



Appeal Decisions

Site visit made on 14 January 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal A Ref: APP/T5150/W/23/3321351 791 Harrow Road, Brent, Wembley HA0 2LP

- 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 Mr H Finavia against the decision of the Council of the London Borough of Brent.
 - The application Ref 23/0363, dated 2 February 2023, was refused by notice dated 6 April 2023.
 - The development proposed is described as: "Retrospective planning permission for part change of use of post office to hot food takeaway, erection of timber and metal enclosed seating area and canopy to front of premises, proposed internal alterations to expand food preparation area."
-

Appeal B Ref: APP/T5150/C/23/3321352 791 Harrow Road, Wembley HA0 2LP

- 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 Himanshu Finaviya against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 27 March 2023.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the premises from a post office to a post office/shop and hot food takeaway use ("the unauthorised change of use") AND
Without planning permission, the erection of a canopy and a timber/metal enclosed seating/eating area to the front of the premises ("the unauthorised development").
 - The requirements of the notice are:
STEP 1 Permanently cease the unauthorised use of the premises as a hot food takeaway use.
STEP 2 Remove the new canopy and timber/metal enclosed seating/eating area to the front of the premises.
STEP 3 Permanently remove all items, debris, and materials, arising from the removal works stated in STEP 2, and remove all paraphernalia associated with the unauthorised use and development from the premises.
STEP 4 Reinstate the premises back to its condition that existed prior to the unauthorised change of use and development took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decisions

1. **Appeal A:** The appeal is dismissed.
2. **Appeal B:** The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

3. For Appeal A, the description of the development differs between the application form and the Council's decision notice. The appellant's statement uses the same description as the Council's decision notice. I have therefore determined this appeal on this basis and applied the same description in the banner heading above.

Appeal A: Main Issues

4. The main issues are:
 - whether the development is acceptable, having regard to the level of takeaways within the Sudbury Town Centre (STC), and its effect on the retail function of the STC;
 - the effect of the development on the character and appearance of the host building and area;
 - the effect of the development on highway safety in relation to safe pedestrian flows;
 - the effect of the development on the living conditions for the neighbouring occupiers on Harrow Road with particular regard to cooking odours, noise, and disturbance.
 - the effect the development on highway safety in relation to the availability of on-street parking facilities; and .
 - whether the development provides suitable fire safety for all building users.

Reasons

The level of takeaways within the STC, and its effect on the retail function of the STC

5. Part c) of Policy BE5 of the Brent Local Plan 2019-2041 (LP) states that takeaways will be approved (in town centres) except where they would result in more than 6% of the units within a town centre frontage being takeaways. The text supporting Policy BE5 states the need to prevent an over concentration of takeaways is supported by national and regional policy as well as a growing evidence base. This is due both to health implications and to preserve the primary retail function of Brent's town centres. While it is acknowledged that takeaways provide a convenience service to local communities, the retail-based role of town centres must be preserved and so an upper limit of 6% of units in a centre's frontage being takeaways has been set. This is also supported by policy TCU 1 of Sudbury Town Neighbourhood Plan, 2015 (NP).
6. The appeal site relates to the ground floor shop/post office of a two-storey property, located within a Secondary Shopping Frontage within the STC. This appeal seeks permission for part change of use of post office/shop to a hot food

takeaway, together with proposed internal alterations to expand food preparation area for the takeaway.

7. There are already 10 takeaway units within the STC and therefore the percentage of takeaways is already over the 6% limit, which has not been disputed by the appellant. As highlighted within Policy TCU1 of the NP, since the 6% threshold is exceeded the principle of this change of use is not acceptable. I appreciate that the post office/shop remains open. Nevertheless, the development results in a reduction of retail floor space STC, and there remains a conflict of policy with the over-concentration of takeaway uses within the STC.
8. I therefore conclude on the first main issue that the development results in an overconcentration of takeaways within the STC, to detriment of the retail function of the STC, contrary to Policy BE5 of the LP and Policy TCU 1 of the NP, which seeks the aforementioned aims.

Character and appearance

9. The appeal site is an end of terraced traditional property which forms part of a terrace of similar two storey properties characterised by commercial uses on the ground floor.
10. Brent's Shopfront SPD3 Supplementary Planning Document (Shopfront SPD) highlights the importance of shop fronts in so far as they play a key role in establishing and defining the character of Brent's town centres and neighbourhood shopping parades. The proposed design should relate in scale, proportion and architectural style to the host building and the wider streetscene. The Design should also incorporate high quality materials with all signage kept to a minimum, to avoid a cluttered appearance.
11. The current unauthorised works which include the timber and metal enclosed seating area together with a black metal canopy with Perspex panelling, is at odds with the more traditional host building and the terrace. Furthermore, I observed that the enclosed timber fencing was largely covered in advertisement panels resulting in further visual clutter, in contrast with other shop fronts in the terrace which maintain more open forecourts. Owing to its poor-quality design, materials and prominent position to the front of the building, the development represents a visually discordant and incongruous feature within the street scene.
12. I note that there are a number of canopies in the vicinity of the appeal site. However, the presence of these does not justify the harm identified above. In addition, staining the timber or lowering its height to 1m would not overcome the harm since it is its poor design and prominent forward position, covering a significant part of the forecourt which is particularly discordant.
13. I appreciate that there are benches and planters outside at the Swan public house. However, the Swan Public House, relates to a large detached public house building and not a terraced property. Furthermore, the Swan public house is set back further from the pavement edge than the appeal building and has a deeper forecourt. The planters are also lower in height than the timber fencing at the appeal site, and there is also no fixed canopy at the Swan. As such the outside seating area at the public house is not directly comparable to the appeal development before me.

14. With regard to the fixed canopy and railings at 763-765 Harrow Road, this also relates to a larger detached building rather than a terraced property, and is located on a section of the Road, with a wider pavement. Furthermore, that development was approved in 2008. Therefore, that development pre-dated the current LP and NP and the Shopfront SPD and would not have been assessed against the same policies and guidance. As such, the examples referred to are not directly comparable to the appeal scheme before me and do not lend support for the current development.
15. I therefore conclude that the development harms the character and appearance of the host building and the area, contrary to Policies BD1, BE7, DMP1 of the LP. Amongst other things, these require shopfronts and development to be of the highest architectural and urban design quality complementing the building and adjoining properties.

Highway safety in relation to safe pedestrian flows

16. The Shopfront SPD highlights that forecourt trading and seating can enliven streets and is generally encouraged but will be permitted where it does not cause an obstruction to pedestrians. To prevent conflict, forecourts should be clearly delineated from the main pavement, allowing sufficient space for the free flow of pedestrians. This will require a clearance of 3m for primary pedestrian routes, where there is heavy footfall (town centres, busy shopping areas and public transport nodes). The above clearance should be free of any obstructions, including lamp posts and street furniture.
17. Owing to the presence of street furniture, the pavement width outside the site cannot achieve the minimum 3m clearance required above. Nevertheless, the enclosed seating area is fully contained within the appellant's forecourt and in line with the existing post box on the forecourt. In this respect the enclosed timber seating area has not resulted in any demonstrable reduction in the footway width or caused an obstruction to pedestrian flows.
18. However, Figure 5 of the Shopfront SPD requires that all canopies should provide a clear headroom clearance of 2.4m. Contrary to the above guidance, the canopy does not meet this minimum requirement.
19. As such, the canopy results in harm to highway safety in relation to safe pedestrian flows, contrary to policies DMP1 of the Brent Local Plan. Amongst other things this requires that all development to be satisfactory in terms of means of access for all and does not have an adverse impact on the movement network.

The living conditions for the neighbouring occupiers on Harrow Road with particular regard to cooking odours, noise, and disturbance

20. The appeal site is in a town centre location, next to the Swan public house. Nevertheless, there are residential flats on the upper floors of Harrow Road, above the takeaway use and therefore there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use of a commercial site.
21. The appeal takeaway serves hot food, including a predominantly egg-based menu including curry dishes. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise and odour caused by cooking inside the premises and noise and general

- disturbance caused by customers and delivery vehicles (scooters) outside the premises, particularly when these take place into the evening and night.
22. A domestic fan is currently in operation within the cooking area, although no further detailed evidence has been submitted regarding this. Extraction flues have the potential to affect the living conditions of neighbouring occupiers by way of vibrations, noise, fumes, and odour.
23. No noise assessment, noise mitigation measures, or details of odour abatement technologies or anti-vibrations devices have been submitted with this appeal to demonstrate that neighbouring residential occupiers of the site would not be affected by this new unauthorised use. Given the close proximity of neighbouring residents to the existing takeaway use, and in the absence of any strong evidence, I am not satisfied that such an important matter could be left to a condition.
24. As mentioned above, the development includes an outdoor seating area at the front of the property, with a canopy above, which allows this area to be used throughout the year by customers of the takeaway, including during inclement weather. The premises is open until 22:00 Mondays to Sundays, and therefore the use occurs during the day and until late in the evenings and weekends, when neighbouring residential occupiers should reasonably expect a quieter living environment. Noise generated from within the outdoor seating area, late in the evening, when background noise levels are typically lower, are likely to be more intrusive and consequentially more harmful.
25. Noise associated with a takeaway use includes comings and goings, delivery vehicles arriving by scooters to collect orders and customers conversing whilst eating and drinking outside within the seating area. Indeed, objections have been received from neighbouring occupiers stating that customers and delivery drivers are causing noise and general nuisance issues, including the parking of scooters close to the neighbouring residential entrances. Noise from the takeaway use and the outside seating area is expected to be particularly harmful during summer months when neighbouring residential occupiers are likely to have windows open for ventilation.
26. Limiting the opening hours for the outside seating area until 21:00 would still enable the outside area to continue well past a time when residents could reasonably expect a lack of any such disturbance. Therefore, I do not consider this would adequately mitigate the harm identified above.
27. For the above reasons, and in the absence of further clear evidence, I conclude that the development harms the living conditions for neighbouring occupiers on Harrow Road with regard to cooking odours, noise, and disturbance, in conflict with policies DMP1 of the LP. Amongst other things states that development will be acceptable provided it is: a) of a location, use, concentration, siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality; g) not unacceptably increasing exposure to flood risk, noise, dust, contamination, smells, waste, light, other forms of pollution and general disturbance.

Highway safety in relation to the availability of on-street parking facilities

28. The site is situated within the STC and is situated on a London Distributor Road and a bus route, in an area with good public transport accessibility (PTAL 4).

The site benefits from a number of local bus routes and Sudbury and Harrow Road Station (Chiltern line) and Sudbury Town Station (Piccadilly line) are both within walking distance. As such, most visitors to the takeaway use would be expected to arrive by foot or public transport.

29. The site is located on a section of the road between a zebra crossing and a roundabout where there is no available on-street parking. The Council's Transport Planning Team consider that these restrictions may not necessarily deter drivers from parking unlawfully outside the premises to collect food quickly which could cause highway safety issues. In particular, the Council raised an objection that parking across the vehicular access to the Swan public house or on the zig zag lines or double yellow lines, close to the entrance to the roundabout would be particularly dangerous as this would restrict the carriageway and result in manoeuvres that other drivers would not be expecting.
30. A report compiled by the Council's parking enforcement shows contraventions of parking restrictions in the local area. Nevertheless, this does not demonstrate that it was the appeal development that was the cause of these contraventions. Furthermore, the report demonstrates that there are relatively few penalty charge notices issued in the local area and there is little clear evidence to demonstrate that the area is suffering from high parking stress. I also observed that on-street parking spaces are available nearby within the town centre for customers.
31. As such, I do not consider that the development has a harmful effect on highway safety in relation to the availability of on-street parking facilities. Therefore, the development complies with policies DMP1, BE5 and BT2 of the LP. Amongst other things these state that development will be supported where it does not add to on-street parking demand where on-street parking spaces cannot meet existing demand such as on heavily parked streets, or otherwise harm existing on street parking conditions and that takeaways will be approved except where they would result in on-street parking in front of the premises creating highway safety problems.

Fire safety

32. Policy D12a of the London Plan, 2021 (London Plan) requires that all development proposals provide the highest standards of fire safety and identify suitably positioned unobstructed outside space for fire appliances to be positioned on and as an evacuation assembly point. Fire appliances could be positioned on the highway to the front of the premises, and the pavement is wide enough outside the premises for an evacuation assembly point.
33. Policy D12 also requires development to be designed to incorporate appropriate features which reduce the risk to life and the risk of serious injury in the event of a fire; including appropriate fire alarm systems and passive and active fire safety measures to minimise the risk of fire spread. The appellant states that this could be addressed by the installation of smoke alarms, fire blankets, fire extinguishers and that fire doors could be installed which will remain closed. He also states that a robust strategy will be introduced providing more than one escape route.
34. However, contrary to the above, when asked to demonstrate where the smoke alarms were, the appellant was unable to show a working smoke alarm in the

kitchen where hot food is cooked. In addition, no fire doors were installed in the kitchen. Whilst I saw fire extinguishers within the kitchen no fire blankets were available within the premises, and when asked where the escape routes were, only the front entrance doors to the shop was shown, which is not more than one escape route. The lack of appropriate fire safety mitigation measures is unacceptable, and the above measures are the minimum requirements for any establishment where hot food is cooked on site for sale to the public. The risk is even greater given that there are residential properties located directly above.

35. The takeaway has been in operation for some time and therefore it is necessary to demonstrate that the development already incorporates such measures rather than these being aspirational. Indeed, the retrospective planning application for the development was submitted in February 2023. It follows that I am not satisfied that such details should be left to condition to secure.
36. Therefore, the development fails to provide suitable fire safety for all building users, contrary to Policy D12 of the London Plan which seeks the aforementioned aims.

Other matters

37. Under the ground (f) appeal the appellant suggests that if permission is not considered acceptable that a split decision is issued for the takeaway use only without the outside seating area and canopy. However, I have found above that the unauthorised use, results in an over concentration of takeaways in the STC, to the detriment of the retail function of the STC; harms the living conditions for neighbouring occupiers on Harrow Road with regard to cooking odours, noise, and disturbance; and fails to provide suitable fire safety for all building users. As such, the split decision suggested would not overcome all the harms raised above. Nor do I consider that conditions would satisfactorily overcome the harms raised.

Conclusion on Appeal A

38. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. For all the reasons outlined above, the development conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits to the appellant's business, outweighs the harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
39. For the reasons given and with regard to all other matters raised, I conclude that Appeal A should fail.

Appeal B: The appeal on Ground (f)

40. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

41. The enforcement notice requires the hot food takeaway use to cease, the removal of the canopy and seating area to the front of the property and the reinstatement of the premises to its condition before the unauthorised development took place. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
42. The appellant considers this excessive and states that the notice could be varied to allow the hot food takeaway use to continue without the outdoor seating area and canopy, and also states that additional information could be submitted relating to an extraction system to ensure efficient removal of odours from the use.
43. However, I have already found under appeal A above, that the takeaway use itself is not acceptable for a number of reasons, and the removal of only the outdoor seating area and canopy and further information of an extraction system would not overcome all the harms identified or remedy the breach. I also note that the appellant *states "the appellant acknowledges that the works necessary to comply with the notice are not excessive¹."*
44. There are no other lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice. On this basis, the Ground (f) appeal fails.

Appeal B: The appeal on Ground (g)

45. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant considers that current compliance period is unreasonably short and asks that the time for compliance is extended from 3 to 6 months in order to relocate the business to a new premises and to ensure the appellant is not placed in financial hardship,
46. I have found under Appeal A, that the development results in a number of harms. As such, the 6 months requested is disproportionately excessive to complete the requirements of the notice. There would not be any complex building operations required to dismantle the outside seating area or cease the use as a takeaway. I conclude that 3 months would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Conclusions

47. **Appeal A:** For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.
48. **Appeal B:** For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR

¹ Paragraph 7.4 of the appellant's enforcement appeal statement.