



Appeal Decisions

Site Visit made on 18 May 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th June 2026

Appeal A Ref: APP/T5150/C/24/3343793

Appeal B Ref: APP/T5150/C/24/3343794

Flats 1-3 Southern Cross House, 30 Challenge Close, London NW10 4BF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Southern Cross UK Limited (Appeal A) and Mr San Soora (Appeal B) against an enforcement notice issued by the Council of the London Borough of Brent (the LPA).
 - The enforcement notice was issued on 26 March 2024.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 21/0679 granted on 6 May 2021.
 - The development to which the permission relates is: erection of a two-storey building to create 3 self-contained flats, provision of private amenity space, refuse storage and associated landscaping.
 - The conditions in question are no. 4 and no. 6 which state:
 - 4) The garden areas so designated within the site shall be landscaped in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before the occupation of the dwellings on the site. The landscape work shall be completed during the first available planting season following completion of the development hereby approved. Any planting that is part of the approved scheme that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced in the same positions with others of a similar size and species, unless the Local Planning Authority first gives written consent to any variation.
 - 6) Prior to occupation of the development, highway works shall be completed in Challenge Close at the applicant's expense and to the satisfaction of the Local Highway Authority to amend the kerb line around the northeastern side of the turning head of Challenge Close and to provide suitable dropped kerbs and tactile paving in order to provide a 2m wide pedestrian footway to the site entrance.
 - The notice alleges that the conditions have not been complied with in that:
 - There has been a breach of Condition 4, because the development is completed and occupied, and the approved landscaping scheme submitted to the Local Planning Authority under ref: 22/1086, dated 19 May 2022, has not been carried out in breach of Condition 4.
 - There has been a breach of Condition 6, because the development is occupied, and highway works have not been completed to amend the kerb line, and to provide suitable dropped kerbs and tactile paving, in order to provide a 2m wide pedestrian footway to the site entrance.
 - The requirements of the notice are to:
 - 1. Cease occupation of the development until the approved landscaping scheme approved by the Local Planning Authority under ref: 22/1086, dated 19 May 2022, has been implemented in full. Any trees and shrubs planted in accordance with the approved landscaping scheme which, within 5 years of planting, are removed, die, seriously damaged or become diseased, shall be replaced, by trees and shrubs of similar species and size to those originally planted.
 - 2. Cease occupation of the development until highway works are completed in Challenge Close to amend the kerb line around the northeastern side of the turning head of Challenge Close and suitable dropped kerbs and tactile paving in order to provide a 2m wide pedestrian footway to the site entrance have been provided.
 - 3. Remove all items, debris and materials, arising from the compliance with the above STEPS, from the premises.
 - The period for compliance with the requirements is: 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Appeals A and B on ground (b)

2. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred.
3. The notice alleges a breach of Conditions 4 and 6 of planning permission 21/0679. Permission was granted for the erection of a two-storey building to create 3 self-contained flats, provision of private amenity space, refuse storage and associated landscaping. Condition 4 required the garden areas within the site to be landscaped in accordance with a scheme to be submitted to and approved by the LPA before the occupation of the dwellings. Condition 6 requires highway works to be carried out prior to the occupation of the development.
4. In respect of Condition 4 the appellants submit that it is only the submission and approval of the landscaping scheme which is required before occupation. There is no requirement within the condition to carry out the landscaping before occupation. To my mind, that is the plain and ordinary effect of the words as written.
5. The details pursuant to Condition 4 were submitted on 23 March 2022 and approved by the LPA on 19 May 2022. The LPA indicates that, according to Council Tax records, the flats were occupied by 20 May 2023. As a consequence, there has been no breach of planning control insofar as a failure to submit and agree a landscaping scheme prior to occupation.
6. The notice alleges there has been a breach of Condition 4 because the development is occupied and the approved landscaping scheme has not been carried out. The condition requires the landscaping work to be completed during the first available planting season following completion of the development hereby approved. The LPA indicates that building control completion certificate for the development was issued on 18 May 2023.
7. However, the notice alleges a breach of Condition 4 on the basis that the development is occupied and completed and the landscaping scheme has not been carried out. As I have established, there is no requirement within the condition for the implementation of the landscaping scheme to be done before occupation or completion of the development, only that it is to be done the first available planting season following completion. As a result, I find that no breach of Condition 4 of as characterised in the notice has occurred.
8. I have considered whether I can correct the notice so that the breach of planning control is described as the failure to carry out the approved landscaping work during the first available planting season following completion of the development. However, neither party submits when the first 'available' planting season following completion of the development was. The enforcement notice was issued on 26 March 2024. Given that a full 12 months had not lapsed between completion of the development and the issue of the notice, I cannot be sure that the notice was not issued before the first available planting season had been reached. As a result, it is not open to me to correct the allegation accordingly.

9. In respect of Condition 6, it states that, *“prior to occupation of the development, highway works shall be completed in Challenge Close at the applicant’s expense and to the satisfaction of the Local Highway Authority to amend the kerb line around the northeastern side of the turning head of Challenge Close and to provide suitable dropped kerbs and tactile paving to provide a 2m wide pedestrian footway to the site entrance.”*
10. The LPA submits that, since the development is occupied, and the amendment to the kerb line on Challenge Close and the dropped kerbs and tactile paving have not been carried out, there is a breach of the condition.
11. However, for there to have been a breach of the condition, the condition must have been legally imposed in the first instance. The relevant legal tests regarding the validity of conditions are laid down in *Newbury*¹. Conditions must be imposed for a planning purpose and no other purpose, fairly and reasonably related to the development permitted and not so unreasonable that no reasonable LPA could have imposed it.
12. The appellants argue that the Land to which the notice relates does not include the land where the highway works are required to be carried out and that it ought to. However, the enforcement notice in my view correctly refers to the Land where the development subject of the planning permission has been carried out and thus to where the condition bites. The fact that the condition requires works to be done on land outside of the appellants’ control before occupation is not unusual. *Grampian* conditions are a common feature on planning permissions.
13. Nonetheless, the condition requires the highway works to be carried out “to the satisfaction of the Local Highway Authority”. The condition thus purports to delegate approval of the scheme to another party, that being the Local Highway Authority. Approval of matters required to be undertaken by condition should be the responsibility of the Local Planning Authority. Moreover, the condition also requires the applicant to carry out works outside of their control, and there is no evidence before me that there is any agreement or obligation in place to allow the condition to be implemented accordingly. Thus, the appellants have no control over whether they can satisfy the Local Highway Authority. As such, the appellants would be unable to comply with the condition or indeed the requirements of the enforcement notice.
14. Furthermore, the condition requires the works to be undertaken at the “applicant’s” expense. A grant of planning permission runs with the land. It is wholly unreasonable that the applicant (that being the person or company who sought the initial grant of permission) be held liable for funding the works were they to no longer have any interest in the Land following the grant of permission but prior to the occupation of development. In addition, the Planning Practice Guidance² makes clear that no payment of money or other consideration can be positively required when granting planning permission.
15. As a result, I consider Condition 6 to have been unreasonably imposed and thus invalid. It follows that the breach of planning control alleged, that being a failure to carry out the highway works described in breach of Condition 6, has not occurred since there is in effect no valid condition to breach.

¹ *Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578

² PPG: Paragraph: 005 Reference ID: 21a-005-20190723

16. The appeals on ground (b) succeed.

Conclusion

17. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed.

18. In these circumstances, Appeal A on grounds (a), (f) and (g), and the application for planning permission deemed to have been made under S177(5) of the 1990 Act (as amended), and Appeal B on grounds (f) and (g), do not fall to be considered.

J Whitfield

INSPECTOR