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## Appeal Decision

Site visit made on 12 January 2023

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

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**Appeal Ref: APP/T5150/C/22/3293857**

**Oriental Chef, 410 Ealing Road, WEMBLEY, Middlesex , HA0 1JQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Thambiah Anandavathanan against an enforcement notice issued by the Council of the London Borough of Brent.
  - The notice, numbered E/21/0096, was issued on 19 January 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the installation of a new shop front, including external alterations to create access to the flat above the shop at the premises AND without planning permission, the installation of two air-conditioning units and flue extractor system to the rear of the premises ("the unauthorised development").
  - The requirements of the notice are to: (1) Remove the new shop front, including the creation of the access to the upper floors at the premises, (2) Remove the two air-conditioning units from the rear of the premises, (3) Remove the extractor duct system from the rear of the premises, (4) remove all items, debris and materials, arising from that removal works, and remove all materials associated with the unauthorised development and change of use of the premises, and reinstate the land back to its original condition before the unauthorised works took place.
  - The period for compliance with the requirements is: six months after the notice takes effect.
  - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
  - **Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**
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### Preliminary Matters

1. Since the enforcement notice was issued, the Council have formally adopted the London Borough of Brent Local Plan 2019-2041 (the LP) in February 2022. The Council advise that it supersedes the London Borough of Brent Development Management Policies document (2016). Given that the enforcement notice referred to the draft policies of the LP, and these are not substantially different to the policies within the newly adopted LP, it has not been necessary to revert to the parties on the application of those policies on the appeal scheme as they have already had the opportunity to comment upon them. I have therefore had regard to the policies of the LP in my determination of this appeal.
2. I was unable to gain access inside the premises at the time of my site visit. However, I was able to view part of the unauthorised development from public vantage points. My reasoning is based upon these publicly available views and the submitted photographic evidence. Whilst I was unable to see the unauthorised air conditioning units in these public views, given my findings below that there is adverse harm caused to character and appearance by

reason of the unauthorised extraction flue, I consider that it is not necessary to return to the premises for a further visit. Even in the event that the unauthorised air conditioning units have a neutral effect on character and appearance, this would not outweigh the harm I have identified as arising from the unauthorised extraction flue nor alter the outcome of this appeal.

### **The Notice**

3. It is the Council's case that the creation of a secondary door from street level to the first floor of the appeal building could facilitate the use of the upper floor as a separate unit of residential accommodation. A use of this nature is stated by the Council to require planning permission.
4. The enforcement notice requires, in part, at step 4, "remove all materials associated with the unauthorised development **and change of use of the premises**" (my emphasis). However, the enforcement notice concerns unauthorised operational development. It does not allege a change of use to the upper floor of the appeal building and no evidence of such a change of use having been commenced at the property has been presented as part of this appeal.
5. Consequently, whilst no ground (f) challenge has been advanced by the appellant, the aforementioned step is excessive in terms of its requirements as it goes beyond what is necessary to remedy the breach.
6. Therefore, I shall vary step 4 in the terms set out in the Formal Decision.

### **The appeal on ground (a)**

7. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issues are the effect of the unauthorised operational development on:-
  - i) the character and appearance of the host building, terrace and surrounding area; and
  - ii) the living conditions of occupants of neighbouring properties having particular regard to noise and disturbance.

### **Reasons**

#### *Character and appearance*

8. The appeal premises is a two-storey property situated within a short terraced row with a parade of shopfronts at ground floor level. Notwithstanding there being a mix of signage and window displays, the neighbouring shopfronts mainly include a traditional design comprising high stall risers and large areas of glazing divided by mullions and transoms. The premises each include a single door integrated within the shopfront design and upper floor windows are simple and include horizontal glazing bars. Overall, these features achieve a cohesive and uniform design that makes a positive contribution to the pleasant character and appearance of the host building, terrace and wider area.
9. In contrast, the unauthorised development at the appeal property includes a stall riser of limited height and an uncharacteristically large and almost full height single pane of glazing that is undivided and includes a glazed door

providing access to the ground floor premises. As a result, it has a contemporary appearance that is at odds with the host property and the surrounding shopfronts. The inclusion of a separate metal door to provide access from street level to the first floor of the property adds to the incongruity of the design and its prominence within the streetscene.

10. The Council's adopted Shopfronts Supplementary Planning Document (2018)(SPD3) explains that large expanses of undivided glass are usually inappropriate for shopfronts. It seeks to achieve some vertical and horizontal subdivision of glazing and notes that secondary doors should form an integral part of the design. In these respects, the appeal scheme fails to accord with the guidance of SPD3 and I find that the shopfront by reason of its glazed design with a lack of a stall riser of adequate height, excessively large glass fascia with an absence of any division and the inclusion of a secondary metal door appear as an inharmonious addition that detracts from the quality of the host building and the terrace thus materially detracting from the character and appearance of the wider area.
11. Notwithstanding the position of the unauthorised extractor flue to the rear of the building, the upper floors of the rear of the terrace together with the unauthorised development are readily visible in public views from the highway of Burns Road on approach towards the junction with Ealing Road. By reason of its considerable height, width and bulky curved head that sits well above the eaves of the building, the unauthorised flue is read as an incongruous and jarring addition to the host building when set against the rear of the terrace which is predominantly residential in character with limited visual clutter.
12. Overall, I conclude that the appeal scheme is contrary to the guidance set out within SPD3 and it conflicts with LP Policies BD1 and BE7 insofar as these policies require development to be of a high quality design that makes a positive contribution to providing an attractive environment.

#### *Living conditions*

13. An unauthorised extraction flue has been installed to the rear of the building, emerging through the flat roof of a single storey rear extension and rising to above the eaves level albeit lower than the ridge. It is positioned in close proximity to an upper window within the appeal building and several other windows nearby. Notwithstanding the Council's view that the upper floor of the appeal premises has been altered to facilitate a residential use, there is no evidence before me to suggest that such a use has commenced. Nor is there any information regarding the use of other upper floors of properties within the terrace.
14. Nevertheless, based upon my observations, I noted the proximity of dwellings along Burns Road, with the nearest property, 14 Burns Road, together with its modestly sized rear garden area being positioned only a short distance away from the unauthorised development.
15. There is no technical acoustic evidence to show that the level of sound omitted from the totality of the unauthorised equipment would be of a satisfactory level that would not unduly harm the living conditions of nearby occupiers. The submitted photographic evidence of a label pertaining to an air conditioning unit does not provide a clear indication of the appropriateness of such an

installation in close proximity to neighbouring residential use, particularly given the complaints of noise nuisance that the Council indicates it has received.

16. On the basis of the submitted evidence, the appeal scheme fails to demonstrate that the unauthorised development would not result in a level of noise and disturbance that materially compromises the living conditions of neighbouring occupiers. A precautionary approach is therefore appropriate in this instance. The appeal scheme therefore conflicts with LP Policy DMP1 insofar as it requires development to be located to provide a high level of amenity and not to unacceptably increase exposure to noise. In addition, it would be contrary to the aims of the Framework insofar as it seeks to create places with a high standard of amenity for existing and future users.

#### Other Matters

17. Reference is made to the manner in which the appellant's agent handled the application for planning permission and failed to submit documentation, a lack of knowledge regarding the planning application process, conformity with standards of building control services and the adversity caused to the business as a consequence of the Covid-19 pandemic. I have had regard to these matters, however, they do not alter my findings above, nor do they provide adequate justification for a development that is unacceptable in planning terms.
18. My attention has also been drawn to the LED lighting system being removed from signage associated with the shop front. However, as this does not form part of the allegation before me, nor does it form part of the deemed planning application, it is not a matter I need to have regard to as part of this appeal.

#### Conclusion

19. I have concluded that the unauthorised development causes unacceptable harm to the character and appearance of the host building, terrace and surrounding area and it fails to safeguard the living conditions of neighbouring occupiers. The appeal scheme conflicts with the development plan and I find there are no material considerations of sufficient weight, either individually or cumulatively, that justify a decision other than in accordance with the development plan.
20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variation specified below and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

#### Formal Decision

21. It is directed that the enforcement notice is varied in Schedule 4 by:
- The deletion of the words "and change of use of the premises" in Step 4.
22. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

*E Brownless* - INSPECTOR