



Appeal Decision

Site visit held on 22 November 2023

by **Jean Russell MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 March 2024

APPEAL REF: APP/X5990/C/23/3320597

The Buildings and Associated Land at Upper Maisonette, 81 Randolph Avenue, London, W9 1DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 by Miss Annikka Liisa Kauppinen against an enforcement notice issued by the City of Westminster Council on 16 March 2023.
- The **breach of planning control as alleged in the notice** is 'Without the benefit of planning permission...the undertaking of the following unauthorised works;
 - A) Alterations to the main roof to raise the height of the main roof of the Property, which has been accommodated by the enlargement of the soffit box to the front, side and rear of the Property in order to bridge the gap between decorative corbel/brackets on the façade and the roof slope and the repositioning of the guttering.
 - B) The erection of new front, side and rear dormers to the new main roof.
 - C) The installation of railings around the perimeter of the flat roof section of the new main roof.
- The **requirements of the notice** are to:
 - 1. Restore the main roof of [the] Property to its condition prior to the Unauthorised Works by:
 - A) Restoring the height and eaves of the roof (including the soffit box) to match their previous detailed design, form, size, position, and materials as shown in Photographs A, C and E attached [to the notice];
 - B) Restoring the front, side and rear dormers to their previous detailed design, form, size, positions, and materials on the main roof as shown in Photographs A, C and E;
 - C) Removing the railings attached to the perimeter of the flat section of the main roof of the Property as shown, outlined in red in Photograph D attached [to the notice]; **And**
 - 2. Repair any damage to the Property caused by the carrying out and removal of the Unauthorised Works;
 - 3. Remove from the Property all debris resulting from compliance with requirements 1A, B, C and 2 cited above.
- The **period for compliance** with the requirements is 12 months.
- The **appeal is proceeding on the grounds** set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

FORMAL DECISION

1. It is directed that the enforcement notice is varied by the deletion of 12 months and the substitution of 16 months as the period for compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

2. The appeal concerns a semi-detached Victorian villa, which has a basement, three full storeys above and accommodation in the loft, and which is subdivided into flats. The appellant resides, as the leaseholder, in the flat or maisonette which spans the second floor and roof space above. The property lies within the Maida Vale Conservation Area.
3. The roof of the appeal building is hipped on all three sides, although its three slopes terminate in a flat section at the apex. Original features of the roof included a slim soffit box to the eaves, a long and grand chimney stack which follows the party wall and supports perhaps 20 chimney pots, and two smaller chimney stacks, supporting three or four pots each, on the side-facing roof plane¹. Before the alleged works were carried out, there were pre-existing dormer windows on the front, side and rear-facing slopes.
4. Three planning applications have been made in recent years in respect of works to the roof of the property:
 - The '2017 application' (17/01467/FULL) was made by the appellant. Her '2017 appeal' (APP/X5990/W/17/3175425) against the Council's decision to refuse planning permission was dismissed on 15 September 2017.
 - The Council granted the '2018 planning permission' (17/10397/FULL) on 16 January 2018 pursuant to another application made by the appellant.
 - The 'second 2018 application' (18/00983/FULL) was made by another person for a 'variation' of a condition on the 2018 permission, to secure a change to the approved plans and design. The '2018 appeal' (APP/X5990/W/18/3202571) against the Council's decision to refuse permission was dismissed on 15 October of that year.
5. In Annex 1 to her statement of case, the appellant submitted copies of the Council's decision notice and report relating to the 2018 permission alongside a set of plans, but **not** the approved plans. The 'proposed elevations' plan subject to the 2018 permission was A201/7 and not A201/5.

THE APPEAL ON GROUND (E)

6. An appeal on ground (e) is that copies of the notice were not served as required by section 172 (s172) of the Town and Country Planning Act 1990 (TCPA90). The appellant asks whether the notice was served correctly on the freeholder of the building because, under s172(2), a copy of an enforcement notice shall be served on the owner of the land to which it relates.
7. Ground (e), like (b), (c) and (d) addressed below, is a "legal" ground of appeal where the onus is on the appellant to make their case on the balance of probabilities. Here the appellant has only questioned the service; she has not demonstrated that there was a failure to comply with s172. The Council has shown that the notice was probably served on the freeholder within the time limits set out under s172(3)² and so the appeal on ground (e) fails.

¹ The side-facing chimney stack which is closer to the rear elevation appears to be a replacement rather than original feature; it is taller and less detailed than its sibling.

² Copies of the notice must be served not more than twenty-eight days after its date of issue and not less than twenty-eight days before the date specified in it as the date on which it is to take effect, so that the recipient is able to make an appeal against the notice.

THE APPEAL ON GROUND (B)

8. An appeal on ground (b) is that the “matters” set out in the notice – the allegation – have or has not occurred. However, the appellant does not dispute that works were undertaken as alleged to, in summary, alter the main roof, erect new front, side and rear dormers and install railings.
9. The appellant’s case for ground (b) is that she did not carry out all of the works in question; some were undertaken by the freeholder. The Council notes a lack of evidence to support that claim but, in any event, who carried out the works is not relevant to ground (b). The appellant has not shown that what is alleged did not occur on the balance of probabilities. Google Street View photographs from January 2021 show that the alleged works had probably taken place when the notice was issued. The appeal on ground (b) fails.

THE APPEAL ON GROUND (C)

10. Ground (c) is that the “matters” do not constitute a breach of planning control. This ground is normally pleaded where the appellant considers that the alleged development does not require or already has planning permission. In this case, the appellant claims that there are only ‘minimal’ differences between what was carried out and what was authorised by the 2018 permission.
11. The development subject to the 2018 permission was described on the Council’s decision notice as comprising: ‘Enlargement of rear dormer and replacement of existing side dormer with a dormer of greater width and installation of new side dormer. Insertion of two rooflights in [the] side roof slope and two rooflights in the flat roof’. The decision notice also lists the approved plans³ such that they are incorporated into the permission.
12. The plans show that the approved works to the roof would be within the description of the development permitted:
 - ‘Enlargement of rear dormer’: A new rear-facing dormer was to be larger than that pre-existing but otherwise have the same design.
 - ‘...replacement of existing side dormer with a dormer of greater width and installation of new side dormer...’: these two new dormers would be located between and lower in height than the chimney stacks on the side roof plane.
 - ‘Insertion of two rooflights in [the] side roof slope...’: each of these would be located behind a side-facing chimney stack.
 - ‘...and [insertion of] two rooflights in flat roof’: to replace a vent.
13. The rear dormer as built is in the same position and similar in size to that approved but it has a thicker roof and more contemporary appearance, because it contains full height glazed doors rather than a three-panel casement window. The single side dormer which has been constructed is at least as wide as the two approved put together and it is taller than the original chimney stack beside. I find these changes to the character and appearance of the rear and side dormers to be significant.
14. I also note that the 2018 permission did not provide for any works to the front dormer, but it has in fact been replaced and the new one has a thicker roof and

³ A000, A001/6, A100/7, A101/7, A200/6, A201/7, A300/6, A301/7

double-glazed windows. The 2018 permission also did not authorise the installation of railings around the flat section of the roof – to create a terrace – or any works to the soffit box. However, that has been enlarged so as to elevate the eaves and main roof slopes, meaning that all the dormers are higher than they should be. The soffit is now about twice as thick as that next door; it also protrudes further from the rear elevation.

15. I accept that there are similarities between components of the as-built development – particularly the front dormer – and what was approved. However, the differences are such that the roof as a whole, and indeed every side or part of the roof, looks significantly different, as a matter of fact and degree, to what was shown on the approved plan A201/7.
16. The appellant has not shown that the works were carried out in accordance with the 2018 permission, or that the differences between the actuality and the approved plans are immaterial. On the balance of probabilities, I find that the development alleged and undertaken – the alterations to the main roof, the erection of new front, side and rear dormers and the installation of railings – was not authorised by the 2018 permission.
17. The appellant has not shown that the planning permission is not required at all or has been otherwise granted for the works. I note, for the avoidance of doubt, that the 'permitted development rights' to enlarge a dwellinghouse through an addition or alteration to its roof do not apply either to flats or to properties in conservation areas⁴. I conclude that there has probably been a breach of planning control as alleged and the ground (c) appeal must fail.

THE APPEAL ON GROUND (D)

18. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Under s171B(1) of the TCPA90, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
19. The notice was issued on 16 March 2023 and so the alleged works must have been substantially completed by no later than 16 March 2019 in order to be 'immune' from enforcement action. The appellant suggests that the freeholder enlarged the soffit box in January 2018, and I accept that Google 'Street View' images taken during that month show scaffolding around the appeal building and workers on the roof. However, the very fact of scaffolding being there indicates that works were probably not then 'substantially completed'.
20. The appellant claims that the soffit box appears larger than that next door in Street View photographs taken in April 2019. However, that is after the four-year date, and those images in any event do not show the soffit as tall or deep as it subsequently became. Moreover, the notice is not only concerned with the raising of the roof. The appellant admits that – as would be logical – the soffit box was enlarged prior to the start of other works. The photographs show that the pre-existing front and rear dormers were still in place, albeit with the front one covered in tarpaulin, and there were no railings in April 2019.

⁴ Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

21. The earliest Streetview photographs which show the alleged alterations to the roof, new dormers and railings as probably substantially completed are those taken in January 2021 and submitted by the Council. Thus, the appellant has failed to show that any component of the alleged development was probably substantially completed four years before the notice was issued. This not a case where I could, like the Inspector in the 'Kingsbury Road' appeal⁵, find that some components are immune from enforcement even if others are not.
22. I conclude that, on the balance of probabilities, it was not too late for the Council to take enforcement action when it did. The appeal on ground (d) fails.

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

23. Ground (a) is that planning permission ought to be granted for what is alleged being, in summary, alterations to the main roof, the erection of new front, side and rear dormers and the installation of railings.
24. In considering the merits of the appeal development, I must compare it to the how the roof would appear if restored to its pre-existing condition as required by the enforcement notice. And I must also take account of any other way in which the appellant could lawfully modify the roof and/or features upon it. Any possible alternative scheme could be a 'fallback' position which should attract some weight as a material consideration.
25. However, I found via ground (c) that the alterations to the roof, the erection of new front, side and rear dormers and the installation of railings did not accord with the plans subject to the 2018 permission. Notwithstanding that the Council opted not to enforce against the new rooflights or second floor French doors and Juliet balcony, the appellant states that 'it is not part of our case that the [2018] permission was implemented' and I find that it has probably lapsed⁶.
26. Accordingly, and since there are no 'permitted development rights' for works to the roof, the appellant would need to make a fresh application to the Council for planning permission to carry out any works other than those specified by the notice. There is unlikely to be any other fallback position.

Main Issues

27. I consider that the main planning issues in this case are:
- The effect of the appeal development on the character and appearance of the appeal building and of the Maida Vale Conservation Area that the building lies within,
 - The effect of the appeal development on the living conditions of nearby occupiers, and
 - Whether there are any public or other benefits that would outweigh any harm identified and justify a grant of planning permission in this case.

⁵ The appellant did not provide a copy of the appeal (ref: APP/T5150/C/21/3284105) decision letter and should be aware that I did not search for it on the appeals casework portal. Weblinks are liable to break or change, meaning that parties or later readers of a decision letter may see something different to the Inspector. All parties should actually submit any evidence that they wish to rely on in appeal proceedings, ensuring that the other parties and Inspector will all refer to the same evidence.

⁶ Under s91 of the TCPA90, every planning permission shall be granted or deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of three years.

Reasons

Character and Appearance

The Significance of the MVCA and Contribution of the Appeal Building

28. The Maida Vale Conservation Area (MVCA) is a 'designated heritage asset' for planning policy purposes. The National Planning Policy Framework (the NPPF) requires local planning authorities (LPAs) and, by extension, Inspectors to identify and assess the particular significance of any heritage asset that may be affected by proposed development. I consider that the significance of the MVCA lies – at least in part – in its network of tree-lined streets, such as Randolph Avenue, which are fronted with grand, architecturally distinctive, and mostly (but not entirely) unaltered Victorian mansion houses and villas.
29. While these properties differ in their size and detailed design, most are built from red brick and stucco. Their front elevations are generally dominated by large and ornately framed windows which decrease in size from the ground floor up. They are also typically characterised, as explained and endorsed by the 2017 and 2018 appeal Inspectors, by having 'large regularly spaced chimney stacks and parapet walls in [sic] otherwise uncluttered roofs'.
30. I agree with the Council that the appeal property makes a valuable contribution to the character and appearance of the MVCA. The building is typical in its size, form, materials and design of the many attractive houses along Randolph Avenue, and it is well-preserved. It also stands in a prominent position at the end of the row of semi-detached villas on this side of Randolph Avenue. It is adjacent to 1 and 3 Lauderdale Road, a classically designed stucco building which is wider but lower in height than the appeal property. It is set in relatively spacious and leafy grounds on the street corner.
31. The rear of appeal building, from first floor upwards, can be seen from Lauderdale Road (though the gap between nos. 3 and 5), if not also from Warrington Crescent when intervening trees are not in leaf. Meanwhile, the front and side elevations of the building can be seen not only from Randolph Avenue but also from Sutherland Avenue to the south, above and through the trees in the adjoining garden.
32. Every side of the appeal building is appreciable from the public realm, and it contributes positively to views not only across but also into the MVCA. I understand why the Council considers the building to be a 'non-designated heritage asset'⁷ although I will focus in this decision letter on the higher level of protection afforded to it by virtue of its location within the MVCA.

The Impact of the Appeal Development

33. The appellant observes that the 'large regularly spaced chimney stacks and parapet walls' on the appeal roof, as described by the 2017 Inspector are 'untouched' by the development. I consider, however, that those original features no longer stand on an 'uncluttered' roof. Indeed, the 2017 Inspector also noted that dormers are not typical of houses on this street and, where they are built, they are normally 'confined to the rear'. The appeal building was unusual just for its three pre-existing dormers.

⁷ It does not have statutory protection like designated heritage assets, but it is identified as having a degree of significance, meriting consideration in planning decisions, for its heritage interest.

34. The Council's Conservation Officer did not object to the principle of having one new side dormer instead of two as per the 2018 permission. However, while a single side dormer may be 'less fussy' as the appellant says, the building is characterised by a degree of 'fussiness' or, I would say, elegance in design. Whether or not the side dormer is 'subsidiary to the overall scale and form of the roof', it looks unduly large and boxy next to the adjacent original chimney stack, and it thereby detracts insensitively from the appearance of the building.
35. I also consider that the rear-facing dormer appears unduly prominent and discordant by reason of its size and design with full-height glazed doors. That there are French doors to the second-floor windows below is not sufficient to make the dormer congruous in its wider setting. Moreover, the side, rear and front dormers – even if the Conservation Officer did not object to the latter in and of itself – are more conspicuous for standing on an elevated roof.
36. And the eaves and guttering are now clearly higher because the soffit box is noticeably larger than that next door. The original soffits at no. 83 and other nearby properties are sufficiently slender as to compliment other architectural details, particularly corbels under the fascia. In my view, the appeal soffit harms the character and appearance of the building and its semi-pair, not just from raising the roof but also because it looks jarringly chunky and heavy.
37. Despite being thin and lower in height than the central chimney stack, the railings on the flat section of the roof are visible from the side, rear and front of the building. They add further visual clutter to the roof and appear incongruous and insensitive to the character of the building and street scene. I would expect them to be seen as such even by passers-by who are not 'scrutinising' the property for change or harm.
38. The appellant notes that there are discrepancies between the appeal semi-detached houses and those adjacent at 85 and 87 Randolph Avenue, where there is a smaller gap between the second floor windows and eaves. However, those properties diverge in terms of other design details, reflecting the fact that villas in this area were built with architectural distinction. I do not object to the appeal development because it is different but because its components are insensitively designed and/or located.

Other Matters and Conclusion on Character and Appearance

39. The appellant also suggests that the appeal dormers are not that different in terms of size or design as others in the area; she refers to and I saw a larger dormer at the front of a more modest house on the other side of Randolph Avenue. She also refers to other sets of railings and (often higher) TV aerials on nearby roofs, and to other examples of soffit boxes being enlarged.
40. However, and as the 2018 appeal Inspector observed, I do not know the circumstances in which any other property in this area was altered or extended. I have properly considered the alleged development on its merits and with regard to current planning policies. I cannot speculate as to whether any nearby dormers or other roof works are acceptable or even lawful.
41. I conclude that the development – the alterations to the main roof, the erection of new front, side and rear dormers and the installation of railings – causes unacceptable harm to the character and appearance of the appeal building, its semi-pair, and of the street scene. It fails to preserve or enhance the character

or appearance of the MVCA, and it thereby causes harm to the significance of this designated heritage asset. While that harm is 'less than substantial', the NPPF requires me to give great weight to the conservation of the MVCA.

42. A grant of permission would conflict with Policy 38 of Westminster's City Plan 2019-2040 (CP), which requires development to incorporate exemplary standards of high-quality architecture befitting Westminster's heritage, and positively contribute to Westminster's streetscape having regard to the character and appearance of the existing area and heritage assets.
43. It would conflict with CP Policy 39 which, like the NPPF, expects development to conserve heritage assets in a manner appropriate to their significance, and to preserve or enhance the character and appearance of Westminster's conservation areas. It conflicts with CP Policy 40 which expects that development is sensitively designed with regard to the prevailing architectural quality in the surrounding townscape, and so as to conserve features which contribute to the significance of a heritage asset, including historic roof forms.
44. Granting permission would also conflict with Policy HC1 of the London Plan 2021 (LP) which again expects development proposals to conserve the significance of heritage assets by being sympathetic to the asset's significance and appreciation within their surroundings.

Living Conditions of Nearby Occupiers

45. The Council's reasons for issuing the notice included that the development causes harm to the 'visual amenity' of neighbouring occupiers. There are no objections from local residents, but I accept that some will see the altered roof from their properties; some may even share my design objections or perhaps have concerns about use of the roof terrace. However, it does not follow that their living conditions have been or would be unduly compromised.
46. In the 2017 appeal decision, the Inspector found that the then proposed side dormer would cause unacceptable overlooking of 1-3 Lauderdale Avenue. The appeal flat has been reconfigured as anticipated in that decision, so that one of the side-facing dormer windows serves a bedroom and will afford the occupier of that room views towards the rear of 1-3. But their angle of vision will be down and oblique, due to the lower height and different orientation of the corner building. I respectfully disagree with my 2017 colleague and consider that the development causes no unacceptable loss of privacy next door.
47. Indeed, the Council has made no real case that the development causes any unacceptable harm to the living conditions of nearby occupiers, and I am not surprised. Those living below the appellant in the appeal building, or next door at no. 83, would scarcely have views of the development at all. Other buildings are sufficiently far away that the raised roof, and the dormers and railings upon it, would not appear unacceptably oppressive or intrusive.
48. The development in my view causes no unacceptable harm to the living conditions of nearby occupiers. It does not conflict with CP Policy 38 or the NPPF insofar as they seek to ensure a good standard of amenity for existing occupiers. However, this conclusion is neutral in the planning balance.

Public Benefits

49. Where development causes 'less than substantial harm' to the significance of a designated heritage asset, the NPPF requires that harm to be weighed against the 'public benefits' of the proposal including, where appropriate, securing its optimum viable use. The appellant contends that the effect of the development on the character and appearance of the MVCS is neutral and therefore she does not expressly put forward any public benefits.
50. Into that category, however, I would put her claim that the development was carried out to improve the quality of her residential accommodation. The appellants' flat is broadly laid out with the kitchen and reception rooms on the second floor, and bedrooms and bathrooms in the loft. The latter have been reconfigured so that there is an extra bedroom served by part of the side dormer. The glazed doors in the rear dormer will afford a modest increase in light within and outlook from another bedroom, while the raised soffit will have added a few extra centimetres to the overall loft head height, and the railings, as noted above, enable use of the flat part of the roof as an outdoor terrace.
51. However, perhaps surprisingly, the appellant does not explain the extent to which the works have changed the family's living conditions or quality of life. She lived in the flat before the development took place but has not described any struggles with lack of space, light or outlook at that time. There is no evidence for me to find that any component of the development might have necessarily increased her habitable space or made another profound difference to her quality of life or that of her children.
52. I also consider that, given the height and shape of the roof, the flat section is likely to be small, exposed and somewhat precarious. The appellant has not described how the terrace is used, and I saw that it can only be reached by climbing a ladder through the new rooflight in the family bathroom. The railings have not, it seems to me, beneficially enabled the creation of an essential, valued or even safe private outdoor amenity space⁸. Overall, and although the changes to the flat could improve the living conditions of future occupiers as well as the appellant's family, I attach only moderate weight to these benefits.
53. A grant of permission – for the whole if not part of the development – would provide another public benefit insofar as it would mean the appellant and her family do not need to move temporarily out of the flat. Subject to the appeal on ground (f), upholding the notice would mean that works must be carried out which would render the flat uninhabitable for the duration. I regret that the appellant's and her family's life, including the children's education, would be so disrupted. And there could be a social impact in that another family would not have opportunity to live wherever the appellant moves to temporarily.
54. However, the appellant does not show – in her representations on the planning merits or period for compliance with the notice – that she and her children would probably or even possibly be made homeless. She seeks more time to look for temporary accommodation close to the children's school but makes no case that doing so would be unreasonably difficult or have unacceptably

⁸ The Council has provided copies of the Building Control Initial Notice and Final Certificate of works. The only information they give of the development is its description as 'two storeys – loft and first [sic] floor refurbishment.' There is no mention of the roof or any terrace at all.

adverse effects. Again, I attribute moderate weight to the benefits arising from not putting the appellant through a temporary move.

Other Matters

55. I have noted the appellant's claim that she did not carry out the works to the soffit. In this situation, I completely understand her frustration that she and her family would bear the negative impacts of a refusal of permission. However, I have addressed those impacts separately and the outstanding issue of who was responsible is not relevant to the planning merits.
56. The appellant has referred to the 'Sidney Road' appeal decision⁹ where the Inspector granted planning permission for a roof extension to an 'attractive mid-terrace Edwardian dwelling', having taken account of complications caused by different permissions and architects. However, that case did not relate to a designated heritage asset where, as I have explained, a particular approach must be taken to decision-making.
57. I accept the appellant's point that the development subject to this appeal is not the same as that refused permission via the 2017 and 2018 appeal decisions. Indeed, I would also distinguish those decisions on the basis that there have been intervening changes to the local and national policy context. However, it is important that I take a consistent approach to my colleague Inspectors, and I have done so in considering the appeal development properly on its merits.

Planning Balance and Conclusion

58. It would be possible in theory for me to make a 'split decision' whereby one or more components of the development is granted planning permission, but others, which are severable, are not. In this case, however, no component is severable from the roof, which has been raised from works to the soffit box.
59. I consider that the appeal development does not preserve or enhance the character or appearance of the MVCA. Rather, it causes harm to the significance of this designated heritage asset and, while that harm is 'less than substantial', I must attach great weight to the failure to conserve the MVCA.
60. On the other hand, I have only ascribed moderate weight to the benefits that would arise from a grant of permission for the development. With its effect on nearby occupiers being a neutral factor, the planning balance is against the appeal. The development conflicts with CP Policies 38, 39 and 40, LP Policy HC1 and the NPPF. There are no material considerations which would justify my allowing the whole or any part of the development.
61. I have had regard to the rights of the appellant and her family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.
62. As noted above, a refusal of planning permission would result in the appellant and her family having to move temporarily out of their home and, thereafter, losing some space, light and outlook. It would interfere with the appellants'

⁹ APP/G5750/C/22/3292249

rights under Article 8, but the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the preservation of the character and appearance of the MVCA.

63. For the reasons given and with regard to all other matters raised, I conclude that a refusal of permission is the necessary and proportionate course of action. The protection of the public interest cannot be achieved by any other means, and the appellant's rights to a home and family life will not be violated. She and her family, including the children, will not be permanently deprived of their home and the quality of their accommodation will not be unacceptably diminished. I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

THE APPEAL ON GROUND (F)

64. An appeal on ground (f) is that the steps required by the enforcement notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
65. The notice essentially requires that the roof of the appeal building is put back to how it was before the alleged works took place. It follows that the purpose of the notice is to remedy the breach. For that reason, and since I have already considered the 'amenity' impacts of the development via ground (a), the only argument open to the appellant on ground (f) is to that the requirements are excessive to remedy the breach and 'lesser steps' would achieve the same end.
66. The appellant argues in the first instance that she should simply be required to remove the railings. Failing that, the only other requirement should be to modify the side dormer so as to comply with the 2018 permission. She seeks to retain the other components of the development as they are.
67. Where there is an extant planning permission, a notice can require that development is modified to accord with the terms and conditions of that permission, and that will normally suffice to remedy the breach of planning control. However, I cannot vary the notice on that basis here because the 2018 permission has lapsed. Even if that had not been the case, the works required to achieve compliance with the permission would have had to involve more than removing the railings and modifying the side dormer.
68. I conclude that the lesser steps proposed by the appellant would not remedy the breach of planning control that has occurred. To that end, the requirements of the notice as it stands are not excessive. The appeal on ground (f) fails.

THE APPEAL ON GROUND (G)

69. Ground (g) is that the period specified in the notice for compliance with the requirements falls short of what should reasonably be allowed. In this case, the period specified is one year which would run from the date of this decision. The appellant asks that the period is extended to 18 months because 'it will take time to organise suitable re-housing close to the children's school which will be more difficult in a very expensive part of London'.
70. In principle, 12 months should be ample time for the appellant to look for alternative accommodation plus a builder, vacate the flat and carry out the

requirements of the notice. Indeed, one year is already at the longer end of the spectrum as a time for compliance with any notice that requires relatively small scale building works. I also note that the appellant only needs to undertake the remedial works within the compliance period; there would be no deadline for her move back home afterwards.

71. Nonetheless, I consider it reasonable in the circumstances that the appellant can schedule the works over a school year, so that the family can move during the summer holidays on each side, minimising the impact on the children's education and wellbeing. For that reason, as well as to give the appellant appropriate time to look for suitable temporary housing, I shall extend the period of compliance to 16 months meaning that the works should be done by July 2025. To that extent, the appeal succeeds on ground (g), and I shall vary the notice accordingly.

OVERALL CONCLUSION

72. For the reasons given above, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice with a variation to the time for compliance and refuse to grant planning permission on the application deemed to have been made under s177(5) of the TCPA90.

Jean Russell

INSPECTOR