



Appeal Decision

Site visit made on 5 April 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 APRIL 2025

Appeal Ref: APP/T5150/C/23/3321618

Unit 1A Plaza Parade, Ealing Road, Wembley, HA0 4YA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Shukra Fruit and Vegetable against an enforcement notice issued by the Council of the London Borough of Brent.
 - The 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 pavement/front courtyard/former raised landscaped area outside of 1A Plaza Parade to a sales display/storage area used for retail purposes and, without planning permission, the installation of a new shop front with retractable canopies/awnings and orange/red metal bar to front boundary wall's inner side of tree/flower bed.
 - The requirements of the notice are to 1) remove the new shop front including the removal of the retractable canopies/awnings and remove all items, debris and materials associated with the unauthorised development from the premises and restore the façade of the premises to the condition before the unauthorised development took place as shown in the Google street view imaged attached; 2) cease the use of the pavement/front courtyard/former raised landscaped area outside of 1A Plaza Parade as a sales display/storage area and cease its use for retail purposes. Remove all vegetable and fruit displays from the area hatched in black as shown in Plan A, which is located outside the footprint on the building known as 1A Plaza Parade; and 3) remove the orange/red metal bar from the former landscaped raised bed, restore the tree-flower bed by removing concrete and planting shrubs and grass ensuring that the vegetation used match those shown on the attached Google street images attached.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2) (a), (f), (g) of the Town and Country Planning Act 1990 (as amended). 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words *"Remove the orange/red metal bar from the former landscaped raised bed, restore the tree/flower bed by removing concrete and planting shrubs and grass ensuring that the vegetation used match those shown on the attached Google street view images attached"* in step 3 of schedule 4, and their substitution with the words *"Remove the orange/red metal bar from the former landscaped raised bed"*. 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 1990 Act as amended.

Preliminary Matters

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of the consideration of the ground (a) appeal main issues below. Therefore, it has not been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

Ground (a) appeal and the deemed planning application

3. An appeal is made on ground (a) of section 174(2) of the Act which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issues are the effect of the development on (i) the character and appearance of the area, and (ii), the safe and convenient movement of all people.

Character and appearance

4. The appeal property falls within a ground floor terrace of several shops. There are apartments to the upper floors of the building. In the main, the architectural details of the shop fronts can be seen by passers-by and there is a noticeable absence of canopies or awnings. Moreover, the pavement/forecourts to each of the shop fronts are noticeably absent of street clutter or goods advertised for sale. This ensures that there is a pleasing order and design symmetry to the pattern of development in this area when experienced from both Ealing Road and Montrose Crescent.
5. In the context of the above, the shop front alterations, including the canopies/awnings, have the effect of unacceptably concealing the pre-existing architectural detailing associated with the appeal property. The canopies and awnings are appreciated as being dominant and discordant additions when considered alongside the rest of the building and the overall visual context of the immediate area. Moreover, the outside sales area departs unacceptably from the otherwise open forecourt/pavement character to the front of shops in this area. In my judgement, the photographic evidence illustrates that material harm has been caused to the prevailing character and appearance of the area in this regard.
6. Use of the space to the front of the appeal property has had the effect of breaking up what is otherwise a relatively consistent building line. I find that the canopies/awnings appear excessive and prominent when viewed by passers-by and cause harm to the otherwise design cohesiveness of the building. In reaching this view, I am mindful of the Council's efforts to try to retain elements of good design in the immediate area. This includes issuing an enforcement notice (March 2021), which has taken effect, for similar development at the neighbouring property of 2 Plaza Parade.
7. For the reasons outlined above, I conclude that the development does not accord with the requirements of policy BE7 of Brent's Local Plan 2021 (LP) which states that '*proposals for shop fronts and forecourts will be required to retain shop fronts of architectural or historic merit, demonstrate a high quality of design, complementing the building and adjoining properties*'. When considered as a whole, the breach of planning control constitutes poor design

and causes material harm to the character and appearance of the area. In this regard, it does not accord with the character, appearance, and design requirements of policies DMP1 and BE7 of the LP, Supplementary Planning Document No 3 (Shop Fronts) 2018 (SPD), and chapter 12 of the 2024 Framework.

Safe and convenient movement of all people

8. There is no dispute between the main parties that the canopies/awnings are positioned at a height which does not meet the headroom clearance requirements as outlined in the SPD. In this regard, there is potential for harm to be caused in respect of the safe and convenient movement of people within the forecourt area to the front of the premises. This is a matter that has already been considered by the Council in respect of the refusal of planning permission for this development.¹
9. In addition to the above, it is noteworthy that the outside display of fruit and vegetables has taken up a significant amount of the space to the front of the appeal property. My assessment of the various photographs is that use of this space for retailing purposes has resulted in the creation of a narrow and congested access. Consequently, at times the use of the land for retailing purposes would likely prohibit the safe and convenient use of all users including those in wheelchairs and pushchairs. Moreover, the evidence is that on occasion the outside sale of fruit and vegetables has generated a significant increase in footfall to a relatively confined area. This also includes the pavements on Ealing Road and Montrose Crescent. In this regard, there is potential for obstructions to occur for those using the pavements and particularly for pushchair and wheelchair users.
10. I acknowledge that there is an alternative route for pedestrians on the pavement beyond the unauthorised outside retail area. To some extent, this does offer some justification for retaining the outside sales area. However, I noticed on my site visit that the alternative pavement route has an incline and hence does not therefore offer the same ease and convenience arising from use of the appeal land for wheelchair and pushchair users who may wish to navigate the route from Montrose Crescent to Ealing Road and via the various shops. In this regard, I find that some harm has therefore been caused from the loss of a safe, convenient and accessible route for wheelchair and pushchair users.
11. For the above reasons, I therefore conclude that the development does not accord with the accessibility and safety requirements of policy DMP1 of the LP, the SPD, and paragraph 115(b) of the 2024 Framework.

Other considerations

12. The evidence is that the Council's Street Trading Service indicated that a Street Trading License was not necessary. Whether a Street Trading License was or was not necessary is a separate consideration to whether the unauthorised development requires planning permission. The breach of planning control requires planning permission and I have identified planning harm and conflict with the development plan for the area.

¹¹ Planning application reference numbers 21/4566 & 22/2034

13. The appellant has submitted accounts information and asserts that in the absence of the breach of planning control, it would put him in financial hardship. I do not doubt that the provision of outside sales has attributed to increased footfall and that it may have been responsible for increased profits. However, the evidence from the appellant is not detailed or conclusive in terms of whether compliance with the varied requirements of the notice would render the business unviable. It is necessary, in any event, that I balance this matter against the harm that has been caused arising from my conclusions on the main issues.

Planning balance and conclusion

14. The development has caused material harm to the character and appearance of the area. Moreover, the canopies/awnings do not have acceptable headroom and the material change of use of the land has prevented safe and convenient access for all. These are matters of overriding concern and are not outweighed by other material planning considerations. I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (f) appeal

15. An appeal on ground (f) of section 174(2) of the Act 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
16. The purpose of the notice is to remedy the breach of planning control. Ceasing the unauthorised use of the land, and the removal of the new shop front with retractable canopies/awnings and the orange/red metal bar, are not excessive requirements in this regard. While the orange/red metal bar may already have been removed, it remains possible that it could be reinstated. Therefore, it is not excessive to still include a requirement for it to be removed.
17. The evidence (i.e., the dated Google Street View image) is that the former tree/flower bed was concreted over in 2015 and prior to the unauthorised material change of use occurring. There is no evidence that the concreting over of the tree/flower bed was undertaken to facilitate the unauthorised material change of use of the land. I reach this view having viewed various Google Street View images over the years.
18. I do not know why the tree/flower bed had been concreted over at this time or indeed who was responsible for doing this. However, to the extent that this amounted to a separate engineering operation, and hence was an act of development, I find, on the balance of probability, that it is now immune from enforcement action owing to the passage of time. In this regard, the step 3 requirement which states *'restore the tree/flower bed by removing concrete and planting shrubs and grass ensuring that the vegetation used match those shown on the attached Google Street View images attached'* is an unnecessary and excessive requirement in the context of the lawful position. I shall accordingly vary the notice by deleting this requirement.

19. Other comments made by the appellant in respect of the ground (f) appeal relate to matters that I have considered as part of the consideration of the deemed planning application as part of the ground (a) appeal.
20. To the extent that I shall vary part of the requirement in step 3 of Schedule 4 of the notice, I conclude that the ground (f) appeal succeeds.

Ground (g) appeal

21. An appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
22. The appellant claims that a period of six months should be allowed as that would give him more time to discuss the potential of altering the shop front including the awnings/canopies. I do not know if it would be possible to achieve satisfactory alterations to the building and moreover use of the forecourt for the sale of goods is not acceptable for the reasons outlined elsewhere in this decision.
23. The appellant does not dispute that it would be possible to ensure compliance with the requirements of the varied notice within two months. Given the harm caused to the character and appearance of the area and to safe and convenient access for all, I find that a period of two months to comply with the varied notice is both reasonable and proportionate. Upholding the notice would not prevent the appellant from discussing other shop front alterations with the Council, in accordance with the requirements of development plan policies, should that be so desired.
24. I therefore conclude that the ground (g) appeal fails.

Conclusion

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

D Hartley

INSPECTOR