

Appeals Decision

Site visit made on 13 August 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 24th August 2026

Appeal refs: APP/P4605/C/25/3358730; APP/P4605/C/25/3358731 806 Pershore Road, Selly Park, Birmingham B29 7LS

- The appeals are made by Mr Sulemaan Iqbal, (APP/P4605/C/25/3358730), and Mrs Shaheen Bibi, (APP/P4605/C/25/3358731), under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 12 December 2024, Council ref: 2023/0781/ENF. The appeals were made on 10 January 2025.
- The breaches of planning control alleged in the notice are: Without planning permission,
 - i. the unauthorised installation of a shop front and roller shutter in the approximate position marked in green on the plan attached to the notice;
 - ii. the unauthorised material change of use of the ground floor to a barber shop in the approximate position marked in green on the plan attached to the notice.
- The requirements of the notice are:
 - i. Remove the unauthorised shop front and roller shutter and reinstate the front elevation of the Premises to its condition immediately prior to the breach taking place;
 - ii. Remove all demolished building materials and rubble from the Premises arising from compliance with requirement i above; and
 - iii. Permanently cease the unauthorised use of the ground floor of the Premises as a barber shop.
- The period for compliance with the above requirements is 3 months.
- The appeal was made on the grounds set out in section 174(2) (a), (b), (c) and (g) of the Town and Country Planning Act 1990 (as amended), (the Act).

Summary of decision: The enforcement notice is varied and upheld.

Appeal property

1. The appeal concerns No. 806 Pershore Road, Selly Park, Birmingham. It is a narrow black painted mid-terrace, 2 storey property in a row of mostly residential uses, excepting the adjoining pharmacy at No. 808 and the end of terrace No. 2 Wallace Road, a hot food takeaway with a frontage to Pershore Road.
2. The ground floor of No. 806 was in use as a barber shop at the time of my visit and when the enforcement notice was issued. The first floor was said to be used as a residential flat, accessed from the rear of the property.
3. The nearby area is predominantly residential with terraced streets located to the east of the appeal site with larger properties to the west in the Selly Park Conservation Area.

The appeal premises are outside a defined Centre. Storchley Local Centre is 900m to the south, Selly Oak District Centre is 1.2km to the west.

The appeals on ground (b)

4. The appeals on ground (b) assert that those matters stated in the enforcement notice have not occurred. Ground (b) is normally pleaded where an appellant considers that what is alleged by the enforcement notice has not in fact happened.
5. The Appellants Mr Iqbal and Mrs Bibi said the roller shutter to the front of the barber shop at No. 806 described in the alleged breach of planning control had been installed by the previous owner, but it had been removed at the time the notice was issued. There had been no breach of planning control in relation to the shutter.
6. Although the Council accepted that the roller shutter had been removed, it is not clear when that took place. If removal took place before the Council resolved to take enforcement action, it should not have been part of the alleged breach of planning control. If removal took place later, it would have been reasonable that the installation of the shutter be part of the alleged breach, even if the shutter was removed prior to issue of the notice. In my view, little turns on this element. I need not come to a view on the matter. The shutter may be seen as part of the ground floor shop front. It would have been picked up as part of Requirements 5.i and ii.
7. The change of use of the ground floor of No. 806 from residential use to use as a barber shop and the installation of a new shopfront had occurred as a matter of fact. The appeals on ground (b) must fail.

The appeals on ground (c)

8. An appeal on ground (c) is that those matters, if they occurred, do not constitute a breach of planning control. The matters alleged will not constitute a breach of planning control if planning permission is not required or is already granted, perhaps because what is alleged is not 'development' as defined by s.55(1) of the Act – for example, the change of use was not material or if what is alleged is exempted from development under s.55(2) – for example, the works did not materially affect the external appearance of the building or is a change within a use class.
9. I consider the Council right to have described the change of use of the ground floor of No. 806 Pershore Road as having been from a residential use, (Use Class C3 – Town and Country (Use Classes) Order 1987 as amended), to a Class E use, (Commercial, Business and Service uses). A change of use from a C3 use to a Class E Class use requires planning permission. Also, when the ground floor at No. 806 Pershore Road became used as a barber shop, the property then had an unlawful sui generis, (of its own kind), mixed use of Class C3 and Class E uses.
10. Facilitating substantial alterations to the ground floor frontage of the building to support its new use as a barber shop materially changed its appearance, as shown by the Council's submission of recent and older Google views. Such works also required planning permission. The Court's decision in the case of *Burroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167 is authority for that position, where it was decided that alterations to the exterior of a building will fall within development if they *materially* affect the external appearance of the building. The alterations to the ground floor frontage at No. 806 changing its appearance from that appropriate to a residential use to a shop front to display the barber shop within clearly and materially changed the appearance of the building.
11. I consider that the enforcement notice correctly identifies breaches of planning control at No. 806 Pershore Road. The appeals on ground (c) must fail.

The appeals on ground (a)

12. The appeals on ground (a) by Mr Sulemaan Iqbal and Mrs Shaheen Bibi ask that planning permission is granted on the deemed application to retain the shop front at No. 806 Pershore Road and continue use of the ground floor as a barber shop.
13. The Council said the lawful use of No. 806 was for residential flats. They said No. 806 was outside of any defined centre as shown in their 'Shopping and Local Centre' Supplementary Planning Document. Although there were commercial uses nearby, No. 806 Pershore Road lies within a residential area. They said a barber shop was a Class E retail use, one that is considered to be a 'main town centre use'.
14. For such projects, policy TP21 of the Birmingham Development Plan and para. 91 of the National Planning Policy Framework, (NPPF), say that a sequential test is required to justify the out of centre location. The Council noted that no sequential test had been provided. They said that in April 2024 there was a 12.15% vacancy rate in Selly Oak District Centre and a 23.3% vacancy rate in Stirchley Local Centre. I agree it appears there may be more suitably located units available in a nearby local centre.
15. Para. 95 of the NPPF says where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in para. 94, it should be refused. I share the Council's view that, whilst the barber shop in the ground floor of No. 806 Pershore Road is a small establishment, permitting its retention would set a poor precedent, even on this small scale, tending to undermine the vitality and viability of nearby local centres, a possible further problem if repeated elsewhere where no sequential test has been carried out.
16. The Council were concerned that the traditional residential frontage of No. 806 had been removed, replaced by a fully glazed ground floor and a central front entrance door. I share their understandable concern that the former residential character had been diminished, having been replaced by a black painted frontage to the barber shop. The harm to the appearance of the immediate is also accentuated by its location just over the road from the Selly Park Conservation Area. I consider that the Council were right to withhold planning consent to retain the unlawful development enforced against.

The appeals on ground (g)

17. The appeals on ground (g) assert that the period for compliance with the requirements of the enforcement notice is too short and that a longer period should be substituted. The Appellants said more than 3 months was required to comply with the enforcement notice. Although 3 months may be a reasonable amount of time to carry out necessary physical works to the property at No. 806, I accept that more time could be needed to re-locate the barber shop business. I increase the period for compliance to 9 months. The appeals on ground (g) succeed to that extent.

Conclusion

18. For the reasons given above, I conclude that the appeals should not succeed. I uphold the enforcement notice with a variation.

FORMAL DECISION

19. It is directed that the enforcement notice is varied by the deletion of the words: "3 months" in line 2 of para. 6. of the second page of the notice and the substitution therefor of the words "9 months". Subject to that, the varied enforcement notice is upheld. Planning permission is not granted on the applications deemed to have been made to retain the barber shop use or the shop front at No. 806 Pershore Road.

John Whalley

INSPECTOR