



Appeal Decision

Site visit made on 25 November 2025

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

Appeal Ref: APP/T5150/C/23/3333149

5-7, 5-7A, 5-7B, 9 Wembley Hill Road, Wembley HA9 8AF

5A-J and 9A-D Wembley Hill Road, Wembley HA9 8AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
- The appeal is made by Mr Neil Sheinfeld of Lionrule Wembley Ltd against an enforcement notice ("EN") issued by the Council of the London Borough of Brent.
- The EN was issued on 9 October 2023.
- The breach of planning control as alleged in the EN is:

The breach of Condition 2 of planning permission reference 15/1949 granted by the London Borough of Brent on 11th February 2016 for the "Construction of a third and fourth floor over existing mixed used [sic] building to include a rear extension at first and second floor level and change of use of the ground floor existing A 1 units (x2) and A3 unit (x1) at No 5-7 into 2 retail units (Use class A1) and the existing flats and upper floors at No 5-7 and No 9 into a total of 13 self-contained flats (6x1bed, 4x2bed and 3x3bed) with associated terraces, alterations to existing entrances, cycle parking and landscaping."

Condition 2 states: "The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s):

RBMP Defensible Space Landscape Strategy April 2015, RBMP Landscape Specification, Stinton Jones Assessment of Daylight and Sunlight, Hawkins Environmental Air Quality Assessment, Stinton Jones Noise Impact Assessment, StoVentec Glass, Design and Access Statement, Land Registry Plan, WHR-PREP1-02, WHR-PP1-01 C, WHR-PP1-03 B, WHR-PP1-04 A, WHR-PP1-05 E, WHR-PP1-06 C, BMP010-01, RBMP010-02.

Reason: For the avoidance of doubt and in the interests of proper planning."

There has been a breach of Condition 2, because the development has not been carried out in accordance with the approved drawings of planning permission 15/1949, contrary to the interests of proper planning. ("the unauthorised breach of condition").

- The requirements of the notice are:
 - STEP 1 Cease the occupation of the third and fourth floors until the premises have been altered to accord with the plans and conditions approved in planning permission 15/1949 dated 11th February 2016, a copy of which is attached to this Notice.
 - STEP 2 Alter the development so that all balconies, roof terraces and landscaping are installed as per the plans approved in planning permission reference 15/1949 and the windows and window pattern are altered to accord with the approved plans in planning permission reference 15/1949.
 - STEP 3 Ensure that the external appearance of the building is clad in accordance with the details approved in planning permission reference 15/1949.
 - The period for compliance with the requirements is: 6 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the 1990 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.
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Decision

1. The EN is quashed.

Matters Concerning the Notice

2. The description of development for planning permission 15/1949 is:

“Construction of a third and fourth floor over existing mixed used [sic] building to include a rear extension at first and second floor level and change of use of the ground floor existing A1 units (x2) and A3 unit (x1) at 5-7 into 2 retail units (Use Class A1) and the existing flats and upper floors at No 5-7 and No 9 into a total of 13 self-contained flats (6x1bed, 4x2bed and 3x3bed) with associated terraces, alterations to existing entrances, cycle parking and landscaping”.

3. Following my site visit I noted:

- There are 15 self-contained flats in total across 5-9 Wembley Hill Road, which exceeds the 13 stated within the description of development. Some flats had been formed by dividing one flat into two smaller flats. Consequently, the layout of the flats differs from the approved plans.
- The flats within 5-9 Wembley Hill Road do not correlate with the mix of bedrooms stated within the description of development.
- The entrances and staircases to the upper floors of the building had not been altered in accordance with the approved plans and there was no lift.
- The alterations to the ground floor units had not been undertaken, and there were no cycle storage areas as shown on the approved plans.
- The communal amenity spaces to the first floor and roof, the terraces (except for those that existed prior to the permission being granted) and balconies had not been provided.
- There was no access to the roof.
- The fourth floor was significantly smaller and a different shape to that which had been approved. Consequently, Flat 11 (as annotated on the approved plans) had not been constructed, and Flat 12 (as annotated on the approved plans) had one rather than two bedrooms and was a different shape.
- The rear extension had not been constructed.
- The fenestration in the existing first and second floors of the building had not been altered to comply with the approved plans. Also, the fenestration in the building's third and fourth floors did not accord with the approved plans.

4. Taking these factors together, there has been a substantial deviation from the approved plans, such that the development that has been constructed bears little resemblance to that which was permitted. Furthermore, the development that has been constructed deviates from the operative part of the permission (i.e. the description of development). Consequently, I sought the parties' views on these matters.
5. The Council's view is that the EN was issued on the basis that the planning permission had been implemented but not completed in accordance with the terms and conditions of the permission. They assert that changes may have occurred

that have rendered the permission no longer capable of completion, but those changes do not affect the validity of the EN. The appellant's view is that the permission has not been implemented and the whole development is unauthorised.

6. The Council issued the EN in October 2023 which, according to the photographic evidence provided, was after all the external works in the construction of the additional storeys had been completed. Also, the land affected by the EN lists 14 flats, when planning permission had only been granted for 13. Therefore, the substantial deviation from the approved plans and its departure from the operative part of the permission occurred prior to the issuing of the EN.
7. For the reasons detailed above, it is my judgement that the development as a whole is without planning permission. Consequently, the EN cannot allege a breach of condition 2 of planning permission 15/1949 under s171A(1)(b) of the 1990 Act. Instead, the alleged breach of planning control would fall under s171A(1)(a) of the 1990 Act (*"the carrying out of development without the required planning permission"*).
8. I canvassed the parties for their views regarding correcting the alleged breach of planning control to s171A(1)(a) of the 1990 Act and whether doing so would cause injustice. The Council's response was that they have no objection to the EN being corrected to reflect the breach of planning control as it now stands, including reference to unauthorised operational development rather than a breach of condition. However, they did not comment on the matter of injustice.
9. The appellant's response was that correcting the EN to refer to operational development would cause them injustice as the immunity period would be four years rather than ten. They assert that the appellant has not had an opportunity to appeal under the four year immunity period, or to put forward a case for planning permission to be granted for operational development. Furthermore, those with an interest in the land have not had an opportunity to comment or submit an appeal against an EN alleging operational development as the breach of planning control.
10. I concur with the appellant and conclude that correcting the alleged breach of planning control to operational development would cause injustice to the appellant. Even if I could correct the alleged breach of planning control to operational development without causing injustice, the EN would require significant re-drafting that would go beyond my powers under s176(1) of the 1990 Act.

Conclusion

11. For the reasons given above, I conclude that the EN cannot relate to a breach of condition as the development as a whole is without planning permission. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. Therefore, the EN is invalid and will be quashed.
12. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (e), (f) and (g) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

A Berry
INSPECTOR