



Appeal Decisions

Site visit made on 2 May 2025

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2025

Appeal A Ref: APP/T5150/C/24/3346439

959-963 Harrow Road, Wembley, HA0 2SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Minesh Patel against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 10 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of metal containers to the rear of the premises.
 - The requirements of the notice are to:
 1. Remove the metal containers to the rear of the premises.
 2. Remove all items and debris, arising from the compliance with STEP 1, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is one month.
 - 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).
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Appeal B Ref: APP/T5150/W/24/3347893

959-963 Harrow Road, Wembley, HA0 2SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Patel (JM3 Investment Ltd) against the decision of the Council of the London Borough of Brent.
 - The application Ref is 24/0968.
 - The development proposed is retention of existing metal containers (x2) at the rear of the property for storage use for ground floor shop.
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Appeal C Ref: APP/T5150/C/25/3359458

959-963 Harrow Road, Wembley, HA0 2SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Minesh Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 16 December 2024.
- The breach of planning control as alleged in the notice is without planning permission, the installation of an extractor system and flue to the rear of the premises on the roof of the single storey rear extension
- The requirements of the notice are to:
 1. Remove the extractor system and flue to the rear of the premises, including the removal of all parts and equipment associated with the extractor system and flue.
 2. Remove all debris and items, arising from the removal works, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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.

Decisions

Appeal A

1. It is directed that the enforcement notice be varied by:
 - the deletion of one month and the substitution with three months for the time for compliance in Schedule 5.
2. Subject to the variation, the enforcement notice is upheld.

Appeal B

3. The appeal is dismissed.

Appeal C

4. 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.

Appeal A

Preliminary Matters

5. I note the objections from neighbouring occupiers on matters relating to character and appearance, living conditions, access and anti-social behaviour. I also note the appellant's reference to the National Planning Policy Framework (the Framework) and the Brent Local Plan (BLP), as well as his submissions on highway safety and whether or not the containers cause obstruction. However, I am unable to consider such matters, insofar as they relate to the planning merits, because the appellant has not made an application for planning permission through a ground (a) appeal.
6. Nevertheless, for the avoidance of doubt, I have considered the planning merits of the development under Appeal B.

The Appeal on Ground (f)

7. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
8. The breach of planning control in this case is the installation of metal containers to the rear of the local convenience store, occupying the ground floor of Nos 959 to 963 Harrow Road. The requirements of the notice are to remove those metal containers as well as all items, debris and materials arising. The purpose of the notice is therefore to remedy the breach of planning control.
9. The appellant states that the containers are essential for the ongoing success of the existing commercial premises and are used for the storage of stock, thereby reducing the frequency of deliveries to the unit, and enabling the shop to stock and restock a wide range of products, which in turn reduces the overall costs to the business and consumers. As an alternative against complete removal, the appellant requests that the notice is varied to allow him to retain the containers but

to paint them an alternative colour or to clad them in a material to complement their surroundings, which he argues would remove any perceived harm.

10. However, as explained above, in the absence of a ground (a) appeal, general planning considerations or arguments about character and appearance cannot be introduced under ground (f). Indeed, given the absence of a ground (a) appeal and the purpose of the notice, any lesser steps, that would not remedy the breach, cannot be accepted through a ground (f) appeal.
11. I appreciate that the appellant has appealed against the Council's refusal of planning permission for the two containers (Appeal B), but each appeal must be considered as a separate entity. Therefore, even though the appeals are linked, it is not possible to merge or introduce the planning merits into the appeal against the enforcement notice when the appellant has chosen not to pursue a ground (a) appeal.
12. In the circumstances, the appeal on ground (f) can only succeed if it is shown that the steps set out in the notice are excessive for the purpose of remedying the breach. In that regard, the requirements of the notice tally and logically follow from the breach and are not excessive for the purposes of remedying the same. The appellant has suggested removing one container from the site but doing so would only partially remedy the breach.
13. The appeal on ground (f) fails.

The Appeal on Ground (g)

14. The ground (g) appeal is that one month given to comply with the notice is too short. The appellant requests a period of 12 months to find other suitable and affordable storage premises, that is not too far away.
15. It is argued that the containers are fundamental to the ongoing trade of the commercial premises and that the cost of removing them and off-site storage would increase expense and time away from the business, compared to how shelves are currently restocked.
16. In support of his appeal the appellant has sought to draw my attention to an enforcement notice issued in respect of the installation of a shipping container at a different property in the Borough (No 134 Church Road), where the period of compliance was 12 months. It is argued that the current appeal development does not differ so significantly to warrant such a differing compliance period. However, the Council has explained that notice related to a carpet shop and the appellant in that case provided details of the difficulties of finding alternative storage for such large items, although the appellant disputes the size of the items involved. In this case the Council highlight that the shop had previously operated for a number of years without any container facilities.
17. Be that as it may, how the business is presently run is at least partly reliant on that additional storage space, so one month is too short to either reconsider operating practices or to find alternative storage arrangements. If the latter, the appellant contends that he would likely need to make a new application, but that may not be so.

18. In any case, a period of 12 months as sought is wholly excessive. A period of three months would strike a reasonable and proportionate balance between any difficulties the appellant may encounter and the public interest in this case.
19. I shall therefore vary the enforcement notice accordingly, prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal B

Preliminary Matters

20. I have taken the property number from the appeal form and decision notice, rather than the application form, which refers to Nos 969-963 and is clearly a typo.

Main Issues

21. The main issues are the effect of the containers on highway safety, the character and appearance of the area, and fire safety.

Reasons

Highway safety

22. The two shipping type containers are sited on what is effectively the service yard to the shop, adjacent to the door which provides direct access into the rear of the premises. The land fronts onto and is accessed via the crossover from The Boltons.
23. BLP Policy BT3 states that the provision of servicing facilities is required in all development covered by the Plan's standards. For retail units less than 500m² gross floor area, that amounts to one transit sized bay. It is likely that prior to siting the containers on the land, that standard would have been met.
24. I appreciate that the containers do not block the rear access door to the store and that space is left over for bin storage. Nevertheless, they do largely cover the service area, so off-street servicing is no longer possible. Indeed, the appellant acknowledges that delivery and service vehicles now park on The Boltons or on Priory Avenue.
25. Regardless of whether highway safety has been reduced, that arrangement is clearly contrary to BLP Policy BT3 which states, amongst other things and in addition to the above, that the loss of existing servicing will be resisted where it is still required to meet operational needs.
26. The appellant argues that both The Boltons and Priory Avenue are sufficiently wide to enable vehicles to park and unload without affecting the safe and free flow of traffic. However, no evidence is provided in support of that assertion. I saw that The Boltons has a relatively narrow carriageway serving the residential properties in that cul-de-sac and that on-street parking would prevent a two-way traffic flow, thereby forcing vehicles exiting The Boltons onto the wrong side of the road and into potential conflict with oncoming vehicles, or even pedestrians.
27. I appreciate that the containers do not extend over the footway, so themselves do not obstruct pedestrian movements. Nevertheless, the Council's evidence includes a photograph of what appears to be a displaced servicing or delivery van parked on the adjacent footway. As that is the only footway linking the residential

properties in The Boltons from Priory Avenue, pedestrians would be forced onto the road and potentially into conflict with vehicles.

28. The appellant says that there is still sufficient space to pass but the photograph shows otherwise. The van with its rear door open obstructs nearly the full width of the footway, even without the likelihood of trolleys or similar, for moving goods between the vehicle and the rear door of the store. Replacing the existing dropped kerbs with full height kerbs would not likely prevent such parking occurring, which is detrimental to the safety and comfort of footway users, particularly those in wheelchairs, the elderly, infirm, partially sighted and parents with small children and pushchairs. Even if it did prevent such parking, it would likely displace it, and it is not shown that could be safely accommodated elsewhere, having regard to the prevailing highway conditions.
29. Moreover, there is evidently significant demand for on-street parking along Priory Avenue, such that at the time of my site visit, parking on both sides restricted movements to a single carriageway width. In the absence of evidence to the contrary, on-street parking in close proximity to the rear of the store is therefore likely to be difficult. That in turn increases the likelihood of indiscriminate, unsafe parking. Indeed, another photograph from the Council's evidence shows a van being unloaded on the corner of Priory Avenue and The Boltons. Such parking would have obstructed visibility for vehicles emerging from The Boltons, and resulted in potential conflict with vehicles travelling along Priory Avenue, from Harrow Road.
30. Therefore, any benefits arising from fewer deliveries, as a result of greater storage capacity, is outweighed by the harm arising to highway safety. Moreover, without the containers, servicing and delivery vehicles would likely be able to safely park off-road in accordance with policy requirements.
31. I therefore find that the siting of the containers is harmful to highway safety, contrary to BLP Policy BT3. Although not cited in the corresponding reason for refusal, the appellant argues that the development does not directly contravene BLP Policy DMP1. I disagree. For the reasons explained the development is contrary to criterion b) which states that development will be acceptable if, amongst other things, it is satisfactory in terms of servicing.

Character and appearance

32. Although the appearance of this short section of land partly reflects its servicing function, it is seen and experienced in the context of an area which is predominantly residential in character. The shipping type containers are significant in scale and footprint and, by their very nature, are bulky and utilitarian in their design and appearance. Their siting therefore creates a harsh, industrial type presence which appears visually jarring and incongruous within their residential setting.
33. The harm arising is exacerbated by their prominent and exposed corner position where they are highly visible in public views from The Boltons and in approaching views along Priory Avenue (from both directions). As a result, they attract undue attention and appear excessively dominant in the street scene. The containers will also be clearly visible from private residential views. The fact that they are bright green adds to the degree of prominence, but even if they were to be painted white

to match the render of the adjoining building, their harmful, utilitarian and bulky characteristics would remain.

34. Although in principle I accept that the containers could be externally clad to improve their appearance, I have little to show how that could be acceptably achieved in this case. Indeed, two large and bulky box type structures, situated within such a prominent location within a residential setting, are unlikely to be acceptably mitigated by external cladding alone.
35. I therefore conclude that the metal containers result in unacceptable harm to the character and appearance of the area, contrary to London Plan Policy D4, BLP Policies DMP1 and BD1 and the Brent Design Guide SPD 1. Those state, amongst other things, that all new development must be of the highest architectural and urban design quality.

Fire safety

36. London Plan Policy D12 states that all development proposals must achieve the highest standards of fire safety and ensure that specific measures are met. However, the policy does not require all minor development proposals to submit a fire statement, as argued by the Council.
37. The appellant submits that the installation of the containers has not impacted on fire safety for the existing retail unit, with there still being unobstructed space for fire appliances to get close to the building in the case of fire, and that employees and customers can still safely evacuate the building through the front or rear doors, to an assembly point on the neighbouring roads.
38. The appellant also highlights that shipping containers are fire-resistant and explains that the items stored inside are arranged carefully in order to minimise fire risk. Nevertheless, the appellant acknowledges the prudence of a risk assessment so that any necessary modifications can then be implemented to align with recommended best practices, enhancing the containers' ability to withstand fires and to safeguard their contents. He says that any further concerns can be secured by way of condition.
39. Considering the above information, and having particular regard to the nature of the development, I agree that fire safety could be satisfactorily resolved by way of condition, so as to accord with London Plan Policy D12.

Other Matters

40. The appellant argues that the Council should support the needs of local businesses to foster economic growth. It is also asserted that the storage containers are essential to the efficient operation of the store. However, it is not shown that alternative arrangements have been considered which would avoid the harms described.
41. Whilst I understand that the existing arrangement is more convenient to the appellant and allows maximisation of the retail space within the main building, the benefits arising do not outweigh the harms identified.

Conclusion

42. For the reasons given above, and having considered all other matters raised, I conclude that the metal containers are contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Appeal C

Preliminary Matters

43. The breach of planning control is the installation of an extractor system and flue [singular] on the roof of the single storey rear extension at Nos 959-963. However, at the time of my site visit there appeared to be three flues on that roof. Three are similarly highlighted in one of the objection submissions. However, both the Council and the appellant refer to the extraction system at No 963, and, for the avoidance of doubt, that is what I have considered.

Main Issues

44. The main issues are the effect of the extractor system and flue on:
- the character and appearance of the area; and
 - the living conditions of the occupiers of neighbouring properties, with particular regard to odour, air quality, noise and general disturbance.

Reasons

Character and appearance

45. Nos 959 to 963 comprise a row of two storey buildings to Harrow Road, with a single storey, full width, rear extension backing onto The Boltons. As noted, the ground floor of the property is in use as a convenience store, whilst the first floor is in residential use (flats).
46. Photographs taken from those first-floor flats, and from the neighbouring first floor flat at No 965a, show that the outlook from those windows is dominated by the flue ducting, which, by reason of its proximity, size, functional design and bright metallic finish, appears highly unsightly and intrusive.
47. I appreciate that the appellant has sought to minimise the visual impact of the flue from the public realm by running it close to the surface of the flat roof. Nevertheless, part of the flue can clearly be seen from The Boltons against the backdrop of the rear of the flats. Due to its above-described characteristics, it appears unsightly and harmful to the appearance of the host building. Because of that visibility from The Boltons, the visual harm will be experienced by residents living on that road who pass it on the way to and from their homes.
48. I appreciate that the flue is partly seen in the context of the rear service yard of the shop, but that immediate context now includes a new ground floor residential unit at No 965 Harrow Road. The flue appears as an unsightly feature alongside the front of that property, thereby detracting from its immediate setting.

49. I therefore find that the development results in unacceptable harm to the character and appearance of the area, contrary to BLP Policy DMP1, which states, amongst other things, that development will be acceptable provided it is of a location, use, concentration, siting, layout, scale, type, detailing and design that provides high levels of internal and external amenity and complements the locality.

Living conditions

50. The appellant's response to the Council's planning contravention notice confirmed that use of the premises as a takeaway had not commenced, but plans were being prepared for the submission of a planning application, although that had not been made by the time of the appeal submissions. In any case, there was no takeaway use at the time of my site visit. I therefore fail to see why the removal of the extraction system would make matters relating to odour and air quality worse.
51. The appellant asserts that a high-quality extraction system has been installed, consistent with industry standards and best practices, so as to mitigate the effects of the development by capturing cooking fumes and odours at source, using a canopy hood positioned directly over the cooking equipment. It is explained that fumes are drawn through filters, which trap grease and neutralise odours so that filtered air is expelled through a flue, which is designed to disperse the air at a position and velocity that dilutes any residual odours, thereby minimising the impact on the surrounding environment.
52. However, the appellant has submitted no technical information which corroborates those assertions, and no odour assessment has been provided. It is not therefore shown that cooking odours emanating from the premises would be sufficiently neutralised. Moreover, it is unclear how the system would operate in respect of its specific design and position in relation to the windows of the nearby first floor flats, which should be able to be opened by occupants for ventilation purposes as and when required.
53. The appellant argues that the flue has been sensitively positioned over 4m away, to ensure that it expels odours away from the residential windows. However, those facing windows are higher than the termination point of the flue. So too are the first-floor windows of other nearby residential properties. It is therefore possible, and indeed likely, in the absence of evidence to the contrary, that odours would be carried/dispersed towards them. The termination of the flue is also very close to the new ground floor residential unit at No 965. Given that proximity to the emission source, there is clearly significant potential for odour exposure for occupants of the same.
54. Moreover, noise from such equipment has the potential to affect existing noise sensitive occupants located in close proximity to that source. Excessive noise can have a significant effect on the health and wellbeing of residents. Although the appellant contends that the extraction system design, and the use of sound-dampening materials and fixings will help to minimise noise levels, no evidence, such as a noise assessment, or even information about the noise characteristics of what has been installed, has been provided.
55. I am therefore unable to ascertain whether noise from the extraction system would operate within acceptable parameters when heard from the nearest noise sensitive residential receptor, or whether any necessary noise attenuation measures would acceptably mitigate any adverse noise effects when the system is in operation.

56. The appellant acknowledges the importance of noise and odour considerations and states that he is prepared to provide additional technical evidence, including noise mitigation measures and odour control details, to substantiate compliance with relevant development plan policies. However, as explained, I have no such information before me.
57. Moreover, as no planning permission has been granted for a takeaway at the premises, I have no details of the days and hours of operation, nor do I have details of the type of food that would be cooked. Without such information and in the absence of technical details and noise and odour assessments, it is not possible to gauge the extent and duration of any noise and odour effects.
58. I therefore find that, given the proximity of the extractor system and flue to nearby residential properties, there is significant potential for unacceptably harmful effects to the living conditions of occupants, arising from odour, noise and general disturbance, contrary to BLP Policy DMP1, London Plan Policies D14 and SL1, and paragraph 135 of the Framework. Those policies state, amongst other things, that development will be acceptable provided it is not unacceptably increasing, and where possible reducing, exposure to noise, smells, other forms of pollution and general disturbance or detrimentally impacting on air quality.
59. The Council also cite conflict with BLP Policy BSU12 (air quality) but that relates to major development, which is not applicable to the breach of planning control in this case.

Alternative scheme

60. In the event that I consider the development to be unacceptable, the appellant has requested that I consider a revised scheme for the extractor and flue. Caselaw¹ directs that, so long as there is an appeal on ground (a), I must consider whether the modified development would be 'part of the matters' and should be permitted. Such options should be considered under ground (a), even though the actual application under ground (a) relates to the development as built. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker².
61. The alternative plans show that the ducting would run across the roof alongside the first floor wall of the flat at No 963, before turning up at right angles between two windows and terminating above eaves level. That configuration is inconsistent with the description of the breach, which refers to a system on the roof of the extension, rather than running up the rear wall at first floor level. Indeed, other than the point of exit from the roof, the flue would be in a different position and would appear materially different, incorporating a top cowl. New works would obviously be involved to modify the scheme and the effects on character and appearance and the living conditions of adjacent residents would likely be materially different. Moreover, to consider that scheme would be prejudicial to interested parties who may wish to comment on it.
62. All things considered, the alternative scheme would not form part of the matters stated in the enforcement notice. Consequently, the works would not fall within the

¹ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

² *R (oao Banghard) v Bedford BC* [2017] EWHC 2391 (Admin)

statutory powers open to me to grant planning permission under s177(1)(a) of the 1990 Act.

63. I note that the appellant requests that the notice is varied to enable the revised scheme to be introduced and to be carried out as set out in the plans submitted with the appeal. However, the requirements and period for compliance are the only parts of an enforcement notice which may be varied. The allegation cannot be corrected so that planning permission may be granted for development which does not reflect the factual position.
64. Furthermore, because the deemed planning application is made in respect of the development as alleged and built, there is no mechanism for incorporating any revised plans into any deemed planning permission granted. It is not possible to impose a 'plans' condition on the planning permission, or to impose a condition which purports to modify the detail of the development. The correct approach, if I had found the alternative scheme was part of the matters, would be to grant planning permission for the development alleged subject to a condition which requires that a scheme of works is submitted to the Council for their approval and then implementation.
65. In any case, even if I were to find that the alternative scheme was part of the matters, the above evidential deficiencies would remain, regardless of the effects on character and appearance. Whilst odour is likely to be less of an issue, having regard to the higher termination of the flue, the effects of noise would likely be increased as the system would be positioned immediately adjacent to the outside wall of the flats.

Other Matters

66. The appellant states that the removal of the extraction system would affect the viability of the shop. However, no evidence is provided in support of that assertion, and it is not explained why a shop, with no takeaway use, requires such a system.

Conclusion

67. For the reasons given above, I conclude that the extractor system and flue is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (f)

68. The appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
69. As noted, the breach in this case is the installation of an extractor system and flue, whilst the requirements are to remove the same and all debris and items arising. The purpose of the notice is therefore to remedy the breach. Consequently, the appeal on ground (f) can only succeed if it is shown that the steps set out in the notice are excessive for that purpose.

70. The appellant argues that the submitted alternative scheme would protect residential and visual amenities. However, even if I found that the alternative scheme would overcome the above explained harms, it would not, for the reasons explained, form part of the matters such that it would be open to me to grant planning permission under s177(1)(a) of the 1990 Act. Moreover, it is not shown that there are any other lesser steps that would remedy the breach of planning control.
71. I find that the requirements of the notice tally with the allegation and are not excessive but are necessary to remedy the breach. The appeal on ground (f) fails.

The Appeal on Ground (g)

72. The appellant considers that one month to comply with the requirements of the enforcement notice is unreasonably short. He states that the extractor system and flue are crucial for the efficient operation of the commercial unit and without the system in place to manage odours, the business would not be able to function effectively. It is further stated that the existing commercial enterprise within the shop would be compelled to relocate if the system is removed and that it is unreasonable to assume that the appellant could find suitable alternative premises within the same area that is not only affordable but also equipped with an extractor system, ensuring a seamless and swift transition for the business.
73. Consequently, he argues that one month is insufficient and a period of six months is required on the basis that compliance would have significant financial and operational implications.
74. In support of his position, the appellant also refers to the Framework which states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
75. However, as explained, there is no existing takeaway use at this commercial premises and I have not been made aware that planning permission has been sought, let alone granted for the same. Moreover, it is not explained why the extractor system and flue are required for a shop and how odour management would be jeopardised without it or why the shop would need to relocate. A six month period for compliance is not therefore justified. Rather, in the circumstances a period of one month is reasonable and proportionate, having regard to the nature of the requirements and the public interest in this case.
76. The ground (g) appeal fails.

Richard S Jones

INSPECTOR