



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **26 March 2024**

Appeal Ref: APP/X5990/C/23/3327851

First Floor to Third Floor Maisonette, 57 Talbot Road, London W2 5JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jeremy Fryzuk against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 13 July 2023.
 - The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years, alterations to the rear of the dormer extension, including changes to the fenestration on the rear elevation of the dormer and the consequent enlargement of the rear roof terrace following alteration to the sloping roof.
 - The requirements of the notice are to:
 - 1) Reinstate the dormer plan form and rear dormer facade, including the fenestration on the rear elevation of the dormer, to match the previous dormer (as shown within the yellow dotted lines in attached Plans B, C and D, and in attached Photograph A);
 - 2) Following compliance with Step 1), repair and make good any damage caused by the installation and/or removal of the unauthorised works to the dormer; and
 - 3) Following compliance with Steps 1) and 2), remove any resulting waste materials and detritus from the property.
 - The period for compliance with the requirements is: 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background

2. A retrospective planning application (ref: 22/04742/FULL) was submitted for the widening of the existing rear dormer window, extension to the terrace to the rear, replacement railings to the roof terrace and replacement windows. The application was refused by the City Council on 28 September 2022 and an appeal (APP/X5990/W/22/3310496) dismissed on 11 April 2023.

The appeal on ground (f)

3. An appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the appellant to reinstate the dormer plan form and rear dormer facade, including the fenestration on the rear elevation of the dormer to match the previous dormer and repair and make good any damage caused by the works, the purpose of the notice is to remedy the breach¹. For the

¹ Section 173(4)(a) of the Act.

appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.

4. The appellant considers that the steps to comply with the notice are contrary to the City Council's stance on 'retrofit over demolition to reduce the environmental impact of development', and they state that they are actively seeking amendments to the development of which the City Council is aware. Thus, the requirements in the notice are considered, by the appellant, to be excessive. There are no details before me to show what lesser steps the appellant considers would remedy the breach of planning control.
5. Having regard to the notice's requirements to remedy the breach of planning control, in the absence of an appeal on ground (a), as set out in section 174(2) of the Act, and a deemed planning application, the power available to me under section 176(1) only relates to whether the requirements exceed what is necessary to remedy the breach and not the substance of the notice. If an appeal is not brought on ground (a), it is not appropriate for arguments to be introduced on the planning merits in the context of an appeal on ground (f).
6. The appeal on ground (f) therefore fails.

The appeal on ground (g)

7. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant states that six months to comply with the notice is not sufficient and suggests that a period of 12 months would be more reasonable. They refer to the time taken to seek a suitable solution through pre-application advice and the submission of a planning application with a proposal to lessen the impact of the development on the surrounding Conservation Area and substitute the need for its total demolition. It is considered that this would likely leave insufficient time, following any formal decision on the planning application, for the appellant to comply with the notice.
8. While I appreciate the reasons stated for requesting an extension of time, and I am mindful of the example appeals provided by the appellant, since the submission of the appeal, the City Council confirms that pre-application advice was provided in August 2023. Furthermore, the appellant confirms, in their final comments, that an application for planning permission has been submitted to the City Council for an alternative scheme. I am not aware how this has progressed or whether an acceptable outcome has been achieved.
9. Nevertheless, given that there has been substantial progress with the submission of an application for planning permission to the City Council towards the end of last year, and given the reasons for issuing the notice, I consider that the period for compliance is reasonable in these circumstances. I note that the City Council in its appeal statement does state that if any applications for an alternative scheme were pending consideration, the City Council would be happy to extend the compliance period on an informal basis to provide for the schemes to be properly considered and the works to be undertaken, either to comply with the requirements of the notice or for any alternative approved scheme.
10. Therefore, the ground (g) appeal does not succeed.

S A Hanson INSPECTOR