They would also deter burglars who might drive a vehicle up to or through the front door or who might try to drive a vehicle on the forecourt away. They would allow the Applicant to load and unload from their vehicles without being open to the road at this vulnerable time. Automating the gates would further reduce the amount of time that the user needed to be out of their car, particularly on arrival.

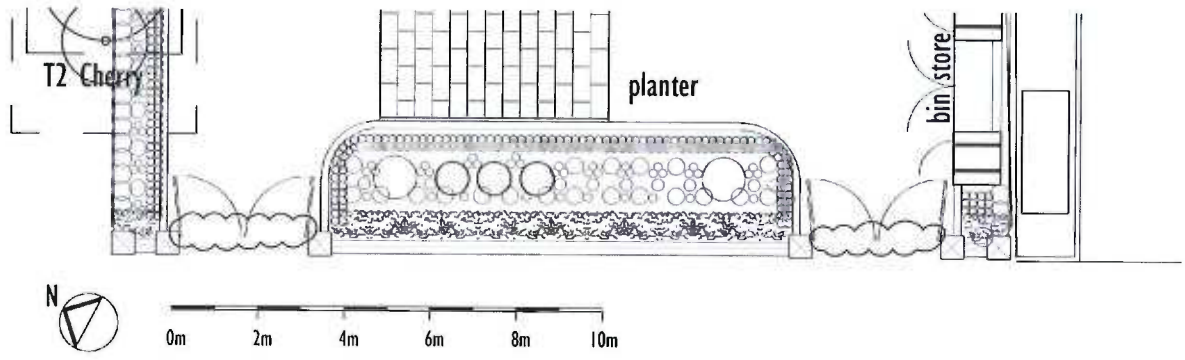
Gates would also reduce the risk of serious injury to children and pets playing in the driveway by containing them away from vehicles on the Avenue.

Gates and walls in Ingram Avenue tend to be lower than those in neighbouring Winnington Road.

Precedents

As an example - two pairs of automatic metal gates of up to 1.75m height were approved at Committee for 15 Winnington Road in 2017 under application number 17/6494/HSE (after the owner had suffered a violent attack on his driveway whilst between his car and house). (We also understand that the large metal gates at 89 Winnington Road were approved under planning reference C05017D.) There are several Ingram Avenue properties within a few yards of the application site that have driveway gates (see photographs below) and numerous others in adjacent streets within the conservation area.

The 31 Ingram Avenue gates in question were actually clouded and shown on drawing 1113-PL-100-K approved under application reference 17/3852/S73 – see excerpt below.



PROPOSED SITE PLAN

Design

The gate design is based on those at 89 Winnington Road. Pedestrian gates of a similar design have been approved and installed at 31 Ingram Avenue as can be seen on drawing 1113-PL-200-0 which accompanies our application.

The proposed gates and associated piers are no higher than 1 metre.

The gates are proposed to receive a black finish in line with other gates in the area. When viewed obliquely this will help them blend in with relatively dark flowerbeds and planting beyond. The existing low walls and holly hedges adjacent to the driveway entrances are unaffected by the proposal.

Access is unaffected by this proposal – the gates are automated.

Conclusion

The Heritage Statement for a recent successful application for gates in an adjoining street in the Hampstead Garden Suburb Conservation Area included the following:

"*Continuing to apply this policy blindly, without trying to manage the needs of a changing area, where security measures are clearly needed, is not ultimately going to preserve or enhance the Conservation Area anyway. If one takes the Council's stand to its logical conclusion, crime will increase in this area and eventually this special place will become an area where people simply do not want to live, let alone protect the historic environment.*"

Appendix 12

---------- Forwarded message ----------
From: David Davidson <david@hgstrust.org>
To: Jason Oliver <joliver@wolffarchitects.co.uk>
Cc:
Bcc:
Date: Fri, 2 Feb 2018 16:01:59 +0000
Subject: 31 Ingram Avenue

Dear Jason

You wrote to Michael before Christmas regarding the landscaping works to the above.

We have no objection to the replacement of the low wall in stone. The wall and piers must be no higher than the existing, as you suggest. We will need to see a sample of the stone material before work starts. As you know the driveway gates have been refused and must not be installed. You should submit an amended drawing to illustrate their omission.

The side gates to the house are approved, as are the garden building details and bin stores. I will send a copy of the approved drawings.

Regards

David

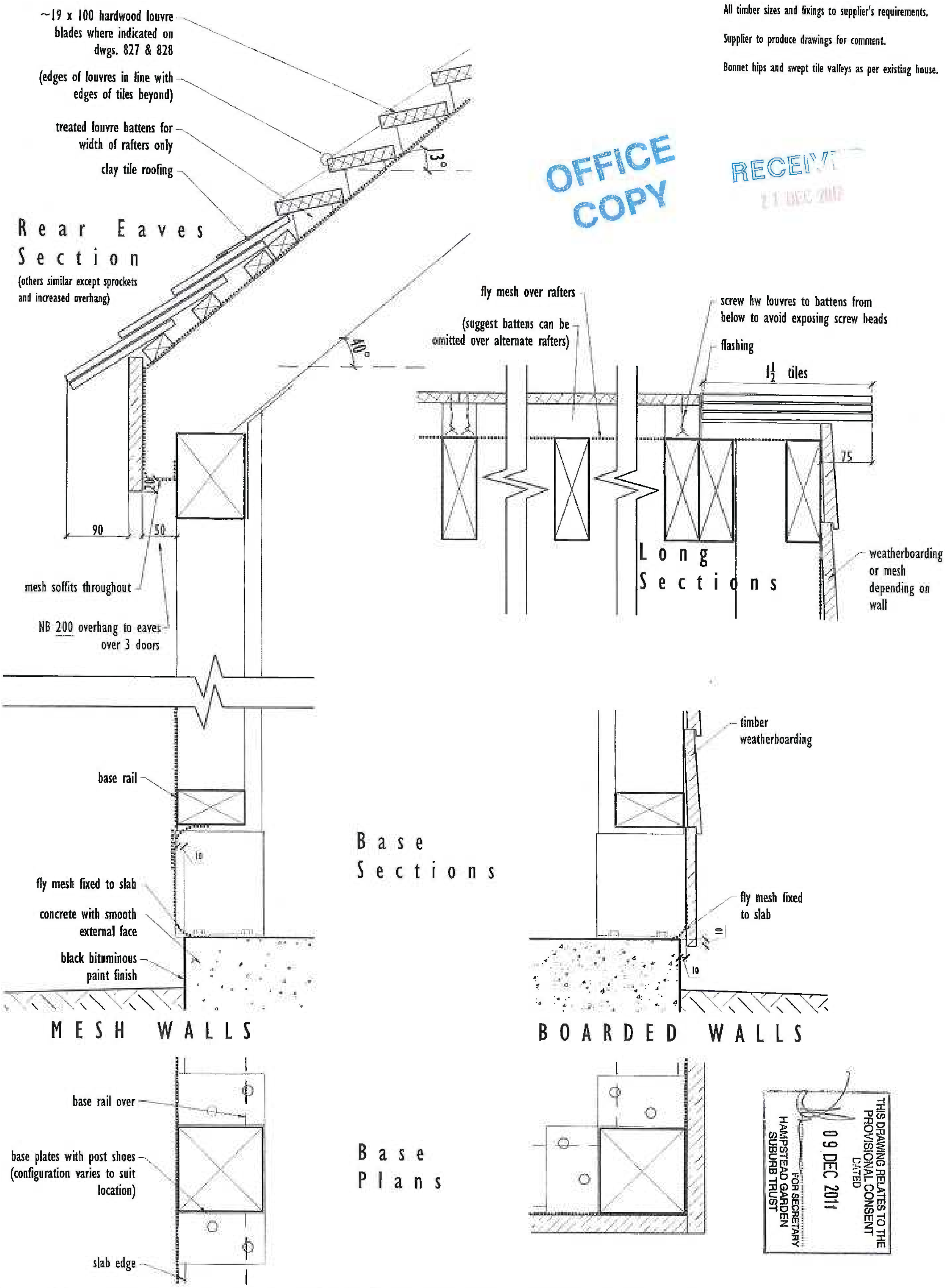
David Davidson
Architectural Adviser

Hampstead Garden Suburb Trust
862 Finchley Road London NW11 6AB
020 8455 1066 / 020 8458 8085

You can find a lot of useful information on our website:www.hgstrust.org

Legal Disclaimer

Appendix 13



OFFICE COPY

RECEIVED 21 DEC 2017

THIS DRAWING RELATES TO THE PROVISIONAL CONSENT DATED 09 DEC 2011 FOR SECRETARY HAMPSTEAD GARDEN SUBURB TRUST

wolff ARCHITECTS

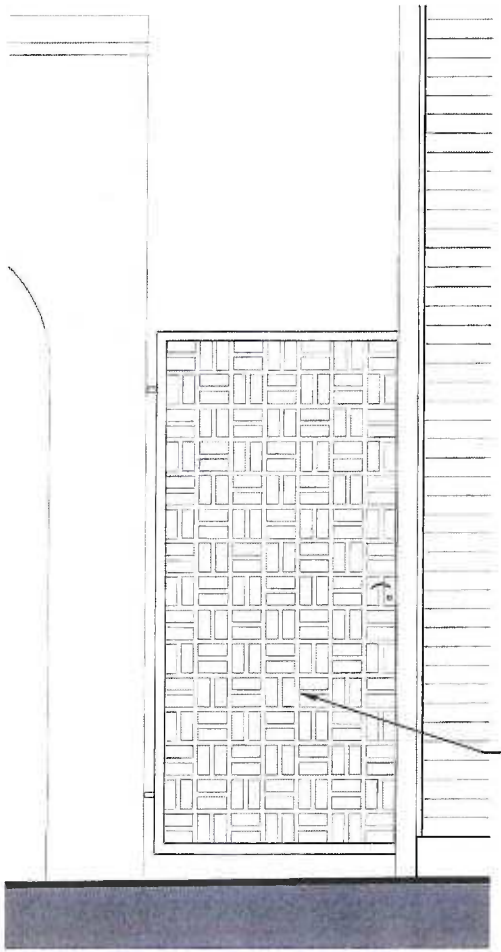
CONSTRUCTION ISSUE — 09.02.2016
Updated to suit revised enclosure dimensions. — 19.08.2016
Metal louvres/ cedar shingles changed to hardwood louvres/ clay tiles. — 17.02.2017

CONSTRUCTION

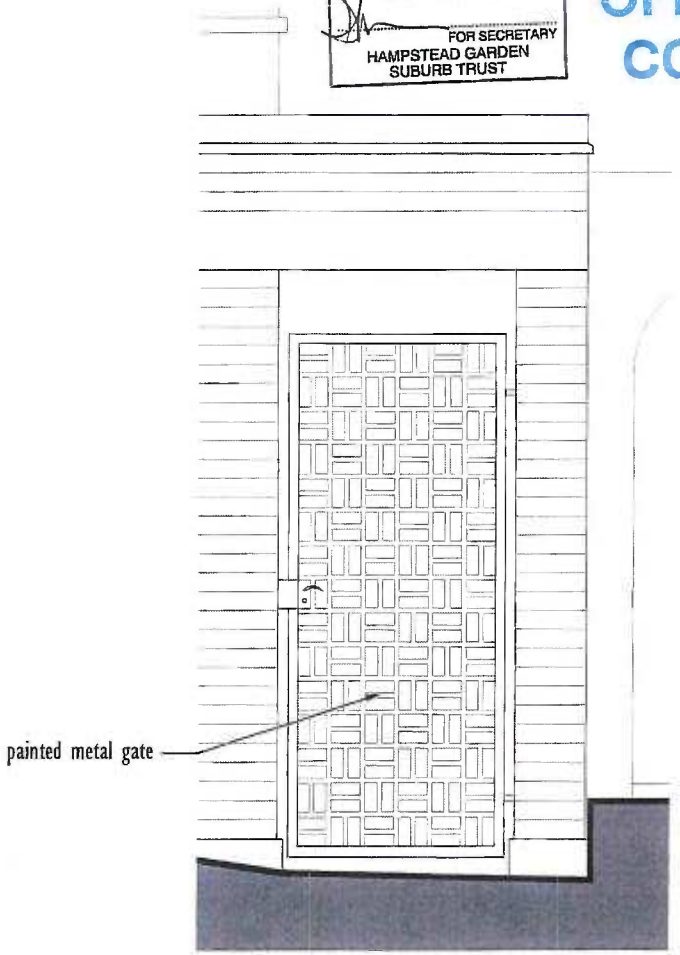
31 INGRAM AVENUE LONDON, NW11 6TG

GARDEN HOUSE - DETAILS

09.02.2016 | 1:5 @ A1 | 1113-CH -819 | B



Side Gate,
left hand side



Side Gate,
right hand side

RECEIVED
21 DEC 2017

THIS DRAWING RELATES TO THE PROVISIONAL CONSENT DATED
09 DEC 2011
FOR SECRETARY
HAMPSTEAD GARDEN SUBURB TRUST

OFFICE COPY

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This drawings must not be used for purposes other than that for which it is provided. It is supplied without liability for any errors or omissions.

Drawings only to be scaled for planning application purposes. All dimensions to be checked on site. All drawings subject to Statutory Authority Approval.

notes: Gate design follows existing driveway gates to house in Winnington Road.

no:	rev:	date:
0	First issue.	15.12.17

status: HGST

wolff ARCHITECTS

16 lambton place
notting hill
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fax 02072293257
info@wolffarchitects.co.uk

project: 31 Ingram Avenue
London, NW11 6TG

dwg no: 1113-HGST-B46 rev no: 0

drawing title: Proposed side gates

date: scale: 1:20@A3

Elevation from Avenue

RECEIVED

THIS DRAWING RELATES TO THE PROVISIONAL CONSENT DATED
09 DEC 2011
FOR SECRETARY
HAMPSTEAD GARDEN SUBURB TRUST

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Drawings only to be scaled for planning application purposes, all dimensions to be checked on site. All drawings subject to Boundary Authority Approval.

notes:

Gate design follows existing driveway gates to house in Winnington Road.

rev:		date:
C	Driveway gates omitted.	08.02.18
B	Wall/ pier material changed to stone.	15.12.17
A	Wall lowered, gate detail added.	03.05.17
0	First issue.	24.03.17

status: HGST

w o l f f
ARCHITECTS

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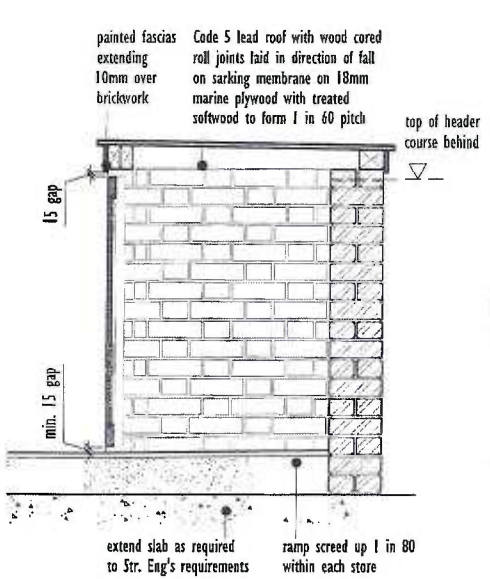
project: 31 Ingram Avenue
London, NW11 6TG

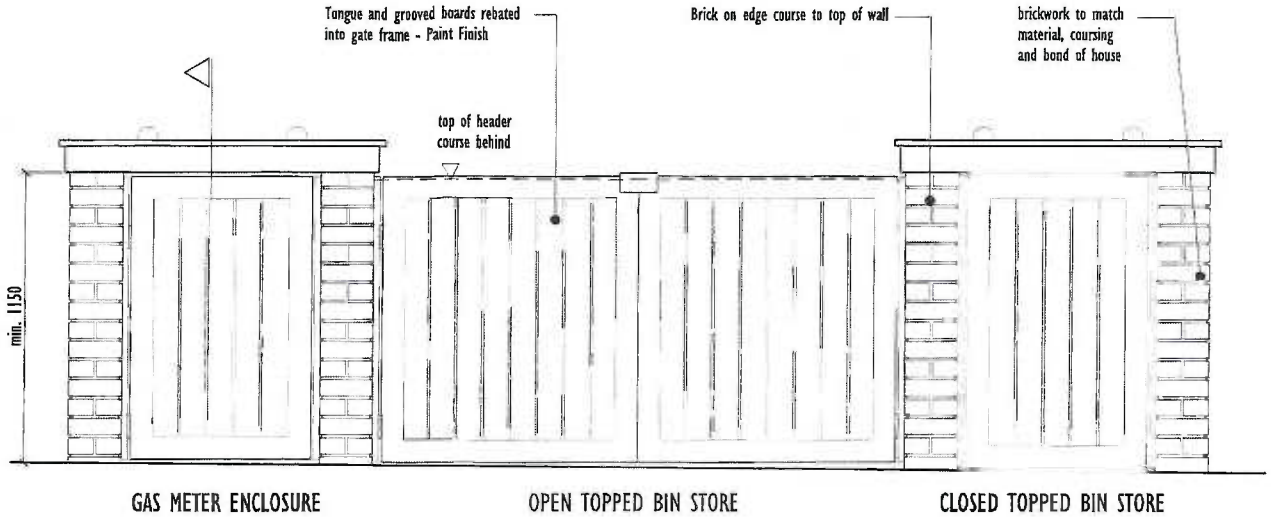
dwg no: 1113-HGST-500 rev no: C

drawing title: Proposed Front boundary wall - LATTICE GATES

date: scale: 1:100@A3



SECTION



FRONT ELEVATION

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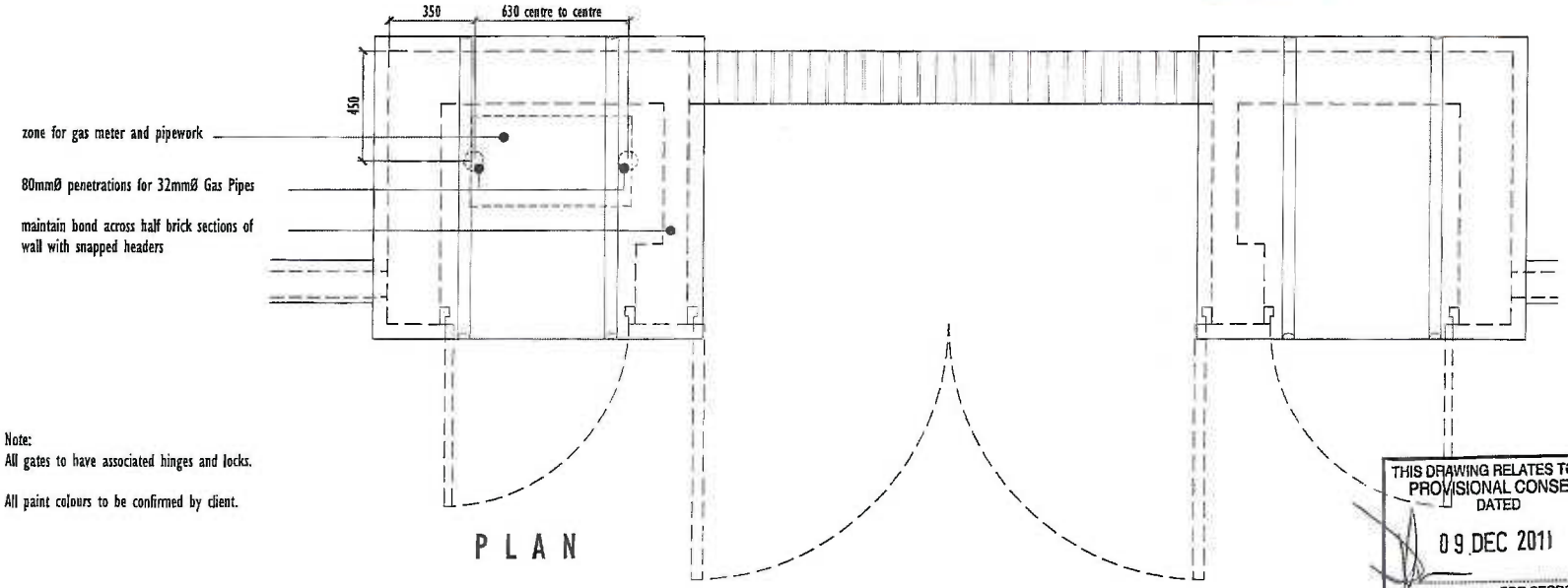
RECEIVED
21 DEC 2011



PLAN

Note:
All gates to have associated hinges and locks.

All paint colours to be confirmed by client.

THIS DRAWING RELATES TO THE PROVISIONAL CONSENT DATED
09 DEC 2011
FOR SECRETARY
HAMPSTEAD GARDEN SUBURB TRUST

For bin store brickwork setting out see dwg. 203.

Wolff ARCHITECTS

Appendix 14

BARNET
LONDON BOROUGH

DELEGATED REPORT

REFERENCE 18/5011/HSE

LOCATION:	31 Ingram Avenue, London, NW11 6TG,
PROPOSAL:	Installation of two pairs of low driveway gates and associated stone piers

KEY DATES	
Statutory Expiry:	**8th October 2018**
Recommendation:	8th October 2018
Ex. of time (if applicable):	
Site Visit (if applicable):	20th August 2018

Case Officer:	**Alissa Fawcett**
Area Team:	Finchley and Golders Green Area Team
Applicant:	Mrs Karen Zakaim
Ward:	Garden Suburb
CIL Liable?	

OFFICER'S ASSESSMENT

1. Site Description

The application site is located on the eastern side of Ingram Avenue, within Area 14- Ingram Avenue of the Hampstead Garden Suburb Conservation Area.

The existing building on site has been designated as locally listed. Most of the properties along the Avenue were built between 1931 and 1938 with the intention of providing accommodation for 'wealthy owner-occupiers who sought space and individuality in their houses'.

The adopted Character Appraisal notes;

"The Ingram Avenue area lies in the southeast part of the Suburb. The land rises from the north-west corner, where Ingram Avenue joins the Heath Extension, to the south east at the top of Spaniards Close and Kenwood Close. Ingram Avenue was cut through the woodland of Turners Wood, which explains the presence of mature oaks amongst the houses, and follows the gentle slope of the hill in a rough 'S' shape. The top and bottom sections of the road are on a sharper incline, with the houses stepping up the hill.

Nos. 31 and 33 are a handsome pair in grey brick with red corner pilasters by William Willets. Both have been marred by ostentatious front doors and porches. The Venetian windows of No. 33 are a bold touch."

2. Site History

Reference: 16/2309/S73
Address: 31 Ingram Avenue, London, NW11 6TG

Decision: Approved subject to conditions
Decision Date: 3 June 2016
Description: Variation of condition 10 (plan numbers) of appeal decision APP/N5090/A/13/2199337 dated of 11/12/13 for 'Partial demolition and reconstruction of house with retention of front facade. Creation of two-storey dwelling house with basement level and rooms in roof space. New crown roof with dormer window to all elevations.' (planning ref.F/03627/12). Amendments to include alterations to front porch including new entrance door, enlargement of adjacent windows and strip paint from original stone and insertion of sunpipe to flat crown roof.

Reference: 16/4824/CON
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved
Decision Date: 20 September 2016
Description: Submission of details of Condition 6 (method statement) pursuant to planning permission 16/2309/S73 (08/04/2016)

Reference: 17/3539/NMA
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Withdrawn
Decision Date: 20 June 2017
Description: Non-material amendments pursuant to planning permission reference F/03627/12 dated 11/12/2013 for 'Partial demolition and reconstruction of house with retention of front facade, creation of two storey dwelling house with basement level and rooms in roof space. New crown roof with dormer windows to all elevations.' Amendments include; Construction of brick arch over side gate and small section of brick wall between boundary and house.

Reference: 17/3852/S73
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved subject to conditions
Decision Date: 10 August 2017
Description: Variation of condition 1 (Plans) 16/2309/S73 dated 03/06/2016 for 'Variation of condition 10 (plan numbers) of appeal decision APP/N5090/A/13/2199337 dated of 11/12/13 for 'Partial demolition and reconstruction of house with retention of front facade. Creation of two-storey dwelling house with basement level and rooms in roof space. New crown roof with dormer window to all elevations.' (planning ref.F/03627/12). Amendments to include alterations to front porch including new entrance door, enlargement of adjacent windows and strip paint from original stone and insertion of sunpipe to flat crown roof.' Amendments include adding a brick arch across the opening to the side gate and minor landscaping alterations.

Reference: F/06040/13
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved
Decision Date: 19 February 2014
Description: Submission of details for Condition 4 (Windows Details) and Condition 7 (Soft Landscaping including Screening) pursuant to Appeal Decision APP/N5090/A/13/2199337 dated 11/12/2013 (Full App: F/03627/12 dated 14/12/2012).

Reference: F/02044/14
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved

Decision Date: 2 June 2014
Description: Submission of details for condition 3 (Materials) pursuant to appeal decision APP/N5090/A/13/219937 dated 11/12/2013.

Reference: F/03966/13
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved
Decision Date: 24 October 2013
Description: Submission of details for condition 7 (Soft landscaping) pursuant to planning permission F/01599/12 dated 12/06/12.

Reference: F/03628/12
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Refused
Decision Date: 14 December 2012
Description: Partial demolition and reconstruction of house with retention of front facade. Creation of two-storey dwelling house with basement level and rooms in roof space. New crown roof with dormer windows to all elevations. (CONSERVATION AREA CONSENT)

Reference: F/03627/12
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Refused
Decision Date: 14 December 2012
Description: Partial demolition and reconstruction of house with retention of front facade. Creation of two-storey dwelling house with basement level and rooms in roof space. New crown roof with dormer window to all elevations.

Reference: F/01689/12
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved
Decision Date: 12 June 2012
Description: Submission of details of condition 11 (Window Details), pursuant to planning permission F/03389/11 dated 02/11/2011.

Reference: F/03548/11
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved subject to conditions
Decision Date: 2 November 2011
Description: Partial demolition of house at rear with retention of front and side facades with rear extensions at ground, first and second floor levels. Reconstruction of part of roof and formation of replacement dormers to all elevations. Formation of new basement, lightwell and alteration to fenestration. , CONSERVATION AREA CONSENT

Reference: F/03389/11
Address: 31 Ingram Avenue, London, NW11 6TG
Decision: Approved subject to conditions
Decision Date: 2 November 2011
Description: Partial demolition of house at rear with retention of front and side facades with rear extensions at ground, first and second floor levels. Reconstruction of part of roof and formation of replacement dormers to all elevations. Formation of new basement, lightwell and alteration to fenestration.

3. Proposal

This application seeks consent for the installation of two pairs of low driveway gates and associated stone piers.
The gates and piers are currently in situ without consent. The brick built piers measure 0.9m in height with a stone coping to the top. Black patterned, metal gates of similar height to the piers are shown.

4. Public Consultation

A site notice was erected on 23/8/2018
A press notice was published on 23/8/2018
22 consultation letters were sent to neighbouring properties.
2 objections have been received.

The views of objectors can be summarised as follows;
- unsightly and inconsistent with the rest of the houses on the road
- do not meet with adopted Design Guidance
- contrary to adopted Character Appraisal
- out of character with open frontages on rest of road

Internal / other consultations:

HGS CAAC - Objection: Refuse

5. Planning Considerations

5.1 Policy Context

National Planning Policy Framework and National Planning Practice Guidance
The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was updated in 2018. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

The Mayor's London Plan 2016

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

Barnet's Local Plan (2012)
Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.
- Relevant Core Strategy Policies: CS NPPF, CS1, CS5.
- Relevant Development Management Policies: DM01, DM02, DM06.

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

ul Supplementary Planning Documents
The Council Guide 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals was approved by the Planning and Environment Committee (The Local Planning Authority) in October 2010. This leaflet in the form of supplementary planning guidance (SPG) sets out information for applicants on repairs, alterations and extensions to properties and works to trees and gardens. It has been produced jointly by the Hampstead Garden Suburb Trust and Barnet Council. This leaflet was the subject of separate public consultation.

- Residential Design Guidance SPD (2016)
- Sustainable Design and Construction SPD (2016)
- Hampstead Garden Suburb Conservation Area Character Appraisal and Design Guidance (2010)

5.2 Main issues for consideration

The main issues for consideration in this case are:
- Whether the alterations would be a visually obtrusive form of development which would detract from the character and appearance of the street scene and this part of the Hampstead Garden Suburb Conservation Area.
- Whether harm would be caused to the living conditions of neighbouring residents;
- Whether harm would be caused to trees of special amenity value.

5.3 Preamble

Hampstead Garden Suburb is one of the best examples of town planning and domestic architecture on a large neighbourhood or community scale which Britain has produced in the last century. The value of the Suburb has been recognised by its inclusion in the Greater London Development Plan, and subsequently in the Unitary Development Plan, as an 'Area of Special Character of Metropolitan Importance'. The Secretary of State for the Environment endorsed the importance of the Suburb by approving an Article 4 Direction covering the whole area. The Borough of Barnet designated the Suburb as a Conservation

Area in 1968 and continues to bring forward measures which seek to preserve or enhance the character or appearance of the Conservation Area.

The ethos of the original founder was maintained in that the whole area was designed as a complete composition. The Garden City concept was in this matter continued and the architects endeavoured to fulfil the criteria of using the best of architectural design and materials of that time. This point is emphasised by the various style of building, both houses and flats, in this part of the Suburb which is a 'who's who' of the best architects of the period and consequently, a history of domestic architecture of the period of 1900 - 1939.

The choice of individual design elements was carefully made, reflecting the architectural period of the particular building. Each property was designed as a complete composition and design elements, such as windows, were selected appropriate to the property. The Hampstead Garden Suburb, throughout, has continuity in design of doors and windows with strong linking features, giving the development an architectural form and harmony. It is considered that a disruption of this harmony would be clearly detrimental to the special character and appearance of the Conservation Area. The front of the properties being considered of equal importance as the rear elevation, by the original architects, forms an integral part of the whole concept.

5.3 Assessment of proposals

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that 'In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 12 of the National Planning Policy Framework at para 129 sets out that the local planning authority should identify and assess the particular significance of any heritage asset...They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

Paras 131-135 sets out the framework for decision making in planning applications relating to heritage assets and this application takes account of the relevant considerations in these paragraphs.

In line with the Planning (Listed Building and Conservation Area) Act 1990 special regard is given to preserving the heritage asset. In this instance, it is considered that there is no harm associated with the proposal to the heritage asset and is therefore acceptable having regard to the provisions of Policy DM06 of the Development Management Policies and Section 16, 72 of the Planning (Listed Building and Conservation Areas) Act 1990. Accordingly, it is recommended that planning permission should be granted.

This application seeks consent for the installation of two pairs of low driveway gates and associated stone piers which are currently in situ without consent.

In Hampstead Garden Suburb Conservation Area hedges still predominate and this contributes to the rural charm of the Suburb. Therefore, walls and weatherboarded or

panelled fences are not usually acceptable on property boundaries. Brick walls or piers are uncharacteristic of much of the Suburb and will not normally be approved. Even low brick walls can visually disrupt a run of hedged boundaries. Elaborate iron gates are not generally a feature of Suburb houses, although some have been approved nearby where houses are larger, driveway gates are not a common feature and will in most cases be resisted.

This part of Ingram Avenue is not characterised by gates and it is considered that the addition of gates and piers at the application site would not be based on an understanding of local characteristics and neither enhance nor protect the character of the conservation area or the individual locally listed dwelling house. They would result in alien features to the streetscene that would not maintain the openness of the road or the original design concept of the conservation area as detailed above.

The proposals are not considered to give rise to any detriment to trees of a high amenity value as no trees exist to the front of the site.

Having taken all material considerations into account, the proposal would detrimentally impact on the qualities of the locally listed building and would not protect the character of this part of the Hampstead Garden Suburb Conservation Area. The design, size and siting of the gates and adjacent pilasters is such that it would not preserve the open character and appearance of the individual property and street scene, or this part of the conservation area and area of special character.

5.4 Response to Public Consultation

The concerns raised as noted and this application is recommended for refusal.

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and support the Council in meeting its statutory equality responsibilities.

7. Conclusion

Having taken all material considerations into account, the proposal would detrimentally impact on the qualities of the locally listed building and would not protect the character of this part of the Hampstead Garden Suburb Conservation Area. The design, size and siting of the gates and adjacent pilasters is such that it would not preserve the open character and appearance of the individual property and street scene, or this part of the conservation area and area of special character.

8. SUGGESTED CONDITIONS AS REQUIRED BY THE RULES

It is considered that if this application was to be allowed by the Inspector the following conditions would be asked for:

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

1113-EX2-099

1113-EX2-200
1113-PL2-200
Design and Access Statement

Reason: For the avoidance of doubt and in the interests of proper planning.

OFFICER'S RECOMMENDATION / PREVIEW OF DECISION

Refuse

1 The proposed gates and piers, by reason of their height and design, would be inappropriate and intrusive features which would significantly detract from the open nature of the frontages in this part of Ingram Avenue to the detriment of the character and appearance of this part of the Hampstead Garden Suburb Conservation Area, contrary to Policies DM01 and DM06 of the Local Plan Development Management Policies; and the Supplementary Planning Guidance in the form of the 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals (October 2010).

Informative(s):

1 The plans accompanying this application are:

1113-EX2-099
1113-EX2-200
1113-PL2-200
Design and Access Statement

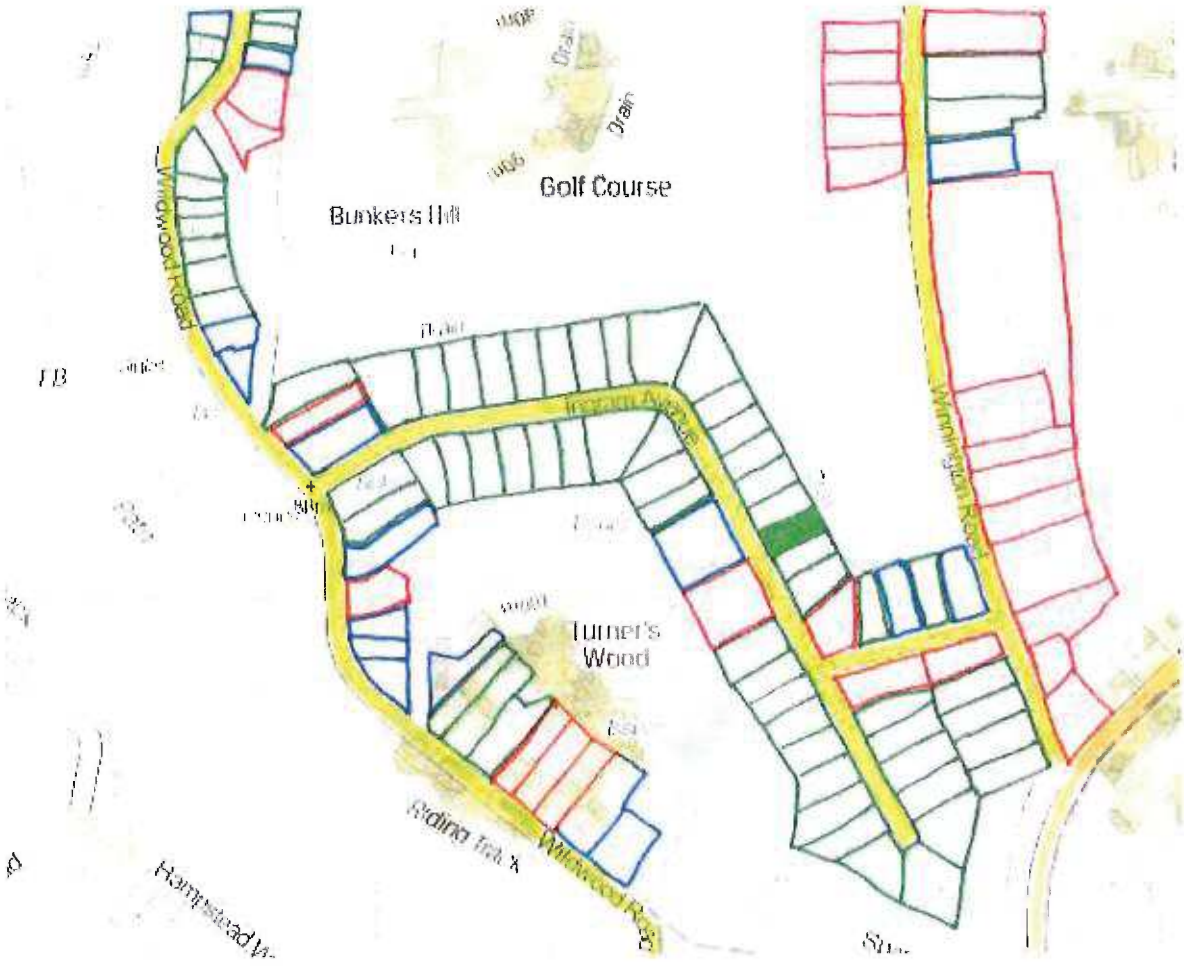
2 In accordance with paragraphs 38-57 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. To assist applicants in submitting development proposals, the Local Planning Authority (LPA) has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered.

The applicant did not seek to engage with the LPA prior to the submission of this application through the established formal pre-application advice service. In accordance with paragraph 189 of the NPPF, the applicant is encouraged to utilise this service prior to the submission of any future formal planning applications, in order to engage pro-actively with the LPA to discuss possible solutions to the reasons for refusal.

3 The permission of the New Hampstead Garden Suburb Trust Ltd may also be necessary and this can be obtained from: The Trust Manager, The New Hampstead Garden Trust Ltd, 862 Finchley Road, London NW11 6AB (Telephone 020 8455 1066). See http://www.hgstrust.org/ for more information.

Signature of Officer with Delegated Authority	Lesley Feldman, Planning Manager

Appendix 15



Red = gated.

Blue = closed.

Green = open.

= roads searched.

= 31 Ingram Avenue.

Appendix 16

*589 West Midlands Probation Committee v Secretary of State for the Environment

Court of Appeal

(Hirst , Swinton Thomas and Pill L.JJ.):

November 7, 1997

Town and country planning—Material planning consideration pursuant to Town and Country Planning Act 1990, section 70(2) —Extension to bail hostel—Fear of crime—Impact of development on use of neighbouring land

The appellants were refused planning permission to extend a bail and probation hostel to accommodate a further 8 bailees. It was located within the green belt adjacent to a quiet suburban housing estate. On appeal, the Inspector found on the evidence, that the apprehensiveness and insecurity of nearby residents was justified because there had been an established pattern of behaviour arising from the hostel in the form of drunken and anti-social behaviour and some of the bailees had committed crimes in the area. He refused the appeal on the basis that the proposal would be likely to exacerbate the disturbance and accentuate the fears of local residents and so impair their living conditions. The Inspector's decision was upheld in the High Court. On appeal to the Court of Appeal, the appellants submitted, amongst other things, that apprehension and fear were not material planning considerations because they did not relate to the character of the use of land. They argued that a distinction had to be drawn between the use of land and the behaviour of people on and off the land.

Held, dismissing the appeal, that where it is justified, a fear of crime emanating from a proposed development is capable of being a material planning consideration to a planning decision. The pattern of anti-social behaviour arose from the use of the land as a bail hostel and did not arise merely because of the identity of the particular occupier or of particular residents.

Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
7 November 1997

Report Citation
(1998) 76 P. & C.R. 589

Legislation referred to:

Town and Country Planning Act 1990, section 70(2) .

Cases referred to:

(1) *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 K.B. 223 .*
(2) *Blum v. Secretary of State for the Environment [1987] J.P.L. 278 .*
(3) *Bushell v. Secretary of State for the Environment [1981] A.C. 75 .*
(4) *East Barnet Urban District Council v. British Transport Commission [1962] 2 Q.B. 491 .*
(5) *Finlay v. Secretary of State for the Environment [1983] J.P.L. 802 .*
(6) *Fitzpatrick Developments Ltd v. Minister of Housing and Local Government (unreported, May 24, 1965) .*
(7) *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment [1994] 1 P.L.R. 85 .*
(8) *Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578 .*
(9) *Newport C.B.C. v. Secretary of State for Wales (transcript June 18, 1997).*
(10) *Stringer v. Minister of Housing and Local Government [1970] 1 W.L.R. 1281; [1971] 1 All E.R. 65.*
(11) *Tesco Stores v. Secretary of State for the Environment [1995] 1 W.L.R. 759 .*
(12) *Westminster City Council v. Great Portland Estates plc [1985] A.C. 661 .*

Appeal by West Midlands Probation Committee against the decision of Robin Purchas, Q.C. sitting as a Deputy High Court Judge on August 20, ***590** 1996, whereby he dismissed an application to quash a decision of the Secretary of State for the Environment who, through his Inspector, had dismissed an appeal by the appellants against a refusal by Walsall Metropolitan Borough Council to grant planning permission in respect of the extension of a bail and probation hostel at Stonnall Road, Aldridge, West Midlands. The facts are stated in the judgment of Pill L.J.

Representation

Robert Griffiths, Q.C. for the appellants.

Michael Bedford for the first respondent.
Ian Ponter for the second respondent.

Pill L.J.:

This is an appeal from a decision of Mr Robin Purchas, Q.C. sitting as a Deputy High Court Judge on August 20, 1996. The judge dismissed an application to quash a decision of the Secretary of State for the Environment ("the Secretary of State") whereby he dismissed an appeal by West Midlands Probation Committee ("the Committee") against a refusal by Walsall Metropolitan Borough Council ("the Council") to grant planning permission in respect of the extension of a bail and probation hostel at Stonnall Road, Aldridge, West Midlands. The appeal was determined by an Inspector appointed by the Secretary of State and was announced by letter dated December 7, 1995 following a local public inquiry.

Planning permission was granted in 1980 for the erection of a secure unit for severely disturbed adolescents. The unit formed part of the Druids Heath Community House complex, most of which had later been transformed into a nursing home. The unit was converted in 1989 to a bail hostel, it being determined, given the existing permission, that planning permission was not required for the conversion. Bail and probation hostels were treated by the Council, without objection, as a *sui generis* use, outside the specified use classes in the Use Classes Order .

The hostel provides accommodation for up to 12 bailees, a typical stay being about four weeks. They are required to reside at the hostel by virtue of a condition of residence imposed by the court when granting bail. A curfew operates between 11 p.m. and 6 a.m. During the day bailees are normally supervised by two professional officers and up to four administrative or domestic staff are also involved in running the hostel. At night, an assistant warden and a relief supervisor are present at the hostel.

The committee is a body corporate established under the Probation Services Act 1993 and its responsibilities with respect to the probation service are set out in the Act. Pursuant to section 7 of the Act, the committee is empowered to provide hostels to accommodate those remanded on bail with a condition of residence at an approved bail or bail and probation hostel, those subject to a probation order including a condition to reside at such a hostel, and prisoners released on licence from custody with a condition of residence at such a hostel. Section 27 of the Act empowers the Home Secretary to approve a hostel and he is also empowered to make grants for expenditure in providing bail and probation hostels under section 17 of the Act. In December 1992, the Home Office issued a Guidance Note entitled "Approved Bail and Probation/Bail Hostels Development Guide". It included guidelines on site selection.

Aldridge is described by the Inspector as a modest town and is two miles from Walsall. The hostel is described as being at the very edge of Aldridge and within the West Midlands Green Belt. Opposite, the Inspector found, ***591** stand the neat houses and bungalows of a suburban estate. Adjacent to the hostel is a large nursing home in extensive grounds and a substantial dwelling. The proposal involved a two-storey extension to the side of the building. It would accommodate an additional eight bailees and there would be some increase in staffing.

Planning permission was refused by the council on January 3, 1995, contrary to the advice of the Director of Engineering and Town Planning. The reason given was:

> The residents of the area and the adjoining properties now experience severe and material problems and incidents arising from the existing use of the premises, which are incompatible with the surrounding residential area. The further expansion of a use which, in the considered view of the Local Planning Authority, is unsuitable for that area has the potential to further exacerbate these problems, to the detriment of the amenities which local residents could reasonably be expected to enjoy.

The Inspector defined the issues in the case as follows:

(1) Whether the scheme would noticeably impair the living conditions that nearby residents might reasonably expect to enjoy in an area like this and, if so,
(2) Whether the need to provide more places in bail hostels throughout the West Midlands would provide a sufficiently cogent reason to warrant expansion of the hostel at Stonnall Road.

On the first issue, the Inspector found that the hostel had attracted numerous police visits, many late at night or early in the morning. Some of the visits involved arrests, personal injuries or the breach of bail conditions. The Inspector stated that:

> It is not surprising that local residents living in such a quiet, sylvan and suburban street should be seriously disturbed by the noise of police cars, police radios and the impact of flashing lights close to their homes, particularly when events occur at times of relative peace and quiet or when police cars have to wait in the street while the hostel gates are opened. The evidence demonstrates that residents might well have to endure such occurrences at fairly regular and frequent intervals. And, of course, the need for ambulances or other vehicles to attend in emergencies must add to this intrusive impact.

The Inspector went on to consider the implications of an expansion of the hostel. He concluded:

> I consider that the proposed expansion of this hostel would be likely to significantly increase the disturbance endured by those living nearby.

He next considered the apprehensiveness and insecurity of residents living in the vicinity of the hostel and stated that:

> Such harmful effects would be capable of being a material consideration provided, of course, that there were reasonable grounds for entertaining them; unsubstantiated fears—even if keenly felt—would not warrant such consideration, in my view.

The Inspector found that residents' apprehensions had some justification. Having considered the evidence, he referred to bailees fighting in the street, ***592** or moaning and mutilating themselves, or smashing crockery in private driveways and milk bottles in the road. These he described as "disturbing incidents". Bailees had committed robberies in the area and had broken into cars. Reference is made to "drunken, intimidating or loutish behaviour". The Inspector stated:

> I consider that such occurrences give reasonable grounds for residents to feel apprehensive; and, the cumulative effect of such events could reasonably be expected to fuel a genuine "fear of crime". That is recognised as a significant problem in its own right particularly if affecting the more vulnerable sections of the community, like some of the relatively elderly people here (Circular 5/94). I think that expansion of the hostel would increase the potential frequency of those occurrences and so exacerbate the "fear of crime" that already exists.

He noted that:

> Rowdy or raucous activity is particularly noticeable amongst the quiet drives and avenues of this neat suburban estate ... It would be hard to imagine a more incongruous juxtaposition. Quite apart from the fact that there are numerous instances where the identity of an occupant is crucial to the acceptability of a planning proposal (as Circular 11/95 clearly demonstrates), a defining characteristic of using land for a "probation and bail hostel" is that it may provide accommodation for probationers or a particular category of bailee. The proposed extension inevitability increases the possibility of residents encountering more bailees. I consider that local people would thus have good reason to feel more apprehensive than they do now.

The inspector concluded as follows:

> Taking all those matters into account, I conclude that the expansion of this hostel would be likely to exacerbate the disturbance, and accentuate the fears of those living nearby, and so noticeably impair the living conditions that residents might reasonably expect to enjoy in an area like this.

On the first issue, Mr Robert Griffiths, Q.C. for the committee, submits that apprehension and fear are not material planning considerations since they do not relate to the character of the use of land. Anti-social and criminal behaviour of some of the hostel residents on or near the land was not a material planning consideration. As Mr Griffiths put it, the isolated and idiosyncratic behaviour of some of the residents did not stamp their identity onto the use of the land. A distinction has to be drawn between the use of land and behaviour of people on and off the land. Moreover, apprehension and fear cannot be measured objectively and provide no basis for establishing that there is demonstrable harm to interests of acknowledged importance. Anti-social or criminal behaviour should not be taken into account; the application should be considered on the assumption that the use of the land would be lawful and activities on it would not involve breaches of the law.

It is also submitted that, by his reference to "the identity of an occupant," the Inspector misunderstood Circular 11/95. The Circular is concerned with planning conditions and provides only that, sometimes and exceptionally, the identity of the occupier of land may be relevant for the purpose of ***593** *granting* permission by attaching an occupancy condition

where otherwise permission would have to be refused. It contains no warrant for *refusing* planning permission by reason of the identity of the occupier.

I say at once that I accept Mr Griffiths' submission that, in the present context, reference to Circular 11/95 was inappropriate. Under the heading "Occupancy: general conditions," paragraph 92 provides:

> Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission.

The following paragraphs of the Circular deal with a series of situations in which permission for development would normally be refused but there are grounds for granting it to meet a particular need. Examples are "granny" annexes ancillary to the main dwelling-house, permission for a dwelling to meet an identified need for staff accommodation, and permission to allow a house to be built to accommodate an agricultural or forestry worker. Planning conditions which tie the occupation of the dwelling to the identified need will be appropriate. That principle has, in my view, no bearing upon the present issue as to whether permission can be refused because of the behaviour of bailees and I disagree with the judge on that point. However, I regard the Inspector's reference to the Circular as merely an aside which does not affect the acceptability of his reasoning.

Section 70(2) of The Town and Country Planning Act 1990 requires a planning authority upon an application for planning permission to have regard *inter alia* to "material considerations". In *Stringer v. Minister of Housing and Local Government [1970] 1 W.L.R. 1281*, Cooke J. stated at p. 1295:

> In principle it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances. However, it seems to me that in considering an appeal the Minister is entitled to ask himself whether the proposed development is compatible with the proper and desirable use of other land in the area. For example if permission is sought to erect an explosives factory adjacent to a school, the Minister must surely be entitled and bound to consider the question of safety. That plainly is not an amenity consideration.

Cooke J. cited the statement of Widgery J. in *Fitzpatrick Developments Ltd v. Minister of Housing and Local Government (unreported) May 24, 1965* that; "An essential feature of planning must be the separation of different uses or activities which are incompatible the one with the other".

In *Westminster Council v. Great Portland Estates plc [1985] A.C 661* at 670 Lord Scarman stated that:

> The test, therefore, of what is a "material consideration" in the preparation of plans or in the control of development ... is whether it serves a planning purpose: see *Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578*, 599 *per* Viscount Dilhorne. ***594** And a planning purpose is one which relates to the character of the use of the land.

Mr Bedford, for the Secretary of State, relies on two other authorities to demonstrate circumstances in which the impact of a development upon neighbouring land may operate as a material consideration. In *Finlay v. Secretary of State for the Environment [1983] J.P.L. 802* the Secretary of State refused planning permission for use of premises as a private members club where sexually explicit films were shown. The Secretary of State regarded as an important consideration the fact that the residential use of a maisonette above the appeal site "shared its entrance with the exit from the cinema club. This fact, particularly in view of the nature of the films being shown, is likely to deter potential occupiers and could effectively prevent the occupation of this residential accommodation". It was submitted that the Secretary of State had taken into account an immaterial consideration, namely the nature of the films being shown. Forbes J. is reported as stating that:

> The Secretary of State was not saying "I dislike pornographic films" what he was saying was a pure planning matter, namely if people show pornographic films downstairs, it was likely to be a deterrent to potential occupiers of the residential accommodation upstairs. That may mean that the accommodation may be difficult to let or use for residential purposes. That seemed to him [Forbes J.]

> to be a wholly unexceptionable way of looking at it from a planning point of view. In other words, that took, in his view, a planning judgment made by the Secretary of State with which the court should not interfere.

In *Blum v. The Secretary of State for the Environment [1987] J.P.L. 278* , an enforcement notice was served in respect of a riding school. Upon an application for planning permission, the Inspector identified as the main issue whether or not a riding school use caused significant harm to the bridleway network in the adjoining public open land and detracted from its visual amenities as part of a conservation area. He found that the very poor state of the network was attributable in large part to horses coming from the appeal site. Simon Brown J. stated, at p. 281, that he:

> recognised that a planning authority might very well place greater weight on questions of, for instance, highway danger, and to considerations of purely visual amenity but that was a very far cry from holding it immaterial and impermissible and an abuse of planning powers to have regard to the environmental impact of a development of this character upon the visual amenities of surrounding land.

The relevance of public concern was considered by this Court in *Gateshead M.B.C. v. Secretary of State for the Environment [1994] 1 P.L.R. 85* . A clinical waste incinerator was proposed and there was public concern about any increase in the emission of noxious substances, especially dioxins, from the proposed plant. Glidewell L.J., with whom Hoffman and Hobhouse L.J., agreed stated:

> Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But, if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial—indeed very little development of any kind— would ever be permitted.

***595** In the recent decision of this court in *Newport C.B.C. v. Secretary of State for Wales (transcript June 18, 1997)* an award of costs by the Secretary of State was challenged on the basis that the Inspector had been inconsistent in his reasoning on the question of public perception of danger from a proposed chemical waste treatment plant. Hutchison L.J. stated that the Secretary of State had made an error of law in reaching a decision "on the basis that the genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal" (page 14E). Aldous L.J. stated (page 15D) that the planning authority should have accepted; "that the perceived fears, even though they were not soundly based upon scientific or logical fact, were a relevant planning consideration".

Mr Bedford relies upon the above statements to support his submission that public concern about the effect of a proposed development is a material planning consideration. The difference between Glidewell L.J., on the one hand, and Hutchison and Aldous L.JJ. on the other, need not be resolved in the present case because the Inspector found that the fears were justified. Mr Griffiths submits that there is a distinction between fear of noxious substances emanating from a site and fear of antisocial behaviour. He also submits that the concession made in the *Newport* case that public perception is relevant to the decision whether planning permission should be granted (page 11A) should not have been made.

The manner in which the Inspector dealt with the second issue he identified, that of need, is also challenged in this appeal. It is submitted that the Inspector erred in going behind the judgment of the committee and of the Home Office. Their view that there was a compelling need to provide more hostel places in the West Midlands should not have been subjected to investigation. The Chief Probation Officer for the West Midlands Probation Service gave evidence.

The committee's evidence, as summarized by the Inspector, was that demand for places exceeded supply by almost 13 per cent. The Home Office had compelled the committee to close two existing hostels with the loss of 31 beds. The Home Office had agreed with the proposed extension at Stonnall Road. It was one of the hostels identified for expansion. Extension would be physically possible at reasonable cost, the demand from local courts was high and the hostel is conveniently located. The other options were to create "cluster units," where bailees are not under direct supervision, or to countenance less onerous bail conditions. Either possibility could expose the community to more risk from criminal elements.

The Inspector stated that he was not convinced that the inability to find accommodation for some of those referred necessarily indicated that there was a pressing need for additional hostel space. He did not find a compelling requirement to replace some of the 31 bed-spaces lost in the closure of the other hostels. He thought it inconsistent to claim that the spaces were essential when the committee and the Home Office had implemented the closure without any guarantee that replacement spaces could easily be found. The lack of bed-spaces could not be regarded as an unacceptable impediment; "since it must have been realised that an inevitable consequence of the hostel closures

would be to deprive the courts of their capacity for however long it took to find suitable replacements". The need for planning permission did not appear to have been countenanced.

Having made his analysis of need, the Inspector stated that "even if there is a need for more hostel space in the West Midlands I consider that there is ***596** little justification for providing more of it at Stonnall Road". He concluded that the need to provide more places in bail hostels throughout the West Midlands would not provide a sufficiently cogent reason to warrant expansion of the hostel at Stonnall Road.

Mr Griffiths accepts that the Inspector was entitled to balance need for additional hostel spaces with other material considerations and to decide whether the need should be met on this particular site. What he was not entitled to do, Mr Griffiths submits, was to challenge the committee's assessment of the need itself. That was a wrongful intrusion into matters within the sphere of the Home Office and the Secretary of State for the Environment (represented by the Inspector) should not thwart the policy of the Home Office.

A further, and separate, point taken by Mr Griffiths is that the Inspector should not have had regard to the "site selection" criteria in the Home Office Guidance Note. Paragraph 2.0.3 reads:

> Finding a site in a suitable location for a hostel is not easy and can be very time consuming. The purpose of hostels is to enable residents to remain under supervision in the community so, as far as possible, hostels should be sited in areas where they can have good access to public transport, employment, social, recreational and other community facilities. This may not always be possible, but any selection of a site should take into account the possible impact of the hostel on local surroundings.

The guidance was not intended for the Inspector, it is submitted, but for the committee and was irrelevant to the Inspector's function as a planning Inspector. The Inspector formed the view that the Home Office's own criteria were not met at the appeal site. In the Inspector's opinion, for example, there was not "good access to public transport, employment, social, recreational and other community facilities". (It is not submitted by the Secretary of State that the last sentence in paragraph 2.03 is relevant to the first issue in this appeal.)

The Inspector also referred to Circular 5/94 when considering fear of crime. The Circular does not in my view throw light on whether such fear is a "material consideration" under the Planning Acts. The Circular is entitled "Planning out Crime" and is said to provide "fresh advice about planning considerations in crime prevention, particularly through urban design measures". The Inspector, in the paragraph already set out, echoes the wording of paragraph A1 of the Circular where it is stated: "Fear of crime, whether warranted or not, is a significant problem in its own right, particularly among those in the more vulnerable sectors of society, such as the elderly, women and ethnic minorities". I regard that as an uncontestable statement but not one which throws light upon the present issue. As the title indicates, the Circular is concerned with the importance of security in the design of development. It is stated in paragraph 3 that, "there should be a balanced approach to design which attempts to reconcile the visual quality of a development with the need for crime prevention". That consideration has no bearing upon the present issue and the Inspector's adoption of a part of the narrative in the Circular does not involve a misdirection upon the point at issue.

In considering the evidence in this case, I do not consider that the "disturbing incidents" and "occurrences" found by the Inspector to have ***597** occurred can be divorced or treated as a separate consideration from the concerns and fears of residents which he also found to be present. The fears arise from the disturbances and the Inspector was entitled to link them in the way he did in his conclusions. It is the impact of the occurrences upon the use of neighbouring land which is said to be relevant.

These propositions, relevant to the first issue, emerge from the authorities:

(1) The impact of a proposed development upon the use of and activities upon neighbouring land may be a material consideration.
(2) In considering the impact, regard may be had to the use to which the neighbouring land is put.
(3) Justified public concern in the locality about emanations from land as a result of its proposed development may be a material consideration.

The contentious point in the present case is whether behaviour on and emanating from the development land in present circumstances attracts the operation of those principles. The "particular purpose of a particular occupier" of land is not normally a material consideration in deciding whether the development should be permitted. (*East Barnet UDC v. British Transport Commission [1962] 2 Q.B. per* Lord Parker C.J. at p. 491.)

A significant feature of the present case is the pattern of conduct and behaviour found by the Inspector to have existed over a substantial period of time. I include as part of that pattern the necessary responses of the police to events at the hostel. That behaviour is intimately connected with the use of the land as a bail and probation hostel. As analyzed by the Inspector, it was a feature of the use of the land which inevitably had impact upon the use of other land in the area. On the evidence, the Inspector was entitled not to dismiss it as isolated and idiosyncratic behaviour of particular residents. The established pattern of behaviour found by the Inspector to exist, and to exist by reason of the use of the land as a

bail and probation hostel, related to the character of use of the land, use as a bail and probation hostel. Given such an established pattern, I would not distinguish for present purposes the impact of the conduct upon the use of adjoining land from the impact of, for example, polluting discharges by way of smoke or fumes or the uses in *Finlay* and *Blum* . There can be no assumption that the use of the land as a bail and probation hostel will not interfere with the reasonable use of adjoining land when the evidence is that it does. Fear and concern felt by occupants of neighbouring land is as real in this case as in one involving polluting discharges and as relevant to their reasonable use of the land. The pattern of behaviour was such as could properly be said to arise from the use of the land as a bail and probation hostel and did not arise merely because of the identity of the particular occupier or of particular residents.

If that is right, it is a question of planning judgment what weight should be given to the effect of the activity upon the use of the neighbouring land. (*Tesco Stores v. Secretary of State for the Environment [1995] 1 W.L.R. 759 per* Lord Hoffmann at page 780F.) The weight to be given in that context to the more intensive use of the hostel proposed by the development at issue is also a question of planning judgment.

Before expressing general conclusions, I turn to the second issue. Had the proposal been by a private developer for residential or shopping use, for example, it would have been open to the Inspector to consider need as a ***598*** material consideration. Mr Griffiths relies on the fact that the committee are a statutory body acting under the statute and government guidelines and he submits that different considerations apply.

I regard it as a significant feature of the present case that, neither in their evidence given by the Chief Probation Officer, nor in their submissions, did the committee seek to limit the scope of the Inspector's investigation of need. The witness was cross-examined upon need in the usual way. It is not suggested that a statement of government policy, not susceptible to challenge, was placed before the public local inquiry. That being so, I am not surprised that the Inspector conducted inquiries into need as he did.

The question of the extent to which policy matters may be investigated at a public local inquiry was considered by the House of Lords, in the context of road proposals, and in different circumstances, in *Bushell v. Secretary of State for the Environment [1981] A.C. 75* . In the present context, there is a potential clash of interest between the Secretary of State for the Environment and the Secretary of State for the Home Department and it may fall for consideration whether there are matters of Home Office policy which ought not to be subject to challenge at a local public inquiry into a planning appeal. Upon the procedure followed in this case, however, I do not consider that the Inspector can be criticized for adopting the course he did.

In any event, the Inspector directed his attention to development on the particular site and, subject to the committee's subsidiary point, he stated his conclusion in terms that, even if the need existed, there was "little justification for providing more of it at Stonnall Road." He added, in relation to meeting the need, that; "a location like this one, on the very edge of a small town and in the sort of quiet suburb where the impact of the hostel must be particularly apparent, would be incongruous". That was a proper approach for a planning Inspector to take. I could not envisage a Home Office policy statement which in effect directed the Secretary of State for the Environment to provide for the need at a particular location as distinct from identifying the need. I do express the view that the extent of the Inspector's assumed power to challenge Home Office policy, and indeed criticize it as inconsistent, may be scrutinized in a future case. His conduct does not however, invalidate the conclusion he reached in this case. His finding was based upon the application of planning criteria to a particular site and followed a procedure at the Inquiry to which no objection was taken.

The committee's further submission is in relation to the use made by the Inspector of the site selection criteria, already cited, in the Home Office Guidance Note. The criteria included matters which an Inspector may properly regard as material planning considerations. They may be intended for guidance of committees seeking to establish hostels but, in so far as the considerations set out are material planning considerations, I see no reason why the Inspector should not adopt them, if he sees fit, in considering whether the development on the site should be permitted. He is not obliged to assume that the particular site, from the planning point of view, meets the planning criteria stated by the Home Office.

The Inspector's application of the criteria in the Guidance Note to the appeal site was also attacked on *Wednesbury* grounds. His conclusions were in my view within the range permitted as a matter of planning judgment.

The Inspector expressed as his general conclusion that; "the need to provide more places in bail hostels throughout the West Midlands would not provide a sufficiently cogent reason to warrant expansion of the hostel at ***599*** Stonnall Road". For the reasons I have given, and in agreement with the judge, that was in my judgment a conclusion he was entitled to reach and I would dismiss this appeal.

Swinton Thomas L.J.:

I agree.

Hirst L.J.:

I also agree.

Representation

Solicitors— Wragge and Co. , Birmingham; Treasury Solicitor ; Solicitor to Walsall Metropolitan Borough Council.

Order

Reporter —Megan Thomas.

Appeal dismissed with costs. Leave to appeal to House of Lords refused. ***600***

Appendix 17

*187 Newport BC v The Secretary of State for Wales and Browning Ferris Environmental Services Ltd

Court of Appeal (Civil Division)

(Staughton L.J. , Aldous L.J. , Hutchison L.J.),

June 18, 1997

Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
18 June 1997

Report Citation
[1998] Env. L.R. 174

Planning permission for chemical waste treatment works—decision of the Secretary of State to make an award of costs against local planning authority for unreasonable behaviour—refusal based upon public perception of risks from proposed development—whether local planning authority may ever reasonably refuse to grant permission for development which is perceived to be unsafe even where that perception is not supported by the evidence.

The second respondents, Browning Ferris Environmental Services Limited ("BF") applied for planning permission to develop a chemical waste treatment plant at Newport, Gwent. The Appellant, Newport Borough Council ("NBC"), as local planning authority refused the application. One of the grounds for refusing planning permission was that the proposed development was perceived by the local community to be contrary to the public interest in that there were unacceptable risks to public health and safety. BF appealed and the first respondent, the Secretary of State for Wales ("SSW") allowed the appeal. In addition, SSW made an award of costs against NBC on the grounds of unreasonable behaviour. In doing so SSW relied upon the conclusions of the inspector appointed to hear the appeal who concluded that whilst public perception of risk was a relevant planning consideration, this perception was not supported by substantial evidence and that accordingly NBC had not behaved reasonably when relying upon that reason for refusal. NBC applied to quash the award of costs. The appeal was dismissed by Latham J.

On appeal to the Court of Appeal, NBC argued that the public's perception of risk was a material planning consideration and that even if that perception was unfounded it could, in an appropriate case, be capable of justifying a refusal of planning permission. SSW had unlawfully considered that unless there was evidence to substantiate the public's perception, that perception could never be a ground for refusing planning permission.

Held, in allowing the appeal and remitting the matter for reconsideration: ***175**

It was apparent from the inspector's main decision letter that genuine public perception of danger, even if not objectively well-founded, was a valid planning consideration. When the separate decision letter which dealt with the costs award was considered, the inspector's conclusion that genuine public fears, unless objectively justified, could never amount to a valid ground for refusal was, therefore, a material error of law (*per* Hutchison L.J. and Aldous L.J.).

(*Per* Staughton L.J. dissenting.) The inspector had taken public fears into account as a special circumstance. He had assessed the facts of the case and rightly concluded that the public fear was not supported by any planning grounds; in those circumstances there was no contradiction between the two decision letters and the inspector was entitled to conclude that NBC's opposition was unreasonable.

Legislation referred to:

Town and Country Planning Act 1990, s.320(2) .
Local Government Act 1972, s.250(5) .

Cases referred to:

Westminster CC v. Great Portland Estates Plc [1985] 1 A.C. 661 .
Gateshead MBC v. Secretary of State for the Environment [1994] 1 P.L.R. 85 .

Policy referred to:

Circular 5/87, paras 5–7, 9.

Representation

Mr J. Howell Q.C. appeared on behalf of the appellant.
Miss A. Robinson appeared on behalf of the first respondent.

STAUGHTON: L.J.:

Hutchison L.J. will give the first judgment.

HUTCHISON L.J.:

This is an appeal from a judgment of Latham J. who on July 11, 1995 dismissed Newport Borough Council's application to quash the decision of the Secretary of State for Wales of August 23, 1993, ordering them to pay to developers, Browning Ferris Environmental Services Limited, the costs of a planning inquiry in October 1991. The inquiry came about because the council had refused planning permission for the construction of a chemical waste treatment plant on land at the junction of Stephenson Street and Corporation Street in Newport, Gwent.

The ground on which the Secretary of State made the order was that the council had behaved unreasonably in refusing planning permission, and ***176** thus put the developers to unnecessary expense. It is accepted that if it was open to the Secretary of State on the material before him to conclude that the council had behaved unreasonably, he was entitled to make the order. This is because there is power by virtue of section 320(2) of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972 to make orders as to costs of planning inquiries and the Secretary of State's declared policy in Circular 5/87 giving guidance as to awards of costs in such proceedings provides that costs should be ordered against a party "only on grounds of unreasonable behaviour". I shall cite those passages of the Circular relevant to the present case. Part 1 in a paragraph headed "Costs in respect of appeals and other planning proceedings" provides:

> "5. In planning proceedings the parties are normally expected to meet their own expenses and costs are awarded only on grounds of unreasonable behaviour . . .
>
> 6. Before an award of costs is made, the following conditions will normally need to be met:
>
> (i) one of the parties has appealed for an award at the appropriate stage of the proceedings . . .;
> (ii) the party against whom the claim is made has acted unreasonably;
> (iii) this unreasonable conduct has caused the party making the application to incur expense unnecessarily, either because it should not have been necessary for the case to come before the Secretary of State for determination or because of the manner in which another party has conducted his part of the proceedings."

Under the heading "Awards against planning authorities—unreasonable refusal of planning permission", one finds this:

> "7. A planning authority should not prevent, inhibit or delay development which could reasonably be permitted. In accordance with the advice given in Circular 22/80 . . . a planning authority should refuse planning permission only where this serves a sound and clear planning purpose and the economic effects have been taken into account. As stated in Circular 14/85 . . . 'There is . . . always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledge importance. Reasons for refusal should be complete, precise, specific and relevant to the application. In any appeal proceedings authorities will be expected to produce evidence to substantiate their reasons for refusal . . . While planning authorities are not bound to follow advice from their officers or from statutory bodies such as Water Authorities or the Health and Safety Executive, or from other Government Departments, they will be expected to show that they have reasonable planning grounds for a decision taken against such advice and that they ***177** were able to produce evidence to support those grounds. If they fail to do so, costs may be awarded against them."

Under the heading "Examples of unreasonable refusal", paragraph 9 reads:

> "Planning authorities are expected to take into accound the views of local residents when determining a planning application. Nevertheless, on its own, local opposition to a proposal is not a reasonable ground for the refusal of the planning application unless that opposition is founded upon valid planning reasons which are supported by substantial evidence. While the planning authority will need

> to consider the substance of any local opposition to the proposal their duty is to decide a case on its planning merits. They are unlikely to be considered to have acted reasonably in refusing an application if no material departure from statutory plans or policies is involved and there are no other planning reasons why permission should be refused."

As will become apparent, the appellants attach particular importance to paragraph 9, as indeed does the respondent.

The appellants submit that the decision of the Secretary of State gives rise to an important point of planning law with which they say the judge did not deal, namely whether a local authority may ever reasonably refuse to grant permission for a development which is perceived to be unsafe and to pose unacceptable health and safety hazards, even though that perception is not supported by opinions of experts.

There is no doubt that the proposed development gave rise to very substantial public opposition. As the judge said, this was not at all surprising. The council gave four reasons for refusing permission, the second of which was withdrawn before the inquiry began. The first, which asserted the increase in Newport of heavy goods vehicles carrying toxic or other hazardous waste materials would give rise to additional public safety risks, as to which the inspector found that the council had offered no substantial evidence, needs no separate consideration as it is no longer material. The third and fourth reasons were as follows:

> "(3) In the interests of public safety and proper planning, major waste treatment plants should not be located within urban communities.
>
> (4) The proposed development is perceived by the local community to be contrary to the public interest generally and to their interests in particular."

The inspector's conclusion was that there was no evidence to support the third reason. As to the fourth, he accepted the accuracy of what was asserted, but found there was no valid basis for the subjective perception. Since the Secretary of State agreed with, and adopted, the reasoning of the ***178** inspector when making the order as to costs, it is to the inspector's recommendation in his report dealing with the developer's application for costs that regard must be had.

However, it is necessary first to make some reference to his recommendations and findings as to the substantive appeal. In summary what he said was that, while he accepted that there was in the minds of the residents of the area a perception that the plant would occasion unacceptable danger to public health, and that that perception would remain however much reassurance there was from experts, there was no objective basis for reasonable fears. He concluded as follows in paragraph 9.33:

> "As the proposal would be in accordance with the policies of the Development Plan, determination of the appeal should be in favour of the development, unless there are material considerations which indicate otherwise. In my opinion, the above material considerations do not indicate otherwise. However, there remains the question of public perception and opinion. It is expected that the views of residents will be taken into account when determining applications for planning permission. Nevertheless, in land-use planning considerations, public opinion should be founded on valid planning reasons and supported by substantial evidence. In this instance, it seems to me that the evidence produced in opposition to the development has not indicated that the proposal would cause demonstrable harm to the environment or public health. The public's perception of the hazards and risks remains. In my judgment, this is a factor which counts against the development. Nevertheless, bearing in mind the actual evidence regarding the foreseeable risks to health and all the circumstances surrounding this case, I find that the opposition of the general public, expressed through various bodies and individuals as well as the Local Planning Authority, is insufficient to override the acceptability of the proposals in terms of Development Plan Policies and the lack of demonstrable harm to the public or the environment."

I turn next to the reasons given for ordering the council to pay the developer's costs. Directing himself in accordance with Circular 5/87, the inspector noted that neither the council's offices nor the statutory bodies consulted recommended refusal and that the experts whom the authority had consulted had reported that in land-use terms there would be no significant environmental impact and agreed with the conclusions of the environmental statement on siting, overall design and intended operation. Against this background, he said, any evidence relied on to support refusal on the grounds of safety and risk should be "strong and convincing".

The inspector then summarised the evidence, apart from that relating to the perceptions of local people and concluded that there had been nothing to establish a prima facie case for refusing permission. It will be remembered, from the

passage I have cited from his substantive report, ***179** that he considered that the public perception of the hazards and risks remained and was a factor against the development, but one which in the light of the evidence was insufficient to justify refusal of permission for the development.

Returning to this topic in his costs report, he said:

> "There was substantial local interest in the proposal. That is understandable, bearing in mind the publicity which related to the other nearby plants, one at Pontypool and the other at Caerleon. No doubt the fire at KwikSave added to local concern over accidents at commercial and industrial premises. There was, therefore, an intense and justifiable local sensitivity to the issue of chemical waste treatment plants. Whilst there is substantial evidence of substantial local opposition, it seems to me that that is not the same as significant land-use planning evidence. Although the objections made to the council indicated the genuine and widespread public concern, the evidence offered by many of the objectors related to the waste disposal industry in its widest and most general aspects and to opposition against a chemical waste treatment plant in general and consequently to its location in Newport. I ask the question: is that extensive perceived public concern sufficient reason to refuse planning permission? The Local Planning Authority take the view that it is. Bearing in mind the advice of Circular 5/87 and PPG1, it seems to me that that perception of public concern, without substantial supporting evidence does not amount to demonstrable harm nor is it, on its own, a sound and clear cut reason sufficient to warrant the refusal of planning permission."

Commenting on the council's individual reasons for refusing permission, the inspector said of this matter of local perception:

> "Clearly the development was perceived by the local community to be unsafe and to pose unacceptable public health and safety hazards and there was evidence to support the volume of public concern. However, in my opinion, that public concern was not supported by substantial evidence, even when founded on valid planning reasons.
>
> Accordingly, it seems to me that the Council did not behave reasonably in refusing planning permission and that, as a consequence, the applicants have incurred the unnecessary expense of an inquiry."

The principal argument advanced by the applicants in support of the detailed grounds of appeal can be simply stated. What is said is that, once it is accepted that the public's perception and risk to their safety inherent in the proposed development, even if objectively unfounded, is a material consideration, it must follow that the unfounded perception alone *can* , in an appropriate case, justify refusal. The inspector and the Secretary of State failed to consider whether the present was such a case, but instead approached the case on the basis that unless there was evidence to substantiate the public's perception, that perception could never be a ***180** ground for refusing permission. This was inconsistent with the acceptance of the proposition that the perception was a material consideration. The Secretary of State, therefore erred in law by approaching the question of the reasonableness or otherwise of the council's refusal of permission on the basis that, absent reasonable grounds on which the public perception was based, it was necessarily unreasonable.

It is also contended, as I have already noted, that the judge in determining the application for judicial review did not address this argument because he based his judgment on the assumption that the inspector had found that there was no substance in planning terms in the public's perception, whereas the inspector had held that it *was* a planning consideration, but one which in the light of all the evidence was "insufficient to override the acceptability of the proposals in terms of the development plan policies and the lack of demonstrable harm to the public or the environment" .

It is submitted that the source of error into which the inspector and the Secretary of State fell was their misconstruction of paragraph 9 of Circular 5/87. That paragraph, it is argued, is concerned with local opposition to a proposed development and is saying that there should be reasonable grounds for the opposition. It is not saying that there must be reasonable grounds for the perception. On the contrary, it is the perception which may constitute a ground for the opposition. The argument is that the inspector and the Secretary of State, who adopted his reasons, misconstruing this paragraph and paragraph 18 of PPG1, treated them as in effect requiring that there should be objective grounds for the perception rather than for the opposition. It is said that the judge did not address this argument, but wrongly treated fear as synonymous with opposition and, therefore, regarded the Circular as applying.

Finally, three particular points are urged, which I summarise briefly. It is said that the Secretary of State misconstrued the requirement for substantial evidence as requiring something more than substantial evidence of public concern and anxiety. It is said that he failed to consider properly the evidence that was before the inspector. Further, it is said that if the guidance in effect condemns as irrational any refusal based on public perception alone, it is in itself irrational.

Those arguments have been extensively developed by Mr Howell Q.C. before us today in his submissions. Miss Robinson, on behalf of the Secretary of State, has contested the validity of any of those contentions. It will be observed that there is no assertion that the decision to award costs was unreasonable in the *Wednesbury* sense. Accordingly, the challenge before the judge depended on its being shown that the Secretary of State had erred in law in one or more of the respects relied on, and whether or not the judge properly understood or dealt with the arguments before him. ***181** That, in the last resort, is the position on this appeal. I shall therefore consider the validity of the criticisms advanced in respect of the Secretary of State's decision (or at any rate some of them) without taking time to analyse the way in which the learned judge dealt with those submissions.

There is, in my view, no doubt that a substantial part of the reasoning of the inspector in that part of his report where he states his conclusions (*i.e* . paragraph 5) addresses the question whether there were any objective grounds for the public perception that the plant would give rise to significant risks to the local inhabitants. This is, however, in my view understandable, given that the arguments relied on by the council, as Miss Robinson reminded us, in resisting the order for costs included arguments to the effect that the decision was not unreasonable because the evidence before them showed that there were, objectively viewed, good grounds for fear. I refer to parts of paragraph 4 of the Inspector's report on costs. In paragraph 4.03(a) he says that the submission was that the evidence before him showed that the plant had not been shown to be safe; (b) that, in any event, a proposal which gave rise to this degree of public concern was not appropriate for an urban area. So the inspector could not properly have disregarded arguments as to substantive risks.

However, it is contended that he had no real regard to the argument that perceived safety risks, even though unjustified, could constitute a valid ground for refusal. Rather, the main thrust of his reasoning is to the effect that, absent any evidence to substantiate the validity of those fears, perceived hazards alone could not as a matter of principle amount to good planning grounds for rejecting an application.

Miss Robinson for the Secretary of State accepts that public perception, even if not objectively justified, is a material consideration to be taken into account on the issue of costs. She seeks to make a distinction in two ways from the way in which Mr Howell puts the matter. First, she does not conceded that it is a relevant planning consideration (*i.e.* it is not relevant in land-use terms), but it is nevertheless relevant to the decision whether planning permission should be granted. Secondly, she seeks to argue that the authorities show that it is only rarely or in exceptional cases that such a consideration would be held to be decisive, absent other planning considerations militating against the grant of planning permission. Those differences apart, it is common ground between the parties to this appeal that a perceived concern about safety is a material consideration which must be taken into account and given such weight as may be appropriate in the particular circumstances of the case. Miss Robinson's submission is that in this case the public's perception of risk was taken into account by the inspector and the Secretary of State as a material consideration, and found to be insufficient to give reasonable grounds for refusing permission. She submits that the Secretary of State was right to have regard ***182** to the policy of Circular 5/87, and she argues that he is not shown to have misconstrued or misapplied it. Since the question whether the public perception was soundly based remained in issue, and because of the terms of the Circular, it was necessary for the inspector to decide that question and his conclusion that it was not soundly based was a material one to which he could have regard in deciding the question of reasonableness. The decision was not made on the basis that mere perception could never justify refusal, but was a decision that in the circumstances of this case it did not do so. Therefore, Miss Robinson submits, there was no error of law on the part of the inspector and, therefore, none on the part of the Secretary of State.

Given the substantial agreement between counsel as to the law, it does not seem to me necessary to cite any of the five or six authorities to which we were helpfully referred by counsel. Nor, as I see it, is it necessary to consider the criticisms of the judge's approach because, as I have already pointed out, it is with the approach and reasoning of the inspector, whose conclusions the Secretary of State in effect adopted, that we are essentially concerned. Has it been shown that he erred in law in his approach to the resolution of the question whether the council had acted reasonably or unreasonably in refusing permission? Though it is of course stating the obvious, I nevertheless emphasise that we are not concerned with the merits of the decision, but with whether it was lawfully reached in the sense that all material and no immaterial matters were taken into account.

That the inspector accepted that genuine public perception of danger, even if not objectively well-founded was a valid planning consideration, is apparent from what he said in paragraph 9.33 of his substantive report where, it will be remembered, having stated his conclusion that the evidence had not established that there would be any demonstrable harm to the environment or to public health, he continued:

> "The public's perception of the hazards and risks remains. In my judgment this is a factor which counts against the development."

He went on to conclude that it was insufficient to override the other considerations.

However, as I suggest the passages I have cited show, in his costs report he adopted a different approach. As I read the material passages in which he gives his reasons for his award of costs, he was, as Mr Howell asserts on the appellant's behalf, directing himself that:

> "... perception of public concern without substantial supporting evidence does not amount to demonstrable harm nor is it, on its own, a sound and clear-cut reason sufficient to warrant the refusal of planning permission."

Miss Robinson's argument is that this and the passages I have cited ***183** from paragraphs 5.06 and 5.07 can be understood as accepting that perception of fear which is not objectively based *can* but on the particular facts of this case *did not* constitute a valid reason for refusing permission, must in my view be rejected since it is simply incompatible with the language he uses. Miss Robinson places particular emphasis on the latter part of paragraph 5.05. Mr Howell submits that in the last two sentences of that paragraph the inspector is stating a general proposition of law, rather than addressing himself to the particular facts of this case. Miss Robinson seeks to refute that by pointing to the fact that he uses the word "that" on two occasions in a context which, she argues, suggests that he is addressing the facts of this particular case.

For my own part, I have concluded that if the passage is read as a whole the proper construction is that the inspector was indeed, as Mr Howell submits, stating a general proposition, a proposition contrary to what he had said in his earlier report dealing with the substantive application. If there were any doubt about the matter, it is in my judgment dispelled by the words in sub-paragraph (04) of paragraphs 5.06 and 5.07, which I have already quoted and which seem to me to be inconsistent with any construction other than that the inspector was saying that in no circumstances could an objectively unfounded fear constitute by itself a reason for refusing planning permission. Moreover, had he had in mind his conclusion in the substantive appeal, as Miss Robinson suggests he must as a matter of common sense have done, he would in my view inevitably have used different language from that which he employed in the passage which I have cited from his costs decision. I accept Mr Howell's submission that the only sensible construction of the material words is that the inspector, and, therefore, the Secretary of State who adopted his reasoning, was approaching the question whether the council had behaved unreasonably on the basis that the genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal. That was in my judgment a material error of law. In the circumstances I consider it unnecessary to deal with any of the other points raised and relied on by Mr Howell. I would on that ground quash his decision and remit the matter for reconsideration.

ALDOUS L.J.:

I agree. Having listened to the submissions of Mr Howell Q.C. and Miss Robinson, I have not in the end discerned any dispute as to the relevant law.

A planning authority may properly take into account the perceived fears of the public when deciding whether a proposed development would affect the amenity of an area. Miss Robinson for the Secretary of State submitted that such fears will rarely provide grounds for refusal of planning permission, whereas Mr Howell for the council submitted that ***184** each case will depend on its facts. Both may be right. However, perceived fears of the public are a planning factor which can amount (perhaps rarely) to a good reason for refusal of planning permission. It is therefore in my view "another planning reason" within paragraph 9 of Circular 14/85.

That being the law, the inspector should have considered whether the council acted unreasonably so that it was not necessary for the case to come before the Secretary of State. In so doing, he should have accepted that the perceived fears, even though they were not soundly based upon scientific or logical fact, were a relevant planning consideration and then gone on to decide whether, upon the facts of the particular case, they were of so little weight as to result in the conclusion that refusal by the council was unreasonable.

Miss Robinson submitted that the Inspector must have had in mind that perceived fears were a relevant factor and, when read in that light, his decision was unobjectionable. Mr Howell submitted that, upon the wording of the decision, it appeared that he did not have that in mind. The inspector appeared to have concluded that if the fears were not based on scientific, technical or logical fact, it followed that refusal by the council was unreasonable with the result that costs should be paid.

Hutchison L.J. has read the relevant passages from the inspector's decision. I believe that they can only be read in one way, namely that suggested by Mr Howell for the reasons given by my Lord. It may be that what is said in that decision does not reflect the true views of the inspector, but we have to interpret what he said.

The judge appears in my view to have read the decision letter in a somewhat similar way. He said at page 7 of the transcript:

> "It follows that the Inspector had come to the conclusion that, although public perception was a relevant consideration, it had no substance in planning terms. In those circumstances there was no

> justification by way of clear-cut sound planning for refusing planning permission. It was on the basis of that approach that the Inspector, when considering the question of costs, came to the determination that he did."

In that passage the judge points to the illogical conclusion that he thought the inspector had reached, namely that public perception was a relevant consideration, but it had no substance in planning terms. How then could it be relevant on a planning inquiry, as the inspector held? In any case, both Miss Robinson and Mr Howell accepted that public perception is a factor in planning terms and on rare occasions can be grounds for refusal.

The judge went on at page 9 to consider the effects of Circular 5/87. He said:

> "The position was, and comes out clearly from the documents, that this was a case where the public quite understandably and, as the inspector ***185*** recognised, with some justification had real fears about what might happen were the development to be permitted. As the Circular, however, makes clear, that is not of itself to be an adequate reason for refusing a planning permission which should otherwise be granted and if, in fact, there is no significant evidence or substantial evidence to support the fear then for a Council to rely upon it, it must fall within paragraph 9 so as to carry with it the consequence as to costs which occurred in this case."

In my view the judge was wrong to come to that conclusion. The Circular does not have that meaning. The Circular states that local opposition is not a reasonable ground for refusal. Mr Howell did not suggest that it was. However, there is a difference between local opposition and a perceived fear which by itself could affect the amenity of the area. The Circular makes it clear that if there are planning reasons, refusal may be reasonable. A perceived fear by the public can in appropriate (perhaps rare) occasions be a reason for refusing planning permission, whether or not that has caused local opposition. It follows that the Circular contemplates that planning reasons such as public perception can (again, perhaps rarely) warrant refusal, even though the factual basis for that fear has no scientific or logical reason. That being so, I conclude that the judge wrongly interpreted the Circular. For the reasons given by Hutchison L.J., I agree with the order proposed by him.

STAUGHTON L.J.:

The conclusion which I have reached is that this appeal should be dismissed. It is right to say that Mr Howell sensibly elected not to address us in reply when he heard that two members of the court were in his favour. It is also right to say that his opening address was by no means abbreviated.

The statute entrusts the task for deciding whether there shall be an award of costs to the Secretary of State. The decision is not for the courts but for him. We can interfere if his decision was unlawful or irrational or procedurally improper. It is said in this case that it was unlawful or irrational.

I feel that one has to start with paragraph 9 of the Circular. Mr Howell submitted that although that paragraph was dealing with the effect of local opposition, it was not dealing with fear (whether justified or not) in local people. I do not agree with that conclusion. It seems to me that it is dealing with local opposition of any kind and the weight that one must give to opposition.

The second sentence of paragraph 9 seems to me to conflict with the fourth. The second sentence says:

> ". . . on its own, local opposition to a proposal is not a reasonable ground for the refusal of a planning application unless that opposition is founded on valid planning reasons which are supported by substantial evidence." ***186***

The fourth sentence says:

> "They are unlikely to be considered to have acted reasonably in refusing an application if no material departure from statutory plans or policies is involved and there are no other planning reasons why permission should be refused."

The fourth sentence does not lay down an absolute rule, but merely says that in those circumstances a refusal is unlikely to be reasonable. In my judgment the fourth sentence prevails over the second, and there is no absolute rule.

That seems to me to accord with the substantive law, at any rate as it was put to us by Miss Robinson. In *Westminster City Council v. Great Portland Estates Plc [1985] 1 A.C. 661* , Lord Scarman at page 670 said:

> "It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present of course indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases."

Applying that to the present case, I would say that local fears which are not, in fact, justified can rank as part of the human factor and could be given direct effect as an exceptional or special circumstance. I would not go so far Glidewell L.J. did in *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment [1994] 1 P.L.R. 85* , where he said at page 95:

> ". . . if in the end public concern is not justified, it cannot be conclusive."

Glidewell L.J. is a great authority on planning matters, but in this instance I cannot agree with him.

So I look to see whether the inspector did take into account public fears as a special circumstance. In my judgment he did. He said as much in his decision letter on the substantive application. He said:

> "The public's perception of the hazards and risks remains. In my judgment, this is a factor which counts against the development."

He had earlier said that public opinion should be founded on valid planning reasons and supported by substantial evidence.

But then in his decision on costs, which had adopted by the Secretary of State, he said:

> "I asked the question is that extensive perceived public concern sufficient reason to refuse planning permission? The local planning authority take the view that it is. Bearing in mind the advice of Circular 5/87 and PPGI it ***187** seems to me that that perception of public concern without substantial supporting evidence does not amount to demonstrable harm nor is it on its own a sound and clear-cut reason sufficient to warrant refusal of planning permission."

That was not in my the judgment an abstract statement of law, but the inspector's assessment of the facts in this case. Perhaps in reaching that conclusion I am influenced by what he said in his substantive decision letter which was dated in the same month as his decision on costs. I am prepared to assume that he did not intend to contradict in a second document what he had said in the first.

It is true that the passage at paragraph .04 says that public concern was not supported by substantial evidence, even when founded on valid planning reasons. I have difficulty with that sentence, not least because I do not understand what it means. But I can see nothing irrational or unlawful in the inspector's decision as I have construed it. He took into account the public fear; he rightly concluded that it was not supported by any planning grounds; and in those circumstances he was entitled to conclude that the council's opposition was unreasonable. I would, as I have said, have dismissed this appeal.

ORDER: *Appeal allowed with costs; the matter to be remitted for reconsideration .*

Representation

Solicitors— Head of Legal and Administrative Services, Newport Country Borough Council , The Treasury Solicitor .

Appendix 18

STATEMENT OF ALON ZAKAIM

1 *Introduction*

1.1 My name is Alon Zakaim. I live at 31 Ingram Avenue, Golders Green, London, NW11 6TG ("**the Property**") with my wife, Karen Zakaim, and our four children.

1.2 I write this statement in support of my Enforcement Notice appeal (PINS reference: APP/N5090/C/18/3216722). This statement should be read in conjunction with the Statement of Facts and Grounds and Hearing Statement submitted in support of that appeal. I will refer to the definitions contained within those documents throughout this statement.

2 *Background*

2.1 We purchased the Property in 2011. We spent seven and a half years renovating the Property and continued to live in our old house (63 Kingsley Way, N2 0EL) until the renovation works were complete. We finally moved into the Property at the end of May/beginning of June 2018. The Gates were installed in February 2018. Our occupation of the Property has therefore always been with the benefit of the Gates.

2.2 When we looked at the Property with a view to purchasing it, we saw many of the surrounding properties had driveway gates. We (mistakenly) understood that it was possible to install gates up to 1 metre in height without the need to obtain planning permission. We therefore proceeded with our purchase of the Property on the basis that installing the Gates would not be an issue.

2.3 When we were choosing the Gates, in order to avoid disapproval from the Hampstead Garden Suburb Trust and to be in keeping with other properties on Ingram Avenue, we decided to install low gates as opposed to tall gates. A considerable amount of effort went into choosing the style of the Gates and they were certainly not cheap. We wanted them to match our existing side gates (which are tall gates either side of the house, the design of which the Trust had previously approved).

2.4 The house we have created is absolutely beautiful. Sadly though, our enjoyment of the Property has been heavily affected by the severe and worsening crime situation in the locality.

2.5 Every day, we hear of another burglary, mugging or robbery in the area. I live in constant fear of my safety, my wife's safety, and that of our children. We are traumatised by the experiences of close family members who have been brutally mugged and burgled. My wife no longer feels able to wear any of the jewellery she owns, not even her wedding ring. Shel never wears fancy clothes but chooses jogging bottoms and casual jumpers in an attempt not to draw attention to herself.

2.6 When my wife drives onto our driveway through the Gates which open automatically. she waits until the Gates have fully closed behind her before getting out of the car. That's the only way she can feel safe.

3 *Personal Experiences*

3.1 My wife's sister-in-law was brutally mugged outside her own home in St. John's Wood. She suffered serious injuries, including a broken nose. My wife spent the night in hospital with her after the incident, staying awake all night to comfort her. Now, whenever her sister-in-law sees anyone on a moped, she freezes and starts to cry. She was so traumatised by watching her sister-in-law going through this that she did not sleep for days afterwards.

3.2 My mother in-law's brother was subject to a horrific robbery at his house in Totteridge (robbery being burglary with force). The robbers entered the house whilst my wife's uncle were home, brandishing weapons (such as metal bars) and raided the house which included

A 2

opening the safe in 8 minutes; the time it takes for the police to arrive. When the police finally arrived, the robbers had gone, leaving her uncle completely traumatised.

3.3 My wife's uncle was another victim of violent crime. His car was followed to his home at 53 Winnington Road. When he got out of his car, he was attacked on the driveway by a man with a hammer, who robbed him of his watch before leaving the scene. It is because of attacks like this one that I now drive a non-descript car to and from my place of work, as my fear is that I would otherwise be followed home and then attacked.

4 *Gates are a deterrent*

4.1 We know that having driveway gates does not remove the risk of crime completely, nor are they a solution to the crime problem. However, we are absolutely convinced that driveway gates, even low ones, act as an extremely effective deterrent and consequently, this gives me peace of mind and a sense of security. We know that our local police have the same opinion, as shown in the letter from DC Daniel Llewellyn to the owner of 15 Winnington Road (22 November 2017).

4.2 If someone is going to burgle a house on foot, they need both their hands to steal the goods. If there is a gate, however low, they will need to jump over this both to enter the property and to leave afterwards (assuming there is no alternative exit route). You need your hands to climb or jump over a gate. Try doing that whilst carrying stolen goods. It suddenly becomes very difficult. Gates clearly provide a deterrent in this way.

4.3 Similarly, if someone was going to burgle a house by driving a van up to the front door to load in stolen goods, the presence of closed gates (again, however low) makes this very difficult. The burglars would need the key/code to open the gates or have the means to destroy the gates which of course, would draw attention to them at a time when they would want to be as surreptitious as possible.

4.4 Anyone seeking to steal a car would be unable to do so where gates are present as even if they could get into the car, they would be unable to drive it away unless they could somehow open the gates.

4.5 Opportunists are able to walk up to a house with an open driveway to take a look or vandalise the car on the driveway (for example, scratching the side of the car with a key or putting nails in the wheels) without necessarily looking suspicious. However, someone climbing/jumping over a gate to take a look or vandalise a car would immediately draw attention to themselves as being suspicious. Gates provide a clear deterrent to this kind of criminal behaviour.

4.6 There have been numerous incidents in Hampstead Garden Suburb of violent moped gangs robbing people. Open driveways are easy targets for criminals to drive straight up to a house on mopeds in order to ram and then rob the homeowner. Driveway gates go a long way to preventing this.

5 *Impact of living in fear on my life*

5.1 When we lived in our old house, we had driveway gates. Occasionally they would stop working. When the gates were not working, my wife did not sleep at night.

5.2 I work away an awful lot which means my wife is regularly home alone with our four children. While that's the choice we've made as a couple, it doesn't change the impact it has on her every day. When I am away, my wife locks the study door at night. This is an internal door but she is so scared that someone may use the flat roof to gain access into the study and then into the rest of the house that she locks it.

5.3 Our four children are aged between 8 and 14. All of our children are acutely aware of the security situation they live in and are worried about their own safety. Of course, we do our best not to let on to our children that we are scared. I continually reassure them that they

are safe and that there is nothing to worry about. But children are not ignorant. They hear from their friends about incidents happening locally. The older ones hear for themselves from the news. No matter how hard we try, it is not possible to shield them from the reality that they live in a crime-targeted area and as a result, their personal safety is at risk.

5.4 One of my children, aged 12, suffers from Obsessive Compulsive Disorder ("OCD"). He is always concerned and worried about safety. For example, when we lived in our old house and the gates were not working, he would be the first to come running to me to tell me that they were not working and that we needed to get them fixed straight away. To live in such a continuous state of fear is unhealthy and has made his OCD worse.

6 *Other security measures at the Property*

6.1 We have installed a range of security measures at the Property in an attempt to make our house more secure.

6.2 We have a sophisticated burglar alarm. There are shock sensors on every window of the house wired to the alarm. (These circumvent the need for bars on the windows).

6.3 We also have a perimeter alarm. This is activated at the end of the day once people have stopped coming and going from the Property. Or during the day if the house is going to be empty for a long period of time with no-one coming or going.

6.4 We use LCS Security services; a security firm which employs ex-Gurkha soldiers to operate daily and nightly car patrols within the Suburb. Our home is part of the patrol route. The fact that we need Gurkhas to watch over us is a continual reminder to me that we live in an unsafe area.

6.5 The reason I want the Gates in addition to these other security measures is that these other security measures do not provide the deterrent benefits I have outlined above. Further, and worryingly, in the event of an incident, it would take the police approximately 8 minutes to arrive. As evidenced by the robbery at my wife's uncle's house above, the robbers had been and gone within 8 minutes before the police even got there. Even with the alarms, we do not feel safe. The Gates are an additional layer of security which in turn, provides an extra layer of safety and peace of mind.

6.6 In addition, the front of our house has full-height windows which reach down to ground level. This creates a huge risk of forced entry in a 'smash and grab' attack. As ram-raiders on mopeds operate in the area, this is a genuine threat, made worse by the fact that we have been told by the local planning authority that there is no way we would get permission to change the windows in the front of the house. The Gates give us essential protection against such an attack.

7 *Conclusion*

7.1 We currently have the Gates. We feel scared in our own home, although having the Gates does help. If they are taken away, how will we feel? How will my wife and children feel? I would feel so vulnerable and exposed, I am not sure we would be able to continue living where we do. The situation is getting worse rather than better. The number of crimes in the area is rising, not decreasing. Police resources are stretched and are not going to improve soon.

7.2 The LPA's approach to Hampstead Garden Suburb needs to wake up! People and homes are being attacked, regularly and often violently. Most of the Suburb was designed and built over 100 years ago. Unfortunately, times have changed and crime rates have rocketed, particularly in recent years. The installation of driveway gates on people's properties has become almost a prerequisite to occupation of properties on certain streets within the Suburb. Their installation would not undermine the feel of the Suburb. Many homes in the Suburb already have gates, including several homes in our own road. I think that the Suburb residents are proud of their community and do their best to look after its unique feel.

However, they and I also want to live together in a place that is safe. The Suburb needs to adapt and accept that times have changed. Conserving the Suburb is important but lives are more important.

Signed: ..... Date: 24 OCTOBER 2019

Alon Zakaim

A.2.

Appendix 19

Photographs of applicant's injuries following attack on 21st June 2017.

Appendix 20

Terror of TV chef as raiders tore £12k Rolex from her wrist: Hampstead's rich and famous hit 12 times by Taser and hammer gang

Annabel Karmel spoke of her terror of being targeted by the gang
Corrie Moroney, Alan Fitzgerald, Ellis Parkinson jailed for total of 23 years
All convicted of conspiracy to rob after three month campaign of raids
Targeted their victims due to their 'outward show of wealth'
Designer watches and handbags and gold jewellery among their haul
Judge says their victims had suffered 'life changing' consequences

By REBECCA CAMBER and JIM NORTON FOR THE DAILY MAIL
PUBLISHED: 13:05, 18 February 2015 | UPDATED: 00:43, 19 February 2015

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A celebrity chef told yesterday how she was attacked by a hammer-wielding gang of robbers whose crime spree brought terror to the streets of Hampstead.

Children's food guru Annabel Karmel thought she would die after being ambushed by muggers on mopeds who grabbed the 5ft 1in blonde and held a hammer to her head as they ripped her £12,000 gold Rolex from her wrist.

The businesswoman spoke out for the first time yesterday after the robbers, who targeted celebrities and millionaire homeowners in North London's luvvieland, were jailed for a total of 23 years.

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DON'T MISS

Who else knew? Glenn Close and Kate Winslet admit to hearing rumors of Harvey Weinstein sexual harassment in the past while others say they were unaware

Rachel Bilson and Hayden Christensen spotted for the first time together since split.. as it emerges Emma Roberts 'may have played role in break-up'

'I've never felt that

orrie Moroney, 23, pictured left, was involved in all 12 robberies and jailed for 10 years, plus ı extra 12 months for a separate assault. Ellis Parkinson, 21, pictured right, was jailed for eight ears

uring a three-month crime spree, Corrie Moroney, 23, Alan Fitzgerald, 20, and Ellis arkinson, 21, preyed on well-heeled residents living within three miles of ampstead Heath.

hey snatched luxury watches, designer handbags and gold jewellery from their ictims who were threatened with a hammer, knives and a Taser.

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Man, 29, arrested after 93-year-old widower was mugged for a...

hey selected targets due to their 'outward show of wealth'.

ıne of their victims was newspaper executive Stan Myerson, the joint managing irector of Northern & Shell, which owns Express newspapers, who was attacked in is driveway and stripped of his watch and cash.

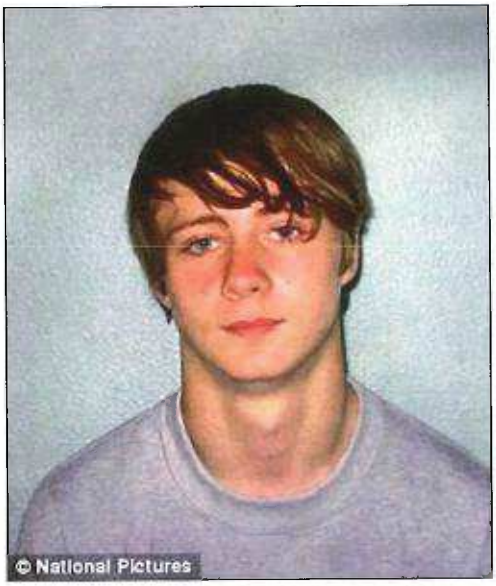
ut the gang were finally caught after ɔbbing Mrs Karmel who helped bring ıem to justice.

he 51-year-old mother-of-three was ıugged in broad daylight after parking n a side street in St John's Wood where ıe planned to go shopping.

he recalled: 'I opened the boot and ıddenly these guys on mopeds with elmets on were there on the pavement.

)ne held a hammer over my head and ıid in a really vicious way "give us your ʻatch".

screamed, I thought they were going ɔ hit me with the hammer.



Alan Fitzgerald, 20, was sent to a young offenders institution for four years

t was so scary, I just knew they would se the hammer. They grabbed my arm, I couldn't move. They cut my arm as they pped off my watch. Then they took my shopping bag.'

he attack on June 20 last year lasted just minutes but Mrs Karmel was able to note ıe number plate of the moped.

he reported the registration to police but was astonished when the Flying Squad ʻere able to track down the offenders just 90 minutes later after following their ıovements using undercover officers and the police helicopter.

etectives showed her photographs of a moped they had recovered which still had lrs Karmel's £150 designer Henri Bendel canvas shopping bag in it.

kind of depression... my life's been a waste of time': George Michael reveals trauma of losing first love to AIDS in final heartbreaking interview

Her birthday suit! Bella Hadid posts racy thong snap before heading out to party in a skintight satin dress for 21 year milestone
Cheeky

f'Wow... totally didn't recognise her': Dawn French shocks fans with her remarkably youthful complexion as she reveals she is nearly 60 on The One Show

Bustin' out! Kim Kardashian flaunts her cleavage again as she steps out wearing sheer bra under a trench coat
Flashed pretty much everything

It's all in the genes! Meet the stunning Kardashian-Jenner COUSIN who looks just like Kendall - and also happens to be an aspiring model

Well, she's certainly got a bun in the oven! Kylie Jenner drowns out her 'baby bump' in massive shirt as she playfully posts photo of cinnamon rolls

Oh Bey-have! Beyonce flashes cleavage in plunging jumpsuit as Jay-Z kicks back in series of Instagram posts
Figure-hugging outfit

We'll take three of those! Kim and Kourtney Kardashian flaunt their legs in hotpants at baby supply store
Stocking up

Tracksuit momager! Kris Jenner shows off her athletic figure in trendy Adidas sports gear as she steps out in LA
Casual

She sheer loves her sister! Gigi Hadid wears racy see-through corset as she holds hands with birthday girl Bella for 21 year celebration
Double trouble

Supermodel Heidi Klum, 44, shows off her incredibly toned bikini body in sultry swimwear campaign for her own fashion line
Bikini babe

he evidence proved to be crucial in convicting the gang who later pleaded guilty to
2 robberies.

elebrity cook Annabel Karmel, pictured left, and publishing boss Stan Myerson, pictured
ght, were both victims

Simmer down, boys! Gordon Ramsay starts a bizarre war of words with Jamie Oliver over the size of their families
Things are heating up between celeb chefs

Miley Cyrus looks wholesome in tight jeans and a simple tee as she steps out in NYC... after revealing why she split from fiancé Liam Hemsworth in 2013

Booty-full day! Kourtney Kardashian shows off her killer figure in a tiny bikini on Instagram after shopping trip with beau Younes Bendjima in LA

'He feels it would be too awkward': Jamie Redknapp 'REFUSES to watch wife Louise in Cabaret... in wake of their split and her new friendship with pal Daisy

Rose McGowan BLASTS Donna Karan after the DKNY head suggested 'wonderful' Harvey Weinstein's victims 'may have been asking for trouble'

'Weinstein is a bad guy but Trump is far worse': Rob Reiner gives extraordinary interview in which he says the President of United States is an 'abuser'

Getting their hearts racing! Kendall Jenner clings to Blake Griffin as they emerge from haunted house
Getting their scares in

Matt Damon is called a 'spineless profiteer who stays silent' by Harvey Weinstein victim Rose McGowan after it is revealed he and Russell Crowe helped kill a story

Advertisement

CTV footage of the moment one of the gang targeted a businessman outside of his £2 milllion ome in Hampstead

he 57-year-old attempted to fight the members of the masked gang off with a broom

Mail Online

'We're not gonna raise a**holes!' Mila Kunis reveals why she and Ashton Kutcher WON'T buy their two children any Christmas presents

Inseparable! Ben Affleck and Lindsay Shookus shop for art during weekend together in New York City as their romance heats up

Smoking hot! Jeremy Meeks puffs on a cigarette at Los Angeles airport after filing for divorce from wife Melissa
Lit up

Fifty Shades of...free love! Dakota Johnson blows kisses while on a green juice run at a health food store in Los Angeles
Sealed with a kiss

Carrie Fisher returns as Princess Leia in heart-stopping new trailer for Star Wars: The Last Jedi... nearly one year after her death at age 60

'Better go back on Big Brother for a new one!': Nadia Sawalha shocks fans with clip of her 'rubbish' bathroom on Twitter... complete with peeling walls and dirty curtains

'We're twins today!': 'Pregnant' sisters Khloe Kardashian and Kylie Jenner sport matching blonde locks for new Kylie Cosmetics Youtube channel

Daisy flashes her derriere in lingerie ad as model's new boyfriend is revealed... after BFF Louise Redknapp credited her with feeling sexy again

'I take my hat off to her': Denise Van Outen admits she identifies with Louise Redknapp as she realised her own

espite the businessman's efforts they stole his £24,000 watch and a gold chain in the raid

masked raider was caught on the CCTV footage wielding a hammer at his terrified victim

Corrie Moroney, 23, pictured left, showing off on his moped, and Alan Fitzgerald, pictured ght

Mrs Karmel told the Mail the ordeal continues to affect her: 'It was terrifying... It has made me feel wary. Now I am more careful and worry about getting out of my car. I run into my house. I don't wear a nice watch or fancy jewellery.'

Blackfriars Crown Court heard how most

as she realised her own 'marriage problems' after her stint on Strictly

Your Bad Mom jeans? Mila Kunis keeps a low profile in faded denim pants as she goes make-up free while running errands in Beverly Hills
Low profile

Advertisement

Mail Online

Flawless! Kate Bosworth stuns in lemon asymmetrical dress with sheer skirt at Hollywood Bowl screening for Jane Goodall documentary

Upbeat Jennifer Garner shows off her gym-honed figure in skintight leggings and pretty sweater on stroll in LA

Trying to blend in? Kaia Gerber wears camouflage pants as she grabs a smoothie and a frozen yogurt in Malibu

How sleazy Harvey Weinstein championed Cressida: Friends hope his disgrace won't damage her career, writes Sebastian Shakespeare

Shame of the female A-listers who refuse to denounce Weinstein: Fury grows as Hollywood's finest

f the victims were mugged on their riveways by the thugs who shattered ar windows with hammers before :ripping the terrified occupants of Rolex nd Cartier watches worth up to 60,000 each, rings worth thousands nd designer purses.

he thieves – dressed in black, with their ıces disguised by helmets, balaclavas nd scarves – struck so frequently that ɜsidents in the wealthy North London istrict hired ex-gurkha soldiers as rivate security guards to patrol the ɔads.

Corrie Moroney, pictured, was involved in all 12 robberies

he first robbery happened on March 5 ıst year when a pensioner was ambushed outside his Hampstead home as he got ut of his Bentley.

he 70-year-old was hit with a hammer several times by the robbers who threatened ɔ smash his kneecaps unless he handed over his watch.

ɔne girl of nine whose mother was mugged wrote a poem telling of her fear at the ɔund of motorbikes.

he gang were finally snared after a two-week surveillance operation by the Yard's lying Squad who studied CCTV footage and witness statements to identify the ɔbbers.

ingleader Moroney was sentenced to ten years in prison plus an extra year for an ssault in a betting shop. Parkinson received eight years and his accomplice itzgerald four years.

THE HAMMER-WIELDING MOPED GANG'S THREE MONTH LONG CAMPAIGN

March 5th, 2014 in Park Way, NW11. Victim hit in face with hammer and had watch taken.

April 11th in Platt's Lane, NW2. Victim grabbed from behind and had watch, rings and chain taken.

May 1st in Farm Avenue, NW2. The victim was approached by suspect with a hammer. The victim was threatened and the suspect took her watch and phone.

May 3rd in Priory Terrace, NW6. The victim was sitting in his car when two suspects approached the car. They smashed the window and took the victim's watch and money.

May 5th in Wray Cresent Park.The victim was walking along the road when he was approached and threatened with a hammer by the suspects. They took the victim's watch, ring, phone, belt and sunglasses.

May 7th in West Heath Road, NW11. The victim was on her driveway when she was approached and threatened by the suspect. The suspect took her watch and ring.

May 14th in Asmans Hill, NW11. The victim was on his driveway when approached by the suspect and threatened with a hammer. The suspect took the victim's watch and money.

actresses remain tight-lipped in face of claims

Keeping Up With The Kardashians: Drunk Kourtney throws up in her bed as Scott Disick fumes 'I'd be sent to rehab for less!'
Role reversal

Bella Hadid is 21! Siren steps out in white dress and Go-Go boots on birthday as Gigi calls her 'forever bestie' and Kendall Jenner shares portrait

Dancing With The Stars' Nick Lachey sobs as he recalls nearly losing his wife Vanessa and their baby on Most Memorable Year
Emotional

Ready for fall! Halle Berry looks lovely in a Moroccan-style dress as she lugs a large pumpkin during grocery run

EXCLUSIVE: Fashion designer Donna Karan comes to Weinstein's DEFENSE suggesting his victims may have been 'asking for it' by the way they dress

Youthful Elizabeth Hurley, 52, steals the show in fitting magenta midi dress as she leads the glamour at 25th anniversary of the breast cancer campaign

Binky Felstead is every inch the doting mother as she cradles baby India... after she and JP revealed they are 'already planning baby number two'

The X Factor: Nicole Scherzinger teams up with rapper Stormzy while Sharon Osbourne enlists children Kelly and Jack as Judges Houses celebrity sidekicks are revealed

Basil Fawlty would be a better hotel inspector than these dolts: Christopher Stevens reviews last night's TV

Smouldering Poppy Delevingne flashes her underwear in VERY daring black lace dress for date night event with dapper husband James Cook

Advertisement

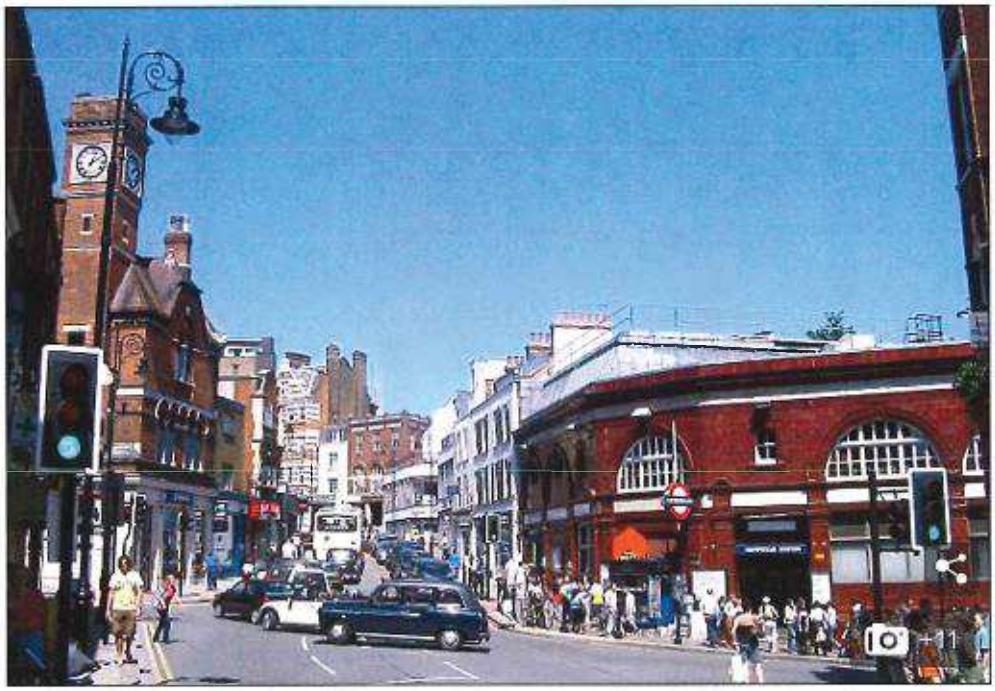
May 17th in Winnington Avenue, NW11. As the victim and his wife were leaving the park they were approached by the suspects on mopeds and threatened with a hammer. The suspects took both watches and a purse.

May 30th in a petrol station in Wellington Road. The victim was approached by suspects on mopeds. They hit his car with a hammer and threatened the victim. The suspects took his watch.

June 1st in Kidderpore Avenue, NW3. The suspect followed the victim into his garage. Smashed his vehicle window and threatened him with a hammer. The suspects took his watch and wallet.

June 17th in Hamilton Terrace, NW8. The victim was parking her car when suspects approached on two mopeds. She was threatened with a hammer. The suspects took her phone and watch. The suspects then took her handbag from the back of the car.

June 20th in St Johns Wood Road, NW8. The victim had just got out of her vehicle when she was approached by the suspects. The suspects took her watch and handbag. Police were able to recover this handbag.



ll of the robberies took place within a three miles or the affluent north London suburb of ampstead (file picture)

ADVERTISING

Mail Online

Did Emma Roberts come between Hayden Christensen and Rachel Bilson? Actress may have played role in couple's surprise split as 'text messages were found' between the co-stars

Topless Emily Ratajkowski FLOUTS strict Moroccan dress code as she poses semi-nude at palatial hotel
Daring to bare

What's up doc? Suranne Jones playfully models white rabbit mask at Mad Hatter themed tea party in London

Scar of the show! Coronation Street's Brooke Vincent sports bloody cuts and bruises all over her face as she transforms into car crash victim for new short film

Lettuce turn that frown upside down! Judy Finnigan looks downcast as she dines on a salad with husband Richard Madeley in France

Back on? Hilary Duff spends 30th birthday with ex Matthew Koma igniting rumors of a romantic reunion
Broke up in March

'I don't want to walk

Appendix 21

METROPOLITAN POLICE

Mr Arron Jolliffe
Foot Anstey Solicitors
High Water House
Malpas Road
Truro
Devon
TR1 1QH
United Kingdom

Information Rights Unit
PO Box 57192
London
SW6 1SF
United Kingdom

Our Ref: 01/FOI/18/000074

Date: 18/02/2019

Dear Mr. Jolliffe,

Freedom of Information Request Reference No: 01/FOI/18/000074

I write in connection with your request for information which was received by the Metropolitan Police Service (MPS) on 14/11/2018. I note you seek access to the following:

"REQUEST 1:
1. the number of crimes reported on Ingram Avenue, Winnington Road, Wildwood Road, Hampstead Way and Spaniards Close for each of the years 2015-2016, 2016-2017 and 2017-2018; together with,
2. a breakdown showing the types of crime committed during those years on those roads.

REQUEST 2:
1. the number of crimes reported in Hampstead Garden Suburb Conservation Area (as defined by the boundary map of the Hampstead Garden Suburb Conservation Area available on Barnet LBC's Conservation area webpage) for each of the years 2015-2016, 2016-2017 and 2017-2018; together with,
2. a breakdown showing the types of crime committed during those years within that area.

REQUEST 3:
Please provide the following information:
1. the number of crimes reported on Ingram Avenue, Wildwood Road, Hampstead Way, Spaniards Close (all situated within NW11) and Winnington Road (situated within N2) for each of the years 2015-2016, 2016-2017 and 2017-2018; together

with,
2. a breakdown showing the types of crime committed during those years on those roads."

Request three was considered a duplicate of request one.

I would like to take this opportunity to apologise for the delay in getting this to you. This is due to issues with extracting the data due to the geographic locations that you requested and the requirement to geo-map this data.

SEARCHES TO LOCATE INFORMATION

To locate the information relevant to your request searches were conducted by our corporate analysts. The searches located some information relevant to your request.

DECISION

The MPS has today decided to disclose the requested information. However, the MPS can neither confirm nor deny whether any additional information is held relating to sexual offences in these small geographic locations, as to do so would potentially disclose information that may impact on our ability to prevent and detect crime or could lead to the identification of any potential victims. Therefore, this response serves as a partial Refusal Notice under Section 17(1) of the Freedom of Information Act 2000 (the Act). Section 40(5B)(a)(i) and Section 31(3) are both engaged. Please see the legal annex for further information on the exemptions applied in respect of your request.

REASONS FOR DECISION

Although the MPS and 'police.uk' publish a lot of data down to street level, sexual offence data is not published at this low level. This is due to the sensitivity of the offence and the increased potential to identify individual victims. This was a well-researched and considered stance following discussions with the ICO about privacy, and the effect of any such disclosure on the rights that have been afforded to individuals by the Data Protection Act.

Furthermore, when data is requested about such a small geographic location, there is also a potential to reveal whether or not crimes have been reported to us, which in this case, could result in further offending. For example, should a sexual offence have occurred in one of these streets and the result of offences we disclosed was '0', the perpetrator would be aware that this had not been reported to us. Should this offence have been committed against someone known to the offender, they could then repeat offend in the belief that this too would not be reported.

DISCLOSURE

Please find the information requested attached.

Should you have any further enquiries concerning this matter, please contact me quoting the reference number above.

Yours sincerely

Shannon Stroud
Information Rights Unit

LEGAL ANNEX

Section 17(1) of the Act provides:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision in part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

(a) states the fact,
(b) specifies the exemption in question, and
(c) states (if that would not otherwise be apparent) why the exemption applies.

Section 31(3) of the Act provides:

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

This information, if it were held, would fall within the following subsections:

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
(a) the prevention or detection of crime,
(b) the apprehension or prosecution of offenders

As section 31 is a prejudice based, qualified exemption, we are required to provide you with both a harm and public interest test. These can be found below.

For your information, the MPS is relying on the lower threshold of 'would be likely to' cause harm, as opposed to 'would'.

Evidence of Harm

In considering whether or not we can confirm or deny, we have considered the potential harm that could be caused to our law enforcement capabilities by confirming or denying whether any sexual offence data is held in relation to these streets.

As explained above, sexual offence data is not disclosed at street level. One of the reasons for this is the fact that it could indicate where there has been an under-reporting of this type of crime, which in certain circumstances, could lead to further offences being committed.

Any confirmation or denial which has the potential to negatively impact upon our ability to prevent and detect crime, especially in sensitive cases such as those relating to sexual offence, can be considered prejudicial to our core policing functions.

Furthermore, the harm this has the potential to cause victims, for the reasons stated in the main body of the letter, cannot be underestimated. The MPS will always consider public safety when assessing whether or not we can 1) confirm or deny whether information is held and 2) whether or not we can disclose any held information. If doing either of these things has a significant risk of causing harm to an individual, as in this case, it definitely results in exemptions being engaged.

Public interest considerations favouring confirming or denying

Confirming or denying whether any additional information is held, specifically sexual offence data, would further demonstrate our commitment to openness and transparency – the lynchpins of the Act.

A confirmation or denial would inform public debate and would, potentially, make the public more aware about any particular risks there were in specific areas.

Public interest considerations favouring neither confirming or denying

Confirming or denying whether any additional information is held, specifically sexual offence data, would be likely to hinder our ability to prevent and detect crime, and apprehend any offenders. Should we confirm or deny whether any information is held we could potentially reveal to offenders whether or not they had been reported, which could in turn result in repeat offending in the belief they would not be apprehended.

Balancing Test

After weighing up the competing interests we have determined that a confirmation or denial in this case would not be in the public interest. We consider that the benefit that would result from such a response does not outweigh the considerations favouring neither confirming nor denying. This is further supported by the large amount of data already disclosed as a result of this request.

Section 40(5B)(a)(i) of the Act provides:

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—
(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
(i) would (apart from this Act) contravene any of the data protection principles.

To confirm or deny whether the MPS hold information about sexual offences in these specific streets has the potential to identify living individuals and therefore, should information be held, it would be considered personal data. In most cases Personal Data is exempt from disclosure under the Freedom of Information Act.

Where an individual is requesting information that may contain third party personal data, such as in this case, the MPS must ensure that any action taken adheres to the

principles of the Data Protection Act 2018 and the GDPR. To clarify, the Freedom of Information Act only allows disclosure of personal data if that disclosure would be compliant with the principles for processing personal data. These principles are outlined under section 34 of the DPA 2018 and under Article 5 of the GDPR.

To confirm or deny whether personal information exists in response to your request would potentially publically reveal information about an individual or individuals, in particular sexual offence victims, thereby breaching the right to privacy afforded to persons under the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR). Such a confirmation or denial would therefore be unlawful and cannot occur in this case.

In complying with their statutory duty under sections 1 and 11 of the Freedom of Information Act 2000 to release the enclosed information, the Metropolitan Police Service will not breach the Copyright, Designs and Patents Act 1988. However, the rights of the copyright owner of the enclosed information will continue to be protected by law. Applications for the copyright owner's written permission to reproduce any part of the attached information should be addressed to MPS Directorate of Legal Services, 10 Lambs Conduit Street, London, WC1N 3NR.

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the Metropolitan Police Service (MPS) to review their decision.

Prior to lodging a formal complaint you are welcome to discuss the response with the case officer who dealt with your request.

Complaint

If you are dissatisfied with the handling procedures or the decision of the MPS made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the MPS to have the decision reviewed.

Complaints should be made in writing, within forty (40) working days from the date of the refusal notice, and addressed to:

FOI Complaint
Information Rights Unit
PO Box 57192
London
SW6 1SF
foi@met.police.uk

In all possible circumstances the MPS will aim to respond to your complaint within 20 working days.

The Information Commissioner

After lodging a complaint with the MPS if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.ico.org.uk. Alternatively, write to or phone:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Phone: 0303 123 1113

Appendix 22

METROPOLITAN POLICE TOTAL POLICING

MET HQ: INFORMATION & INSIGHT

Notes

Official

Live data was extracted from the CRIS system and previously GeoCoded MPS data using MapInfo ™ covering a recorded date range of April 2015 to March 2018.

A polygon layer was manually drawn in MapInfo ™ in an attempt to copy as close as possible the Hampstead Garden Suburb Conservation Area shown in this link

https://www.barnet.gov.uk/citizen-home/planning-conservation-and-building-control/conservation/conservation-area-boundary-maps.html

Within this HGSCA are the following streets that the customer also requested individual crime data for:

Ingram Avenue, Wildwood Road, Hampstead Way, Spaniards Close and Winnington Road

The HGSCA covers an area of approximately 1.6sq miles.

MPS Geocoded Notifiable Offence data was extracted from within the HGSCA boundary and matched with Live CRIS data using a unique reference in both data sets to obtain additional CRIS fields not included within the Geocoded data.

Overall, Total Notifiable Offences are GeoCoded to an accuracy level of 97-99% depending on crime type.
So, even though an MPS Borough may "own" the crime and be responsible for its investigation, when GeoCoding takes place, some will be plotted on neighbouring Boroughs or may in reality even be outside the MPS boundary.

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Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these

figures are not generic, nor are the procedures used locally in capturing the crime data. It should be noted that for these reasons this force's response to your questions should not be used for comparison purposes with any other response you may receive.

METROPOLITAN POLICE TOTAL POLICING

MET HQ: INFORMATION & INSIGHT

IMPORTANT: Please ensure that the Notes Page is read in conjunction with the data in this report to ensure that it is interpreted correctly.

Official

Notifiable Offences within the Hampstead Garden Suburb Conservation Area on Barnet Borough recorded by the MPS between 01/04/2015 to 31/03/2018

e Group Ca	Offence Sub Group Category	FY15-16	FY16-17	FY17-18	Grand Tota
Violence A	Violence with Injury	29	27	31	87
	Violence without Injury	46	72	71	189
Violence Against the Person Total		75	99	102	276
Robbery	Robbery of Business Property	0	1	1	2
	Robbery of Personal Property	11	15	16	42
Robbery Total		11	16	17	44
Burglary	Burglary - Residential	140	102	139	381
	Burglary - Business and Community	33	22	17	72
Burglary Total		173	124	156	453
Vehicle Off	Aggravated Vehicle Taking	0	1	3	4
	Theft from a Motor Vehicle	151	165	125	441
	Theft or Taking of a Motor Vehicle	33	37	54	124
	Interfering with a Motor Vehicle	76	46	16	138
Vehicle Offences Total		260	249	198	707
Theft	Theft from Person	16	12	11	39
	Bicycle Theft	8	5	7	20
	Shoplifting	5	4	0	9
	Other Theft	105	105	135	345
Theft Total		134	126	153	413

Arson and	Arson	0	1	1	2
	Criminal Damage	43	48	30	121
Arson and Criminal Damage Total		**43**	**49**	**31**	**123**
Drug Offer	Drug Trafficking	0	1	0	1
	Possession of Drugs	4	8	9	21
Drug Offences Total		**4**	**9**	**9**	**22**
Possession	Possession of Article with Blade or Point	0	1	1	2
Possession of Weapons Total		**0**	**1**	**1**	**2**
Public Ord	Public Fear Alarm or Distress	12	21	22	55
	Racially or Religiously Aggravated Public Fear, Alarm or Distress	8	1	4	13
	Other Offences Against the State, or Public Order	3	3	2	8
Public Order Offences Total		**23**	**25**	**28**	**76**
Miscellane	Going Equipped for Stealing	0	0	1	1
	Making, Supplying or Possessing Articles for use in Fraud	1	1	0	2
	Profitting From or Concealing Proceeds of Crime	2	0	1	3
	Handling Stolen Goods	0	0	1	1
	Threat or Possession With Intent to Commit Criminal Damage	2	0	0	2
	Possession of False Documents	0	1	1	2
	Obscene Publications	1	0	1	2
	Disclosure, Obstruction, False or Misleading Statements etc.	0	0	1	1
	Other Notifiable Offences	0	0	3	3
	Dangerous Driving	1	1	0	2
Miscellaneous Crimes Against Society Total		**7**	**3**	**9**	**19**
Hampstead Garden Suburb Conservation Area Grand Total		**730**	**701**	**704**	**2135**

Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the crime data. It should be noted that for these reasons this force's response to your questions should not be used for comparison purposes with any other response you may receive.

METROPOLITAN POLICE TOTAL POLICING
MET HQ: INFORMATION & INSIGHT

IMPORTANT: Please ensure that the Notes Page is read in conjunction with the data in this report to ensure that it is interpreted correctly.

Official

Notifiable Offences for specific streets on Barnet Borough recorded by the MPS
between 01/04/2015 to 31/03/2018

Street Location of Offence	Offence Group Category	Offence Sub Group Category	FY15-16	FY16-17	FY17-18	Grand Tota
HAMPSTEAD WAY NW11	Violence Against the Person	Violence with Injury	1	0	1	2
		Violence without Injury	2	3	10	15
	Violence Against the Person Total		3	3	11	17
	Robbery	Robbery of Personal Property	1	2	1	4
	Robbery Total		1	2	1	4
	Burglary	Burglary - Residential	10	6	5	21
		Burglary - Business and Community	3	1	0	4
	Burglary Total		13	7	5	25
	Vehicle Offences	Theft from a Motor Vehicle	11	10	10	31
		Theft or Taking of a Motor Vehicle	3	1	2	6
		Interfering with a Motor Vehicle	8	3	2	13
	Vehicle Offences Total		22	14	14	50
	Theft	Theft from Person	0	0	1	1
		Bicycle Theft	1	0	0	1
		Other Theft	4	2	4	10
	Theft Total		5	2	5	12
	Arson and Criminal Damage	Criminal Damage	5	4	1	10
	Arson and Criminal Damage Total		5	4	1	10
	Drug Offences	Possession of Drugs	2	0	0	2
	Drug Offences Total		2	0	0	2
	Public Order Offences	Public Fear Alarm or Distress	0	3	1	4
		Racially or Religiously Aggravated Public Fear, Alarm or Distress	1	0	0	1
		Other Offences Against the State, or Public Order	0	2	0	2
	Public Order Offences Total		1	5	1	7
HAMPSTEAD WAY Total			52	37	38	127
INGRAM AVENUE NW11	Robbery	Robbery of Personal Property	1	0	0	1
	Robbery Total		1	0	0	1

	Burglary	Burglary - Residential	1	2	5	8
		Burglary - Business and Community	3	0	0	3
	Burglary Total		4	2	5	11
	Vehicle Offences	Theft from a Motor Vehicle	1	3	1	5
		Theft or Taking of a Motor Vehicle	0	1	2	3
		Interfering with a Motor Vehicle	0	0	1	1
	Vehicle Offences Total		1	4	4	9
	Drug Offences	Possession of Drugs	1	0	0	1
	Drug Offences Total		1	0	0	1
INGRAM AVENUE Total			7	6	9	22
SPANIARDS CLOSE NW11	Arson and Criminal Damage	Criminal Damage	1	0	0	1
	Arson and Criminal Damage Total		1	0	0	1
SPANIARDS CLOSE Total			1	0	0	1
WILDWOOD ROAD NW11	Violence Against the Person	Violence with Injury	0	1	0	1
		Violence without Injury	0	0	2	2
	Violence Against the Person Total		0	1	2	3
	Robbery	Robbery of Personal Property	2	2	2	6
	Robbery Total		2	2	2	6
	Burglary	Burglary - Residential	4	1	3	8
		Burglary - Business and Community	2	5	0	7
	Burglary Total		6	6	3	15
	Vehicle Offences	Theft from a Motor Vehicle	7	5	7	19
		Theft or Taking of a Motor Vehicle	0	1	1	2
		Interfering with a Motor Vehicle	5	1	0	6
	Vehicle Offences Total		12	7	8	27
	Theft	Theft from Person	1	0	0	1
		Other Theft	1	0	1	2
	Theft Total		2	0	1	3
	Arson and Criminal Damage	Criminal Damage	3	0	1	4
	Arson and Criminal Damage Total		3	0	1	4
	Public Order Offences	Public Fear Alarm or Distress	0	1	0	1
		Other Offences Against the State, or Public Order	1	0	0	1
	Public Order Offences Total		1	1	0	2
WILDWOOD ROAD Total			26	17	17	60
WINNINGTON ROAD N2	Violence Against the Person	Violence with Injury	0	0	1	1
		Violence without Injury	1	1	0	2
	Violence Against the Person Total		1	1	1	3
	Robbery	Robbery of Personal Property	0	0	2	2
	Robbery Total		0	0	2	2
	Burglary	Burglary - Residential	2	4	2	8
		Burglary - Business and Community	1	0	1	2

	Burglary Total		**3**	**4**	**3**	**10**
	Vehicle Offences	Theft from a Motor Vehicle	4	3	5	12
		Theft or Taking of a Motor Vehicle	0	3	0	**3**
		Interfering with a Motor Vehicle	2	2	0	**4**
	Vehicle Offences Total		**6**	**8**	**5**	**19**
	Theft	Other Theft	1	0	2	**3**
	Theft Total		**1**	**0**	**2**	**3**
	Arson and Criminal Damage	Criminal Damage	0	1	1	**2**
	Arson and Criminal Damage Total		**0**	**1**	**1**	**2**
	Public Order Offences	Public Fear Alarm or Distress	0	1	0	**1**
		Racially or Religiously Aggravated Public Fear, Alarm or Distress	1	0	0	**1**
	Public Order Offences Total		**1**	**1**	**0**	**2**
WINNINGTON ROAD Total			**12**	**15**	**14**	**41**

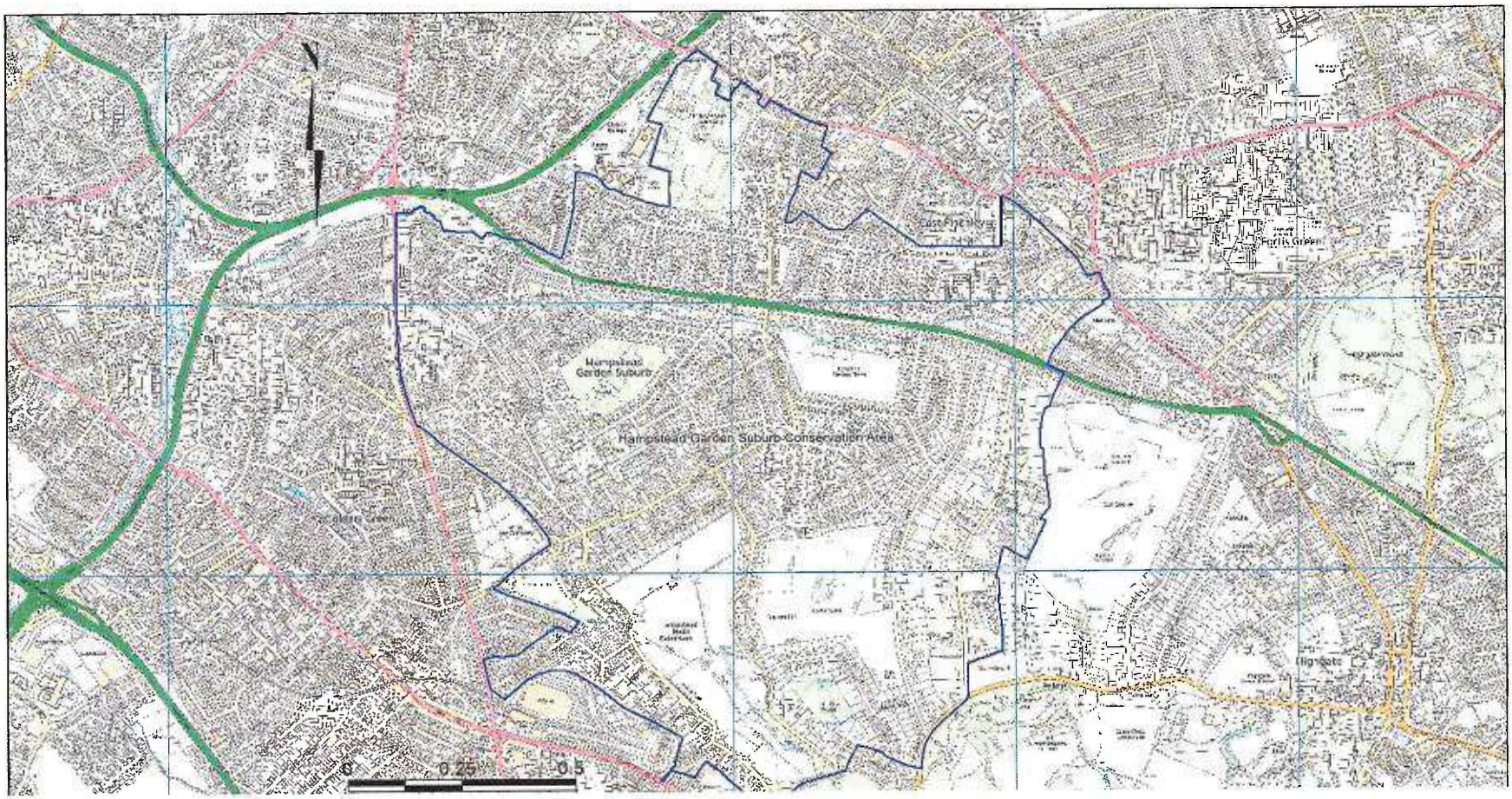
Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the crime data. It should be noted that for these reasons this force's response to your questions should not be used for comparison purposes with any other response you may receive.

METROPOLITAN POLICE **TOTAL POLICING**

MET HQ: INFORMATION & INSIGHT

IMPORTANT: Please ensure that the Notes Page is read in conjunction with the data in this report to ensure that it is interpreted correctly.

Manually drawn Polygon boundary for the Hampstead Garden Suburb Conservation Area policed by the MPS showing an underlying Ordnance Survey map layer



Original Hampstead Garden Suburb Conservation Area map referred to in the notes page link:

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Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the crime data. It should be noted that for these reasons this force's response to your questions should not be used for comparison purposes with any other response you may receive.

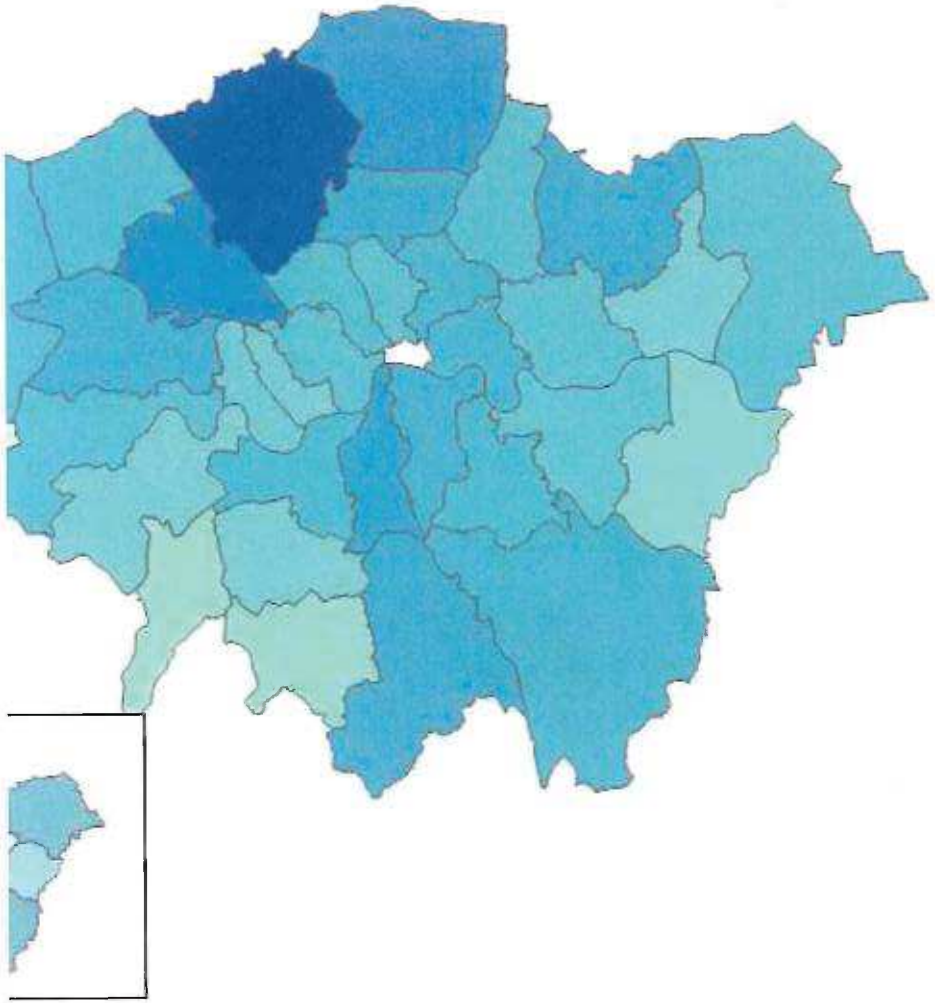
Appendix 23

tections

Start Date
August 2015

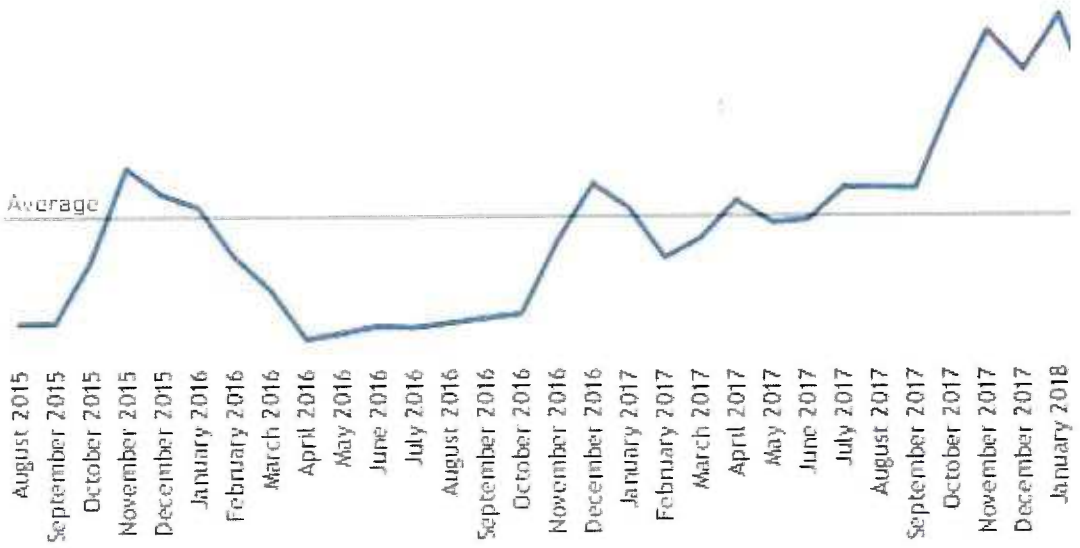
End Date
August 2018

Sub Group
Burglary - Residential



Totals

Crime Rate (per 1000 pop)
17.26



August 2018 compared to previous month:	12 months to **August 2018** compared to the previous 12 months
▲5.73%	▲21.21%

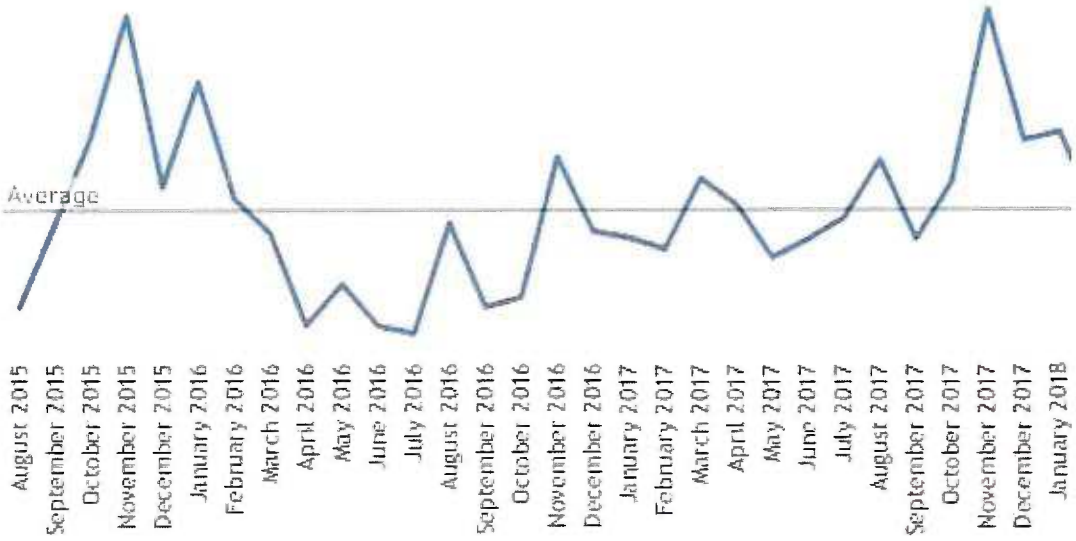
tections

Start Date
August 2015

End Date
August 2018

Sub Group
Burglary - Residential

Totals	Crime Rate (per 1000 pop)
	20.69



August 2018 compared to previous month:	12 months to **August 2018** compared to the previous 12 months
▲3.96%	▲13.75%

Please note that Sanctioned Detections are not available at Safer Neighbourhood Level in this dashboard.

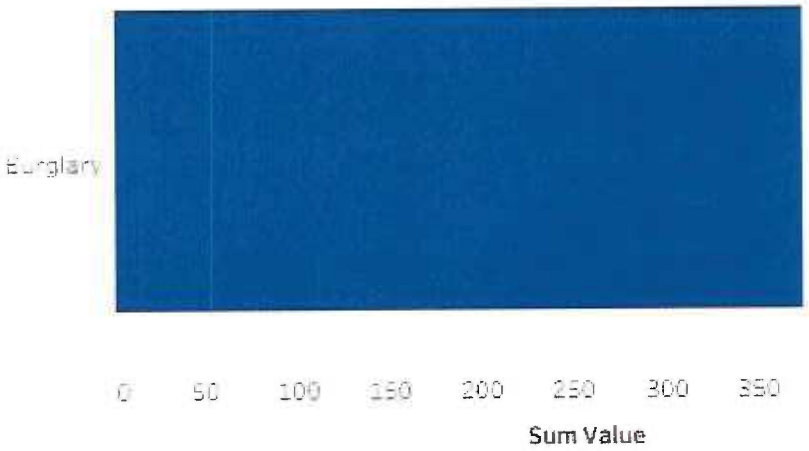
ourhood Team Map

StreetMap

Garden Suburb

Crime Rate (per 1000 pop)	
Totals	27.72

Crime By Type



Crime By Month

Appendix 24

Secure Your Perimeter

Secure Your Doors And Windows | Secure The Inside Of Your Home | Buying A New Build Home
Secure Gardens Sheds And Garages | Home Security Alarm Systems | Secure Your Bike And Bicycle

Gates and fences are the first signs of a secure home and act as a good deterrent to intruders. Make sure they are in good repair.

1. Keeping your front gate closed sends a psychological message of privacy, so consider investing in a gate spring.
2. Ensure that side access to the rear garden is secured with a 2 metre high fence and gate. You can fix trellis topping to your fence as it makes climbing difficult.
3. Ensure ladders are put away and bins can't be turned into climbing aids
4. For a perimeter fence by a public path or other vulnerable area consider defensive or prickly shrubbery on your side of the fencing.
5. An outdoor light operated by sensors can be used to make intruders feel vulnerable and observed.
6. Illuminate areas such as the front, side and rear of your home
7. Make sure passers-by can see the front of your home by cutting your shrubs and bushes to 1m so burglars can't work without being seen.

Appendix 25

FIRE & SECURITY LIMITED

incorporating PHASE 8 ALARMS LTD

Our Ref: ILD/01071018

11th October 2018 2018

Mr A Zakaim
31 Ingram Avenue
Hampstead Garden Suburb
London
NW11 6TG

Dear Mr Zakaim

Following my visit to your premises on Monday 8th October 2018, when we discussed the security installations at your premises, I write to confirm that the installation of the perimeter fencing and gates will significantly increase the level of security providing a first layer barrier to your premises based on the secured by design crime prevention report of which I include an extract.

3. Perimeter Gates as a Crime Prevention Measure.

3.1 The first line of defence against crime to any property is the perimeter fencing and gates. Having a good secure perimeter with secure gated access of any size will reduce foot traffic/unauthorised vehicles to the premises and help to prevent any potential crime. The overt presence of such measures may stop an act of criminality at the outset, presenting an image of good security that might dissuade those seeking unauthorized access. Deterrence is perhaps the most desired effect from any physical security measure, as stopping a crime before it has begun is safest for all involved. Having access controlled points such as gates, residents can also feel they are living in a safer environment.

Secured by Design state that gates and fences are the first signs of a secure home and act as a good deterrent to intruders. (http://www.securedbydesign.com/crime-prevention-advice/secure-your-home/secure-your-perimeter/)

I trust this information is of assistance, however should you wish to discuss this or any other matter further please do not hesitate to contact me.

Yours sincerely

Ian Dickinson
Director

Appendix 26

ASPEN

Perimeter Gates as a Crime Prevention Measure

April 2018

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Introduction

COMPANY PROFILE

About Aspen Security Consultants Limited

In an increasingly unstable and uncertain world, enterprises are faced with the challenge of protecting profitability and shareholder value on one hand and managing mounting complexity and risk on the other. In recent years economic, financial, environmental and social crises have combined to elevate political, security and operational risks even in regions that were regarded as relatively stable.

In this context, resilience to risk has become a key issue for business leaders and an important differentiator between companies that are weathering the storm and those that are not.

Aspen Security Consultants understands that resilience is not just about protecting key personnel. It is about establishing and maintaining environments that are operationally safe and that provide optimal protection for a company's human and other assets, including its financial resources.

For more than 30 years Aspen Security Consultants personnel have provided a discrete and comprehensive security service for world leaders, high-wealth individuals, international sports teams and key personnel of major corporate organisations.

Aspen Security Consultants were incorporated on 21 May 2012 as a Limited Company in the United Kingdom.

The services offered by Aspen Security Consultants are customised to meet the unique risk profiles of companies and executives, assisting them in building and maintaining resilience under challenging conditions.

Residential Security

Our approach to residential security comes from many years of experience. Having an understanding of the current residential crime patterns, risk and threat analysis, current physical security methods, crime prevention and the latest and best equipment on the market enables us to provide and design the best approach and cost effective way to protect a client's property.

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1. Specific Assessment

This report on Perimeter Gates as a Crime Prevention Measure was requested by Jason Oliver of Wolff Architects, Chandos Yard 83 Bicester Road Long Crendon HP18 9EE. The report relates to 2 proposed driveway entrance gates both 1 meter high at 31 Ingram Avenue London NW11 6TG.

This report, the conclusions and recommendations contained within it, do not constitute either a warranty of future results by Aspen Security Consultants Limited or an assurance against risk, threat or loss subsequently sustained, experienced or suffered by the client. The material submitted will represent the best judgment of Aspen Security Consultants Limited and will be based solely upon the information provided by representatives of Wolff Architects and others.

Aspen Security Consultants Limited provides no warranty or guarantee that the information provided, as set out in this report, will secure any specific expectation, requirement or result intended by the client.

2 General Crime in the Area

2.1 Ingram Avenue is within the Garden Suburb policing neighbourhood, under the Metropolitan Police Service force area.

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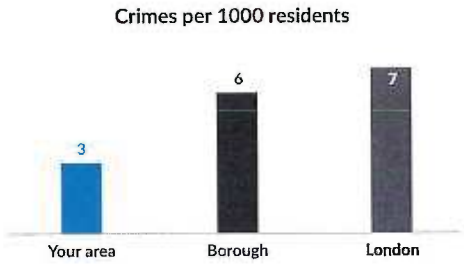
2.2 Metropolitan Police reported crime rates for the area for February 2018 show that the top reported crimes were for Burglary. There was 1 reported Burglary on or near Ingram Avenue. (source: Metropolitan Police)

Top reported crimes
for February 2018

Residential burglary	10
Miscellaneous theft	9
Theft from a vehicle	8

See more stats and prevention advice

London crime rate comparison
for February 2018



Heat Crime Map

10	9	8
Residential burglary	Miscellaneous theft	Theft from a vehicle

Where items are taken without permission from inside the home, following illegal entry.

Hotspots

Most common recorded points of entry

Front, side or rear door	7
Patio doors	2
Windows	1

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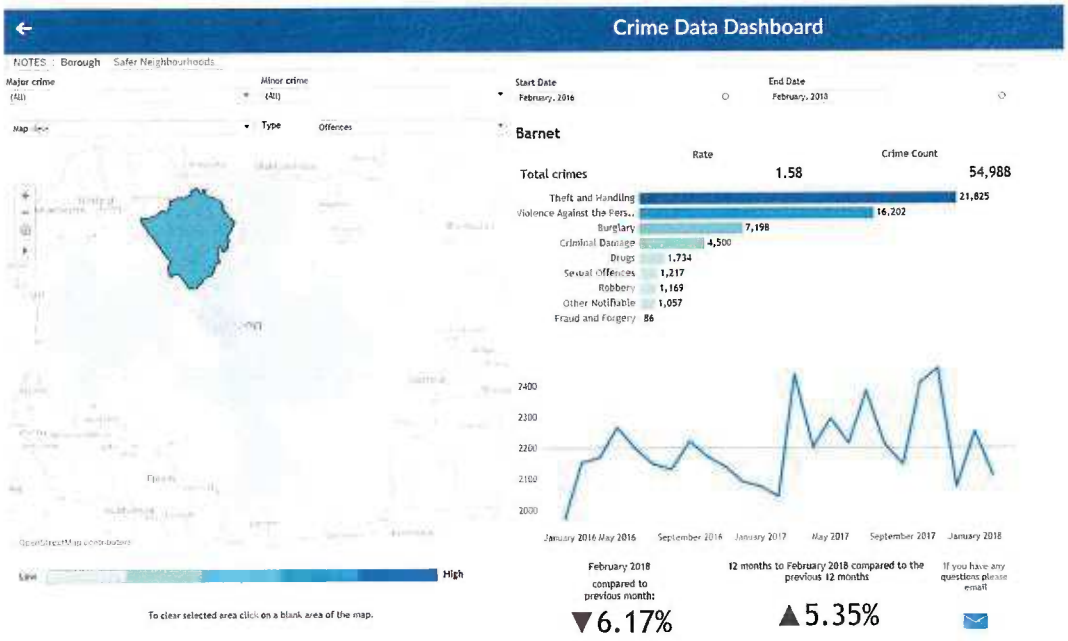
Reported crime in the Barnet Metropolitan Police Borough shows a 5.35% increase in the 12 months to February 2018 compared with the previous 12 months. (source: Metropolitan Police)



3. Perimeter Gates as a Crime Prevention Measure.

3.1 The first line of defence against crime to any property is the perimeter fencing and gates. Having a good secure perimeter with secure gated access of any size will reduce foot traffic/unauthorised vehicles to the premises and help to prevent any potential crime. The overt presence of such measures may stop an act of criminality at the outset, presenting an image of good security that might dissuade those seeking unauthorized access. Deterrence is perhaps the most desired effect from any physical security measure, as stopping a crime before it has begun is safest for all involved. Having access controlled points such as gates, residents can also feel they are living in a safer environment.

Gates can also play an immense role when it comes to the safety of your children and pets. By keeping your children secure in your property and not running around the streets, such actions can prevent accidents and injuries.

Secured by Design state that gates and fences are the first signs of a secure home and act as a good deterrent to intruders. (http://www.securedbydesign.com/crime-prevention-advice/secure-your-home/secure-your-perimeter/)

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Staffordshire Police advice that the garden is your home's first line of defence against burglary and theft. Good security around the perimeter of your property can deter burglars. Maintain gates and fences as this will act as a deterrent. (https://www.staffordshire.police.uk/article/2367/Fence-and-Gate-Security)

Crime Prevention Advice Bexley Borough Neighbourhood watch state that side and driveway gates should be the same height as the side and rear boundaries and, where possible, be level with the front building line, to eliminate recessed areas which exceed 600mm. Metal side and driveway gates allow good natural surveillance, but need careful design to reduce climbing points, particularly at the locking and hinge points. (www.bexleywatch.org.uk/downloads/handbook5File1.pdf)

3.2 Many insurance companies will insist on perimeter security. Money Supermarket advises that as well as ensuring your actual property is secure, check the boundaries around your home. Are fences and hedges secure, or are there any gaps a burglar could squeeze through? Put in a gate if necessary – the more obstacles a burglar faces, the less appealing your property will be. (https://www.moneysupermarket.com/money-made-easy/ten-ways-to-keep-your-home-safe-this-autumn/)

The Association of British Insurance state that you are ten times more likely to be burgled if you don't have basic security with 36% of all burglaries are crimes of opportunity. (https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/migrated/home/abi-guide-to-home-security.pdf)

4. Conclusions

It can be concluded that:

- 36% of all burglaries are crimes of opportunity.
- There has been a 5.35% crime increase in the 12 months to February 2018 compared with the previous 12 months for the borough of Barnet. Burglary is a problem in the borough.
- Having good secure perimeter fencing and gates can be an aid to crime prevention.
- Gates play an immense role when it comes to the safety of your children and pets
- A number of Police forces and professional bodies recommend the use of perimeter gates as a crime prevention measure.

5. Recommendations

It is recommended that:

The 1 meter high metal gates be installed to the property to assist in crime prevention to the property.

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Appendix 27

My name is Jason Simpson and I'm currently employed as a contracts manager for SQR Security Solutions. I recently retired from the Metropolitan Police after 26 years of service, the last 10 years of which were spent as an Operational Firearms Commander with the Parliamentary and Diplomatic Protection Unit (PaDP). During this time I was responsible for the safety and security of over 50 diplomatic missions across London.

I have been asked to review the security and safety of 31 Ingram Avenue. The following report contains my views and recommendations regarding the use of gates to control access to the driveway.

The property is located in the policing area of HAMPSTEAD GARDEN SUBURB which has seen a marked increase in crime since the start of the year with 140 recorded incidents in MAY alone. A number of these were violent crimes including knife point robberies and aggravated burglaries which also featured knives. Several saw residents attacked on their driveway just meters from their front own front door.

This geographical area contains the A1, a major fast road. I am aware that criminals will often use such roads as part of an escape plan and therefore this is also a factor to be taken into consideration. The lack of police resources is no longer a talking point amongst senior police officers it is now a national fact. The criminals involved in these types of crime have adapted to this new environment and are employing sophisticated tactics.This includes carrying out reconnaissance and surveillance of their intended targets. The recent spate of knife attacks has demonstrated that not only are private citizens at risk but the police themselves.

A recent example involved two suspects on a moped, one of whom followed a resident onto his drive before threatening him at knife point in order to steal a high value watch.

Another saw a violent gang attempt to rob a family at knife point during an aggravated burglary.

Having discussed the rise in crime with local police, it is believed that the residents of Ingram Avenue and the surrounding areas are being specifically targeted because of their perceived wealth. As a result a number of them are considering and implementing enhanced security measures.

The first line of defence in any home are the key physical features of the property itself. The gates at Entrance to the property afford a measure of protection against moped enabled robberies. Theses types of crimes typically see the victim being attacked in their own drive way. The gates afford a measure of protection against ride up robberies as they provide a physical barrier. They are a visible deterrent to any would-be criminal. In addition they provide some comfort and piece of mind for the occupants, giving them time to react and seek safety should anyone attempt to climb over.

Taking into account the unique circumstances and location of this property, it is my considered opinion that gates carry out a extremely important function in the safety and security of the occupants of this address. They are in keeping with other gates in the immediate and surrounding area. In fact they are a good deal smaller than most, please see the attached pictures.

In my many dealings with the residents in the area, I have been left with no doubt that the fear of crime is a major concern.

Ingram Avenue existing gate details

50 Ingram Avenue


Gate height = 135 cm
Notes: Gated double entry driveway.

11 Ingram Avenue


Gate height = 93 cm
Notes: Gated double entry driveway

37 Ingram Avenue


Gate height = 167 cm
Notes: Gated double entry driveway

18 Ingram Avenue


Gate height = 185 cm
Notes: Gated double entry driveway

41 Ingram Avenue


Gate height = 190 cm
Notes: Gated single entry footpath.

90 Wennington Road

Gate height = 157 cm
Notes: Gated entry on Ingram Avenue

Gate and hedgerow leading down to Wildwood Road

Gate height = 192 cm
Notes: Gate situated near the north-west entrance to Ingram Avenue.

Gate leading to golf course

Gate height = 126 cm
Notes: Gate situated between house numbers 33 and 35.

Gate leading to bird sanctuary

Gate height = 125 cm
Notes: Gate situated between house numbers 22 and 24.

"To improve is to change; to be perfect is to change often." (W.Churchill)

Appendix 28

METROPOLITAN POLICE TOTAL POLICING

CID – Dc Daniel Llewellyn

Colindale Police Station
Grahame Park Way
NW9 5TW

Telephone: 02087334037
Facsimile:
Email:
Daniel.M.Llewellyn@met.pnn.police.uk)
www.met.police.uk

Your ref: 2414101/17
Our ref:

22/11/2017

Bradley Gerrard
15 WINNINGTON ROAD
LONDON,
N2 0TP

Dear Bradley Gerrard

I was the investigating officer for an incident that took place on the 21st June 2017, where you were the victim of a violent Robbery outside your home address, 15 Winnington Road N2.

I have been asked by several residents of Winnington Road to provide a letter confirming that this violent attack took place and it would be beneficial for the local residents to be able to gate their driveways.

I can confirm that you where the victim of a viciously violent robbery outside your home address and that you were attacked in your garage by people unknown, who hit you over the head knocking you unconscious and stole your Rolex Watch.

This may well have been prevented, if you had security gates outside your home address. Not only would this have been a visible deterrent, but there is a good possibility that it would also put off any potential opportunist thieves.
I do believe there would be a benefit of security gates and could potentially help prevent you being the victim of crime in the future.

Yours sincerely,

Dc Daniel Llewellyn

Appendix 29

Association of British Insurers

Home Office

KEEP IT SAFE, KEEP IT HIDDEN

LET'S KEEP CRIME DOWN

INSURANCE ADVICE ON HOME SECURITY

Prepared by the Association of British Insurers (ABI) and the Home Office

Association of British Insurers
51 Gresham Street
London EC2V 7HQ
020 7600 3333

www.abi.org.uk

Insurance Advice on Home Security

During difficult economic times, people naturally become more concerned about crime. This advice has been prepared by the Association of British Insurers (ABI) and the Home Office to help people make sure that they do all they can to prevent their homes from being burgled, protect their property and get the best deal possible from the insurance market.

Did you know?

- 36% of all burglaries are crimes of opportunity, with burglars letting themselves in through unlocked doors or windows.
- You are ten times more likely to be burgled if you don't have basic security. Even something as simple as putting strong locks on your doors and windows will keep your house much safer.
- Burglary has fallen by nearly 60% since 1995, but criminals are opportunists who will take advantage of any chance to steal from you, so you should remain alert.

Make sure you're covered

Saving money by not taking out home insurance is a false economy. It's a sad fact that almost half of all burglary victims are uninsured. Without insurance you will have to find the money to replace what is stolen or damaged. Insurance will cover possessions stolen from your home and your insurer will cover the cost of replacements. The average contents premium is only around £130 per year and a number of insurers now offer cover aimed at social tenants which is even cheaper – about £1 per week. Ask your social landlord if they belong to a low cost tenants' insurance scheme.

Insurers can also provide advice on home security. They recommend that locks and alarms are fitted in customers' homes and that these should meet certain standards. In high-risk areas they will insist that customers fit good quality door and window locks and burglar alarms.

Insurers often use information on how secure a property is when they are deciding whether to offer cover, on what terms and conditions, and what premium to charge. Improving the security on your home can help make sure you get the best possible deal from the insurance market when you buy or renew your cover.

Good security measures complement your insurance cover by giving you peace of mind, knowing your home is well protected. However, some things are irreplaceable, for example, your engagement or wedding ring, special jewellery or family photographs have sentimental value which cannot be measured. It is therefore important to do all you can to prevent your home being burgled in the first place.

The Home Office has prepared some common sense top tips to help prevent you from becoming a victim of burglary. These are:

1. Fit strong locks to external doors and windows, and make sure they are locked at all times.
2. Always remove all keys from inside locks, and keep them out of sight and in a safe place.
3. Fit sturdy deadlocks (British Standard BS3621) to all doors.
4. Make sure your doors and frames are strong and in good condition - wood doors should be at least 44mm thick.
5. Mark your property - having it marked helps police verify it's been stolen.
6. Fit a door chain or bar and door viewer (spy-hole), and use them.
7. Never leave a spare key in a convenient hiding place such as under the doormat, in a flowerpot or behind a loose brick - thieves know to look there first.
8. When you are out in the evening, leave your lights on and shut the curtains.
9. Install outside security lighting; if other people can see your property a burglar may think twice.
10. Keep your tools and ladders securely locked up – a burglar could use them to get into your house.

The Home Office also publishes *A guide to Home Security* which provides useful advice on how to make your home more secure. This can be downloaded at: http://www.crimereduction.homeoffice.gov.uk/cpghs.pdf

The Home Office also has an online home security self-assessment questionnaire which will help you identify how secure your home is:www.homeoffice.gov.uk/secureyourhome

There are many ways you can reduce the risk of an intruder breaking into your home. Below are some ideas for protecting your property from a potential intruder.

Outside your home

Fences/Gates

The majority of burglars break into a house from the back, therefore high walls or fences to enclose the rear garden are recommended as this can put off a potential intruder. Any gate to the rear garden should be of sturdy construction and preferably at least 1.8m high. It should be secured with an integral key-operated lock or a good quality padlock. And do not leave natural climbing aids like ladders or garden tools, that can be used to break in, outside.

Outside Lighting

Outside security lights should be near to external doors and accessible roofs. The two main types of outside lighting are:

- Triggered by movement - lights automatically come on when the sensor is triggered (e.g. by someone approaching the house) during the hours of darkness.
- Triggered by light, sensors-lights automatically come on at dusk and stay on until dawn.

Intruder alarms

Insurers often recommend that your home is protected by an intruder alarm.

The external sounder should be positioned so that it is visible from the street as this can act as a deterrent to a potential intruder.

When your home is not occupied

Making it appear that someone is in your property if you are out will deter burglars.

- During the hours of darkness, leave lights or lamps on in rooms other than the hall, including a back room.
- Use a plug-in timer which will automatically turn a lamp on and off as programmed, or a sensor which will trigger the light to come on when the room gets dark.

When you are away for an extended period (e.g. on holiday).

- If you can, arrange for somebody to open and close your curtains and ask them to push through any mail or newspapers which may be sticking out of the letterbox.
- Cancel newspaper and milk deliveries.
- Arrange for any outside bins to be emptied.

What security devices are needed?

In certain areas of the country, the risk of theft and vandalism is unfortunately higher. Customers in these areas are likely to be asked by their insurer to meet minimum security standards such as those set out below, and to use locks, bolts and other security devices in order to minimise the risk of theft and vandalism. Your insurer will let you know if these minimum standards apply to you but even if your insurer doesn't require these steps they would certainly recommend them. The insurance market is competitive and each insurer might impose slightly different minimum standards but most will include similar requirements to these:

- External Doors: A lock which can be locked by a key from both the inside and the outside on external doors and a mortice deadlock with five levers or more, or a surface mounted rim deadlock. A key operated multi-point locking system which will secure the external door at the top and bottom of the door as well as at the centre.
- Sliding patio doors and exit doors should be fitted with good quality locks and security bolts, and an anti-lift device.
- At least one key operated locking device, for example a padlock, on the garden shed.
- Window locks on ground floor opening windows.

Your insurer will be able to advise you about the security features that they recommend or require.

If your insurer has required you to introduce minimum security standards as a condition of them insuring you, they may not provide any cover for theft or attempted theft and/or vandalism at your home, unless the appropriate security devices are properly fitted and used.

Vehicle Security

Cars

If you have a garage, use it. If you have gates on your drive, lock them at night. Never leave anything of value in vehicles parked on your drive. Always physically check that all vehicles are locked.

Motorcycles

Secure motorcycles and scooters to a substantial object such as a fence, post or ground anchor. Where possible, store cycles inside locked sheds or garages.

Caravans and Trailers

Park caravans as close to a wall or fence as possible. Secure caravans by using either a wheel clamp, or towing hitch lock, or both.

Appendix 30

Blackwall Green

The Walbrook Building
25 Walbrook
London
EC4N 8AW

Telephone: **020 7234 4307**
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29th March 2018

Private
Alon Zakaim
Alon Zakaim Fine Art Limited
5-7 Dover Street
London
W1S 4LD

Dear Alon,

Art dealer's insurance – cover at 31 Ingram Avenue, London NW11 6TG.
Our policy reference – BG0048317

The insurers have confirmed that, in principle, they are willing to cover your stock at your new home subject to receiving satisfactory security information. They will require, as a minimum, that you have an intruder alarm linked to a remote monitoring service and five lever mortice deadlocks or equivalent on all external doors, with key-operated locks on all accessible windows. If you plan to hold significant values at this address then you should consider CCTV with a recording function and perimeter security, including securing any walls, fences, gates, &c, and an entryphone system, as well as a remotely monitored fire alarm.

Please do let me know if you would like to discuss this further, or if you require the insurers' approval of any plans.

With best regards,

Robert Hepburne-Scott

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