



Appeal Decisions

Inquiry Held on 14 and 15 January 2020, 2 November 2021 and 15 March 2022

Site visits made on 15 January 2020 and 2 February 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2022

Appeal A, Ref: APP/T5150/C/18/3209760

13-15 Walm Lane, Willesden Green, London NW2 5SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nihat Algul against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 17 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the removal of two shop fronts and the installation of a new combined single shop front.
- The requirements of the notice are:
 - Step 1 Demolish the new single combined shop front.
 - Step 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Appeal B, Ref: APP/T5150/C/18/3201506

13-15 Walm Lane, Willesden Green, London NW2 5SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nihat Algul against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 23 March 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a first floor rear extension to the rear of No 15 Walm Lane.
- The requirements of the notice are:
 - Step 1 Demolish the first floor rear extension to the rear of No 15 Walm Lane.
 - Step 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld, with a correction and a variation, in the terms set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by the Council. The application is the subject of a separate Decision.

Procedural Matters

2. The Inquiry first opened on the 14 January 2020 and was scheduled to last for two days. It was adjourned at the end of the second day as it had not been possible to hear all the evidence in this time. The Inquiry then resumed on the 2 November 2021 but was adjourned after lunch due to illness. The Inquiry resumed again on the 15 March 2022 and was concluded on that day. I made an accompanied site visit to the premises on the 15 January 2020 and an unaccompanied site visit to the wider area on the 2 February 2022.
3. All the oral evidence to the Inquiry was taken under oath or affirmation.
4. In my opening remarks and subsequently thereafter it was clarified that Appeal A related to the shop front and Appeal B related to the rear extension. In addition, the appellant had added an appeal on ground (g) in respect of both appeals in his Proof of Evidence. The Council raised no objection to this and agreed to address this verbally when their planning witness was on the stand.
5. The appellant withdrew his appeals on grounds (b) and (c) in respect of Appeal A when the Inquiry resumed in November 2021. The appellant also withdrew his arguments on nullity in respect of Appeal A when the Inquiry resumed on the 15 March 2022. Appeal A will therefore proceed on grounds (a), (f) and (g) and Appeal B will proceed on grounds (a) and (g).
6. During the first adjournment, one of the appellant's witnesses¹ withdrew the evidence he had given during the first sitting of the Inquiry. I have therefore proceeded without this evidence.
7. The National Planning Policy Framework (the Framework) current at the time when the enforcement notices were issued was that of 2012. By the time of the opening of the inquiry, this had been revised as the February 2019 publication. By the time of the resumption of the Inquiry the Framework had been revised again in July 2021. The parties were given an opportunity to comment on the changes and I have had regard to any comments made in reaching my decisions.
8. The development plan current at the time the notices were issued was the London Borough of Brent Development Management Policies document, adopted 2016. During the course of this Inquiry the Council adopted a new development plan on the 24 February 2022, known as the Brent Local Plan 2019-2041 (BLP). Policies DMP1 and DMP7 referred to in the notices have now been replaced by Policies DMP1, BD1 and BHC1. The purpose and wording of the new policies reflect the previous policies, as recognised by the parties, and I shall have regard to them in my determination of these appeals.
9. Following the adoption of the new local plan, work will commence on reviewing the Council's supplementary planning documents (SPDs). Until such time, SPD Shopfronts adopted June 2018 remains current and I have had regard to it in determining Appeal A.

Notice B

10. A notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case

¹ Mr T Antoniou

the allegation in respect of Notice B refers to the erection of a first floor rear extension to the rear of No 15 Walm Lane. It appears that the allegation was worded as such as the appellant had received planning permission for a single storey rear extension at the property.² However, the approved single storey extension was not built. In its place is a different extension that is taller within which there is a mezzanine floor.

11. The parties agreed I could correct the notice without causing injustice so that the allegation now reads as "The erection of a rear extension 5.2m high". The requirements in the notice could also be varied to reflect this new description of development. I will proceed on the basis of this new description.
12. At the accompanied site visit I saw that part of the unauthorised extension also extended over a small area of the existing single storey extension to the rear of No 13. However, from the Council's photographs³ this part of the extension appears to have been added after the enforcement notice was issued and as such is not attacked by the notice. The Council confirmed at the Inquiry that this was the case.

Notice A, the ground (a) appeal and the deemed planning application

Main Issue

13. The main issue is the effect of the development on the Willesden Green Conservation Area (WGCA), having regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the WGCA.

Reasons

14. The WGCA is largely centred on the commercial development along Walm Lane, High Road and a section of Willesden Lane, though there is also an element of residential use above the shops and in purpose built flats and houses in the area. In the main, the area covered by the WGCA is a Victorian shopping district serving the adjacent residential area with purpose built shopping parades that were probably developed with the coming of the underground railway. Willesden Green station lies at the eastern end of the WGCA and a detailed history of the area is set out in the unadopted Character Appraisal of the WGCA, prepared by the Council in March 2006.
15. I find that the distinctive character and appearance of the WGCA stems in part from the architectural uniformity of the various shopping parades and the design of the residential mansion blocks and estates included in the WGCA.
16. The appeal site is situated towards the southern end of Walm Lane within a long parade that differs from others in the area in that the shop units project forward from the residential accommodation above. As such, the uniformity of the first and second floors is not so obvious as other parades in the area but there is a clear line of uninterrupted shop fronts below, obvious in long distance views.

² Demolition of existing ground floor rear extension and erection of a single storey extension, and the removal of ducting to rear, change of use from hot food take-away (Class A5) to a restaurant (Class A3), all to No 15 Walm Lane, amalgamation of No 13 and 15 Walm Lane into one single unit, to be used as a restaurant (Class A3), granted 27 October 2017, ref: 17/3210

³ Mr N Wicks combined Proof of Evidence page 29, photographs taken 21 June 2018

17. The uniform appearance of individual shop fronts in the WGCA has altered over the years, especially along Walm Lane, and the quality and design of new shop fronts has changed the character and appearance of the area. Nevertheless, some elements of the original shop fronts remain such as cornices and fascias but with new shop fronts using modern materials inserted below them, which hark back to, or are reminiscent of, Victorian shop fronts.
18. The appellant's shop front has retained a slim cornice, which is marginally higher in height than the original, to separate the commercial use from the residential use above. Although the appellant has merged two units into one, he has maintained the illusion of two units by retaining the entrance door to the flats above in the middle of the shop front. This is flanked by two brick columns. This feature provides a strong visual element of separation. In addition, there are two entrance doors into the premises. Thus, the appearance of uniformly wide shop fronts is preserved.
19. Whilst the name of the premises extends across both shop fronts, it is depicted in individual letters and is positioned at the original fascia height. There are also two separate retractable blinds below it, similar to a traditional shop front feature. They are positioned slightly higher than normal otherwise it would not be possible to open them fully as there is a bus stop shelter outside the premises. The fascia area of the new shop front is also tipped forward towards the street, not unlike a traditional fascia, so that the name of the premises is more prominent. In addition, the height of the glazing is similar to what it would have been originally, that is, in line with the bottom of the corbels. Replacement shop front glazing is nowadays often lower in height to match the non-original lowered ceilings inside the premises.
20. The pilasters also project forward, increasing in the depth of their projection towards the cornice level. This is not a traditional approach to shop front design but they do not interfere with the corbels on the adjacent premises. However, they provide a strong framework to the overall design of the shop front and act as pronounced separation points from the adjacent premises. This maintains one of the prevalent characteristics of Walm Lane, which is the appearance of uniform shop widths. The appellant has also included a shallow stall riser, which is increased in depth by the application of a pattern stuck to the inside of the glazing.
21. Overall, whilst the appearance of the new shop front is modern, especially as it uses brick slips, and metal framing to the glazing, it replicates much of what is considered to be the traditional elements of a Victorian shop front. As such, I find that it preserves the character and appearance of the WGCA.
22. The Council are concerned that the choice of materials and the design of the shop front results in an overly dominant feature. However, notwithstanding that the purpose of a shop front is to draw attention to the services or goods on offer, the appellant's development is no more eye catching than other shop fronts along the road, which make use of bold colour schemes and projecting signs, metal and timber finishes. Indeed, when taken together, they add vibrancy and life to the area. The Council also refer to the removal of the three traditional corbels but I saw that their tops are still visible from Walm Lane, they therefore remain and are covered by the new brick slips.
23. The Council also seek to rely on two previous appeal decisions to support their case. However, one is concerned with the development of roller shutters,

which is not the scheme before me, whereas the other is a scheme for a shop front. The Inspector's conclusions on the latter, although they were made in 2006, were also pertinent to the details of the scheme before him and his assessment of the character and appearance of the area at that time. I have reached my own conclusions on that matter.

24. For all these reasons, it is considered that the development preserves the character and appearance of the WGCAs. As such, it accords with Policies DMP1, BHC1 and BD1 of the BLP. These require new development to complement the locality, sustain the significance of heritage assets and demonstrate a clear understanding of the architectural and historic significance of the WGCAs. It also accords with the checklist set out in section 2.9 of the Shopfronts SPD, which is applicable to the whole borough. The appeal on ground (a) therefore succeeds and the appeals on grounds (f) and (g) do not need to be considered.
25. No relevant conditions have been suggested by the Council in the event of planning permission being granted and since the shop front was substantially complete when the notice was issued, none are necessary.

Notice B, the ground (a) appeal and the deemed planning application

Main Issues

26. The main issues are the effect of the development on (i) the WGCAs, having regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the WGCAs; and (ii) the living conditions of neighbouring occupiers, having regard to light and outlook.

Reasons

Character and appearance

27. The rear of the appeal site is accessed via a lane that runs directly along the rear of Nos 3-35 Walm Lane and opens onto St Paul's Avenue. This service road forms the boundary of the WGCAs and it is just about wide enough for two cars to pass. Views of the rear of the properties facing Walm Lane are largely private and mainly confined to views from the residential properties and gardens in Dean Road, which runs parallel to the service road.
28. It would appear that the rear of the Walm Lane properties originally opened onto gardens but over the years many of these have either been infilled with extensions or hard standings have been laid for off street parking. The extensions vary in size and extent but are largely single storey and are faced in brickwork, though there are a few examples of older taller structures and some which are rendered, as highlighted by the appellant. There are some mature trees remaining from these former gardens and together with trees within the gardens of the Dean Road properties they help to soften the utilitarian character and appearance of the lane and the ad hoc, built form of the various extensions.
29. The appellant's structure is essentially 'two storey', in that internally there is a seating area at ground level and another seating area above it accessed via a staircase at the rear of the restaurant. Internal ceiling heights are low but the upper seating area is lit by two lantern-effect roof lights, which add a sense of spaciousness. The extension occupies the full width and depth of what was

- once an open area to the rear of No 15 used for parking and as a refuse storage area. The extension has a flat roof and externally is finished in render, which at the time of my site visit had not been painted.
30. In my view the size, siting and design of the extension appears incongruous in the lane. This is because the character and appearance of the lane is still largely open at first floor level, especially at the western end of the service road, where there are no original two storey outriggers. The extension appears unduly prominent in this context, especially as the adjoining extension at No 15a is single storey with a flat roof, as is that at No 17a. The taller extension at No 17 is currently the subject of another enforcement notice.
31. Looking at the extension at the appeal site from the west, the rear gardens at Nos 13 and 13a have been infilled with single storey extensions but the rear space at Nos 11 and 9b is open and, other than a tall extension with a pitched roof at No 9, the open aspect of the lane at first floor level remains. This open aspect feature now marks the transition between the commercial area overlooking Walm Lane and the residential area to the rear overlooking the Dean Road gardens and properties. The extension intrudes into and detracts from this feature.
32. The appellant submits that the extension is unfinished and that once it is painted or clad with brick slips it would fit in with its surroundings much better. Even though there is a proposal to add to the external appearance of the extension, this would not reduce the harm caused by the development due to its size, height and position and I attach substantial weight to the requirements of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of CAs and makes no distinction between areas considered by some to be less significant in a CA than others.
33. For the reasons given, it is considered that the design of the extension neither preserves nor enhances the character or appearance of the WGCA and therefore results in harm. As such, it does not accord with Policies DMP1, BHC1 and BD1 of the BLP.
34. Although the harm to the WGCA is less than the 'substantial harm' referred to in paragraph 201 of the Framework, it nevertheless weighs significantly against the development. Paragraph 202 of the Framework requires the harm in such instances to be weighed against any public benefits of the proposal.
35. The appellant submits that the extension provides a much-valued, informal community space that adds to the vitality and viability of the commercial area and which requires five additional full-time staff to function. However, circumstances could change in the future, new owners of the premises could run it in a different way and for the reasons already given, I consider that this would be an insufficient public benefit to outweigh the harm I have found to the character and appearance of the WGCA. Accordingly, the development is at odds with the advice in paragraph 202.

Living conditions

36. There are flats at first floor level and above at No 15 Walm Lane with direct outlook across a small flat roof area of a single storey rear extension adjacent to the extension the subject of this appeal. There are also two windows of

residential accommodation within the flank wall of the first floor extension at No 15a with a less direct outlook onto the appellant's extension.

37. The Council are concerned that the height and position of the extension results in a loss of light and outlook to neighbours and objections have been raised by some of the occupiers regarding the loss of outlook.
38. At the site visit I was able to see that the outlook from some of the properties in Dean Road has been diminished as a result of the extension. However, intervening trees and the distance between the extension and the windows serving primary living accommodation in Dean Road means that whilst there is harm, it is limited.
39. This is not the case in respect of the flats at Nos 15 and 15a. Here the outlook and, to a lesser extent light, has been seriously reduced. The occupiers either look straight onto a blank wall about 4m from their windows or have their outlook significantly reduced by the proximity and position of the extension. Whilst there is possibly a glimpse of sky above the extension from the windows and the outlook to the west remains open, the effect of the extension is that it results in unacceptable harm to the living conditions of the occupiers.
40. The appellant submits that there are other first floor extensions along the lane that result in a greater reduction in outlook to nearby occupiers than the appeal site, where it is not accepted that there has been a reduction, due to the distance between the extension and the windows. However, I do not have full details of the circumstances that led to these other developments being built and so cannot be sure that they represent a direct parallel to the appeal extension.
41. The Council state that many were built without planning permission and are now lawful due to the passage of time. In any event, those that I saw served to confirm that, in the main, such extensions do reduce the outlook from residential properties. In addition, the previous outlook across the yard may have been poor due to the unkempt nature of the yard, as submitted by the appellant, but in my view, the outlook was, nevertheless, an open outlook. Any sense of privacy created by the new extension, as suggested by the appellant, is no compensation for the loss of light and outlook.
42. For these reasons it is concluded that the extension results in harm to the living conditions of nearby occupiers, having regard to light and outlook. The development therefore does not accord with Policy DMP1 of the BLP, which states new development will only be acceptable if it provides high levels of internal and external amenity. The appeal on ground (a) therefore fails in respect of the extension.

Notice B, the ground (g) appeal

43. This ground is that the time given to comply with the requirements of the notice is too short. The appellant requires a year, not three months, to prevent the business from closing while the work is carried out, which may also entail the submission of a new planning application.
44. In cases involving business uses it is necessary to weigh the interests of the business against the harm caused by the development the subject of the notice. On the one hand, the appellant has calculated that he would need a year to organise the works to avoid closing the restaurant and losing income.

On the other, the notice includes a number of reasons setting out the harm caused by the development. These include serious harm to living conditions.

45. I consider a year would be a disproportionately long time to comply with the notice but an increase to six months would be reasonable. This would enable the appellant to comply with the requirements of the notice, which is the purpose of the compliance period and would strike the appropriate balance between these competing needs. To this limited extent the appeal on ground (g) succeeds.

Conclusions

Appeal A

46. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Appeal B

47. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeal A

48. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the removal of two shop fronts and the installation of a new combined single shop front on land at 13-15 Walm Lane, Willesden Green, London NW2 5SJ referred to in the notice.

Appeal B

49. It is directed that the enforcement notice be corrected by the deletion of words in the allegation and the substitution of the words 'Without planning permission, the erection of a rear extension 5.2m high' and varied by (i) the deletion of the words in Step 1 of the requirements and the substitution of the words 'Demolish the rear extension 5.2m high' and (ii) the deletion of 'three months' and the replacement with 'six months' in Schedule 5 of the notice. Subject to these corrections and variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Fleming

INSPECTOR

APPEARANCES 14 January 2020

FOR THE APPELLANT:

Mr R Dunwell	Consultant engineer, instructed by the appellant
He called:	
Mr T Antoniou MBE	Local business man and Chairman of Willesden Traders' Association
Mr M Algul	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Wicks	Director of Enforcement Services Ltd, instructed by the Council
He called:	
Mr N Wicks BTP PGDip Law MRTPI	Director of Enforcement Services Ltd

INTERESTED PERSONS:

Mr D De Groot	Local resident
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Documents submitted 14 January 2020:

1. Copy of Mr Dunwell's Opening and appeal decision ref: APP/G1630/C/15/3133109
2. Appendix 3 to Council's first costs application
3. Appellant's written questions and answers to Mr Antoniou read aloud by appellant's advocate and Mr Antoniou
4. List of suggested conditions
5. Policy BD1 from emerging local plan
6. Chapter 12 of the National Planning Policy Framework 2019
7. Council's Appeal A Statement of Case before the appeals were conjoined
8. Council's Appeal B Statement of Case before the appeals were conjoined
9. Appellant's reference system for his appendices

APPEARANCES 2 November 2021

FOR THE APPELLANT:

Mr H Leithead	Of Counsel, instructed by Pattersons Commercial Law
Mr P Shelcott	Solicitor, Pattersons Commercial Law
Mr N Algul	Appellant
Mr M Algul	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Wicks	Director or Enforcement Services Ltd, instructed by the Council
He called:	
Mr N Wicks BTP PGDip Law MRTPI	Director of Enforcement Services Ltd

INTERESTED PERSONS:

Mr R Dunwell	Former agent
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APPEARANCES 15 March 2022

FOR THE APPELLANT:

Mr H Leithead	Of Counsel, instructed by Pattersons Commercial Law
Mr P Shelcott	Solicitor, Pattersons Commercial Law
Mr N Algul	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Wicks	Director or Enforcement Services Ltd, instructed by the Council
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Documents submitted 15 March 2022

1. Copies of Policies BD1 and BHC1 from the Brent Local Plan 2019-2041
2. Appendix 4 to Council's first costs application