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## Appeal Decisions

Inquiry held on 3, 4 and 5 February 2015

Site visit made on 4 February 2015

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

Decision date: 7 May 2015

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### **Land at 57 Bethune Road, London N16 5EE**

**Appeal A Ref: APP/U5360/C/11/2159648**

**Appeal B Ref: APP/U5360/C/11/2159705**

**Appeal C Ref: APP/U5360/C/11/2159799**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Y Grossberger (Appeal A), Wiseheights Ltd (Appeal B) and Satmar Ltd (Appeal C), against an enforcement notice issued by the Council of the London Borough of Hackney.
- The Council's reference is 2008/0703/ENF.
- The notice was issued on 13 July 2011.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the dwellinghouse to use [as] a synagogue together with the erection of a single storey extension to the rear of the property.
- The requirements of the notice are:
  - i. Permanently and completely remove the unauthorised rear extension and restore the rear of the property to its former condition before the unauthorised development was constructed on the property.
  - ii. Permanently and completely cease the use of the property as a synagogue and return the property to its previous use as a single family dwelling. Permanently and completely remove all equipment, partitions and walls which facilitated the unauthorised use of the site as a synagogue from the site.
  - iii. Permanently and completely make good all damage resulting from the compliance with the other requirements of this Notice and restore the relevant parts of the property to their condition before the unauthorised development was carried out on the site and before the unauthorised use was commence [sic] on the site.
  - iv. Permanently and completely remove all the waste, materials, equipment and debris created as a result of fulfilling the other requirements of this Notice from the property and its premises.
- The period for compliance with the requirements is 3 months.
- Appeal A was made on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Appeal B was made on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees were not paid within the specified period, the applications for planning permission deemed to have been made in respect of Appeals A and B under section 177(5) of the Act as amended and the ground (a) appeals do not fall to be considered.
- Appeal C was made on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- This decision supersedes that issued on 23 March 2012. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.

**Summary of Decisions: The enforcement notice as corrected is quashed and planning permission is granted.**

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### **Appeal D Ref: APP/U5360/A/14/2214779**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Satmar Ltd against the decision of the Council of the London Borough of Hackney.
- The application Ref 2012/3300, dated 28 October 2012, was refused by notice dated 5 September 2013.
- The development proposed is provision of a 4 bedroom family unit on first floor and roof and the retention of single storey extension as amended and change of use of ground floor and part first floor to synagogue D1.

**Summary of Decision: The appeal is allowed and planning permission is granted.**

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### **Background to the Appeals**

1. 57 Bethune Road is a mid-terrace property with useable accommodation on the ground, mezzanine and first floors. There used to be a detached garage block at the back with access onto Fairholt Close, which probably was built following planning permissions granted in 1962. At the time the enforcement notice was issued in 2011 the property, including a single storey extension to the rear, was in use as a synagogue serving the Satmar community. The detached garage building was no longer on site and the garage use had ceased.

### **Appeals A, B and C**

#### *Scope of redetermination*

2. These appeals against the enforcement notice were heard at a public inquiry in January and February 2012. The appeals were dismissed and the enforcement notice upheld with corrections and variations (the 2012 decision). Satmar Ltd successfully challenged the decision under section 289 of the 1990 Act as amended. The particulars of the consent order state that the inspector failed to demonstrate in the decision letter that she had due regard to the Public Sector Equality Duty (PSED) as required by section 149 of the Equality Act 2010. The decision was remitted for redetermination.
3. In the period leading up to the inquiry there was disagreement between the main parties as to the scope of the redetermination. The issue was partly resolved when the appeals on ground (d) were withdrawn (Appeals A and C). Additional submissions were made in relation to the appeals on grounds (a), (f) and (g), with reference to the *Perrett* judgement<sup>1</sup>.
4. In Appeal C the determination of the ground (a) appeal involves judgement and attributing weight to all the various considerations. Since March 2012 the policy context has changed very significantly both at national and local level. There is new evidence on a range of matters concerning need and the effect on local character and living conditions. Submissions have been made on interpretation and application of policy and the relevance of the PSED to the main issues. All these factors affect the value judgements I must make and the balancing exercises that must be carried out. Therefore I intend to consider the ground (a) appeal afresh. In respect of the appeals on ground (f) it soon became clear to me that it would be necessary to revisit the purpose of

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<sup>1</sup> *Perrett v Secretary of State for Communities and Local Government & West Dorset District Council* [2009] EWCA Civ 1365

the notice and the requirements in order to inform the fallback position and to ensure the requirements would not be excessive. The reasonableness of the compliance period would be affected by the up-to-date position on need for the synagogue and the requirement to have due regard to the PSED. Therefore evidence on grounds (f) and (g) were explored at the inquiry.

5. In summary, the appeal on ground (a) (Appeal C only) and the appeals on grounds (f) and (g) (Appeals B and C) were re-heard. I will take no further action in respect of Appeal A, the ground (d) appeal having been withdrawn.
6. No submissions were made by either party on the matter of an application for costs.

#### *The enforcement notice*

7. The Council had confirmed previously that the description of the alleged breach of planning control ought to be corrected to describe the new use as 'a synagogue with ancillary facilities'. This correction would take account of the administrative activities that were undertaken at the property at the time the notice was issued, consistent with the appellants' evidence. I also consider that the use of the rear extension as part of the synagogue should be expressly stated for the avoidance of doubt.
8. The plan attached to the notice in identifying the Land excludes the small area behind the rear extension. I suggested that the plan be corrected because the area is used in conjunction with the synagogue, is enclosed by the boundary walls and provides a way between the synagogue and Fairholt Close. Physically and functionally it is part of the planning unit. All of the land is outlined on a site location plan submitted by the appellants<sup>2</sup> and their case on ground (f) in part relied on the boundary wall being part of the site. The Council raised no objection to correcting the plan and although the appellants had some concerns I consider that no injustice would be caused. In fact not to do so could leave the area with no authorised use.
9. Accordingly I shall correct the enforcement notice in respect of the wording of the allegation and the extent of the Land to which the notice relates in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.

#### **Appeal D**

10. The planning application sought to remedy and overcome issues highlighted in the 2012 decision in order to facilitate a grant of planning permission. The key difference is the inclusion of a residential unit on the upper floors. The application also proposed alterations to the rear extension by lowering part of the roof. Reports were submitted on the development's effects on the noise environment and on daylight and sunlight. I am satisfied that the development is not substantially the same as the development in respect of which the enforcement notice was served and therefore the appeal is valid.
11. The description of the development, both in the application and on the decision notice, indicated that planning permission was being sought retrospectively for the change of use to a synagogue on the ground and part first floor and for the erection of the single storey rear extension. I considered that the descriptions

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<sup>2</sup> Appendix 2 to Mr Ormonde's proof.

were not entirely accurate and suggested alternative possible forms of wording to the main parties. At the inquiry the main parties agreed that the description of the proposal should be amended. In the appellant's opinion the property would be divided into two planning units, rather than accommodating a mixed use in a single planning unit. In light of the submissions, I consider that the description should read "A material change of use of a dwellinghouse to use as a synagogue (Class D1) on the ground and mezzanine floor and use as a four bedroom family unit on the first and attic floors, together with the erection of a single storey rear extension for use as part of the synagogue and the erection of a rear dormer extension and the installation of front roof lights to the proposed upper floor family unit."

### **Matters of common ground**

12. The signed statement of common ground between the Council and the appellants dated 15 January 2015 included a section "agreed matters of fact". The findings of fact on the synagogue use and the extension made by the Inspector at paragraphs 8 to 21 of the 2012 decision were agreed (see Appendix A)<sup>3</sup>. In summary these are:
- on the balance of probability the building had a sole primary use as a dwellinghouse prior to its use by the appellants;
  - as a matter of fact and degree, given the nature and scale of the activities taking place, there has been a material change in the use of the premises to a sole primary use as a place of worship;
  - on the balance of probabilities the material change of use took place after 13 July 2001;
  - the garage was functionally but not wholly demolished;
  - on the balance of probabilities the extension was substantially completed after 13 July 2007.
13. There is no reason for me to question these agreed matters of fact. Indeed to do so would prejudice the interests of the appellants and the Council because these agreed facts formed the basis of the withdrawal of the ground (d) appeals.
14. In determining the planning application submitted in 2012 (Appeal D) the Council accepted the conclusions of the reports on noise and daylight and sunlight. Therefore in the second reason for refusal the identified harm to neighbours' amenity centred on the overbearing nature of the extension and a loss of outlook/increased sense of enclosure.
15. At the inquiry the Council accepted that a need for a synagogue had been demonstrated.

### **Main issues**

16. In respect of the planning merits on Appeals C and D these are:

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<sup>3</sup> The appellants made clear that this agreement did not extend to the Inspector's findings directed at the veracity or credibility of the appellants' witnesses.

- The effects of the development on housing and community needs, taking particular account of the provision of places of worship and associated community facilities in the surrounding area.
  - Whether the development of the synagogue has delivered high quality inclusive design and a good standard of amenity, taking into account the effect of the single storey rear extension on:
    - i. The character and appearance of the host building and the street scene;
    - ii. The living conditions of adjoining occupiers.
17. In my assessment and decision taking I must exercise the PSED contained in the Equality Act 2010. In summary, the three aims of the equality duty are to eliminate discrimination, advance equality of opportunity and foster good relations (s149(1)). Religion or belief is the protected characteristic of particular relevance to these appeals. Therefore having due regard to the need to advance equality will involve examining the obligation to remove or minimise disadvantages suffered by the appellants and the Satmar community, to advance equality of opportunity between them and those who do not share their protected characteristic and to take steps to meet their different needs (s149(3)).
18. In terms of the Human Rights Act 1998, throughout I have kept in mind the qualified rights of article 8, the right to respect for the home, private and family life and article 9, the right to freedom of thought, conscience and religion.

### **Planning policy**

19. With reference to the statement of common ground, I consider the following policies to be the most relevant to the main issues in the deemed application in Appeal C and to the proposal in Appeal D.
20. The development plan for the area includes the London Plan Consolidated with Alterations since 2011 (the London Plan)<sup>4</sup>, the London Borough of Hackney's Core Strategy and the saved policies of the adopted Unitary Development Plan (the UDP).
21. In the London Plan Policy 3.1 aims to ensure equal life chances for all and this includes, where appropriate, addressing the barriers to meeting the needs of particular groups and communities. Policy 3.16 recognises that additional and enhanced social infrastructure provision is necessary to meet the needs of a growing and diverse population. The policy supports proposals which provide high quality social infrastructure in light of local and strategic needs assessments. Facilities should be accessible to all sections of the community and be located within easy reach by walking, cycling and public transport.
22. The physical character of a place is stated to reinforce the social, cultural, environmental and economic relationships between people and their communities. This provides the context for Policy 7.4 on local character. Policy 5.3 seeks the achievement of the highest standards of sustainable design and construction and Policy 7.6 requires buildings to be of the highest

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<sup>4</sup> The Consolidated version was adopted in March 2015. The policies relied on by the main parties and which I consider have most relevance to these appeals have not changed.

- architectural quality. Good quality housing development, internally, externally and in relation to its context, is required by Policy 3.5.
23. The Core Strategy aims to transform the quality of social infrastructure and recognises the importance of places of worship in supporting different faith communities in the Borough. Stamford Hill is identified by Policy 8 as one of the areas most in need of new or enhanced social infrastructure. Policy 8 builds on Policy CS8 of the UDP that supports proposals for places of religious worship subject to other policies in the plan. Core Strategy Policy 19 resists any development which would lead to a net loss of residential units. In respect of design, Core Strategy Policy 24 requires all development to enrich and enhance the Borough's built environment, creating a sense of place and local distinctiveness. Noise control is subject to Policy EQ40 of the UDP.
24. These development plan policies are consistent with the policies in the National Planning Policy Framework that promote healthy communities and require good design to enhance the sustainability of communities and residential environments. They have full weight.
25. The Council's Development Management Local Plan (the DMLP) is currently being examined and the Inspector's report is anticipated in May 2015. The Council hopes to adopt the DMLP in June or July 2015. There are no outstanding objections to the policies applicable to these appeals. In view of the advanced stage of plan preparation and the high degree of consistency with the Framework the emerging policies have substantial weight.
26. Proposed Policy DM19<sup>5</sup> states a general presumption in favour of housing. Proposed Policy DM20 sets out the circumstances when proposals involving loss of residential floorspace will be permitted. These include when the site or building is in the right location to be used for an essential community use for which there is demonstrable need and can only be provided by use of a residential building (point vii). Proposed Policy DM5 supports proposals for new and extended social and community facilities. Smaller scale proposals must demonstrate that the facility has good access by public transport, walking and cycling. Facilities must meet the requirements for end users and must comply with policies in the Plan on design, amenity and highway safety. Proposed Policies DM1 and DM2 require all development to be of a high quality design and not result in adverse impacts on the amenity of occupiers and neighbours.
27. The Supplementary Planning Document Residential Extensions and Alterations (the SPD) sets out requirements to ensure proposals are of good design. The SPD is directed at residential properties, not places of worship but even so the guidance indicates design principles to be taken into account, more especially in respect of Appeal D.

## **APPEAL C**

### **Appeal on ground (a) and deemed planning application**

#### ***Community and housing needs***

28. The Stamford Hill area of Hackney is characterised by a strictly Orthodox Jewish or Charedi community. The community, estimated at some 30,000

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<sup>5</sup> The DMLP document uses the term 'Proposed Policy', which I have followed in my reasoning to distinguish the emerging policies in the DMLP from adopted policies in the development plan.

- people, comprises around 10% of the overall population in Hackney and is growing at a rate of around 5% each year. It is the largest *hassidic* community in Europe and is served by a range of Kosher shops, Jewish schools, emergency and medical institutions and so on.
29. The diversity of the Charedi community is very important and the multiple sects and groups have their own separate and unique customs and ways. The Satmar *hassidic* movement comprises mostly Hungarian and Romanian Jewish Holocaust survivors and their descendants. The Satmar Congregation is the largest and fastest growing community in Stamford Hill. The appellant stressed how vital it is that Satmar members attend their own house of worship given the unique Satmar culture which is at times at odds with other cultures prevalent within other sections of the Orthodox Jewry. There is an obligation to pray daily with a quorum of adult males of 10 or more and prayers take place three times a day. As a consequence they maintain use of a private home is impractical even for small communities.
30. There are now four Satmar synagogues, including the main synagogue on Cazenove Road and the synagogue at 57 Bethune Road. Each synagogue serves a particular area and based on the evidence on membership and seating capacity they are operating either at or near capacity. More specifically, the branch at Bethune Road started with 15 members in 2006 and now has a membership of around 90 to 95 families. The appellants also considered whether there is sufficient provision for the overall Jewish community in Stamford Hill and demonstrated that the seating capacity of existing synagogues is well below the provision required.
31. The choice of location is constrained by the need for the synagogue to be within walking distance of the community it serves – there is a prohibition against using cars, buses or any form of transport on the Sabbath. Good accessibility also allows younger children to be taken by their siblings to the synagogue without parental supervision. The Bethune Road synagogue serves an area roughly bounded by Stamford Hill, Amhurst Park, Green Lanes, Lordship Park and Manor Road. Bethune Road is reasonably centrally located and the synagogue is located within 0.80 kilometres (0.5 miles) of nearly all its members. A number of people commented on the importance of its proximity to their home because of their age or ill health.
32. The appellant explained that synagogues are not just places for prayer. They are also used for study, leisure activities, lectures, socialising, adult and children's education, supervised youth activities and day centres for the elderly. The point was made that all these facilities are in great demand but are in short supply in the Borough. The wider community function increases the amount of space required. The appellant expressed a strong preference for the Appeal C development, as opposed to the Appeal D proposal, because it best meets the need for a fully functioning synagogue. More specifically at No. 57 the ground floor prayer room provides the necessary capacity for the congregation and the library was described as being in constant use. The ability to use the upper floors would enable accommodation to be provided for the Rabbi and more space to be devoted to the library and for quiet study. Space would also be available for administration purposes and storage. Use of smaller premises, or shared use of a dwelling, would be unacceptable to the appellant in view of the social role of the synagogue and the value of communal prayer.

33. My conclusions are that undoubtedly the Bethune Road synagogue meets a pressing need for a synagogue for the growing Satmar population in this area of the Borough and more specifically in the residential area lying between Stamford Hill and Green Lanes. The information requirements of the Council have been satisfied and the Council accepted need was no longer a matter of dispute. The synagogue is very well placed because of its near central location, within walking distance of the community it serves. The building offers suitable space and capacity to fulfil the wider functions of a synagogue. The ability to use the upper floors would ease existing pressure on the ground floor accommodation where the library and quiet study areas are currently somewhat cramped next to the main room for prayer. There is every indication that the congregation will continue to grow and the use of smaller premises could be regarded as short-sighted, with insufficient thought to future accommodation needs. The development provides a cultural and social facility to meet the needs of a particular community and contributes to making the residential area a sustainable neighbourhood. Therefore the change of use has support from policy in the Framework and Policies 3.1 and 3.16 of the London Plan, Core Strategy Policy 8 and Proposed Policy DM5.
34. The change of use of the property has resulted in the loss of a dwellinghouse. On an initial assessment such an outcome is resisted by Core Strategy Policy 19. However, the DMLP policies are intended to give effect to the Core Strategy and Proposed Policy DM20 permits a loss of residential floorspace under the circumstances specified.
35. In this case the building is in the right location for an essential community use for which there is demonstrable need. Use of the whole building allows for flexibility and the opportunity to respond and accommodate a growing congregation. The more contentious element of the policy criterion in this case is whether the synagogue, for which there is an agreed need, can only be provided by use of a residential building.
36. The Council's case was that no evidence of investigations of alternatives had been provided to the Council and no such evidence was put before the inquiry. The Council did not accept that it should have undertaken its own assessment of alternative sites. In summary, the appellant argued that the policy does not ask for a formal assessment of any kind, no burden of proof is placed on any one party and that a judgement should be based on the facts.
37. The policy test is not requiring proof of a need for a particular site but that the essential need for the community use in question can only be met by use of a specific type of building, namely a residential building. It seems to me that the evidential burden has to be exercised reasonably and a judgement made on the balance of probability on the evidence available. The options for the use of alternative non-residential premises or provision of a place of worship as a new build scheme were shown to be severely constrained for several reasons.
38. The synagogue is integral to the way of life of the Satmar community and has to be within the heart of the residential area where the properties are primarily in residential use. Funding development is primarily by the congregation and research has shown strictly Orthodox Jews are more likely to experience poverty than 'mainstream' Jewish families. The Council accepted competing with developers for land was not realistic and to date a synagogue has not come forward through a developer-led initiative. Non-residential land or



premises may well be protected by policy for other uses. Over the considerable period of time since the establishment of the Bethune Road synagogue no non-residential buildings, suitable for the use, had been identified by either of the main parties. Also the evidence showed how the Satmar culture is based on kinship networks and communal cohesion. In effect the synagogue becomes an extension to the home in view of the amount of time devoted to daily prayer and its broad community role. The use of a residential property is suited to fulfilling that function.

39. In conclusion, the development results in the net loss of a residential unit with no plans in place for a replacement. Core Strategy Policy 19 directs that planning permission should not be granted. However, the development of policy provided by the emerging DMLP is an important consideration that has to be weighed in the balance. Proposed Policies DM19 and DM20 build on the general presumption in favour of housing expressed by Policy 19. The loss of residential floor space will only be permitted under a limited range of conditions. All matters considered, in this instance criterion (vii) of Proposed Policy DM20 is satisfied and given the particular circumstances a loss of a dwelling is justified.

### ***Design***

40. The Framework attaches great importance to the design of the built environment and this emphasis is reflected in development plan policy. In addition to being visually attractive, developments should respond to local character, function well, optimise the potential of the site, provide a safe and inclusive design solution, address the connections between people and places and incorporate sustainable construction. The relevant policies concentrate on setting and context to guide the overall scale, massing, height and materials of developments. The principles in the policies, as distinct from the guidance in the SPD, relate to all kinds of development.
41. No. 57 is a Victorian/Edwardian brick built two storey mid-terrace property, with the front façade distinguished by a ground floor front bay, a main entrance porch and decorative detailing. The probability is that the original house was built with a two storey rear projecting wing across half the width of the house, attached to a similar projection at no. 55 and set back from the main front elevations. The roofs are of hipped form. Subsequently, a single storey flat roofed addition was built that infilled the space between the rear wing and the boundary with no. 59. The site was atypical in having a large freestanding garage block at the back. The garage building, which was sited at a slight angle, extended across the full width of the plot and had a forecourt onto Fairholt Close. Neighbouring properties have small extensions at the back, allowing private garden space to be retained.
42. The terrace forms part of a residential block fronting Bethune Road, Fairholt Road, Grange Court Road and Heathland. As indicated by the aerial photographs, in general the dwellings consist of a principal building on the frontage with a subordinate wing to the rear. The rear gardens contribute to a sense of spaciousness and the vegetation softens the built environment. Modern infill has taken place, notably at 49 Bethune Road. A modern courtyard scheme has been inserted behind the frontage development. The two short terraces of low, two storey flat roofed houses face onto a central parking area, with a low garage block on the northern side. The access road,

Fairholt Close, enables the rear of No. 57 to be easily visible from the street. In the wider locality, the residential streets are characterised by period terraces of varying scale and appearance, although modern blocks of flats such as the Hillcourt estate also form part of the built environment. Flat roofed additions are a common occurrence.

43. The appellant explained that No. 57 had several advantages for conversion to a synagogue, which included its location, a large garage to facilitate provision of a prayer hall at minimum expense and a ground floor at a single level to assist the elderly and disabled. However, in my view the property also gave rise to various design challenges including its position mid-terrace, the modest two storey scale of the dwelling, the restrained scale of buildings in the immediate vicinity and the need to address the public views from Fairholt Close. The former large garage was part of the local scene but there is acceptance by the appellant that the rear extension is, in effect, a new building. The Framework expects that when available the opportunity should be taken to improve the character and quality of an area and the way it functions. Development of poor design should be refused. The former garage building should not be used as a yardstick to judge the acceptability of a new extension.
44. The Council's objections primarily focus on the single storey rear extension and the local planning authority has consistently sought reductions in its length and height. The extension wraps round the two storey projection and, with the former gap infilled, occupies the full width of the plot for much of its length. At 3.5 m the building is significantly higher than the single storey extensions at the adjoining properties. It has a flat, felt covered roof, apart from the introduction of a slight monopitch attached to the two storey wing. External air conditioning units have been affixed to the roof, with the cabling entering the building through the side wall. No case was made that the units were erected separately and were not part of the extension covered by the notice. Concrete render provides the external finish and the rear elevation has a series of windows and a door. The small yard at the back is enclosed by a red brick wall along the boundary with Fairholt Close.
45. The former garage block, although large, was physically divorced from the host dwelling and because of the forecourt, access arrangements and use it related visually in form and function to the garage block opposite in Fairholt Close, not No. 57. The existing rear extension, whilst probably incorporating some of the fabric of the garage block, is a new building (as described in the breach of planning control) and therefore it has to be judged on its merits. The erection of the extension has resulted in the loss of the all important gap and therefore it is an integral element of the frontage building. By reason of its form, height, width and length, the extension fails to respect the established scale, massing and rhythm of the host building and the terrace. The flat roof, by reason of its expanse and relatively elevated position, adds to the inappropriateness of the built form. Moreover, the visible external finish is drab, does not weather well and is not a facing material commonly utilised in the vicinity. It does not provide the high quality of material sought by development plan and emerging policy.
46. The extension has no effect on the unity and coherence of the front of the terrace, the principal façade, and hence the appearance of the street scene along Bethune Road remains unchanged by the development. However, the extension is an over-dominant building element in the context of the private

amenity spaces at the back of the terrace and the smaller scale dwellings in Fairholt Close. The air conditioning units are prominently sited, look to be an afterthought and detract from the appearance of the extension and the rear of the building. Their addition indicates the constraints on natural ventilation and the inadequate attention to sustainable design and construction as an integral aspect of the design process. The rear extension is not a positive addition to the appearance of the Close and its physical form causes harm to visual amenity.

47. The Framework recognises that although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Thinking about the purpose of the change of use and adaptation of the property, the extension is used as a prayer room and is well related to the women's gallery on the mezzanine floor above. Its size is to a large degree dictated by the need to maximise the capacity of the synagogue to accommodate an increasing congregation. The users believe that the place of worship functions well and it meets a high priority of being easily accessible to the home.
48. The area has developed a specific identity through the presence of a large Orthodox community. The introduction of community uses and places of worship into the residential area adds to its vitality and provides an essential opportunity for those sharing the same beliefs to meet and practice their religion. The synagogues have reinforced this identity through their form and distinctive features, such as the relatively large extensions on the back of plots and a sloping roof to accommodate the women's gallery. The synagogue on St Kilda's Road is one such example and No. 57 would add to this sense of place.
49. In terms of specific additional design attributes of the synagogue at No. 57, the absence of a change in level on the ground floor assists access for those with mobility problems. At the back of the property, the enclosure of the former garage forecourt within the site boundary and the clear definition of the extent of the property have improved the safety of the street and home environment by removing a space used in the past for unneighbourly and anti-social activity.
50. In conclusion, there are a number of positive design considerations, more particularly those related to the use, accessibility and community values and cohesion. To that extent the development responds to how the local area functions, consistent with an objective of Policy 7.4 of the London Plan. It also responds to the character of the local community and the aim for social inclusion in accordance with Core Strategy Policy 24 and Proposed Policy DM1 - General criteria (v), (vi) and (viii).
51. In contrast, the external expression through the additional built form is not of the required standard when assessed against accepted design principles. This development does not display an equivalent attention to detail and building quality seen in other recent similar developments. Some improvements could be secured through planning conditions, namely relocation of the air conditioning units to a less prominent position and attention to the finish of the concrete render to make its appearance more compatible with surrounding buildings. Nevertheless the basic over large size and inappropriate form would remain. The structure is not of the highest architectural quality, nor does it respect the established scale, massing and rhythm of the building, the terrace and street block of which it forms a part. Accordingly, there is conflict with

Policies 7.4B(a) and 7.6B(a), (b), (c) of the London Plan, Core Strategy Policy 24 and Proposed Policy DM1 – setting and context criteria (ii), (v) and general criterion (i) in particular.

52. The appellant sought to rely on a fallback resulting from compliance with the enforcement notice. In the appellant's opinion the notice as varied through the 2012 appeal decision would require the garage to be rebuilt. The Council confirmed at the inquiry the intention was to achieve that outcome at the time the enforcement notice was issued. I consider that approach weakens the Council's case on the impact of the rear extension. However, the requirements of the notice must not be excessive. The notice describes the breach of planning control as the erection of a single storey extension. The steps to be taken should achieve wholly or partly the purpose of the notice, whether to remedy the breach or remedy any injury to amenity caused by the breach<sup>6</sup>. Whichever purpose applies in this instance I consider that to require the garage to be rebuilt would be excessive<sup>7</sup>. The Council's enforcement officer in his written and oral evidence at the inquiry expressed a similar view. The requirement should be confined to removal of the extension. I attach no weight to the fallback as described by the appellant. Consequently the visual harm caused by the new rear extension is not reduced by a comparison to such a fallback.

### ***Effect on neighbours***

53. No. 57 adjoins residential properties at numbers 55 and 59 and is part of a residential terrace. There are two main considerations – the effect of the use and the impact of the rear extension.

#### *Use*

54. The property is now in use as a synagogue with an active congregation of around 100 families. As a consequence there are a large number of comings and goings throughout the day primarily via the front entrance and more especially in association with times for prayer and when there are festivals or other celebratory occasions. Another source of possible disturbance is the singing or chanting, which would relate to the prayer room at the back of the property. My conclusions are informed by a noise survey and impact assessment that was submitted by the appellant after the 2012 appeal decision<sup>8</sup>.
55. The noise study shows that at the Bethune Road side of the building the background noise level varies considerably during the day and at night, which reflects the traffic conditions and general activity in the area. The study also showed there was no significant increase in noise levels as a result of activities at the synagogue. I also have taken into account the fact people generally come and go by foot, which reduces the scope for noise disturbance. The building layout assists in that the front door to No. 57 is offset from the common boundary, as is the nearest neighbouring bay window at No. 55. A close boarded fence along the boundary provides a screen and additional protection. All these considerations lead me to conclude that the effect on the neighbours would be acceptable.

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<sup>6</sup> Sections 173(3) and 173(4) of the 1990 Act as amended.

<sup>7</sup> The breach of control was not described as the erection of a link between the dwelling and the garage. If it had, the link could be required to be removed, leaving the garage building.

<sup>8</sup> Environmental Noise Survey and Impact Assessment August 2012 Stinton Jones Consulting Engineers

56. At the back, as may be expected, the background noise level is lower and more consistent. The survey recorded a significant increase in the noise level that coincided with a session of singing or chanting. Noise break out was identified to be via a single glazed plastic roof light. The noise study concluded that noise nuisance could be prevented by reinforcement of the roof light by the installation of secondary glazing, comprising a fixed and sealed sheet of heavy weight glass to the underside of the roof light. This extra glazing would reduce the peak noise level to one substantially below the background noise level.
57. A supplementary report re-assessed the findings against prevailing policy in the Framework and British Standard BS8223:2014 and confirmed the conclusions were unaffected.
58. The noise study did not address the effect of the air conditioning units, which by reason of their position could be a source of annoying disturbance to the occupiers of No. 59 in particular. The units were switched on when the site visit took place and no adverse effect was audible. However, the performance of air conditioning units may be affected by age and maintenance and so the potential for noise disturbance would remain. The appellant suggested relocating the units to a low level at the back of the site as a way of addressing the issue. This is a matter that could be controlled through a planning condition.
59. Policy EQ40 of the UDP does not permit proposals which could lead to an unacceptable increase in noise levels affecting occupiers of adjacent premises. The change of use would not have such a detrimental effect, subject to the mitigation recommended being carried out and maintained. Whilst there may be some occasional noise disturbance, the effect would not be such to cause significant harm to living conditions in this urban area. Consideration of national policy and guidance leads to the same conclusion.

#### *Rear extension*

60. I have assessed aspects of the design of the rear extension on its merits as a new building and I have explained why I attach no weight to a fallback which relies on the garage being rebuilt as a requirement of the enforcement notice. However, the garage block would have affected both neighbouring properties. The probability is that the garage, which was granted planning permission, had been present around 50 years since the early 1960's. Therefore occupiers of the adjoining properties would have lived with it for a considerable period of time and any new occupiers moving into the properties would have been fully aware of its physical presence. The layout of the buildings would be expected to remain unaltered, at least for the foreseeable future, if the change of use had not taken place. Therefore the position prior to the development is relevant to assessing the degree of material change brought about by the rear extension on living conditions. The Council accepted this approach in agreeing the conclusions of the report on site layout for daylight and sunlight.
61. The rear extension resulted in the infilling of the space between the dwellinghouse and the garage block. On the Council's calculations this would have involved an extra length of building some 3.2 m adjacent to No. 55 and some 2.5 m adjacent to No. 59, the difference due to the siting of the garage at an angle.

62. At No. 55 some time between 2007 and 2011 a 'shed' on the boundary with No. 57 was replaced by a single storey extension, next to where the gap would have been. However, the dwelling is to the south of the site and the extension to the synagogue has not caused a significant loss of daylight or sunlight, as confirmed by the analysis of site layout. The garden looks to be a well used amenity space. The extension provides a high degree of enclosure along the northern boundary but the side wall, facing the garden, has been painted white and this appears to be beneficial in reflecting sunlight and reducing its visual dominance. The open aspect towards Fairholt Close and the reasonable width of the plot also help to offset the enclosure of the extension, whilst the extra sense of privacy compensates to some degree too. Overall the extension is unlikely to have adversely affected the occupiers' reasonable enjoyment of the dwellinghouse.
63. No. 59, being on the north side of the extension, is the more likely property to be adversely affected. The evidence produced for the last inquiry verified that the ground floor accommodation at the back is kitchen and utility space. The technical report demonstrates that the criteria on sunlight and daylight in good practice guidance<sup>9</sup> are met in terms of the window nearest the extension. The sunlight to the garden has been reduced to some extent but when account is taken of the shadowing effect of the garage the loss would not be significant. The side wall of the extension appears somewhat overbearing but this effect on outlook could be mitigated to some degree by applying the same external finish as used for the side wall to No. 55. The removal of the air conditioning units and the associated cables would also improve the outlook and make it less 'industrial' in appearance. To do so would address the representation from the owner of the property. Although not conclusive, an immediate neighbour living in the ground floor flat stated that the use of the synagogue had not caused a loss of amenity and the children enjoyed playing in the garden as before. In sum, the adverse effect on neighbour amenity falls well short of making the extension unacceptable. Improvement could be secured by means of a planning condition.

### *Conclusion*

64. The development is compatible with the policy objective of safeguarding the living conditions of the adjoining occupiers and complies with Policy 7.6B(d) of the London Plan and Proposed Policy DM1 setting and context point (vii) and Proposed Policy DM2.

### **Conclusion on ground (a)**

65. In the area around Bethune Road there is an agreed shortage of synagogues and a need for additional housing, both exacerbated by the increasing population and the number of households living in overcrowded conditions. The development results in a loss of a dwelling but the synagogue enhances the sustainability of the community and residential environment. The built envelope of the extension is not of the required standard but with an understanding of its function, its value to the Satmarers and its general acceptance by most of the residents of the area, the visual harm identified has less weight. The design of the extension also has a number of positive elements. The effect of the development on the living conditions of

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<sup>9</sup> Building Research Establishment: 'Site layout and planning for daylight and sunlight, a guide to good practice' 2011.

neighbouring occupiers has been shown to be policy compliant. On close consideration of the main issues and taking account of all relevant policies, the overall balance of the development plan supports the development.

66. In terms of other considerations, the development is consistent with the emphasis in the Framework on delivering community and cultural facilities to meet local needs. All matters considered the design contributes positively to making a better place for the local community. The balance of relevant policies in the emerging DMLP indicates the development is acceptable. Allowing the synagogue would reduce the disadvantage experienced by the Satmar community, whereas to refuse planning permission on grounds of the shortcomings in the design quality of the rear extension would be disproportionate in view of the limited harm.
67. I conclude that the development is sustainable and is acceptable.

### **Planning conditions**

68. The Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Council's list of suggested conditions formed the basis of the discussion at the inquiry.
69. The deemed planning application, and hence the development granted permission, is that described in the breach of planning control, as proposed to be corrected. There are no plans to be referred to in a condition.
70. The probability is that the use has been taking place for at least seven years, without evidence of complaint about noise disturbance from the pattern of use. To require a management plan would not be an appropriate approach and is not sufficiently precise. Nevertheless, the current use formed the basis for the noise study and the planning permission for a D1 use class would be permanent<sup>10</sup>. A condition controlling the hours of use of the property for communal prayer is justified to reduce the possibility of disturbance to adjoining occupiers through the increased activity. A condition proposed by the appellant is reasonable, although the wording would benefit from slight amendment to avoid uncertainty. The hours of use of the synagogue for private study or ancillary activities would not be subject to the limitation.
71. The noise break-out from the roof light must be dealt with to ensure the sound of worship does not rise above the background noise level. The proposed condition relied on a reference to the noise report. However, that approach is not sufficiently precise and would not enable the permission to be understood as a discrete document. Instead the recommendation of the noise impact assessment will be expressed in the condition. The Council's condition on the air conditioning units was agreed by the appellant. I will amend the wording in order that the condition is enforceable and to ensure the units are relocated as proposed.
72. In terms of external finishes, a condition to require treatment to the external walls of the rear extension is necessary to improve its appearance in the interests of visual and neighbour amenity. The requirement has been linked to the submission of a scheme in respect of the air conditioning units, which is

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<sup>10</sup> The Council did not propose the removal of rights to change to other uses with the D1 use class.

necessary for similar amenity reasons. The timescale for submission of a scheme is based on the discussion at the inquiry and is reasonable. A control linked to the synagogue use is included to ensure the condition is enforceable.

### **Conclusion on Appeal C**

73. For the reasons given above and having taken account of all other matters raised I conclude that the appeal should succeed on ground (a). Planning permission will be granted in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeal on grounds (f) and (g) does not need to be considered.

### **APPEAL B**

74. Following on from the conclusions in Appeal C the enforcement notice will be quashed. Therefore the appeal on grounds (f) and (g) does not need to be considered.

### **APPEAL D**

75. The proposal is to convert the dwellinghouse to a family unit and place of worship. The synagogue would continue to occupy the ground and part of the first floor (mezzanine) and a four bedroom flat would be created on the first floor and within the roof space through conversion and alterations. The proposed flat would be self-contained, with a separate entrance via a door at the front, set back from the main façade.

76. Much of the reasoning on the deemed application in Appeal C applies equally to this proposal and therefore will be adopted and not be repeated in detail. However, the proposal is substantially different in respect of the use of the property as a whole. The proposed alterations to the extension also must be considered.

### ***Need***

77. The use of the ground floor and part of the first floor as a synagogue would meet the need for a place of worship to serve the Satmar sect in the immediate area. This aspect of the development has support from Policies 3.1 and 3.16 of the London Plan, Core Strategy Policy 8 and Proposed Policy DM5. The change of use delivers a cultural and social facility needed by the community, in accordance with policy in the Framework.

78. As a result of the creation of a family sized flat on the upper floors there would be no net loss of a residential unit. The potential issues and conflict with Core Strategy Policy 19 and Proposed Policy DM20 do not arise. The residential unit has support from Proposed Policy DM19. The appellant confirmed that the flat would provide appropriate space to meet the particular requirements of the Orthodox community. Therefore the residential unit responds to the Borough's housing needs in compliance with Core Strategy Policy 19.

### ***Design***

79. National and development plan policies require high quality and inclusive design for all development.



### *Residential unit*

80. The building alterations to form the maisonette would include the insertion of a dormer at the back and rooflights in the roof slope at the front. These alterations would be in accordance with the design guidelines in the SPD. The Council confirmed that the internal layout, floor space and room sizes of the flat would comply with internal space standards set out in the Mayor of London's Housing Supplementary Planning Guidance 2012<sup>11</sup>. The Council did not raise a lack of private amenity space as an issue of concern.
81. The amenity of the unit was considered in a supplementary noise report, with particular attention to the proximity of bedroom windows to the roof lights above the prayer room. The installation of sealed secondary glazing to reinforce the roof lights would provide sufficient protection from noise transmission. In addition, noise could be transmitted through the floor of the flat at first floor level. The women's gallery below would substantially reduce noise transmission and additional insulation could be achieved by construction of the floor to the flat in accordance with Building Regulation requirements. Mitigation measures could be secured through planning conditions to ensure future occupiers of the unit would not experience undue noise disturbance. The proposal complies with the objective of Policy 3.5C of the London Plan.

### *Synagogue*

82. The synagogue is in a good location, accessible to the congregation on foot. The place of worship reinforces the character of the area that has developed through the growth of the Orthodox community. The facility makes a positive contribution to the quality of life for many living nearby. The rear extension is the main change to the building to accommodate the place of worship. This addition has been considered in detail in Appeal C. The extension adequately fulfils its function, is suitably placed in relation to the women's gallery and provides the necessary capacity for the community. In these respects the proposal is consistent with objectives of Policy 7.4 of the London Plan, Core Strategy Policy 24 in respect of social character and connections and Proposed Policy DM1 - General criteria (v), (vi) and (viii).
83. The rear extension as built does not fit in well or complement the principal building, the terrace and the surroundings in Fairholt Close by reason of its size, shape and materials. With a view to reducing the scale of the extension the proposal provides for a reduction in the height of the rear elevation fronting Fairholt Close. This alteration was put forward as a compromise to retain the synagogue. However, I agree with the appellant that the change would have detrimental effects on the use and comfort of the prayer room and interfere with the view from the women's gallery. Also I consider little would be gained visually from the alteration and neighbour amenity would not be improved because the side walls would remain the same height. The overall benefit of the alteration would be minimal. The more significant improvements would be through re-siting the air conditioning units and by treatment of the concrete render.

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<sup>11</sup> The Written Ministerial Statement Planning Update March 2015 includes a new approach for the setting of technical standards for new homes. In the transitional period to 30 September 2015 planning permission may still be granted on the basis of existing Local Plan and neighbourhood plan policies on internal space even though there may be conflict with the new national technical standards.

84. Therefore the rear extension by reason of its large size and inappropriate form would not be of the required standard when assessed against accepted design principles. The structure, even with the proposed alterations, would not be of the highest architectural quality, nor would it respect the established scale, massing and rhythm of the building, the terrace and street block of which it forms a part. Accordingly, there is conflict with Policy 7.4B(a) and 7.6B(a), (b), (c) of the London Plan, Core Strategy Policy 24 and Proposed Policy DM1, in particular setting and context criteria (ii), (v) and general criterion (i).

### ***Effect on neighbours***

85. The introduction of a residential unit would make little difference to the level of activity and use associated with the synagogue. However, experience and a noise impact assessment have shown that at the front of the site the pattern of daily prayer and general use of the building do not cause significant disturbance to neighbours. Measures have been identified to minimise noise escape from the prayer room at the back of the building. The test of Policy EQ40 of the UDP is satisfied. Quality of life and health, the concerns of national policy, would not be adversely affected.

86. The rear extension has made little significant difference to the daylight and sunlight received at the neighbouring properties. The effect on outlook for residents of No. 59 could be improved by re-siting the air conditioning units and lightening the external finish of the side boundary wall. The increase in the degree of enclosure to neighbouring gardens is not oppressive, especially when account is taken of the long established garage block.

87. The development is compatible with the policy objective of safeguarding the living conditions of the adjoining occupiers and complies with Policy 7.6B(d) of the London Plan and Proposed Policy DM1, specifically setting and context point (vii) and Proposed Policy DM2.

### ***Conclusion on main issues***

88. The proposal delivers a much needed and valued social facility and avoids the loss of a dwelling. The harm is restricted to the appearance of the rear extension. This adverse impact does not outweigh the substantial benefits and accordingly the overall balance of the development plan is in favour of the development.

89. A core planning principle of the Framework is to find ways to improve places where people live. This proposal would achieve that aim by providing an accessible synagogue, essential to the well-being of the Satmar community. The amenity of the occupants of the proposed residential unit and immediate neighbours would be safeguarded. Whilst the Framework states visual appearance of individual buildings is very important, other aspects would secure an inclusive design. All matters considered the proposal is a sustainable form of development. The balance of relevant policies in the emerging DMLP also indicates the development is acceptable.

### ***Planning conditions***

90. The list of conditions prepared by the Council formed the basis for discussion at the inquiry. There was agreement that a condition requiring the commencement of development within three years was not necessary.

91. It is good practice to specify the application plans which form part of the permission. The submitted plans included alterations to the roof of the rear extension. The appellant chose not to amend the proposal, even though expressing disquiet about the effects of such an alteration. The Planning Practice Guidance states that it may be possible for a local planning authority to impose a condition making a minor modification to the proposal and the appellant put forward a condition with the effect of retaining the height and roof of the extension in its current form. However, the roof detail is shown on nearly all the plans. Therefore, even using the phraseology suggested, such an approach would be inconsistent with a condition requiring the development to be carried out in accordance with the submitted plans. The most appropriate way would be for the appellant to seek a minor modification to the permission, if necessary.
92. In terms of the synagogue use, conditions on hours of use and the installation of secondary glazing are necessary to mitigate noise disturbance<sup>12</sup>. The purpose of these conditions is to protect the amenity of nearby residents, which would be especially important with the inclusion of a residential unit in the property. Relocation of the air conditioning units and treatment of the external surfaces of the single storey rear extension would be important to enhance its appearance in the street scene and to improve the outlook of neighbours. To ensure conditions on secondary glazing and a scheme for the rear extension meet the test of enforceability, a time limit is imposed that takes account of the retrospective nature of the development. In carrying out the alterations to the building to provide the rear dormer and front roof lights matching materials should be used to ensure no visual harm to the appearance of the property. The construction of the floor of the new flat to reduce noise transmission from the synagogue would be controlled through the Building Regulations and therefore a planning condition is not necessary.
93. I have considered whether it is necessary and reasonable to impose a condition to ensure the residential unit is provided within a specified timescale. The Council did not seek such a condition and the wording of the condition put forward at the inquiry would be difficult to enforce. Therefore I have decided against it.

### **Conclusion on Appeal D**

94. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be allowed.

### **DECISIONS**

#### **Appeal A Ref: APP/U5360/C/11/2159648**

95. The ground (d) appeal having been withdrawn there is no appeal to determine.

#### **Appeal B Ref: APP/U5360/C/11/2159705**

96. The appeals on grounds (f) and (g) do not require to be determined in view of the decision on Appeal C to quash the enforcement notice.

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<sup>12</sup> A sound reduction of 20 dB is used in the condition as recommended in the original report, rather than the more conservative 10 dB reduction recommended in the supplementary report.

**Appeal C Ref: APP/U5360/C/11/2159799**

97. It is directed that the enforcement notice be corrected by:

- a) Deleting the text in paragraph 3 and substituting the words: Without planning permission, a material change of use from a dwellinghouse to use as a synagogue with ancillary facilities, together with the erection of a single storey extension to the rear of the property and its use as part of the synagogue.
- b) The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

98. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings for a synagogue with ancillary facilities and the erection of a single storey extension to the rear of the property and its use as part of the synagogue at 57 Bethune Road, London N16 5EE, as shown on the plan annexed to this decision, subject to the following conditions:

- 1) The use of the synagogue for communal prayers shall not take place other than between 0800 and 1000 hours Sundays to Fridays, 0800 and 1200 hours on Saturdays and Jewish festivals, at any time on the Jewish New Year and Day of Atonement, and from 1 hour before sunset until 1 hour after sunset on any day.
- 2) Within three months of the date of this decision sealed secondary glazing shall be installed to the underside of the domed roof lights on the single storey rear extension in order to achieve a reduction in noise transfer to outside the building of a minimum of 20 dB. Thereafter the sealed secondary glazing installation shall be retained.
- 3) Within 2 months of the date of this decision a scheme for the rear extension shall be submitted for the written approval of the local planning authority. The scheme shall provide details of:
  - a) the re-siting and installation of the air conditioning units and shall include measures to ensure that the air conditioning units operate at a noise level of at least 10 dB below the ambient background noise level;
  - b) the external appearance and proposed treatment of the walls of the rear extension; and
  - c) a timetable for the implementation of the submitted scheme.

The scheme shall be implemented in accordance with the approved details and timetable. The use hereby permitted shall cease within 2 months of the date of a failure to meet any of the above requirements on the submission of a scheme or its implementation and the use shall not re-commence until such time as a scheme is approved and implemented. Thereafter the air conditioning units shall be maintained in the approved position and operated in accordance with the approved details.

**APPEAL D Ref: APP/U5360/A/14/2214779**

99. The appeal is allowed and planning permission is granted for a material change of use of a dwellinghouse to use as a synagogue (Class D1) on the ground and mezzanine floor and use as a four bedroom family unit on the first and attic floors, together with the erection of a single storey rear extension for use as part of the synagogue and the erection of a rear dormer extension and the installation of front roof lights to the proposed upper floor family unit at 57 Bethune Road, London N16 5EE in accordance with the terms of the application, Ref 2012/3300, dated 28 October 2012, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 20120630-P01 Rev A site plan and basement, 20120630-P06A Rev C proposed floor plans, 20120630-P07A Rev B proposed floor plans, 20120630-P08 Rev B proposed section A-A, 20120630-P09 Rev C proposed rear elevation, 20120630-P10 proposed front elevation.
- 2) The use of the synagogue for communal prayers shall not take place other than between 0800 and 1000 hours Sundays to Fridays, 0800 and 1200 hours on Saturdays and Jewish festivals, at any time on the Jewish New Year and Day of Atonement, and from 1 hour before sunset until 1 hour after sunset on any day.
- 3) Within three months of the date of this decision sealed secondary glazing shall be installed to the underside of the domed roof lights on the single storey rear extension in order to achieve a reduction of a minimum of 20 dB in noise transfer to outside the building. Thereafter the sealed secondary glazing installation shall be retained.
- 4) Within 2 months of the date of this decision a scheme for the rear extension shall be submitted for the written approval of the local planning authority. The scheme shall provide details of (a) the re-siting and installation of the air conditioning units and shall include measures to ensure that the air conditioning units operate at a noise level of at least 10 dB below the ambient background noise level; (b) the external appearance and proposed treatment of the walls of the rear extension; and (c) a timetable for the implementation of the submitted scheme. The scheme shall be implemented in accordance with the approved details and timetable. The synagogue use hereby permitted shall cease within 2 months of the date of a failure to meet any of the above requirements on the submission of a scheme or its implementation and the synagogue use shall not re-commence until such time as a scheme is approved and implemented. Thereafter the air conditioning units shall be maintained in the approved position and operated in accordance with the approved details.
- 5) All new external finishes in respect of all the works hereby approved (and any other related incidental works) to create the residential unit shall match the existing building in terms of the materials used, detailed execution and finished appearance.

*Diane Lewis*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr James Pereira QC	Instructed by Mr Ormonde
He called	
Rabbi Shulem Posen	Member of the synagogue
Mr Alvin Ormonde	Planning & Project Management Services

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Byass of Counsel	Instructed by Corporate Director of Legal, HR and Regulatory Services
He called	
Mr Nicholas Bovaird BA MA	Planning Officer, London Borough of Hackney
Mr Michael Johnson	Planning Enforcement Manager, London Borough of Hackney

### INTERESTED PERSONS:

Ms Chaya Spitz	Interlink Foundation, National Association of Orthodox Jewish community organisations.
Mr Avrohom Josefovitz	Member of the synagogue
Mr Samuel Feivel Reiner	Local resident and member of the synagogue

## **DOCUMENTS submitted at the inquiry**

- 1 Opening submissions on behalf of the Appellant
- 2 Opening submissions on behalf of the Council
- 3 Statement on behalf of Interlink
- 4 Extracts from the Core Strategy
- 5 Policy CS8 of the UDP
- 6 Proposed Policy DM5
- 7 Delegated report 49 St Kilda's Road and associated plans
- 8 Documents in relation to the Public Sector Equality Duty
- 9 Extract from the Planning Practice Guidance
- 10 Email from C Ozor dated 30 April 2013
- 11 Appeal decision 21 Northfield Road ref APP/U5360/A/14/2217616
- 12 Plans for 49 St Kilda's Road
- 13 Extract from Council's proof for the inquiry in 2012
- 14 Letter confirming Mr Ormonde as agent for the three appeals
- 15 Objections to development at 57 Bethune Road
- 16 Additional planning conditions
- 17 Annotated plans submitted by Mr Johnson
- 18 Closing submissions on behalf of the Council
- 19 Closing submissions on behalf of the Appellants
- 20 *R v Leominster District Council* [1998] 76 P & C R 346

## **PHOTOGRAPHS**

- P1 Aerial photographs of rear of the terrace dated 02/2007 and 03/2011
- P2 Photographs taken on the appeal site visit

P3 Photographs of synagogues

**PLANS**

- A1 Pre-existing floor plans 20120630-P00
- A2 Existing floor plans 20120630-P02
- A3 Existing front elevation 20120630-P03
- A4 Existing rear elevation 20120630-P04 Rev A
- A5 Existing section A-A 20120630-P05
- A6 Site Plan and basement 20120630-P01 Rev A
- A7 Proposed floor plans 20120630-P06A Rev C
- A8 Proposed floor plans 20120630-P07A Rev B
- A9 Proposed section A-A 20120630-P08 Rev B
- A10 Proposed rear elevation 20120630-P09 Rev C
- A11 Proposed front elevation 20120630-P10



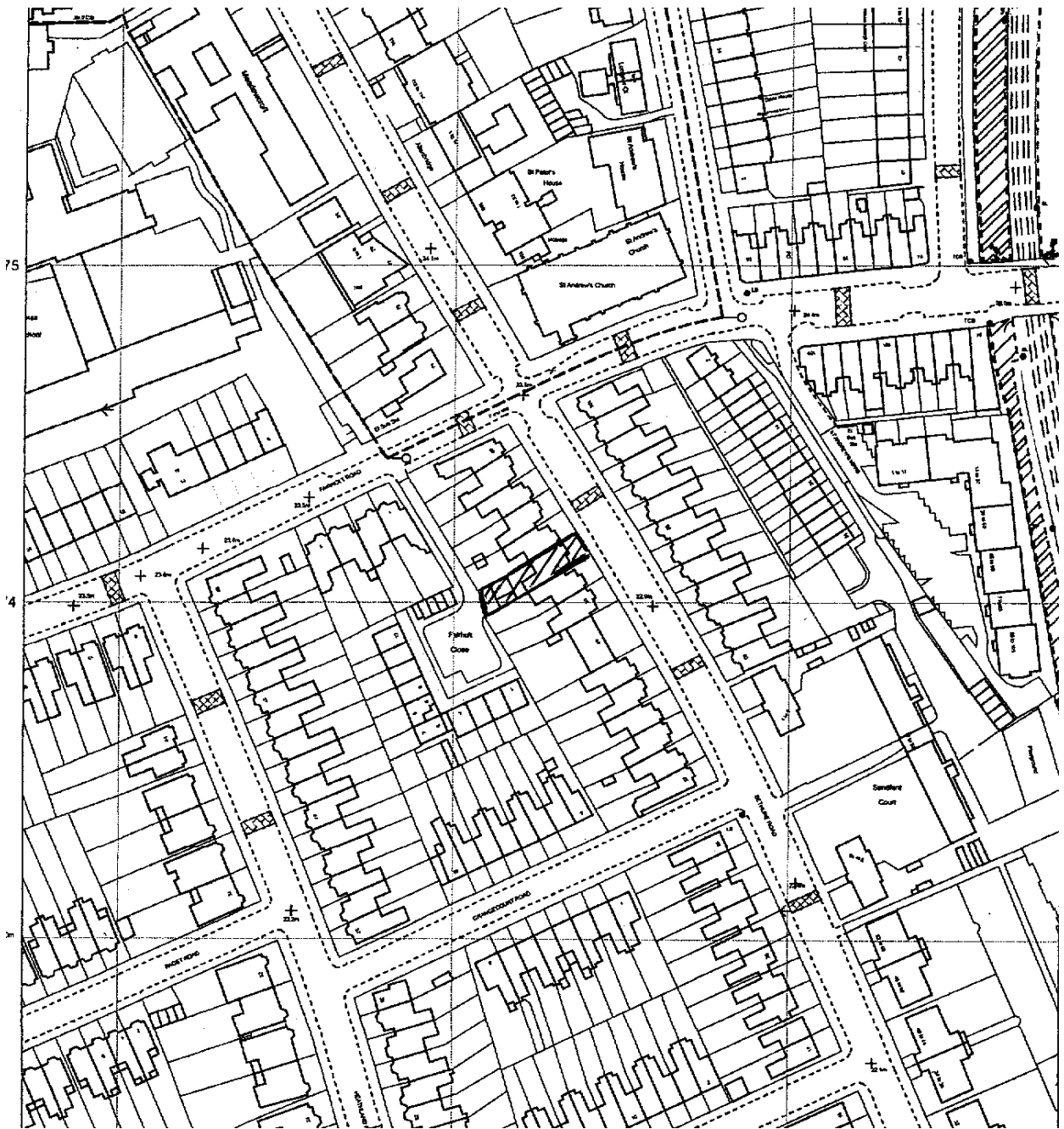
## Plan

This is the plan referred to in my decision dated: 7 May 2015

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

**Land at: 57 Bethune Road, London N16 5EE**

**References: APP/U5360/C/11/2159648, 2159705, 2159799**





## **APPENDIX A: PARAGRAPHS 8 TO 21 DECISION DATED 23 MARCH 2012**

### **Appeals A and C on Ground (d)**

This ground of appeal is that, at the date the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof is on the appellants and the standard of proof is the 'balance of probabilities'.

#### *The Synagogue Use*

Under s171B(3) of the 1990 Act as amended, no enforcement action may be taken against a material change of use of land after the end of ten years beginning with the date of the breach. Whether there has been a material change of use is a matter of fact and degree – so in an appeal on ground (d), it is necessary to compare the character of the use of the land on the date of the issue of the notice with that as it existed ten years before. It is also essential to ascertain whether the unauthorised use continued throughout the period. The notice was issued on 13 July 2011, so the material date is 13 July 2001.

Local residents suggest that 57 Bethune Road was used as a synagogue from around 1948. There is little to verify this or show how long the use continued for. The appellants do not dispute that no. 57 was subsequently used as a dwelling – but they say that it was occupied by a priest and put to a dual use, being in part a place of worship. Letters from local residents suggest, on the basis of comings and goings, that the priest held public events. The occupiers of adjoining dwellings made sworn declarations that they heard singing and other noise from the building. They reiterated this evidence orally at the inquiry.

However, I have seen no detailed information as to how many visitors were received at no. 57, at what times or how often. There is little to confirm that the priest conducted public services, on a regular or occasional basis. I have not been told how much space in the building was used for worship. Finally and crucially, the appellants have not shown when the priest commenced any religious use – and if the activities took place on a continuous basis for ten years.

It may be true that the former occupier was a noisy neighbour. But a resident of a private house may receive private guests, play music and engage in prayer. The primary activities undertaken in a dwelling are those of private everyday living, such as cooking and sleeping – but one may choose to sing hymns at home without causing a material change in the use of the building. Places of worship are eligible for relief from business rates, yet the former occupier of no. 57 paid Council Tax from 1993. On the balance of probabilities, I find that the building had a sole primary use as a dwellinghouse prior to its use by the appellants.

In the synagogue, the majority of the floorspace is dedicated to prayer and study. I heard that morning prayers are held from about 08.00 to 09.00 hours from Sunday to Friday, and 09.00 to 11.30 on the Sabbath. There is study after morning prayers each day, and there are evening prayers at sunset. Some 15-20 people attend prayer meetings, except on the Sabbath when there may be up to 50. As a matter of fact and degree, given the nature and scale of the activities taking place, there has been a material change in the use of the premises as alleged, to a sole primary use as a place of worship.

I heard that contracts were exchanged on no. 57 in late 2006 or early 2007, and the synagogue opened in May or June 2007. On the balance of probabilities, the material change of use took place after 13 July 2001.

### *The Extension*

Under s171B(1), no enforcement action may be taken in respect of building operations after four years of the date of substantial completion. The material date in respect of the alleged extension is 13 July 2007.

Although I heard dissent as to whether 'demolition' occurred, the parties' accounts of the building works are reconcilable. Council records suggest that the sides of the garage were retained, explaining a 'join' in the coping stones. The appellants accept that the asbestos roof of the garage was replaced. Works must have been undertaken to the front elevation, because doors were replaced by windows and the wall as a whole may have been set back. The rear elevation of the garage must have been removed to facilitate the 'link' to the main building.

I find, therefore, that the garage was functionally but not wholly demolished. It matters little, however, if this assessment is wrong. The appellants suggest that the date of substantial completion should relate to the construction of the 'shell'. This must include that of the 'link' structure.

Adjoining occupiers told the inquiry that the gap was filled in around April 2007. However, they were unclear as to how long the building works took. Neither of them mentioned April 2007 in their statutory declarations – and there is no reference to this date in any other written representation. I also heard from Mr Grunhut that works took place in 2007, and I do not dispute that the witnesses aimed to assist the inquiry. However, human memory can be unreliable and the oral evidence described is at odds with Council records.

The appellants' builder submitted a Building Notice to the Council. I heard that his description of the works – 'demolish and rebuilding [sic] existing garage' – was inaccurate. However, there is no dispute that the Notice relates to the extension, and so it follows that the date of the Notice is important: 6 August 2008. The Notice states that the works have 'started', but I could not construe from this that the extension had been substantially completed by April or July 2007.

Building Control records show that, on 15 August 2008, foundations had 'been excavated down...to 3 sides of a very large garage'. On 30 October 2008, the Inspector 'discussed proposal to build an extension that will connect the garage to the main house'. This evidence is authoritative – and it fits with the appellants' response to the Planning Contravention Notice, received on 4 August 2009, that 'refurbishing works' were carried out 'in the last two years'. On the balance of probabilities, the extension was substantially completed after 13 July 2007.