



Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2023

Appeal A Ref: APP/K5600/C/22/3300204

Land at 42-52 Earl's Court Road, London W8 6FT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mark West of Trailfinders Ltd against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The notice was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a roof structure on the flat roof to protect HVAC equipment and server room.
 - The requirements of the notice are to:
 - i) Remove from the land the roof structure as shown on drawings submitted with PP/21/07862, reference 130 Rev.A, attached as Appendix A.
 - ii) Remove from the land all the resulting debris.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/K5600/C/22/3300206

Land at 42-52 Earl's Court Road, London W8 6FT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mark West of Trailfinders Ltd against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The notice was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of HVAC equipment and relocation of existing air condensers.
 - The requirements of the notice are to:
 - i) Remove from the land the HVAC equipment and air condensers from the roof as shown on drawings submitted with PP/21/07317, reference 102 Rev.B, attached as Appendix A.
 - ii) Remove from the land all the resulting debris.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, and the enforcement notices upheld.

Preliminary Matter

2. The addresses in the banner headings above are taken from the enforcement notices, noting the numbering is different to that given by the appellant on the appeal forms.

The appeals on ground (g)

3. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
4. The appellant's case is made on the basis that the plant is necessary to ensure the appropriate ventilation and cooling of the server room and offices, and the office could not operate without it. They stated that it is essential to the running of the business to keep the equipment in place, protected and in a suitable environment. Any weather damage to this equipment would have significant consequences to the business.
5. As such, the appellant seeks a period of three years on the basis that this will enable them to seek and implement an alternative solution, which will involve discussions with the Council and the preparation and submission of a planning application.
6. The period given for compliance within the enforcement notices is to allow for the physical works associated with the notices to be removed. Six months is a reasonable and proportionate period to undertake the works required by the notices.
7. However, in cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the developments subject of the notices.
8. In this respect I acknowledge the importance of the equipment to the operation of the business and welfare of its employees. However, the developments enforced against are causing harm to the character and appearance of the area and in respect of the roof structure, the living conditions of the occupants of 11-13 Pembroke Place in respect of outlook. Such harms should not be permitted to continue for any longer than necessary.
9. Whilst preferable to the appellant, three years is an exceptional period. In the absence of substantive explanation about why it could take three years to identify, apply for and implement an alternative solution, extending the period as such would unduly perpetuate the planning harm caused by the breaches.
10. There is no appeal on any other ground other than ground (g), and therefore the appellant will know that the notices will come into force in exactly the form as issued. The only reason for appealing is to gain more time to comply. So, where the only ground is (g), the Inspector can usually take account of the time taken in the appeal process when deciding what would be a reasonable period for complying with the notices.
11. Given that the appeals were made in May 2022, the appellant has already had around one year to identify and submit the necessary application/s for an alternative.
12. Consequently, as the periods for compliance will begin from the date of these decisions, the appellant will have had a reasonable amount of time to submit and implement any alternative which might be approved and comply with the requirements of the notices.
13. Accordingly, based on the above and given that the developments have been in place for some time, having been drawn to the Council's attention in around

September and November 2021 and the need to bring these harmful developments to an end, I consider six calendar months to be reasonable periods for compliance. The appeals on ground (g) therefore fail.

Conclusion

14. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices.

Felicity Thompson

INSPECTOR