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Development Management

Pat Whymer – Head of Development Management



What is “development”?

- “Development” is “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land”

Town & Country Planning Act 1990, section 55

- But not all development needs planning permission.

- “Permitted development” exempts some ‘development’ from the need to obtain planning permission

Town and Country Planning General Permitted Development (England) Order (As amended)

- Use Classes Order allows some changes of use



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“Development” is not ...

- ◆ Internal works to a building
- ◆ Works not materially affecting the external appearance of a building
- ◆ Works required for road maintenance/improvement within the boundaries of a road
- ◆ Repairing, renewing, inspecting sewers, mains, pipes, cables or other apparatus by statutory undertakers
- ◆ Use of buildings or land within the curtilage of a dwelling for incidental purposes
- ◆ Change to a different use within the same use class
- ◆ Agricultural or forestry uses



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Development Management

- ◆ What Applications do we Receive ?
- ◆ Planning Applications
- ◆ Listed Building Consent
- ◆ Prior Notifications
- ◆ Permission in Principle
- ◆ Discharge of Conditions
- ◆ S73 Applications
- ◆ Certificates of Lawful Use
- ◆ Works to TPO Trees
- ◆ Adverts

The DM Team receive approx. 3500 applications each year (2600/900)

What else do we do ?

- ◆ Pre-applications
- ◆ General Enquires
- ◆ Enforcement – approx 750 per year (530/220)



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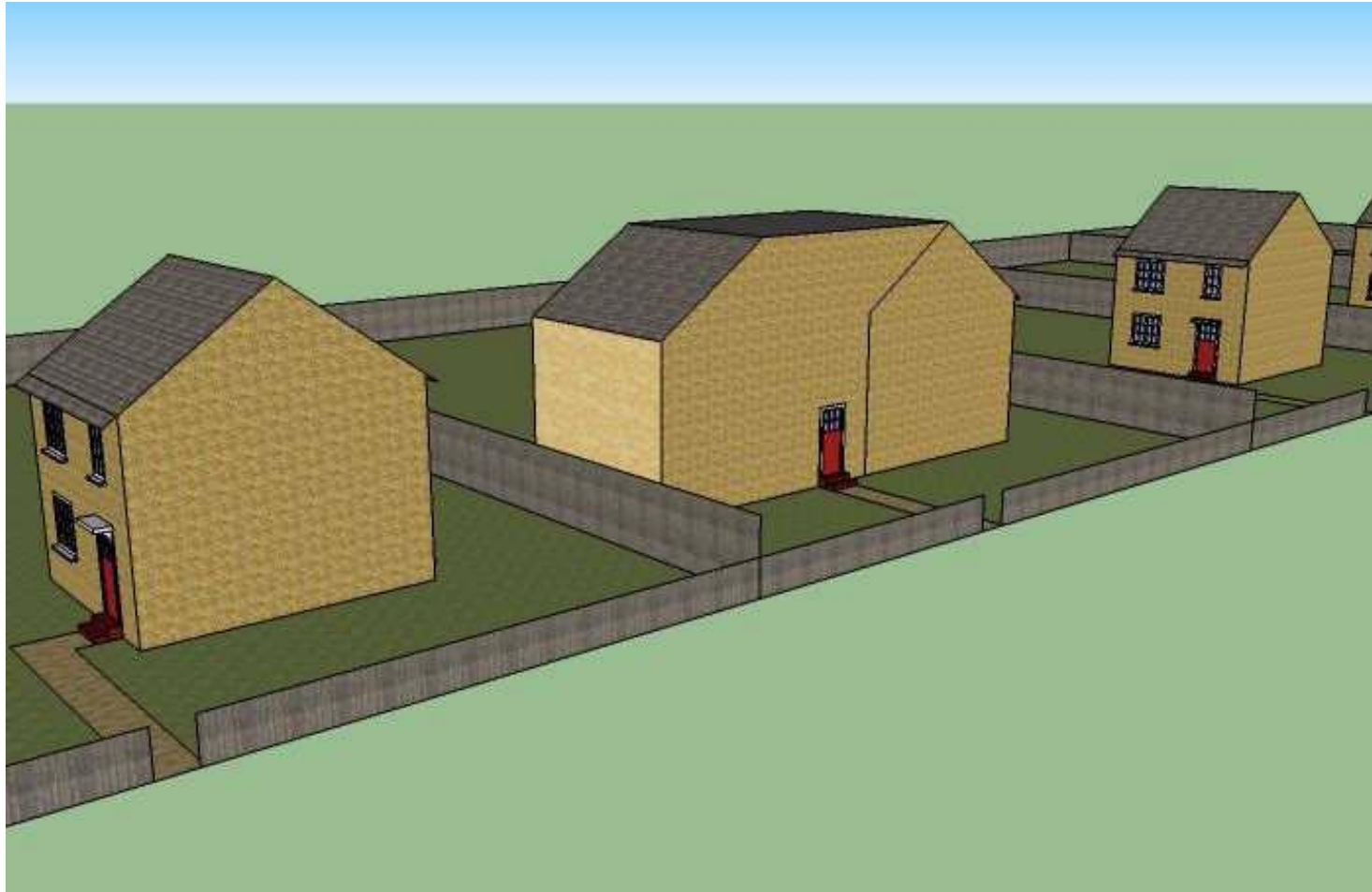


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‘How is a Planning application determined – the planning judgement ?

- ◆ To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#))
- ◆ Starting point is therefore the development plan which is the JLP together with any NP plan that has been made and the adopted DCC Waste and Minerals plan.
- ◆ Material considerations – what is a material consideration is a matter for the courts – in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material.



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Material Consideration - Examples

MATERIAL

- National and local planning policy
- design/siting/external appearance
- visual impact
- privacy/overbearing
- daylight/sunlight
- noise/smell/pollution
- access/traffic/highway safety
- health and safety
- ecology/landscape
- Heritage/setting of listed buildings
- crime (and fear of)
- economic impact
- tourism impact
- planning history/related decisions
- cumulative impact
- flood risk

NOT MATERIAL

- the applicant
- land ownership
- private rights (e.g. access)
- restrictive covenants/deeds
- property values
- competition
- loss of private view
- “moral” issues
- “better” site or use
- change from previous scheme
- personal circumstances (seldom outweigh material considerations)
- number of objections/support received



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Material considerations and the weight to attach to them (or how we arrive at our decision...)

The law has always made a clear distinction between whether something is a material consideration and the weight it should be given

“The former is a question of law. The latter is a question of planning judgement which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (within the test of “reasonableness”) to give whatever weight the planning authority thinks fit or no weight at all.....”

Lord Hoffmann, in *Tesco Stores Ltd v Sec of State for the Environment* 1995

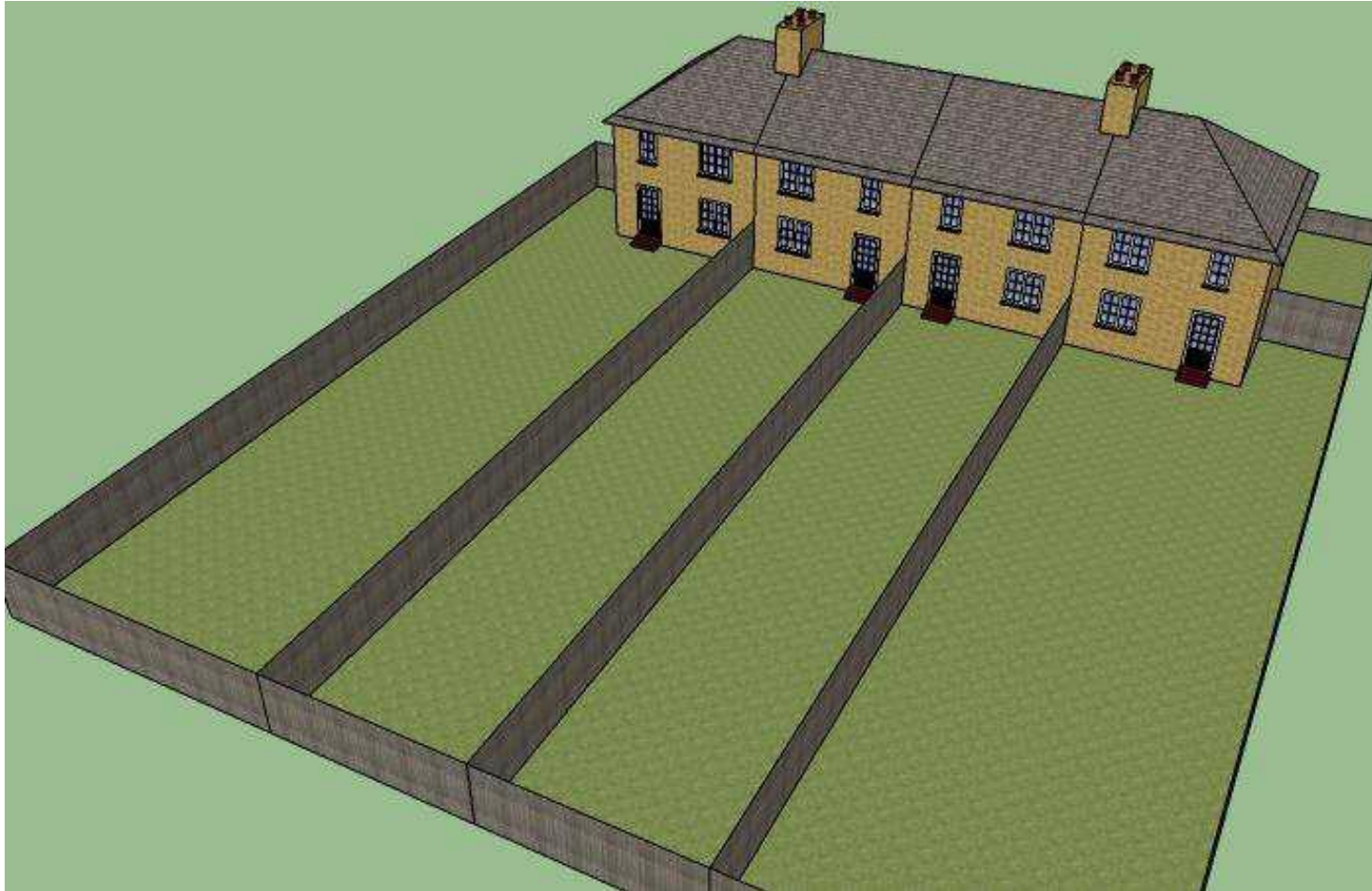


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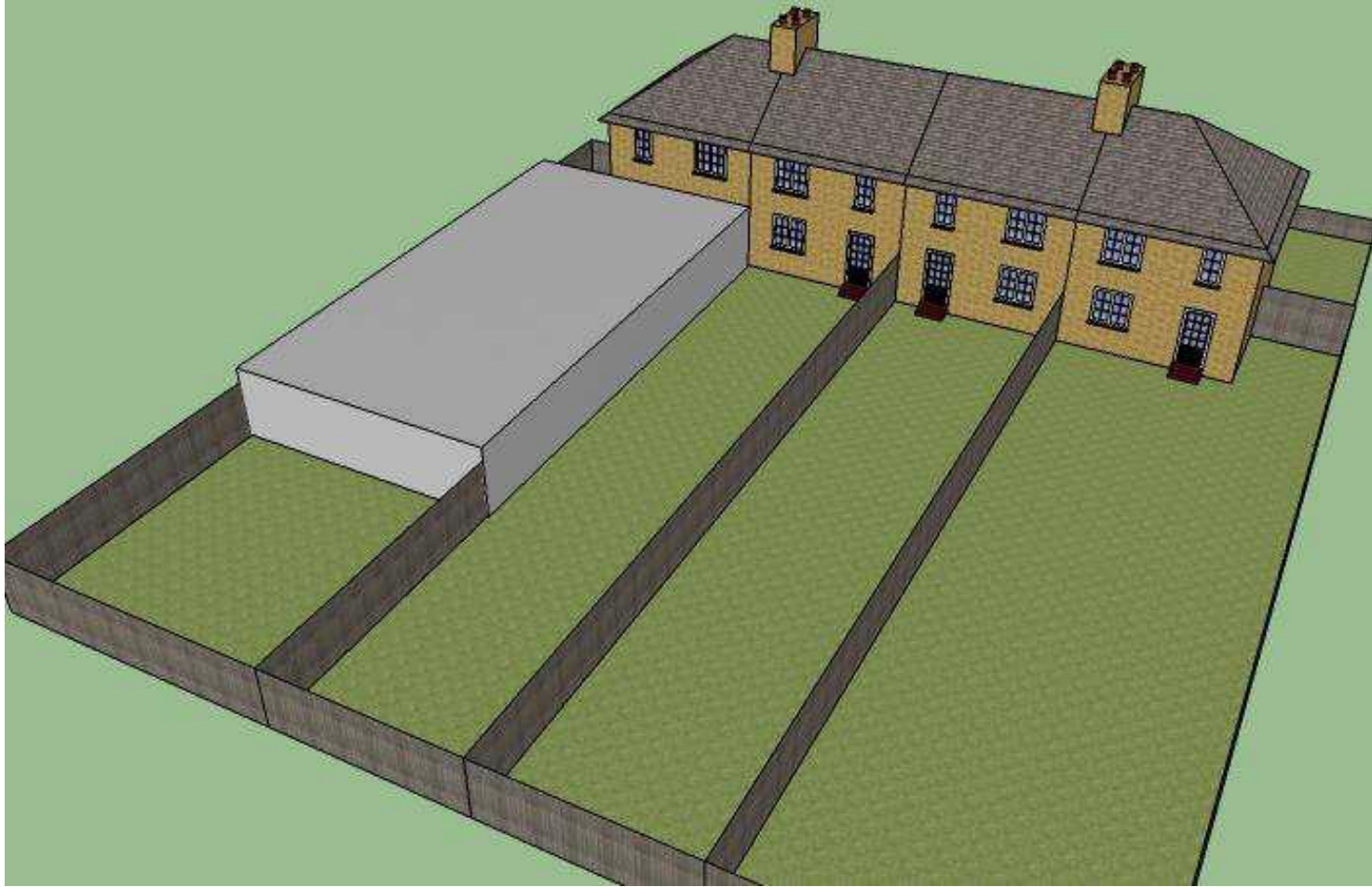


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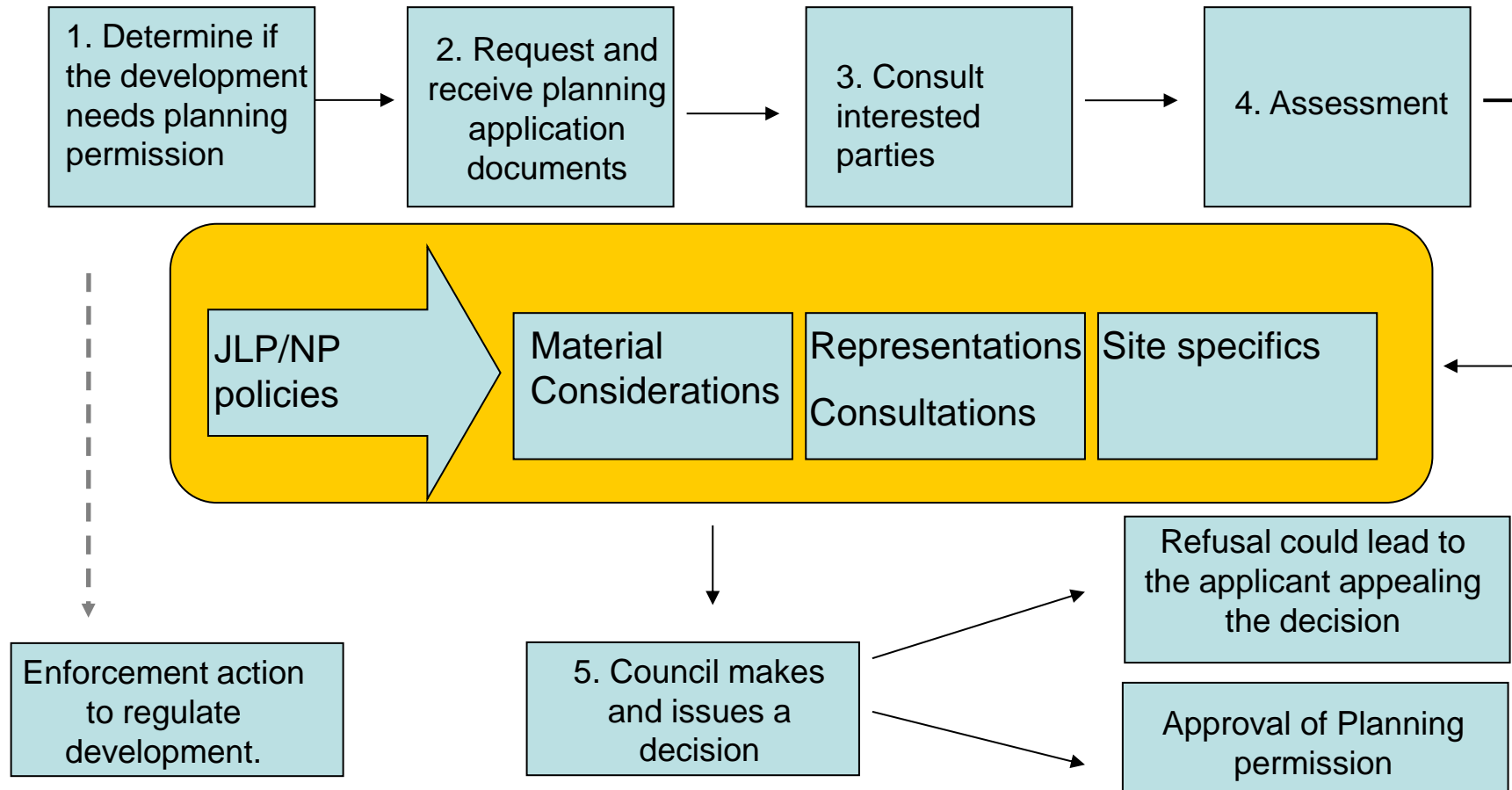
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The DM Process



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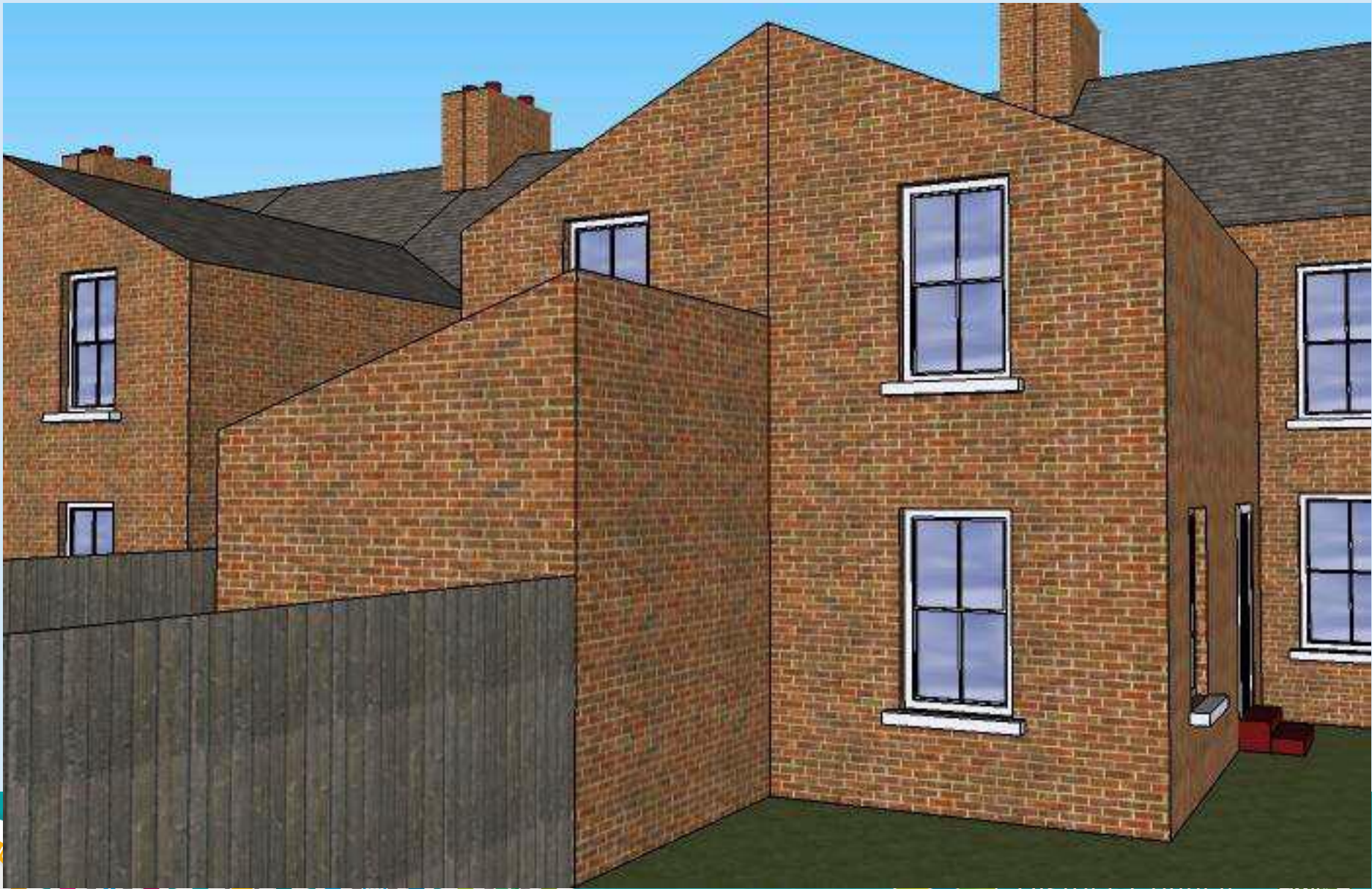


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Councillor Involvement in DM

Weekly lists of Applications for Information

All applications can be delegated with some exceptions:

- Applications by staff/Councillors or immediate family
- Applications by the Council or on Council land.

If we receive a representation that is contrary to the officer recommendation the decision can only be issued with agreement of Councillors.



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Types of applications

Planning application types

- Full
- Outline
- Reserved Matters
- Change of Use
- Variation of condition

Listed Building – not based on planning merit but on impact on the special character and appearance of the building

Prior Notifications – certain PD requires notification to us – principle established

Advert – public safety and amenity

Certificates of lawfulness – not on planning issues but whether lawful

Permissions in principle

Pre-applications

TPO Trees



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Protected Trees – Tree Preservation Orders & Conservation Areas

- ◆ Trees are protected by TPOs when (it is)...*‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands’*
- ◆ Conservation Areas protect all trees over 75mm in diameter, decisions are mindful of the requirement *‘to preserve or enhance the character and appearance of the Conservation Area’*. TPOs may be served where harm may ensue
- ◆ Form of TPOs
 - ◆ **Individual** (merit protection in their own right), **Groups** (group not individual merit), **Woodlands** (land covered with trees, generally cohesive), **Areas** (trees not in well defined groups and are numerous spread over an area, discouraged and generally for emergency only)



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Protected Trees – Decisions against Tree Work Applications/ Notifications

◆ Timescales for Decisions

- ◆ TPO applications 8 weeks - 4 weeks consultation
- ◆ Conservation Area Notifications 6 weeks - 3 weeks consultation

◆ Decisions under TPOs

- ◆ Approval, refusal, lesser works or split decisions. Conditions may be applied - standard of work, replacement trees etc. Can be appealed within 28 days

◆ Decisions within Conservation Areas

- ◆ No objection, Objection Raised and provisional TPO served.



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Offences against Protected Trees

- ◆ Unauthorised works are criminal offences for TPOs and Conservation Areas, **unless** covered by exemption (*dead, dangerous, fruit production, National Security, Statutory Undertakers, etc*)
 - ◆ Upto £20,000 fine in Magistrates Court or unlimited in Crown Court
 - ◆ Criminal record upon conviction
 - ◆ Case details published
 - ◆ Replant Directions securing replacement trees in the same location
 - ◆ Forestry Commission powers – offence to fell over 5 cubic metres per quarter



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The Decision

- ◆ Target timescales for a decision

8 or 13 weeks - applications;
28 days and 56 days - notifications

- ◆ Approve with conditions/Section 106 Agreement

- ◆ Refuse



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Conditions & S.106 Agreements

Both are for the purpose of making an otherwise unacceptable development, acceptable.

Conditions should only be imposed where they satisfy 6 tests:

- ◆ necessary
- ◆ relevant to planning
- ◆ relevant to the development to be permitted
- ◆ enforceable
- ◆ precise, and
- ◆ reasonable in all other respects

S106 similarly must be :

- ◆ necessary to make the development acceptable in planning terms
- ◆ directly related to the development
- ◆ fairly and reasonably related in scale and kind to the development



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Reasons for Refusal

- ◆ Must be based on material planning considerations and can be justified
- ◆ Inappropriate and unreasonable refusal reasons
- ◆ *“Local opposition is not in itself a reason for refusing planning permission unless it is founded on sound planning reasons which can be substantiated”*
- ◆ Risks – appeal/costs, judicial review



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Appeals

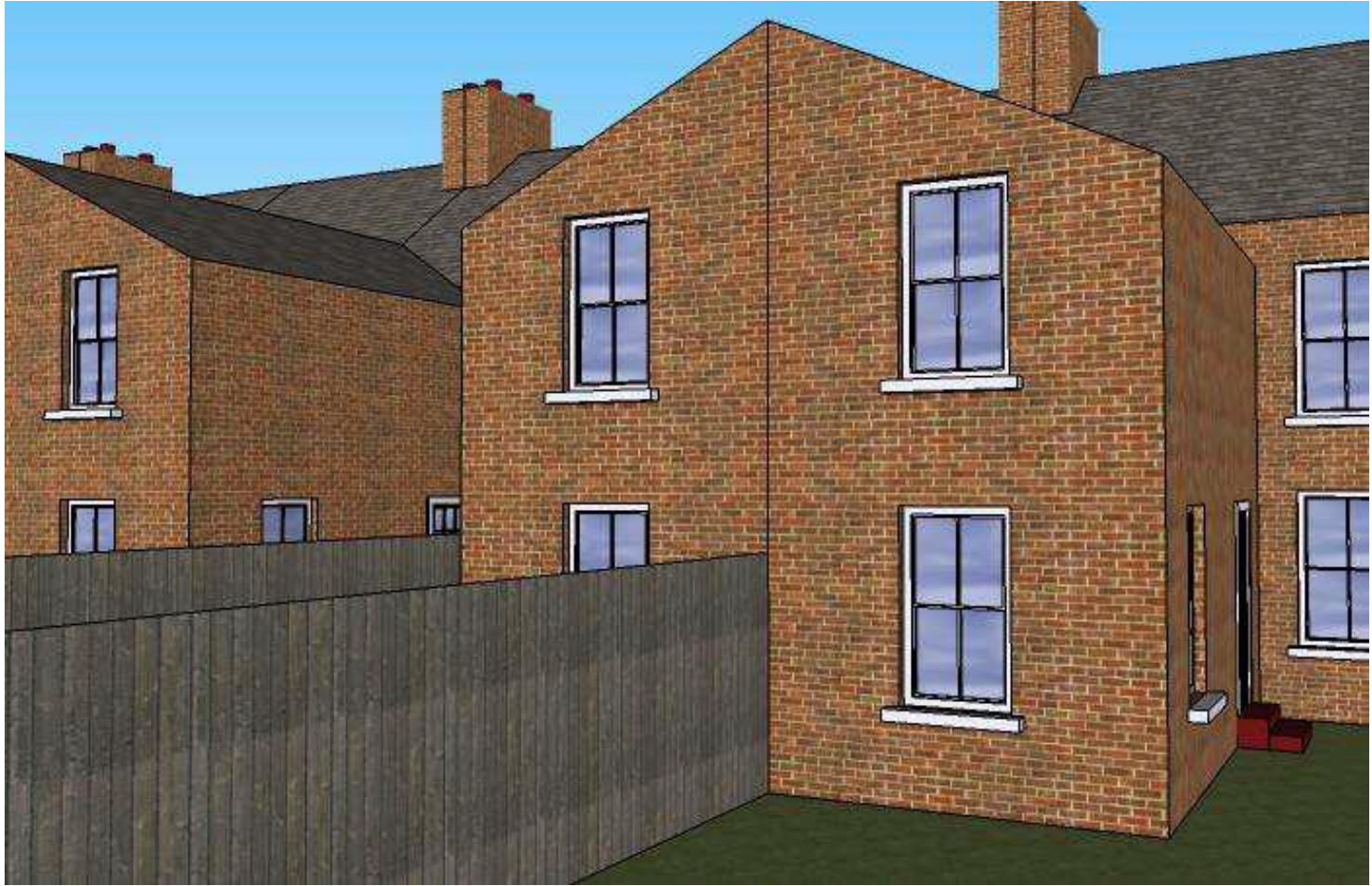
- ◆ Any refusal or non-determination of a planning application can be the subject of an appeal made by the applicant (NOT by a third party)
- ◆ Planning appeals take three forms:
 - Written representations
 - Informal Hearings
 - Public Inquiries



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Judicial Review

- ◆ Provision by which a third party can challenge Council's (or Planning Inspectorates) decision.
- ◆ Strict time frame – 6 Weeks
- ◆ Two stages
 - Leave to appeal – can the Claimant demonstrate that the Council has either:-
 - ◆ failed to comply with any statutory requirements (illegality)
 - ◆ failed to take account of material considerations
 - ◆ failed to give adequate and intelligible reasons or
 - ◆ Procedural unfairness.
 - ◆ Irrationality



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Enforcement

- ◆ Reasonable or necessary or expedient to take enforcement action in the public interest. '*Effective enforcement is important as a means of maintaining public confidence in the planning system*' (NPPF).
- ◆ Majority of decisions delegated to officers
- ◆ Not a criminal offence
 - Planning Contravention Notices
 - Breach of Condition Notices
 - Enforcement Notices
 - (Temporary) Stop Notices

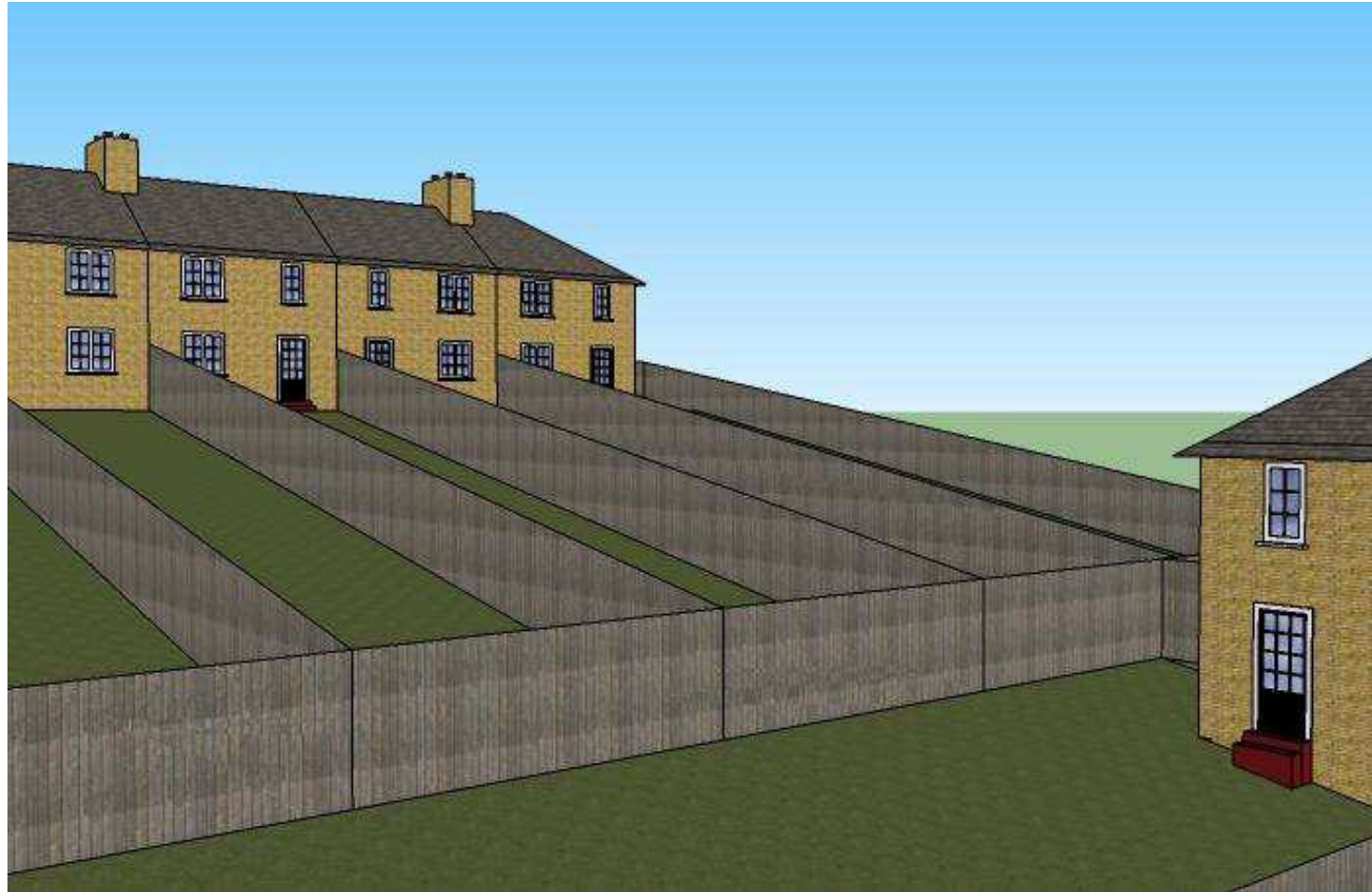


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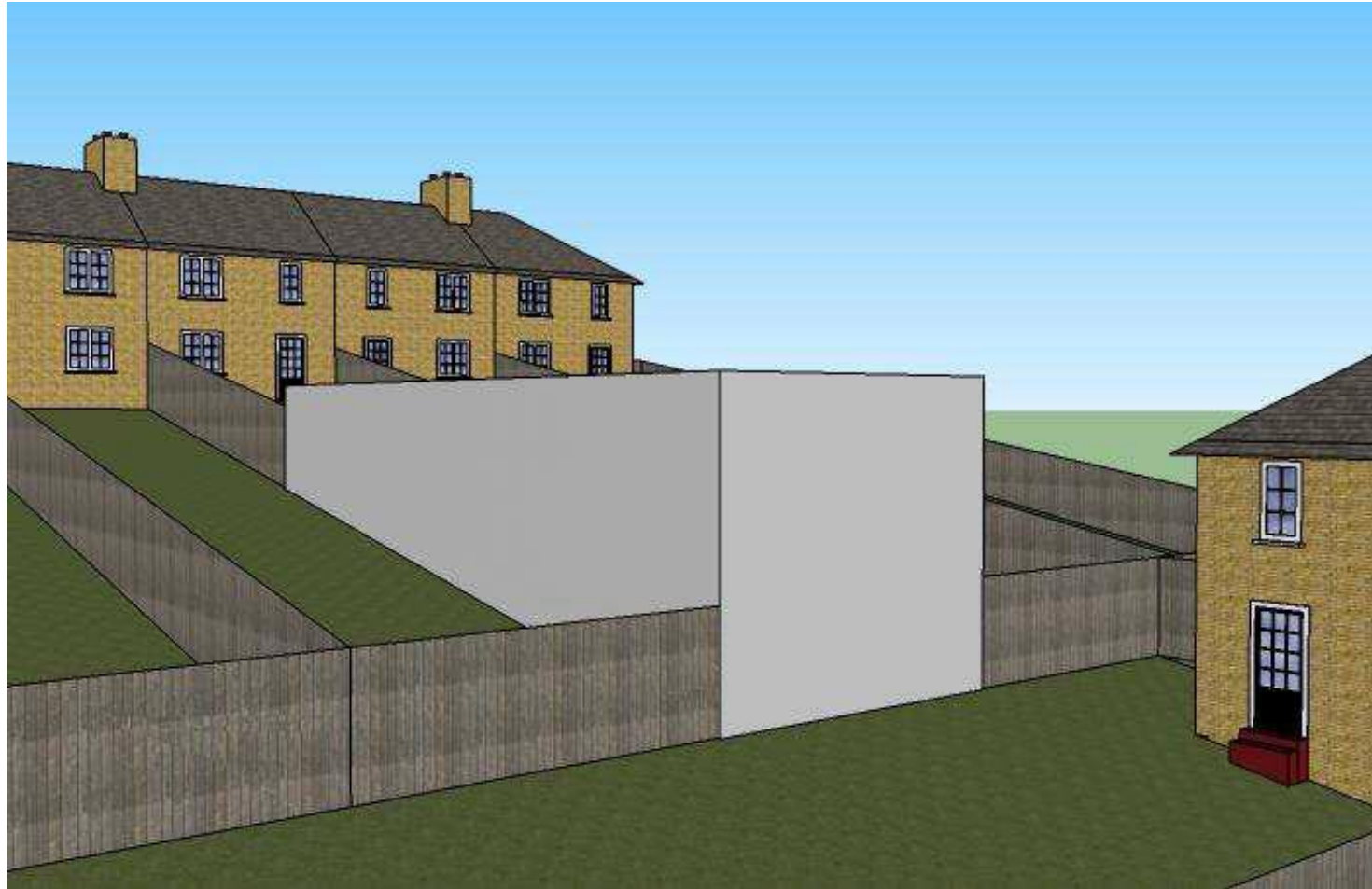


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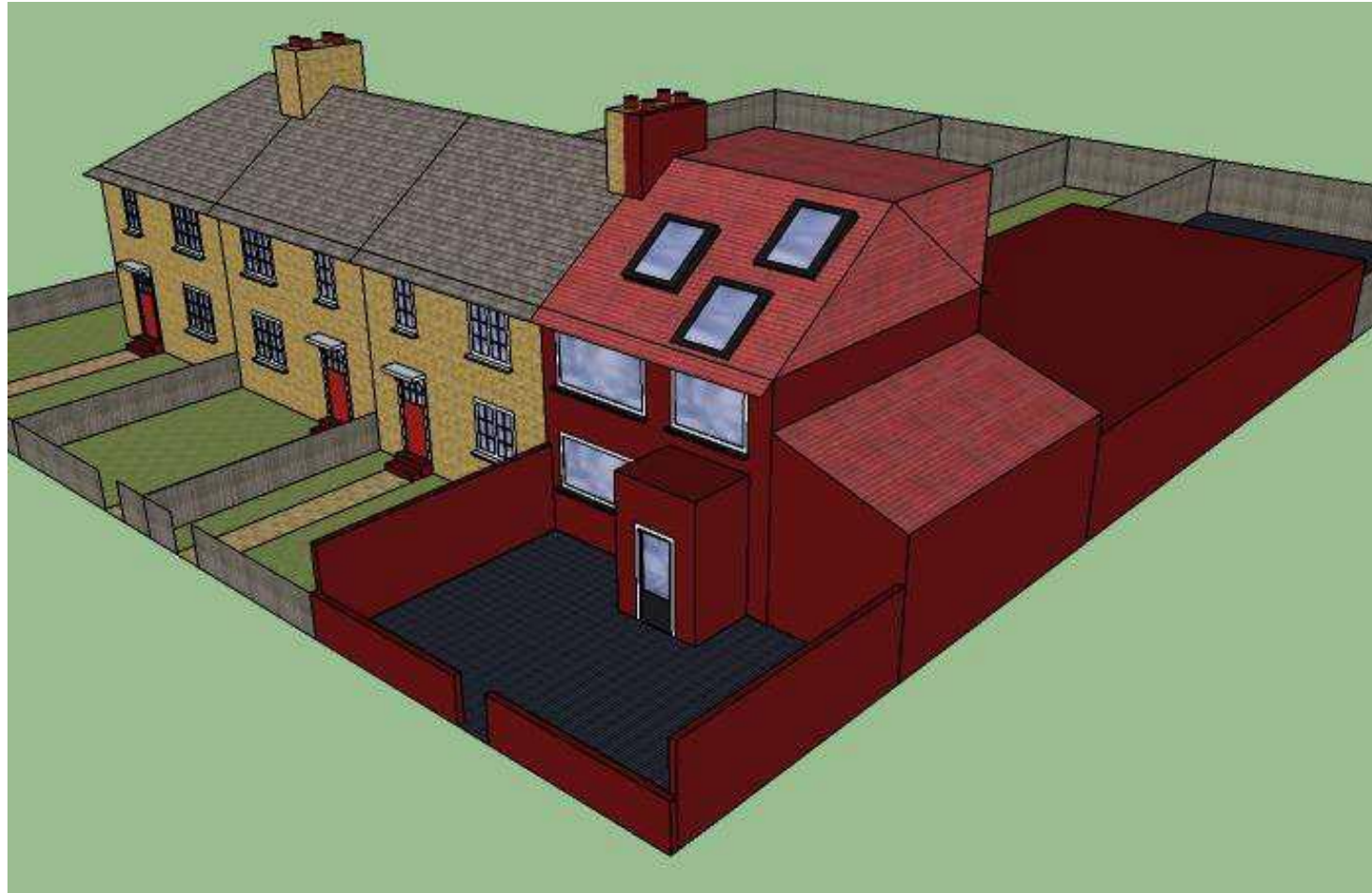


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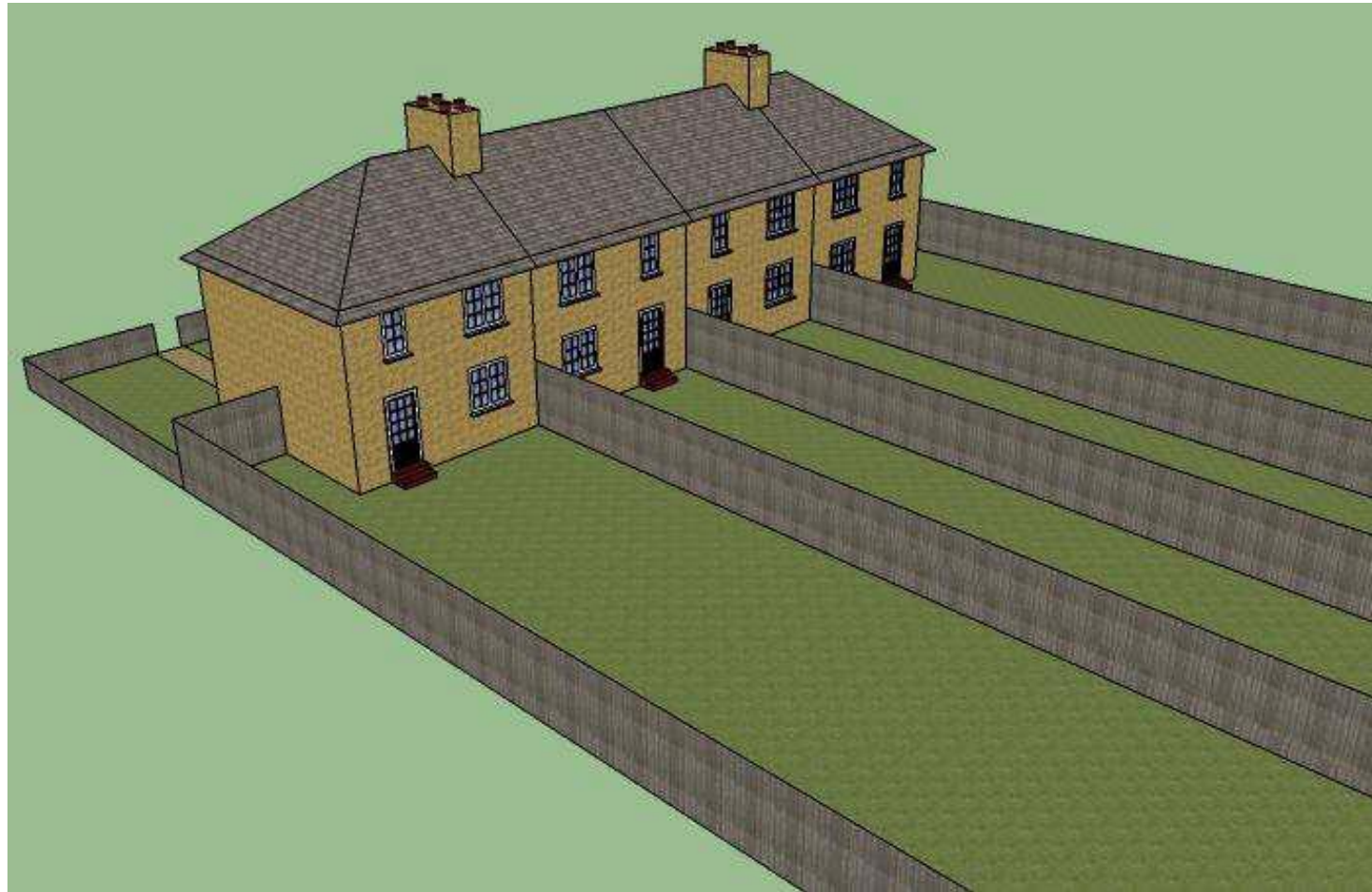


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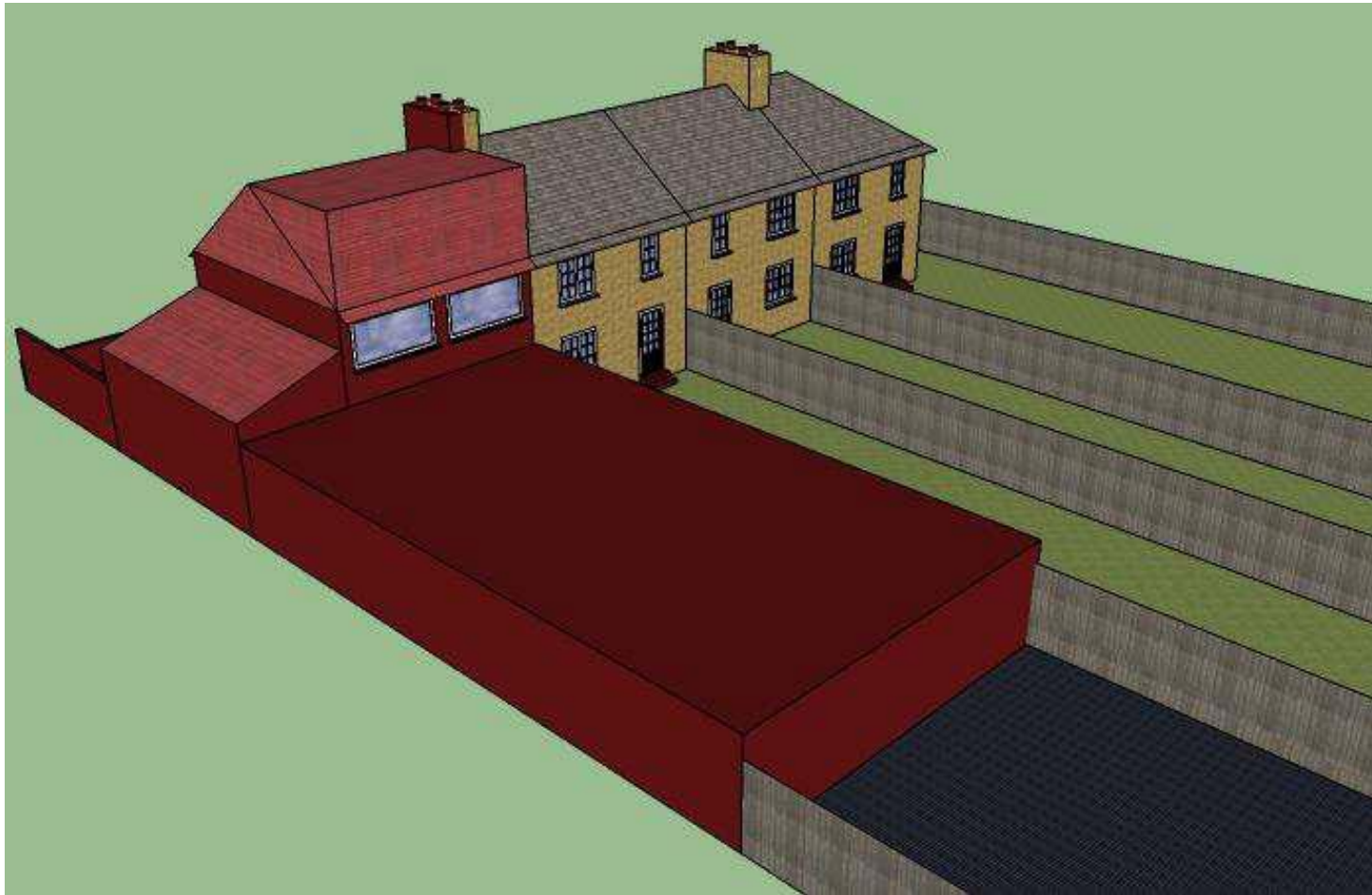


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