

LONDON BOROUGH OF BRENT

Item 4/01

PLANNING Appeals RECEIVED between 1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

**Application Number:** 04/4082      **Team:** Northern Team      **Application Type** S78      FUL  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** Cbc Computers, 91C Mora Road, London,  
**Proposal:** NW2 6TB

Erection of first-floor extension and part single-storey and part two-storey extension to existing commercial building

**Application Number:** 05/2096      **Team:** Northern Team      **Application Type** S78      FUL  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** Mosque & Islamic Centre Of Brent, Chichele  
**Proposal:** Road, London, NW2 3DA

Retention of first floor office extension to side of mosque that projects into the curtilage of Nos. 35A and 35B Howard Road

**Application Number:** 05/2230      **Team:** Western Team      **Application Type** S78      FUL  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** Land Adj To Morrith House, Talbot Road,  
**Proposal:** Wembley, HA0

Demolition of garages and erection of part single-, two- and three-storey building comprising 4 one-bedroom flats and 4 two-bedroom flats, creation of 4 parking spaces, associated landscaping and erection of bin and bicycle store to rear and erection of bin store enclosure on site frontage (as accompanied by Arboricultural Report by Nicholas van Pelt dated 16/04/04. Sunlight and Daylight Report by Gordon Ingram Associates dated 19 January 2005 and Supporting Statement by Development Planning Consultancy)

**Application Number:** 05/2446      **Team:** Northern Team      **Application Type** S78      FUL  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** 25B & C, Bridge Road, Wembley, HA9  
**Proposal:**

Change of use from Use Class A1 (barbers' shop) to Use Class A3 (cafeteria) with new shopfront

**Application Number:** 05/2757      **Team:** Northern Team      **Application Type** S78      FUL  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** 1-28 Inc, Evans Business Centre, Brook Road,  
**Proposal:** London, NW2

Demolition of existing buildings and redevelopment of the site for a mixed-use development of 6 new buildings, comprising 140 flats (Class C3), 54 of which will be affordable housing, 4,120m<sup>2</sup> of space for commercial use (Class B1) and 130m<sup>2</sup> of space for community use (Class D1) with associated car-parking and landscaping (as accompanied by Sustainability checklist received 07/10/2005, Planning Statement by Barton Willmore dated October 2005, Design Statement by Carey Jones Architects dated September 2005 and Transport Statement dated October 2005)

LONDON BOROUGH OF BRENT

PLANNING Appeals RECEIVED between 1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

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**Application Number:** 05/2964      **Team:** Western Team      **Application Type** S78 VAR  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** 427A High Road, Wembley, HA9 7AB  
**Proposal:**  
Removal of condition 4 (restricting opening hours) of full planning permission  
01/0180 for change of use of the first floor to food and drink (Use Class A3),  
(As accompanied by letter dated 14th December 2005)

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**Application Number:** 05/3138      **Team:** Northern Team      **Application Type** Other ADV  
**Appeal Received:** 10/12/2004      **Appeal Against:** Refusal of planning permission  
**Location:** Council Yard N/T 451-453, North Circular  
**Proposal:** Road, London, NW2 7QD  
Installation and display of 2 internally illuminated advertisement hoardings  
facing North Circular Road

1 km 4/02

**LONDON BOROUGH OF BRENT**

**ENFORCEMENT Appeals RECEIVED between 1-Feb-2006 and 28-Feb-2006**

**Planning Committee: 29 March, 2006**

**Application Number:** E/03/0236 **Appeal Against:** Enforcement Appeal **Team:** Northern Team  
**Appeal Started:** 23/02/2006  
**Location:** 47 Corringham Road, Wembley, HA9 9PX  
**Description:**  
 The erection of a boundary wall, gates and railings, and the formation of a hardstanding to the front of the premises.

**Application Number:** E/04/0709 **Appeal Against:** Enforcement Appeal **Team:** Western Team  
**Appeal Started:** 02/02/2006  
**Location:** 196 Ealing Road, Wembley, HA0 4QG  
**Description:**  
 The erection of a building to the rear of premises and the erection of a canopy to the front of the premises.

**Application Number:** E/05/0107 **Appeal Against:** Enforcement Appeal **Team:** Western Team  
**Appeal Started:** 09/02/2006  
**Location:** Anglo Asian Cash and Carry Ltd, 539 High Road,  
**Description:** Wembley, HA0 2DJ  
 The erection of a canopy, enclosure and timber display structure to front of premises.

**Application Number:** E/05/0605 **Appeal Against:** Enforcement Appeal **Team:** Northern Team  
**Appeal Started:** 15/02/2006  
**Location:** 12 Balnacraig Avenue, London, NW10 1TJ  
**Description:**  
 The erection of a rear dormer window extension, a balcony, front rooflights and a side window to the premises.

**Application Number:** E/05/0663 **Appeal Against:** Enforcement Appeal **Team:** Southern Team  
**Appeal Started:** 10/02/2006  
**Location:** Vogue Classic Dry Cleaners, 116 Chamberlayne  
**Description:** Road, London, NW10 3JP  
 Erection of a single storey rear extension to premises.

**Application Number:** E/05/0729 **Appeal Against:** Enforcement Appeal **Team:** Western Team  
**Appeal Started:** 09/02/2006  
**Location:** Gold Angels, 5 Curtis Lane, Wembley, HA0 4FW  
**Description:**  
 The erection of the 2 non-illuminated signs, the single-storey extension fronting Curtis Lane and the material change of use of the premises to a retail shop.

LONDON BOROUGH OF BRENT

Item 4/03

PLANNING Appeal DECISIONS between 1-Feb-2006 and 28-Feb-2006

Planning Sub-Committee: 29 March, 2006

**Application Number:** 04/3542 **Team:** Western Team

**Appeal Decision:** Appeal Dismissed **Appeal Decision Date:** 13/02/2006

**Location:** O'Hara Brothers, Atlas Road, Wembley, HA9 0JH

**Proposal:**

Formation of car park with associated access onto Hannah Close, erection of 2.5-metre-high boundary fencing, lighting columns, sliding gate and landscaping to front and side boundaries.

**Application Number:** 05/0413 **Team:** Western Team

**Appeal Decision:** Appeal Dismissed **Appeal Decision Date:** 09/02/2006

**Location:** 681,683,685,687,687A,689,691, Harrow Road,

**Proposal:** Wembley, HA0

Alterations and extensions to convert hipped roof to a mansard roof containing windows on all frontages in conjunction with the formation of an additional floor to provide 3 two-bedroom self contained flats and provision of 8 car parking spaces served by two proposed accesses at either end of the site.

**Application Number:** 05/1820 **Team:** Southern Team

**Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 22/02/2006

**Location:** Store In Basement, College Mansions, Winchester

**Proposal:** Avenue, London, NW6 7TY

Conversion of a store-room in the basement into a one-bedroom, self-contained flat, involving the erection of a single-storey rear extension

**Application Number:** 05/2488 **Team:** Western Team

**Appeal Decision:** Appeal Dismissed **Appeal Decision Date:** 23/02/2006

**Location:** 244 North Circular Road, London, NW10 0JT

**Proposal:**

Installation and display of 2 illuminated advertisement hoarding

**Application Number:** 05/2709 **Team:** Northern Team

**Appeal Decision:** Appeal withdrawn **Appeal Decision Date:** 08/02/2006

**Location:** 34 Barn Way, Wembley, HA9 9NW

**Proposal:**

Erection of two-storey side and rear extension to dwellinghouse

LONDON BOROUGH OF BRENT

Item 4/04

ENFORCEMENT Appeal DECISIONS between 1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

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**Application Number:** E/04/0579

**Team:** Western Team

**Appeal Decision:** Appeal partially allowed

**Appeal Decision Date:** 21/02/2006

**Location:** 29 Casselden Road, London, NW10 8QR

**Proposal:**

The Material Change of Use of the premises to 5 flats and the erection of a single storey rear extension, a rear dormer window extension and installation of french doors on the first floor of the rear elevation of the premises.

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**Application Number:** E/04/0718

**Team:** Southern Team

**Appeal Decision:** Appeal partially allowed

**Appeal Decision Date:** 21/02/2006

**Location:** 111 Holland Road, London, NW10 5AT

**Proposal:**

The erection of a conservatory extension.

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**Application Number:** E/05/0039

**Team:** Western Team

**Appeal Decision:** Appeal Dismissed

**Appeal Decision Date:** 02/02/2006

**Location:** 19 Brook Avenue, Wembley, HA9 8PH

**Proposal:**

The erection of a dormer window roof extension to the rear of the premises.

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**Application Number:** E/05/0189

**Team:** Southern Team

**Appeal Decision:** Appeal Dismissed

**Appeal Decision Date:** 07/02/2006

**Location:** Shawarma Express, 19 Walm Lane, London, NW2 5SH

**Proposal:**

Erection of new shop front and extractor duct.

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**Application Number:** E/05/0198

**Team:** Southern Team

**Appeal Decision:** Appeal Allowed

**Appeal Decision Date:** 07/02/2006

**Location:** Shawarma Express, 19 Walm Lane, London, NW2 5SH

**Proposal:**

The Material Change of use from retail to sale of hotfood and drink on and off the premises.

Item 4/05

LONDON BOROUGH OF BRENT

PLANNING SELECTED appeal DECISIONS between  
1-Feb-2006 and 28-Feb-2006  
Planning Committee: 29 March, 2006

**Introduction**

In order to keep Members fully informed of Planning Appeal decisions, copies of Inspector's decision letters concerning those

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<b>Our reference:</b>	05/1820	<b>Appeal Decision:</b>	Appeal Allowed	<b>Appeal Decision Date:</b>	22/02/2006
<b>Team:</b>	Southern Team				
<b>Location:</b>	Store In Basement, College Mansions, Winchester Avenue, London, NW6 7TY				
<b>Proposal:</b>	Conversion of a store-room in the basement into a one-bedroom, self-contained flat, involving the erection of a single-storey rear extension				

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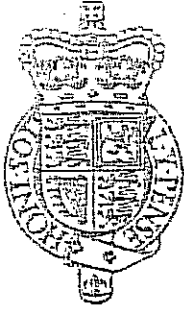
**Background Information**

Any persons wishing to inspect appeal decision not set out in full on the agenda should contact the Area Planning Support Team, The Planning Service, Brent House, 349 High Road, Wembley, HA9 6BZ. Telephone 020 8937 5210 or tps@brent.gov.uk.

Chris Walker

Director of the Planning Service

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# Appeal Decision

Site visit made on 3 February 2006

by **Martin Andrews MA BSc(Econ) DipTP(Dist) MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate  
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2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date

**22 FEB 2006**

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**Appeal Ref: APP/T5150/A/05/1190880**

**Flat 2, College Mansions, Winchester Avenue, London NW6 7TY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mohammad Ali Darabi against the decision of the Council of the London Borough of Brent.
- The application Ref. 05/1820, dated 8 April 2005, was refused by notice dated 14 September 2005.
- The development proposed is to convert part of the basement of this residential building which is currently used as storage by the residents into a one bedroom self contained flat.

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## Decision

1. For the reasons given below, I allow the appeal and grant planning permission for the conversion of part of the basement of this residential building which is currently used as storage by the residents into a one bedroom self contained flat, at Flat 2, College Mansions, Winchester Avenue, London NW6 in accordance with the terms of the application, Ref. 05/1820 dated 8 April 2005 and the plans submitted therewith, subject to the following conditions:
  - 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
  - 2) The development approved shall be carried out and completed in all respects in accordance with the plans and proposals contained in the application.
  - 3) Details of adequate arrangements for the storage and disposal of refuse shall be submitted to and approved in writing by the Local Planning Authority and shall be installed prior to the commencement of the use hereby approved.

## Reasons

2. Foremost amongst the Council's concerns is the small size of the proposed unit and with an internal floor area of only about 36 sq. m. I consider that the proposed conversion is close to the minimum that could be considered as acceptable in terms of modern day living conditions. That said, the floorspace exceeds the space under the Council's guidelines that would be acceptable for a one person studio and although as a flat this proposal would be different, it does not fall below an absolute standard of living space for a single occupier. I do not therefore consider that with a reasonable quality of conversion and the opportunity for the occupier to exercise their own discretion as to suitability, the proposed dwelling would be in harmful conflict with the Council's policies.

3. Although as a conversion, the arrangement of living space is necessarily such that there would be separate areas for kitchen, lounge and bedroom, I do not consider that the space within each element of the accommodation to be so inadequate as to be unacceptable. As regards the 'poor outlook', I agree with the appellant's view that the 20 sq. m. patio area would provide an outlook equivalent to, if not better than, that of innumerable other basement flats in London.
4. The Council has also referred to an absence of parking and the lack of an appropriate pedestrian access. On the first point, the appellant disputes the PTAL score of 3 and places it at 6. Whatever the accurate score, from my visit to the site it was clear to me that the flat would have reasonable access to bus routes and the Underground. And in any event I am of the view that the sustainability advantages of the conversion are such as to outweigh any absolute requirement for a parking space. On the second point, I note that in addition to the service road, the flat would be accessible from the common parts of the main building and its principal entrance in Winchester Avenue.
5. Overall, I consider that the proposal would not conflict significantly with the Council's UDP policies and would make a modest but nonetheless valuable contribution to the housing stock of the area. I shall therefore allow the appeal subject to the suggested conditions. These will ensure that the conversion is in accordance with the application drawings (to ensure a satisfactory standard of development) and provide adequate refuse storage and disposal facilities (to protect residential amenities and safeguard hygiene).



INSPECTOR



# LONDON BOROUGH OF BRENT

## ENFORCEMENT SELECTED appeal DECISIONS between

1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

### Introduction

In order to keep Members fully informed of Enforcement Appeal

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**Our reference:** E/04/0579 **Appeal Decision:** Appeal partially allowed **Appeal Decision Date:** 21/02/2006  
**Team:** Western Team

**Location:** 29 Casselden Road, London, NW10 8QR

**Proposal:**

The Material Change of Use of the premises to 5 flats and the erection of a single storey rear extension, dormer window extension and installation of french doors on the first floor of the rear elevation of the

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**Our reference:** E/04/0718 **Appeal Decision:** Appeal partially allowed **Appeal Decision Date:** 21/02/2006  
**Team:** Southern Team

**Location:** 111 Holland Road, London, NW10 5AT

**Proposal:**

The erection of a conservatory extension.

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**Our reference:** E/05/0198 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 07/02/2006  
**Team:** Southern Team

**Location:** Shawarma Express, 19 Walm Lane, London, NW2 5SH

**Proposal:**

The Material Change of use from retail to sale of hotfood and drink on and off the premises.

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### Background Information

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Telephone 020 8937 5210 or email: tps@brent.gov.uk.

Chris Walker

Director of the Planning Service

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# Appeal Decision

Hearing held on 07 February 2006

By **Felix Bourne** BA(Hons) LARTPI Solicitor

an Inspector appointed by the First Secretary of State

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inspectorate.gsi.gov.uk

Date

21 FEB 2006

Appeal Ref: APP/T5150/C/05/2003304  
29 Casselden Road, London, NW10 8QR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Lauden Investments Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/04/0579.
- The notice was issued on 5 July 2005.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises to five flats and the erection of a single storey rear extension, a rear dormer window extension and installation of French doors on the first floor of the rear elevation of the premises.
- The requirements of the notice are to cease the use of the property as 5 self-contained flats; to remove all materials associated with the unauthorised change of use; and to remove the rear extension, the rear dormer window extension and "French" doors on the first floor, and restore the house to its original condition before the unauthorised development took place.
- The period for compliance with the requirements is three months.
- 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.

**Summary of Decision:** The ground (a) appeal is allowed in so far as it relates to the rear (ground floor) extension and the French doors, and conditional planning permission is granted for these elements. However, the ground (a) appeal is dismissed in so far as it relates to the material change of use and the rear dormer window extension, and the grant of planning permission is refused for these elements. The ground (f) appeal is dismissed, but the ground (g) appeal is allowed and the period for compliance increased. Subject to the variations indicated the enforcement notice is upheld.

## PROCEDURAL MATTERS

1. I conducted a Hearing into the above appeal on 7 February 2006, undertaking a formal site inspection as part of the Hearing.
2. From the appellant's statement it appeared that, if the understanding set out therein as to previous use of the premises was correct, and notwithstanding that no LDC had been applied for, its lawful use could be as two flats. I therefore raised this question at the opening of the Hearing, and the Council helpfully confirmed that their understanding was indeed that the lawful use was for two flats. This does not, it seems to me, necessitate any changes to the terms of the enforcement notice but is clearly a matter to be borne in mind when considering compliance with the Notice.

## THE GROUND (a) APPEAL & DEEMED APPLICATION

### Main Issues

3. The main issues in this appeal are as follows:
- i) The adequacy of the accommodation provided in the 5 self-contained flats;
  - ii) The effect of such a use on the living conditions of those resident at the appeal property and other nearby properties.
  - iii) The effect of the rear dormer on the character and appearance of the host property and other properties in the terrace of which it forms part, as well as on the locality;
  - iv) The effect of the rear extension on the living conditions of those resident at the ground floor unit at No. 29 and other neighbouring properties, with particular reference to the questions of loss of outlook, loss of light, and visual domination; and
  - v) The effect of the creation of French doors at first floor level, with particular regard to the questions of loss of privacy and the effect on the character and appearance of the host property and the terrace of which it forms part.

### Planning Policy

4. Statute provides that, if regard is to be had to the development plan for the purpose of any determination under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The development plan for the area includes the London Plan, adopted in February 2004, and the Brent Unitary Development Plan, also adopted in 2004.
5. The enforcement notice refers to UDP policies BE2, BE7, BE9, H18, H19, H21, TRN23 and PS14 whilst, in their statement, the appellants also draw attention to Policy H17.
6. I have also been referred to Government Planning Policy Guidance in the form of PPG3, on Housing, and have additionally had my attention drawn to the Council's Supplementary Planning Guidance on Altering and Extending Your Home (SPG5) and that entitled Design Guide for New Developments (SPG17). I understand that the SPG has been the subject of extensive consultation, and has been adopted as SPG by the Council. Indeed the UDP contains references to it. Accordingly it can, in my view, be accorded significant weight.

### Inspector's Reasoning

7. The appeal property is a mid-terrace house in a predominantly residential no-through road.
8. I have approached the planning merits on the basis that, whilst a developer should not be disadvantaged by the fact that he has already undertaken the development for which he seeks planning permission, neither should he be placed at an advantage by having chosen to follow such a course.
9. Looking, first, at the policies relevant to the material change of use, **UDP Policy H18** is concerned with the quality of flat conversions and indicates, amongst other things, that flat conversions should provide an acceptable standard of accommodation to future residents, should not be over-intensive, in terms of the number and size of proposed units and/or the size of extensions proposed and should have an acceptable visual impact on the street. Amongst various criteria set out in the policy are (a) that the layout of rooms within conversion schemes should avoid differing types of room being "stacked" over or under each other; or "handed" next to each other; and (b) that all rooms should have regard to

room size standards (SPG17). Criterion (k) provides that schemes should, where practicable, include a range of unit sizes suitable to various needs, and where the dwelling to be converted has a rear garden, then a family unit (2 or more bedrooms) on the ground floor/sub basement floor should be included, with direct access to the garden. Policy H17 states that the conversion of dwelling houses into flats will be permitted unless the property is less than 110 square metres (or less than 140 square metres if the property is in a location where conversions are restricted). Whilst the Policy contains a cross-reference to Policy H22 this is an error, and the errata sheet prepared for the UDP shows that this should be a reference to Policy H19, which provides, amongst other things, that on-street parking will not be acceptable where either a street is heavily parked, or where the location presents particular traffic safety hazards. Section 3.5 to SPG17 accepts that internal residential areas are normally beyond the remit of planning guidance but sets out factors, including minimum unit size, to be taken as a guide relevant to new development and to residential conversions.

10. Policy PS14 sets out parking provision standards for residential development. However, Policy TRN23 states that residential developments should not provide more parking than those standards indicate, and provides that lower standards apply for developments of affordable housing and for units in town centres with good and very good public transport accessibility.
11. Examining, first, the adequacy of the accommodation provided, all five flats fall short of the guideline sizes set out in SPG17. Flats 3 and 5 are Studios and have areas of around 23 square metres (Flat 3) and 21 or 26 square metres (dependant on whether you include a lobby area) for Flat 5. This compares to the minimum unit size guideline of 33 square metres in SPG17. Flat 1 is intended to be a one-bedroom flat, and has a floor area of around 28 square metres, which compares to the guideline minimum of 45 square metres contained in SPG 17. Flat 4 is again a one-bedroom flat, having an area of about 29 square metres (on the Council's calculations) or 32 square metres on the appellant's. Again this compares to a minimum size guideline of 45 square metres. Finally, Flat 2 is a two bedroom flat, with a floor area of about 37 square metres, compared to a guideline minimum of 55 square metres.
12. At the time of my site inspection I was told that there were eight people living at No. 29. However, it was agreed that, on the basis of the beds and bed settees at the property, there was capacity for twelve. In particular, the reception/kitchenette to Flat 1 had been divided by a curtain, and a bed placed in the front part of the room, in addition to the double bed in the bedroom. The studio flat, No. 3, had a double bed and that at No. 5 had a folding bed also capable of accommodating two. In short, therefore, there was sleeping capacity for three in each of Flats 1 and 2, and for two in each of the other flats.
13. It is, of course, fair to point out that the guidance on the size of units (and their occupancy) contained in SPG17 is exactly that and, indeed, the appellants referred me to an appeal decision where a conversion was allowed with units that were smaller than provided for by that guidance. However, the shortfalls are significant and, in this case, I am satisfied that they do impact adversely upon the living conditions of residents. Conditions are often cramped, or would be if the occupiers had more than the bare essentials in terms of furniture. As an example, both the bedrooms to Flat 2 are very small, whilst the reception/kitchenette also seems to me to be inadequate for satisfactory living by three people.

14. Accordingly, I conclude that the development is over-intensive, fails to provide an acceptable standard of accommodation to future residents, and fails to have sufficient regard to the room size standards set out in SPG17, which brings the development into clear conflict with UDP Policy H18. It seems to me that there are also potential problems with regard to stacking, as Studio flats combine the bedroom with the living area and, whilst it is possible they may only be occupied by one person, that will not necessarily be the case and in any event is no guarantee that a single occupier will not cause disturbance.
15. The appellants had argued that the conversion was in accord with Policy H17. However, this was on the basis that the Policy contained a cross-reference to Policy H22, and that this did not militate against the development. In fact the cross-reference should be to Policy H17 and, as a consequence, the Council argue that, as Casselden Road is designated as a "heavily parked street", the original internal floor area of the house needs to be at least 140 square metres before the property is considered large enough to convert into flats. In this case the original floor area of the premises was around 132 square metres and, whilst the Council have, in the event, accepted that the lawful use of the property is as two flats it seems to me that a conversion to five flats would be a very different matter.
16. With regard to the second main issue, I note that car occupancy amongst those living at the flats is expected to be low, but that cannot be guaranteed. Use for five flats is likely, in my view, to generate more car-owners than use as two flats. More generally, I am satisfied that the over-intensive use of the premises is likely to have an adverse effect on the character of this residential street, and those who live there.
17. I understand that a street is designated as a "heavily parked street" if Council inspections reveal it to be more than 80% parked overnight. The appellant's agent had visited at times when the on-street parking was at a lower level. However, I note that the representation from the Bachs Residents Association refers to major parking problems at night and at weekends and, from all the evidence available to me, I have no reason to think that the designation is inappropriate. In any event, Policy H19 also refers to locations which present particular traffic hazards. Such a description could, it seems to me, be fairly ascribed to this street, which is a cul-de-sac with no turning point, which means that traffic has to turn, as best it can, in the street, and brings the risk that large vehicles, and others at times of heavy parking, may have to reverse back down the street in order to get out of it. I therefore identify a clear conflict with Policies H17 and H19.
18. Turning to the policies relevant to the operational developments, **Policy BE2** is concerned with townscape: local context and character and provides, amongst other things, that proposals should be designed with regard to their local context, making a positive contribution to the character of the area, and that they should not cause harm to the character and/or appearance of an area. **Policy BE7**, which is headed "Public Realm: Streetscape" is concerned with the street environment, including residential street frontages, but does not appear to be directly relevant to the appeal. **Policy BE9**, however, seeks to ensure development of high architectural quality, and indicates, amongst other provisions, that extensions and alterations to existing buildings should be designed to be of a scale, massing and height that is appropriate to their setting, and should be laid out to ensure that buildings and spaces are of a scale, design and relationship to each other, which promotes the amenity of users, providing a satisfactory level of sunlighting, daylighting, privacy and outlook for existing and proposed residents. **Policy H21** relates to domestic extensions and

states that these should be acceptable when judged against the criteria set out in the Policy, and having regard to SPG. Amongst the policy's criteria are that the extension should (a) complement the existing house and should not alter its general scale and character; and (b) respect the amenity, privacy, daylight and sunlight of adjoining properties and the local character of the area and the streetscene. SPG5 provides, amongst other things, that single rear extensions to terraced houses should be no more than 2.5 metres deep, and that rear dormers should be no wider than half the original roof plane.

19. With regard to the dormer, and the third main issue, at the time of my site inspection the appeal property was the only property in the terrace that I could see to have a "dormer" type roof extension. Because it is in the rear roof façade it is not apparent from the street. Although described as a "dormer" the structure contains two sets of windows and extends to a width of around 4.3 metres (disregarding the overlapping roof) within a total roof width of around 5.2 metres. Although the guidance contained in SPG5 is indeed guidance only, Policy H21 calls for regard to be had to the SPG. However, in this case the structure is far in excess of 50% of the width of the roof and the guidance in the SPG appears, to all intents and purposes, to have been ignored. In my view the structure is an unattractive addition out of sympathy with the original building. Whilst not visible from the street it is readily apparent from some neighbouring properties and also from those backing on to the rear garden at the appeal site. In my view it detracts from the outlook of those residents with views of the structure and, to that extent, it harms the character of the area. I therefore identify clear conflict with UDP Policies BE2, BE9, and H21, as well as SPG5.
20. Turning to the ground floor rear extension, and the fourth main issue, this is 4.5 metres in length, whereas the SPG refers to a maximum of 2.5 metres for terraced properties. The increased length does exacerbate an unattractive tunnel effect between the flank wall of the dwelling and the boundary, to the disadvantage of the outlook from the bedroom of Flat 1. However, were the current use to cease, and the property reinstated to its lawful use as two flats, the new extension and the existing bedroom to Flat 1 would be part of the same unit. If that were so I do not believe that, overall, the effect of the extension on the living conditions of residents at the appeal property would be unacceptable.
21. From my site inspection I consider that, provided the parapet were removed to allow the reduction in height of the extension to around 2.9 metres, the extension would not have an unacceptable impact upon the neighbours to either side, and feel reinforced in that view by the absence of any specific objection to this element of the development from the occupiers of those properties. I have also borne in mind the argument that, if this were a dwellinghouse, this extension (or the roof extension) could have been constructed as permitted development.
22. I consider that retention of the ground floor extension need not conflict with development plan policies though, turning to the final main issue, one potential problem of retaining this flat-roofed extension is the possibility that it could be used as a roof terrace or sitting-out area, via the French Doors created in the rear of the building at (more-or-less) first floor level. The appellants accepted that such a use could harm the living conditions of neighbouring residents and suggested that I could impose a condition to prevent this. It was suggested that this could be achieved by requiring the doors to open inwards and by placing a Juliet balcony on the outside.

23. The Council, on the other hand, were concerned about enforceability and would have preferred to have a window inserted in place of the French doors, to make use of the roof more difficult. However, having learnt that, before insertion of the French doors, there was a single door, with stairs allowing the first floor flat dwellers access to the garden, I could not achieve that by changing the requirements of the Notice as I would be making them more onerous for the appellant. As I see the French doors as no more harmful to the appearance of the building than a single door I consider a condition along the lines suggested as the best way forward. If, on re-instatement of the building to two flats, the appellant wishes to re-instate direct access for residents of the first floor flat to the garden area, that will have to be the subject of a separate permission from the Council. The only other condition which I believe is required in relation to the ground floor extension is a condition to lower the parapet, and this requirement I shall incorporate into the condition regarding the balcony.
24. Generally, I have had regard to the paragraphs of PPG3 on which the appellants rely in support of their appeal. However, paragraph 63 of the PPG indicates that, in determining planning applications, local planning authorities should reject poor design particularly where their decisions are supported by clear plan policies and adopted supplementary planning guidance. In this case the development plan is up-to date and the SPG has not only been adopted but has been the subject of extensive public consultation and is referred to in UDP policies.

#### **Conclusions on the ground (a) appeal**

25. I conclude that the change of use is unacceptable and, likewise, the "dormer" roof extension. I will therefore uphold the enforcement notice and refuse the grant of planning permission in relation to these elements. However, I conclude that the ground floor rear extension is acceptable, as are the French doors. I shall therefore grant planning permission for these elements, subject to appropriate conditions.

#### **THE GROUND (f) APPEAL**

26. I have considered the matters raised within the ground (f) appeal whilst looking at the ground (a) appeal. In particular I have accepted the concept of a Juliet balcony at first floor level. I have also considered the argument that the "dormer" extension could have been constructed as permitted development, had the building been in use as a single family dwelling. However, even if that were the use of the building, it was accepted that not both the ground floor rear extension and the "dormer" extension could have been constructed as permitted development and, in the light of the sound planning objections thereto, it is inappropriate to contemplate the retention of the roof extension.

#### **THE GROUND (g) APPEAL**

27. At the Inquiry the Council conceded that the period of three months for compliance was not generous and confirmed that they would not object to a reasonable extension to the period. From the current tenancy agreements it would seem that, so far as the use is concerned, an extension of the period of compliance to seven months would allow the completion of those tenancies, as well as giving the present occupants a reasonable time in which to find alternative accommodation.

28. It would then be necessary for the works required by the Notice relating to the roof extension to be undertaken. For this it seems to me that a period of a further two months would be sufficient.
29. The ground (g) appeal therefore succeeds to this extent and I shall extend the periods for compliance accordingly.

#### OVERALL CONCLUSIONS

30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part.
31. Accordingly, as to the ground (a) appeal and deemed planning application, I shall dismiss the appeal, and refuse the grant of planning permission with regard to the material change of use, and the "dormer" extension, but allow the appeal and grant planning permission, subject to condition, for the ground floor extension and French doors.
32. I also conclude that the ground (f) appeal should be dismissed, but that a reasonable period for compliance would be seven months, in relation to the use, and nine months with regard to the "dormer" extension, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.
33. The appeal therefore succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

#### FORMAL DECISION

34. I allow the ground (a) appeal insofar as it relates to the erection of a single storey rear extension, and the installation of French doors on the first floor of the rear elevation, and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for these operations, at 29 Casselden Road, London, NW10 8QR subject to the following condition:

1. The single storey rear extension shall be demolished to ground level and all materials resulting from the demolition shall be removed within two months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

(i) within three months of the date of this decision a scheme for altering the French doors so that they open inwards, and for the erection of a "Juliet" balcony outside the French doors, as well as for the removal of the parapet to the single storey rear extension, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;

(ii) within eleven months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the First Secretary of State.

(iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the First Secretary of State.

(iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.



35. I dismiss the appeal under ground (f) but allow the appeal on ground (g), and direct that the enforcement notice be varied by the deletion of three months and the substitution of seven months as the period for compliance in relation to the material change of use, and nine months with regard to the rear dormer window extension.
36. I dismiss the ground (a) appeal, and uphold the enforcement notice, as varied, insofar as it relates to the material change of use of the premises to 5 flats and the erection of a rear dormer window extension, and refuse the grant of planning permission, including on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Felix Bourne*

FELIX BOURNE

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms C Apcar BA(Hons) MRTPI      Principal of Apcar Smith Planning

FOR THE LOCAL PLANNING AUTHORITY:

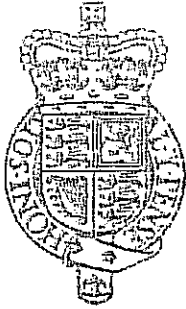
Mr Tim Rolt BA(Hons) MRTPI      A Planning Officer with the Council

DOCUMENTS

Document 1 List of persons present at the hearing  
Document 2 Errata Sheet for Brent UDP 2004  
Document 3 Small bundle of UDP documents  
Document 4 Appeal decision, reference APP/T5150/C/04/1152375, relating to 32 Casselden Road

PLANS

Plan A Plan relating to 50 Furness Road, London, NW10 4QE



# Appeal Decision

Site visit made on 30 January 2006

by **David C Pinner BSc(Hons) DipTP MRTPI**

an Inspector appointed by the First Secretary of State

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Date

**21 FEB 2006**

**Appeal Ref: APP/T5150/C/05/2003569**

**111 Holland Road London NW10 5AT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Vishram Meghani against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/04/0718.
- The notice was issued on 19 July 2005.
- The breach of planning control as alleged in the notice is the erection of a conservatory extension.
- The requirements of the notice are remove the rear conservatory extension and all resulting debris from the premises.
- 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), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

**Summary of Decision:** The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

## **Ground (a)**

1. The Council has prepared supplementary planning guidance which deals specifically with single storey rear extensions to terrace houses. The maximum depth of extension that is acceptable is 2.5 metres. However, the guidance is intended to ensure that extensions are well-designed, complement the house and the neighbourhood and do not have an unacceptable impact on neighbouring property. Although in parts it refers to "rules", it is nevertheless guidance and has to be applied as such. In this case, the appeal property and the houses either side have single storey extensions. The projection of the conservatory should be assessed in terms of its effect on the extended dwellings either side rather than on the original dwellings.
2. The extension is constructed along the common boundaries with both the adjoining properties. Although the side windows are obscure glazed, I consider that this is an unneighbourly form of development which imposes itself on the adjoining properties. Issues such as light spillage and the fact that the side walls and windows of the extension cannot be maintained or cleaned are likely to cause annoyance to the adjoining occupants. Under such circumstances, I see no justification for permitting an extension that significantly exceeds the Council's guidance in terms of its projection from the rear elevation of the extended dwelling. I conclude that the extension has an oppressive impact on the adjoining dwellings, causing unacceptable harm to the living conditions of their occupants. The property retains an adequate amount of open garden space and I disagree

with the Council's claim that the extension has resulted in the over-development of the site. However, this does not alter my conclusion that it is unacceptable.

**Ground (f)**

3. The Council has sought to remedy the breach of planning control rather than the alternative of specifying lesser steps to overcome the injury to amenity. It is not for me to say that they should have followed this alternative course of action. There is no planning permission for any alternative structure and the measures proposed by the appellant would still result in a structure for which no planning permission had been granted. The only remedy that would overcome the breach of control would be the removal of the unauthorised structure as required by the enforcement notice. The appeal on ground (f) therefore fails.

**Ground (g)**

4. The appellant has indicated a willingness to alter the extension in the hope of avoiding the need to demolish it completely. I believe that a smaller extension might be acceptable and that the appellant should be given enough time to apply for planning permission for such an extension. I shall extend the compliance period to 6 months accordingly.

**Conclusions**

5. For the reasons given above and having regard to all other matters raised, I conclude that planning permission should not be granted but that a reasonable period for compliance with the enforcement notice would be 6 months. I am varying the notice accordingly, prior to upholding it. The appeal succeeds to that extent under ground (g).

**Formal Decision**

6. I allow the appeal on ground (g) and direct that the enforcement notice be varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation, I uphold the enforcement notice.



INSPECTOR

LONDON BOROUGH OF BRENT

Mem 4/06

ENFORCEMENT SELECTED appeal DECISIONS between

1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

**Introduction**

In order to keep Members fully informed of Enforcement Appeal

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**Our reference:** E/04/0579 **Appeal Decision:** Appeal partially allowed **Appeal Decision Date:** 21/02/2006

**Team:** Western Team

**Location:** 29 Casselden Road, London, NW10 8QR

**Proposal:**

The Material Change of Use of the premises to 5 flats and the erection of a single storey rear extension dormer window extension and installation of french doors on the first floor of the rear elevation of the

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**Our reference:** E/04/0718 **Appeal Decision:** Appeal partially allowed **Appeal Decision Date:** 21/02/2006

**Team:** Southern Team

**Location:** 111 Holland Road, London, NW10 5AT

**Proposal:**

The erection of a conservatory extension.

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**Our reference:** E/05/0198 **Appeal Decision:** Appeal Allowed **Appeal Decision Date:** 07/02/2006

**Team:** Southern Team

**Location:** Shawarma Express, 19 Walm Lane, London, NW2 5SH

**Proposal:**

The Material Change of use from retail to sale of hotfood and drink on and off the premises.

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**Background Information**

Any persons wishing to inspect appeal decision letters not set out in full on the agenda should contact the Area Planning Service, Brent House, 349 High Road, Wembley, HA9 6BZ.

Telephone 020 8937 5210 or email: tps@brent.gov.uk.

Chris Walker

Director of the Planning Service

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## LONDON BOROUGH OF BRENT

### PLANNING SELECTED appeal DECISIONS between

1-Feb-2006 and 28-Feb-2006

Planning Committee: 29 March, 2006

#### Introduction

In order to keep Members fully informed of Planning Appeal decisions, copies of Inspector's decision letters concerning those

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<b>Our reference:</b>	05/1820	<b>Appeal Decision:</b>	Appeal Allowed	<b>Appeal Decision Date:</b>	22/02/2006
<b>Team:</b>	Southern Team				
<b>Location:</b>	Store In Basement, College Mansions, Winchester Avenue, London, NW6 7TY				
<b>Proposal:</b>	Conversion of a store-room in the basement into a one-bedroom, self-contained flat, involving the erection of a single-storey rear extension				

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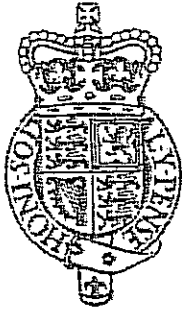
#### Background Information

Any persons wishing to inspect appeal decision not set out in full on the agenda should contact the Area Planning Support Team, The Planning Service, Brent House, 349 High Road, Wembley, HA9 6BZ. Telephone 020 8937 5210 or tps@brent.gov.uk.

Chris Walker

Director of the Planning Service

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# Appeal Decision

Inquiry held on 31 January 2006

Site visit made on 31 January 2006

by Ian Currie BA MPhil MRICS MRTPI

an Inspector appointed by the First Secretary of State

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Date

07 FEB 2006

**Appeal Ref: APP/T5150/C/05/2001876**

**19 Walm Lane, Willesden, London NW2 5SH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Faras Al-Tarehi trading as Shawarma Express against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/05/0189.
- The notice was issued on 30 March 2005.
- The breach of planning control as alleged in the notice is erection of new shop front and extractor duct.
- The requirement of the notice is to remove the shopfront and extractor duct and all associated materials.
- The period for compliance with the requirement is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.**

**Appeal Ref: APP/T5150/C/05/2001953**

**19 Walm Lane, Willesden, London NW2 5SH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Faras Al-Tarehi trading as Shawarma Express against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/05/198.
- The notice was issued on 30 March 2005.
- The breach of planning control as alleged in the notice is the material change of use from retail to sale of hotfood (*sic*) and drink on and off the premises.
- The requirements of the notice are to cease the use of the premises for the sale of hot food and drink on and off the premises and to remove all items, equipment and materials associated with this use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. An appeal on ground (c) was withdrawn before the inquiry opened.

**Summary of Decision: The appeal is allowed, subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

## Procedural Matters

1. In a letter dated 10 January 2006 (Document 8), the Council indicated that it now considered the allegation in the change of use enforcement notice (Appeal

T5150/C/05/2001953) to be wrong in the light of the appellant's evidence to the inquiry. In the letter, it is said that the alleged unauthorised use should now be considered to comprise a mixed Class A1, A3 and A5 use, following the amendments made to the Town and Country Planning (Use Classes) Order 1987 that came into force on 21 April 2005 (SI 2005/85). If this is being promoted by the local planning authority, then there can be no accusation of prejudice to the Council's case if I adopt its representatives' suggestion. Equally, as the revised allegation, indicating a continued conventional retail presence in the premises, waters down the allegations set out in the enforcement notice, then its impact upon the appellant is consequently reduced. Therefore, I am satisfied that no prejudice would be caused to the main parties if I were to take this suggested correction on board. On that basis, I intend to use my extensive powers, under section 176(1) of the 1990 Act as amended, to correct any defect, error or misdescription in the enforcement notice, where this does not cause any injustice to the appellants or the local planning authority. The allegation in the notice will be corrected to read "*The material change of use from retail to a mixed use comprising Class A1, retail sale of goods, Class A3, sale of food or drink for consumption on the premises and Class A5, sale of hot food for consumption off the premises, as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended*".

2. On the understanding that the enforcement notice would be corrected on the lines set out in the preceding paragraph, the appellant did not pursue his ground (b) appeal, made under reference APP/T5150/C/05/2001953, at the inquiry, as it was bound to fail, and I am therefore taking no further action on that matter. However, at the Inquiry an application for costs was made by Mr Al-Tarehi against the London Borough of Brent, confined to Appeal APP/T5150/C/05/2001953. This application is the subject of a separate Decision.

#### **Appeal APP/T5150/C/05/2001876 – Main Issue on Ground (a)**

3. I consider that the main issue in this appeal is the visual impact of the unauthorised shopfront and front extractor duct upon the character and appearance of the Willesden Green Conservation Area.

#### **Appeal APP/T5150/C/05/2001876 – Planning Policy**

4. The Brent Unitary Development Plan was adopted on 14 January 2004 (Document 3). Policy BE26 states that alterations to elevations of buildings in conservation areas, including window designs and shopfronts, should (as far as practicable) retain the original design and materials, or, where not practical, be sympathetic to the original design in terms of dimensions, texture and appearance. Characteristic features such as doors, canopies and party wall upstands should be retained, even when these elements may be redundant. Extensions to buildings in conservation areas should be complementary to the original building.
5. Supplementary Planning Guidance 7 (SPG7-Document 4) gives further advice on shopfronts and shop signs. Paragraph A2 says that features which separate or frame shopfronts should be retained and reproduced if they are an important part of a shopping area. This is particularly important in Victorian shopping centres like Willesden. Among the features that should be retained or reproduced are pilasters, corbels and stallrisers. Paragraph A4 states that timber construction is preferable. Paragraph A6 says that corbels in traditional shopping parades should not be covered by fascias where shopfronts are



framed by pilasters and decorative corbels. Paragraph A12 permits retractable Dutch blinds on shopfronts framed by pilasters but they should be in place of an advertising fascia, not in addition to it. Paragraph A14 says that perforated shutters may be acceptable for the protection of high value goods susceptible to theft but they will not normally be permitted in conservation areas.

**Appeal APP/T5150/C/05/2001876 – Reasons on Ground (a)**

6. The appeal site lies within the Willesden Green Conservation Area, so that the test, set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, has to be applied in the determination of this appeal. In doing so, I am struck by the total disregard that this development has demonstrated towards its inclusion within a conservation area, albeit one in which commercial activities predominate. Unitary Development Plan Policy BE26 requires alterations to conservation area elevations, including shopfronts, to be sympathetic to the conservation area's character but the well-founded advice contained within SPG7 appears to have been ignored. The corbel at the top of the pilaster has been swamped by the fascia and projecting illuminated sign. Although these signs require express consent under other legislation, the illuminated fascia is an integral part of the shopfront. The perforated shutter, which is not normally acceptable in a conservation area, does not protect goods of high value. The Dutch blind, incorporating advertising material, adds unnecessarily to a cluttered appearance when drawn down.
7. Finally, and most importantly, I find the skimpily proportioned metal framed shopfront wholly out of keeping with its surroundings. I accept that there are other examples of metal framed shopfronts close-by. However, it is clear from one of the drawings submitted in connection with the planning application for the retention of the shopfront (drawing number PA/465/A/E.01 dated 18 December 2004) that its predecessor was a timber framed example, which, with its short recessed return, was undoubtedly a significant element in the street scene and redolent of the parade's late Victorian origins. While it would be unrealistic and unreasonable for the reproduction of that shopfront to be incorporated as a requirement of this notice, clearly the pre-existing front and side elevations shown in that drawing indicate the proportions that any shopfront installed at these premises ought to display. Overall, I find the present shopfront wholly unsympathetic to its siting in this conservation area and it should be removed.
8. I am equally concerned by the insensitive siting of an extraction duct on the front elevation. It may be set well behind the bungalow front of the shop but, in my professional opinion, installing a duct in front of the front main wall to a building facing a busy main road in a conservation area looks wholly out of place. I could see no other similar precedents for this form of development close-by and, if there were any, in my judgement that would not make this example acceptable, even if it were painted in a subdued colour. I have no evidence before me of the planning status of the rear flues installed at 15 and 21 Walm Lane, which are clearly visible from the back yard of the appeal premises. They are somewhat stark in appearance but, being round the back of these restaurant and hot food take-away outlets, they are out of site from public vantage points. Any flue required at the appeal premises should be similarly sited to the rear. I therefore conclude that the present shopfront and front extractor duct at the appeal premises cause severe harm to the character and

appearance of the Willesden Green Conservation Area. As a consequence, this appeal on ground (a) and the associated deemed application fail.

**Appeal APP/T5150/C/05/2001876 – Ground (f)**

9. In the preceding paragraphs, I make it clear that the present shopfront, including the roller shutter, retractable blind and associated illuminated advertising material, and the front extraction duct, cause unacceptable harm to the appearance of the Willesden Green Conservation Area. In these circumstances, I am satisfied that the only means of remedying these breaches of planning control is to remove this inappropriate operational development and to start again. Therefore, an appeal on ground (f) must fail.
10. However, planning permission will be required for a replacement shopfront and an extraction duct to the rear of the premises. This may take time to advertise and for suitably designed alternatives to emerge successfully through the planning process. It may also take time for a more traditional timber shopfront or equivalent to be assembled and installed. I have therefore considered an appeal on ground (g), although none has been pleaded. In my opinion, a period of three months is unlikely to be sufficient for all of the proper steps, set out above, to be taken and the present shopfront and duct should be allowed to remain as an interim measure. In the meantime, I am prepared to extend the period for compliance with the notice's requirements to six months to assist in that regard. To that extent an appeal on ground (g) succeeds and the notice will be varied accordingly.

**Appeal APP/T5150/C/05/2001953 – Main Issue on Ground (a)**

11. I consider that the main issue in this appeal is the impact of the use of these premises for mixed Class A1 retail, Class A3 (Restaurant/café) and Class A5 (take-away hot food) purposes, as defined in paragraph 1 above, upon the vitality and viability of the Willesden Green Shopping Centre.

**Appeal APP/T5150/C/05/2001953 – Planning Policy**

12. Unitary Development Plan Policy SH6 states that non-retail uses proposed in primary shopping frontages will be acceptable providing they comply with Policy SH7 and are confined to one of the following uses:-
  - (a) financial and professional services, (Use Class A2) e.g. bank, estate agent, internet/telephone services, employment agency, betting office, building society, advice bureau; or
  - (b) food and drink (Use Class A3) e.g. restaurant, public house, café, wine bar, hot food take-away;
  - (c) libraries.
13. Policy SH7 states that where primary shopping frontages have been defined, applications for change of use from retail to those non-retail uses listed in Policy SH6 will be determined after taking account of all of the following criteria:-
  - (a) non-retail uses, which do not require rear servicing facilities of a standard that would comply with the plan's standards, will not be permitted where such facilities exist or are programmed and where these are limited within the centre;
  - (b) the location of the proposal in relation to existing non-retail units; applications should not result in an excessive concentration of units or continuous non-retail frontage within any parade or street block;

- (c) the overall proportion of primary frontage in established non-retail use; applications should not generally increase the proportion of non-retail frontage to over 35%; however, if vacancy rates exceed 10% of primary frontage then changes of use to non-retail may be permitted up to a maximum of 50%;
- (d) whether the particular use proposed enhances the range of services provided or enhances the specialist role of a centre; and
- (e) whether the proposal is an extension to an existing business.

**Appeal APP/T5150/C/05/2001953 – Reasons on Ground (a)**

14. There was some disagreement at the inquiry that a disproportionate amount of frontage in Willesden Green Shopping Centre was designated as primary. However, there was general agreement that this part of Walm Lane could unequivocally be considered primary shopping frontage. Having conceded that the present use being enforced against is a mixture of Use Classes A1, A3 and A5, the local planning authority has continued to mount arguments based on the use being the former A3 use of the 1987 Order, as set out in Policy SH6. There is still on the local planning authority's admission, a retail element maintained within the appeal premises and this is now set out in the deemed application before me. Taking that into account, I am firmly of the opinion that this use can no longer be regarded as one of those identified in Policy SH6. In reaching this conclusion, I have had special regard to the rationale behind all of these non-retail policies set out in the Unitary Development Plan at paragraph 8.8.2.
15. This states:- *"Although certain types of non-retail uses are complementary to the retail function of a town centre, and contribute to its overall vitality, an excess is seen to cause two major problems:- (a) if the growth of non-retail uses leads to a net loss of retail units, there will be a reduction in the choice available to shoppers, with the possibility of the disappearance of particular types of shops and a decline in the attractiveness of the centre; (b) the creation of "dead frontage", where there is a general absence of window displays, can lead to a loss of vitality and lessen the attractiveness of the centre for shoppers. The problem is exacerbated if non-retail uses are concentrated in a particular frontage rather than dispersed evenly throughout the shopping area."*
16. To my mind two particular issues arise from looking at this mixed retail and non-retail use in a different light from a wholly non-retail activity. The first is that the retail element maintains a degree of specialism within the centre by selling Arabic foods not available elsewhere in Willesden Green, even in other outlets catering for the local Moslem community at large. The second is the protection of frontages from an over-concentration of non-retail uses. If these premises gave the appearance of a retail frontage, there would be no wholly non-retail activities in this part of Walm Lane between an estate agency two units to the south-west of the appeal premises and an Indian restaurant two units to the north-east. A shop window display, currently lacking in these premises, would reinforce a retail presence and I am satisfied that, subject to this requirement being met, a dead frontage of the type envisaged by Unitary Development Plan sub-paragraph 8.8.2(b) would be avoided.
17. At the inquiry, the local planning authority argued that a mixed retail/non-retail use of this type does not attract as many customers as most wholly retail uses, especially during normal shopping hours. That has not been my experience. I visited these premises twice on an accompanied and unaccompanied basis. Both occasions were in the middle of the working week in the late afternoon in the depths of cold winter weather. Both times I was surprised

at how many customers this use was generating during normal shopping hours but off-peak for many hot food take-away and café operations. Numbers of customers in the premises appeared significantly greater than those to be seen in most other units in this locality at these times, whether in retail or non-retail use. I therefore conclude that this retail/non-retail use does not breach the important criteria (b), (c) and (d) of Unitary Development Plan Policy SH7. This is partly because it cannot be said to be covered by the classes spelt out in Policy SH6, but mainly because I find that this particular mixed use enhances the vitality and viability of the Willesden Green shopping centre, rather than undermining it, in any event. Criterion (a) concerning rear servicing, is not breached, in my judgement, if a retail presence is maintained.

18. There were a number of objectors present at the inquiry expressing concern on two counts. Firstly, their takings at their take-away hot food outlets had been adversely affected since the use at the appeal premises had commenced. This is a question of competition in which I am unable to intervene. Secondly, the appellant was said to have unfairly opened a rival outlet without the benefit of planning permission. As I explained at the inquiry, it is not an offence to carry out a material change of use without planning permission but only where this is in breach of a valid enforcement notice. No arguments are advanced by any parties that the use gives rise to harm to nearby residents from noise, smell or disturbance from long opening hours, as envisaged by Unitary Development Plan Policy SH10. Indeed, no objections to this use have been received from any residential neighbours under this heading. Consequently, I now conclude that this use, as described in the corrected enforcement notice, is acceptable within this primary shopping parade in its own right.

#### **Appeal APP/T5150/C/05/2001953 – Conditions**

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19. As is apparent from the preceding paragraphs, a condition is required to maintain a shop window display. This would re-emphasise a residual retail presence in these premises that would reflect their continuing contribution towards the vitality and viability of this primary shopping frontage. A condition to achieve this is therefore attached to the formal decision on this appeal set out below.

#### **Conclusions on both Appeals**

20. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal APP/T5150/C/05/2001876 should not succeed. I shall uphold the enforcement notice with variations and I refuse to grant planning permission on the deemed application.
21. On the other hand, it became clear from the representations, and, to a lesser extent, from my inspection of the site, that the description of the development in the enforcement notice, the subject of Appeal APP/T5150/C/05/2001953, is incorrect in that the unauthorised use is a mixture of retailing, restaurant/café activities and the sale of hot food to take away. The appellant and the local planning authority agreed at the inquiry that it was open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
22. For the reasons given above, and having regard to all other matters raised, I conclude that this appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as

amended, which will now relate to the corrected allegation. The appeal on ground (f) does not therefore need to be considered.

**Formal Decision**

**Appeal Ref: APP/T5150/C/05/2001876**

23. I direct that the enforcement notice be varied by the deletion of the words "*Three months*" and the substitution of the words "*Six months*" in Schedule 5. Subject to this variation, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal Ref: APP/T5150/C/05/2001953**

24. I direct that the enforcement notice be corrected by the deletion of the words "*to sale of hotfood and drink on and off the premises*" and the substitution of the words "*to a mixed use comprising Class A1, retail sale of goods, Class A3, sale of food or drink for consumption on the premises and Class A5, sale of hot food for consumption off the premises, as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended*" in Schedule 2.

25. Subject to these corrections I allow the appeal, and I direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the mixed use comprising Class A1, retail sale of goods, Class A3, sale of food or drink for consumption on the premises and Class A5, sale of hot food for consumption off the premises, as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, in the ground floor premises at 19 Walm Lane, Willesden, London NW2 5SH, subject to the following condition:

- 1) A window display, displaying goods for sale within the ground floor premises, shall be provided at all times in the windows fronting Walm Lane.

**Information**

26. Attention is drawn to the requirements of section 76 of the Town & Country Planning Act 1990 concerning provisions for the benefit of persons with disabilities.

*J. Cumie*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Hans Martin MRTPI Director, Direct Planning Ltd, Riverbank House, 95-97 High Street,  
St Mary Cray, Kent, BR5 3NH

He called:-  
Mr Jonathan Durbin BA MRTPI Planning Consultant, Direct Planning Ltd.  
Mr Faras Al-Tarehi Director, Oras Ltd, Aljannat Food Store, 405 Edgware Road,  
London W2 1BT.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks MRTPI Director, Enforcement Services Ltd, 7 Station Road, Winslow  
Bucks, MK18 3DZ.

He called:-  
Mr Timothy Rolt BA BTP Planning Enforcement Manager, London Borough of Brent.  
MRTPI

INTERESTED PERSONS:

Mr Nihat Algul 13 Walm Lane, Willesden, London NW2 5SH.  
Mr Nasser Zaman 15 Walm Lane, Willesden, London NW2 5SH.  
Mr Muzaffar Ali 15 Walm Lane, Willesden, London NW2 5SH.

DOCUMENTS

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|----------|----|---|
| Document | 1  | List of persons present at the inquiry.   |
| Document | 2  | Letter of notification of inquiry and list of persons notified.   |
| Document | 3  | Extracts from the Brent Unitary Development Plan, adopted 14 January 2004.  |
| Document | 4  | Brent Council Supplementary Planning Guidance 7, "Shopfronts & Shop Signs", 2003.   |
| Document | 5  | "Goad" Centre Report for Willesden Green, prepared for Direct Planning Ltd.   |
| Document | 6  | Decision notice (Ref:- 04/4047) dated 21 March 2005 refusing planning permission for the erection of a single-storey rear extension, installation of a new shopfront and installation of an extract duct (part retrospective) at the appeal premises. |
| Document | 7  | Decision notice (Ref:- 04/4048) dated 21 March 2005 refusing planning permission for retention of the change of use of premises from A1 (retail) to A3 (food and drink) use at the appeal premises.   |
| Document | 8  | Letter dated 10 January 2006 from Mr Rolt to Direct Planning Ltd suggesting an amendment to the allegations contained in the enforcement notice alleging a material change of use to the sale of hot food and drink on and off the appeal premises.   |
| Document | 9  | VAT returns and takings at the appeal premises for the period 1 March to 31 May 2005, submitted by the appellant.   |
| Document | 10 | VAT returns and takings at the appeal premises for the period 1 June to 31 August 2005, submitted by the appellant.   |
| Document | 11 | Bundle of five letters and a petition signed by customers of the appeal premises supporting the appellant, submitted by Mr Al-Tarehi.   |
| Document | 12 | Letter of objection dated 27 June 2005 from Cllr Lesley Jones supporting the Council's enforcement action.  |

PLANS

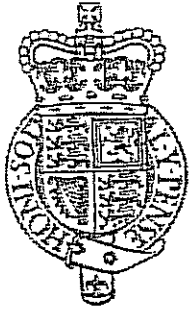
- |      |   |   |
|------|---|---|
| Plan | A | Copy of plan attached to the enforcement notice.  |
| Plan | B | "Goad" plan to a scale of 1:1,000 of Willesden Green shopping centre, surveyed on 24 November 2004.   |
| Plan | C | Three drawings submitted with planning application for the erection of a single-storey rear extension, installation of a new shopfront and installation of an extract duct (part retrospective) at the appeal premises (Ref:- 04/4047). |

PHOTOGRAPHS

- Photo 1 Six photographs of the interior and exterior of the appeal premises, submitted by the appellant.  
Photo 2 Four photographs of the exterior of the appeal premises, submitted by the local planning authority.







# Costs Decision

Inquiry held on 31 January 2006

Site visit made on 31 January 2006

by **Ian Currie BA MPhil MRICS MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate  
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2 The Square  
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Date

**07 FEB 2006**

## **Costs application in relation to Appeal Ref: APP/T5150/C/05/2001953**

**19 Walm Lane, Willesden, London NW2 5SH**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Faras Al-Tarehi for a full award of costs against the Council of the London Borough of Brent.
- The inquiry into this appeal was in connection with an enforcement notice alleging change of use from retail to sale of hot food and drink for consumption on and off the premises. There was another appeal made under section 174 of the 1990 Act that was determined at the same time, but no application for an award of costs was made in connection with that appeal.

**Summary of Decision: The application fails and no award of costs is made.**

### **The Submissions for Mr Faras Al-Tarehi**

1. The general approach to planning enforcement is set out in paragraph 5 of PPG18, "Enforcing Planning Control", which confirms that a local planning authority has discretion whether to take enforcement action when it is regarded as expedient to do so. The decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. There were no complaints from any local member of the public regarding this use prior to the inquiry. Instead, the local planning authority was said to have concealed vital evidence in their decision making by failing to make available reports prior to the issuing of the enforcement notice, as required by paragraph 4(3) of Annex 2 to Circular 8/93, prolonging proceedings unnecessarily. The failure to provide a proper proof of evidence to the inquiry had a similar effect.
2. Particular advice is given in paragraphs 14 to 17 of PPG 18 with regard to unauthorised development by small businesses. The aim should be to explore in discussions with the owner whether the business use can be allowed to continue less intensively. If a small business is forced to relocate, the local planning authority should agree a timetable minimising disruption to business and loss of employment. None of this was done. Instead, an enforcement notice was issued within nine days of a refusal of planning permission.
3. Paragraph 24 of Annex 3 to Circular 8/93 says it will be unreasonable for a local planning authority to issue an enforcement notice solely to remedy the absence of a planning permission where no public interest is involved, while paragraph 28 warns that a local planning authority failing to undertake reasonable investigations to establish whether there has been a serious breach of planning control will be in danger of an award of costs against them if an enforcement appeal could have been avoided with greater diligence. If Unitary Development Plan Policy SH7 had been properly applied, planning permission could have been granted and enforcement action leading to this appeal avoided. Therefore, a full award

of costs against the Council, concerning its unreasonable behaviour in its conduct of this appeal, is wholly justified.

#### **The Response on behalf of the London Borough of Brent**

4. The appellants accepted that there had been a breach of planning control. A planning application had been submitted for change of use from retailing to a Class A3 food and drink use. This had been refused for valid planning reasons in the public interest, the protection of primary retail frontage from an over-concentration of non-retail uses within Willesden Green shopping centre. The use for Class A3 purposes continued after the refusal of planning permission and a purported section 78 appeal was turned away by The Planning Inspectorate. Any retail activities on the site were well concealed during the winter months, so enforcement action was taken based on a wholly A3 use.
5. The local planning authority did not want to waste time and public money to avoid an appeal succeeding under section 174(2)(b), only for fresh enforcement action to be taken on the use as it operates. The advice in PPG18 says that clear breaches of control should not be condoned. The appellant knew that planning permission was required for a hot food takeaway/café use in retail premises. Planning permission had been refused for cogent reasons and an informative was attached to the decision notice warning of enforcement action should the unauthorised use persist. The appellant was therefore fully aware of the likely consequences of a continuation of the use following the refusal of planning permission. With no proper section 78 appeal lodged, only the service of an enforcement notice on the appellant could achieve a proper level of control over unlawful activities at these premises.

#### **Conclusions**

6. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. I understand the need to use enforcement powers sparingly in relation to the needs of small businesses. However, paragraph 17 of PPG 18 makes clear that effective enforcement action is likely to be the only appropriate remedy if unauthorised development by a small business is causing irreparable harm. Planning permission had been refused by the Council for a Class A3 food and drink use, which was all that was being sought by the appellants. In the absence of a section 78 appeal, enforcement action was the only means of bringing a use, which could damage a matter of public concern, the vitality of Willesden Green shopping centre, under control. It may be that the use is more properly described as mixed, but arguments of this type were not advanced until the appellant's agents' proof of evidence was produced in late December 2005. In any event, from my inspection of these premises, they still look and feel like a hot-food take away/café outlet, in which retailing plays a subordinate part; the only method by which its retail content could be properly highlighted was by means of conditions attached to a deemed planning permission on the corrected notice. This was only possible through the Council issuing an enforcement notice in the first place. The appeal proceedings were completed comfortably within the day allotted to them, including a site inspection. I therefore conclude that the Council behaved reasonably in taking enforcement action when it did and no award of costs is made.

**Formal Decision**

8. I refuse the application for an award of costs.

*J. Currie*

INSPECTOR

