



Appeal Decision

Site visit made on 1 October 2025

by **Diane Lewis** BA(Hons) MCD MA LL M RTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2025

Appeal Ref: APP/T5150/C/24/3341450

Land at Connaught House, 20 Acton Lane, London NW10 8TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Basrah Development's Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 19 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the formation of a vehicular access, including the erection of a sliding metal gate, in the approximate position marked with xxxx on the attached plan.
 - The requirements of the notice are:
 - 1) Remove from the land the sliding metal gate, including the supporting posts, rails and other fixtures.
 - 2) Reinstate a kerb rising at least 150mm above the adjacent footway between the curtilage of 20 Acton Lane and the adjacent highway in the approximate position marked with xxxx on the attached plan.
 - 3) Reinstate close boarded fencing between the existing fencing on the curtilage of 20 Acton Lane and the masonry pillar at its junction with 2 Connaught Road in the approximate position marked with xxxx on the attached plan.
 - The period for compliance with the requirements is 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) 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.
 - The application for costs made by the Council of the London Borough of Brent against Basrah Development's Ltd is the subject of a separate Decision.
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DECISION

1. It is directed the enforcement notice be varied in Schedule 4 by the substitution of the following wording for Step 3 "Reinstate close boarding fencing along the boundary of 20 Acton Lane in the direction towards the masonry pillar at its junction with 2 Connaught Road, to replicate the extent of the fencing that existed prior to when the breach took place."
2. Subject to this variation 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 Act.

REASONS

The Enforcement Notice

3. The enforcement notice is directed at operational development, which is reflected in the words 'formation' and 'erection' in the description of the alleged breach of planning control, and the time limit of four years cited in Schedule 3. The notice does not allege a material change of use of the property, whether in relation to all or part of the Land. Also, I am satisfied that the notice does not relate to matters that fall outside

of the Land. In Step 2 of the requirements the kerb referred to was on the boundary of the Land and did not form part of the public highway.

4. The notice includes all the necessary contents and matters specified by section 173 of the 1990 Act as amended and Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. The notice is not a nullity and is not 'defective on its face' as submitted by the appellant.

5. Whether the notice contains any error, defect or misdescription or requires to be varied will be considered through the grounds of appeal. If any necessary correction or variation would cause injustice to the appellant or the Council, the notice would be quashed. On the legal grounds of appeal, grounds (b), (c) and (d), the onus is on the appellant to demonstrate their case, where the standard of proof is the balance of probability.

6. The photographic evidence submitted by the appellant and the Council, over a period from 2012 to October 2022, inform the legal grounds of appeal.

Appeal on ground (b)

7. The onus is on the appellant to show the alleged formation of a vehicular access, including the erection of a sliding metal gate, has not occurred as a matter of fact.

8. There is no doubt that a gated vehicular access exists in the position indicated on the notice plan. The photographic evidence submitted by the appellant and the Council demonstrates the point, in particular the images dated October and December 2020, April and August 2021 and October 2022. The appeal site visit confirmed the access, as described in the allegation, exists on the ground.

9. In conclusion, the formation of a vehicular access with sliding metal gate has occurred as a matter of fact. The appeal on ground (b) fails.

Appeal on ground (c)

10. The issue is whether the formation of a vehicular access with a sliding metal gate constitutes a breach of planning control.

11. The photographic evidence shows that to form the vehicular access fencing was removed, works were undertaken to the ground surface and a metal gate was erected with associated posts and fixtures. These building works, that together constituted a single operation to form the access, amounted to development requiring planning permission. The site history confirms no planning application was made and no specific planning permission was granted to authorise the works.

12. Planning permission may also be granted by a development order. The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission through article 3 for the development described in Schedule 2 to the Order. The appellant gave no detailed consideration to this matter as part of their case, although their final comments stated the addition of a metal gate was permitted development and did not require planning permission. However, the development should be considered as a whole and not disaggregated. Even if the erection of the gate was taken in isolation, the appellant gave no consideration to the position of the gate relative to the highway used by vehicular traffic or the height of the gate. The onus of proof has not been met. On the evidence that is available I consider as a matter of fact and degree the metal gate has been erected adjacent to a highway used by

vehicular traffic and clearly exceeds 1 metre above ground level. For all these reasons the gate is not permitted development.

13. The images of the property show that in the period around 2012 to 2015 close boarded fencing extended up to the boundary with 2 Connaught Road, although the images are not clear enough to confirm whether the last panel was in fact a double gate. The image for June 2016 shows removal of a small length of the enclosure to create a gap at the western end of the frontage. A van is parked within the property. On this basis the appellant appears to argue that no development has taken place because a vehicle access existed. This approach fails to take into account the works that took place to form the current access and the significant change that occurred. I return to this matter in the ground (d) appeal.

14. Finally, the vehicular access would facilitate parking within the boundary of the property by occupiers of the residential accommodation and their visitors. The appellant submitted access and parking of vehicles was ancillary to the main use of the premises as a house in multiple occupation. This link with the use of the property does not assist in demonstrating the operational development to form the access is not a breach of planning control.

15. In conclusion, the matters described in the allegation are a breach of planning control. The appeal on ground (c) fails.

Appeal on ground (d)

16. The enforcement notice was issued before the legislative changes came into force on the time limits for taking enforcement action. Therefore, as set out in Schedule 3 of the notice, the relevant time limit in this case is four years. Accordingly, the issue is whether the vehicular access, including the erection of a sliding metal gate, was substantially completed on or before 19 February 2020.

17. The appellant maintained the vehicular access existed and was in use prior to July 2016. The main source of evidence are the images taken from Google Street View in the evidence of the appellant and the Council. The appellant's submissions regarding the planning unit and comments on ownership and tenancies do not assist on the ground (d) issue.

18. The photographic evidence does show that a gap was created by removal of a section of the timber boundary treatment at the far western end of the frontage some time between June 2015 and June 2016. The presence of a van parked within the property indicates the gap was large enough to serve as a mean of vehicular access. The erection of new close boarded fencing along the frontage maintained the gap, as seen in the image dated July 2017. The Council estimated the gap was approximately 2 metres wide. The position probably did not change significantly through to at least March 2019. The image taken at this date shows a low kerb marked the boundary between the footway and the rough ground surface within the property. No gates of any form are evident. The early photos indicate minimal change took place to enable vehicles to access the property.

19. The photographs submitted by the Council show the property was under renovation in June 2019. The gap was wider as a result of the removal of some timber boarding although the board at the base remained. A pile of rubble and a skip was present blocking any access through the gap. A similar position was shown on the images dated 4 March 2020.

20. The next image dated October 2020 shows the widened gap forming a vehicular access, and the metal gate in place. Also of note, directly outside the property paving slabs had been replaced by a tarmac surface and there were fewer bollards along the edge of footway. The images at later dates over the period December 2020 to October 2022, submitted by the appellant, do not record any further significant changes.

21. Conclusions. An access of sorts to the property existed in June 2016 but no act of development was involved. The notice is directed at the physical works that were carried out to form a gated vehicular access at the property. On the balance of probability this act of operational development was not substantially completed until after March 2020. The development is not immune from enforcement action and the appeal on ground (d) fails.

Appeal on ground (a)

22. The deemed planning application is for the development described in the alleged breach of planning control, the formation of a vehicular access, including the erection of a sliding metal gate. The main issue is the effect of the development on highway safety.

Highway safety

23. The Brent Local Plan, adopted in 2022, takes a positive attitude towards promoting sustainable development. Within that context Policy DMP1 requires development to be satisfactory in terms of means of access and not to have an adverse impact on the movement network. The Local Plan identifies safety issues as a priority, including the convenience and safety of vulnerable road users such as pedestrians and cyclists. Accordingly, when forming an access to a road, Policy BT4 requires the access to be safe. These policies are generally consistent with the National Planning Policy Framework (the Framework), which states assessment of development proposals should ensure safe and suitable access to the site can be achieved for all users. An unacceptable impact on highway safety is a reason for a refusal of development on highways grounds.

24. Connaught House is located on the corner of Acton Lane and Connaught Road. At the junction the footway widens out and provision is made for pedestrians to cross safely, as indicated by the tactile paving, the traffic island in the carriageway and the measures to reduce vehicle speed. The physical form and design features of the highway at the junction indicate the importance of limiting traffic speed, ensuring good visibility and awareness of traffic and pedestrians. The photographs show a number of bollards positioned near the edge of the footway, emphasising the distinction between the pedestrian area and the carriageway for vehicle use. The traffic signs at the entrance to Connaught Road inform road users of a 20 mph zone and a weight limit, again directed towards the 'place' function of the street and community safety. The surrounding residential streets, the community buildings nearby including places of worship and a primary school, and the public transport facilities all support treating pedestrian safety as a priority.

25. The vehicular access was formed on the western side of the property in a position where vehicles using the access would have to cross the wide area of footway, whether to access the carriageway or leave the road to park within the property. The photographic evidence indicate bollards on the highway probably were removed to facilitate access from Connaught Road and to Acton Lane. Manoeuvring on the footway to allow passage in and out of the gateway would be likely by reason of the width of the gateway and lack of a defined route to/from the carriageway. The appellant has not

demonstrated that turning space exists within the property. Vehicles reversing through the gateway and over the footway would be a hazardous manoeuvre and endanger pedestrians. Visibility for drivers emerging from the property would be reduced by the gate pillar and fencing, which in turn would increase the risk of conflict with pedestrians and other road users. The set back of the access, the siting of the property and the configuration of the junction would all lead to unsafe and unexpected turning movements to and from the carriageways.

26. There are properties on Connaught Road and Acton Lane that have direct access to the highway by way of a dropped kerb and vehicle crossover but none have the same locational characteristics as the appeal site at the junction. They provide no justification for the development.

27. The appellant stated the access has not been the cause of safety concerns and accidents but has provided no information or accident records in the locality and has not submitted any technical assessments or explained how the access would contribute to the use of the property. Even police data on accidents would detail only accidents where personal injuries were involved. The data usually is presented to cover five year periods whereas the vehicular access had been in place less than four years by the time the enforcement notice was issued. Furthermore, policy is concerned with accident prevention, reduction of risk and ensuring a safe environment for the community. A representation on the appeal described the blind curve at the corner of Connaught Road and Acton Lane as being “extremely dangerous for all pedestrians”, an indicator of local concern.

28. In conclusion, the vehicular access has been created in an unsuitable location and fails to take into account the highway characteristics, junction design and provision for pedestrians outside the property. No planning conditions have been proposed to suitably overcome the identified harm. The development has an unacceptable impact on highway safety and is contrary to Policies DMP1 and BT4 of Brent’s Local Plan. Policy in the Framework supports a refusal on highway grounds.

29. Very significantly, by the time I carried out a site visit, a guard rail and bollards had been erected on the pavement in front of the metal gate to prevent the vehicular use of the access. Bollards had been replaced along the edge of the footway. The probability is these works were carried out by the highway authority in response to very serious concerns about the unacceptable risk to highway and pedestrian safety caused by the unauthorised access.

Other matters

30. The appellant considered use of the vehicular access necessary for the enhancement and betterment of the site, allowing vehicles to park on the property. However, I consider the property is in a highly sustainable urban location served by bus routes on Acton Lane and within walking distance of rail stations, local shops and facilities. A lack of on-site parking would not detract from the suitability of the property for residential accommodation.

31. This conclusion is consistent with the grant of planning permission for a material change of use of the property to four flats (ref 18/0838 dated 28 September 2018). One of the approved plans (11 rev 04) allocates the area at the western end of the property frontage for use as cycle parking and refuse storage, served by a pedestrian access. This arrangement was consistent with the Transport Officer’s pre-application comment, who considered the site was suitably located for car free housing. The officer also

noted the absence of a formal vehicle crossover and that a vehicle would have had to drive unlawfully over the footway across the tactile paving from Connaught Road to park within the property. It is the case the description of development in the 2018 planning application referred to the provision of car parking but none of the approved plans showed such provision.

32. In summary, the other considerations raised in the appellant's representations on the deemed planning application are not of sufficient weight to overcome the very serious and unacceptable harm to highway safety.

Conclusion on ground (a)

33. The formation of a vehicular access, including the erection of a sliding metal gate, is contrary to the development plan. By reason of its siting, the access is not safe, having regard to all highway users at the junction and especially vulnerable pedestrians. Therefore the unacceptable means of access should be refused planning permission. Other considerations do not indicate otherwise. The ground (a) appeal fails.

Appeal on ground (f)

34. The issue is whether the steps required by the notice to be taken exceed what is necessary to achieve the purpose of the notice.

35. Schedule 4 of the notice specifically states the steps are directed at remedying the breach of planning control. Remedying the breach may include restoring the land to its condition before the breach took place. The requirements must be read within the context that the appeals on grounds (b), (c), (d) and (a) have failed. It is not open to the appellant to argue that the purpose should be to remedy any injury to amenity. No alternative lesser steps have been proposed.

36. Step 1 that requires the removal of the metal gate and fixtures is a direct response to and does no more than remedy part of the breach of planning control. The reinstatement of the kerb required by step 2 would contribute to restoring the land to its former condition and is not excessive. The position of the kerb is detailed as being on the boundary to the land and not part of the public highway. Step 3 requires reinstatement of fencing up to the masonry pillar on the boundary with 2 Connaught Road. Photographs show that before the breach took place the fencing did not extend fully across frontage. The wording will be varied slightly to ensure the fencing required does not exceed what was there before. To this limited extent the appeal on ground (f) succeeds.

Conclusion

37. For the reasons given above the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector