



Appeal Decisions

Inquiry Held on 21 and 22 February and 1 March 2024

Site visit made on 22 February 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2024

Appeal Ref: APP/X5990/C/22/3310080

Ground/Basement Floors, 108 Great Portland Street W1W 6PG and Flat 1, First/Second Floors, 108 Great Portland Street W1W 6PG

- 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 Giles Fernando against an enforcement notice issued by the City of Westminster Council.
- The enforcement notice, numbered 22/00121/ENFTP, was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission and within the last 4 years; alterations to the pre-existing multi-level roof to the rear ground floor extension by the creation of a flat roof with asphalt covering, erection of infill parapet wall adjoining 110 Great Portland Street, installation of decking over the new flat roof, installation of timber fencing on the rear parapet wall and around the rear lightwell, the replacement of a window in the flank elevation of the back addition at first floor with an access door; all in connection with the unauthorised use of the new flat roof as a terrace by occupiers of the First/Second Floor Flat.
- The requirements of the notice are 1. Remove the unauthorised parapet, decking and fencing from the roof of the rear ground floor extension of the Property, shown in Photograph A attached; and 2. Remove the door from the flank elevation of the back addition at first floor level from the First/Second Floor Flat, as shown in Photograph B attached; and 3. Restore the roof of the rear ground floor extension of the Ground Floor Property to match the detailed design, materials and appearance of the roof prior to the Unauthorised Works taking place as shown in Photograph's C, D and E attached; 4. Replace the removed door (step 2) by reinstating a white painted timber framed sliding sash window to match the detailed design, size and materials of the window shown in Photograph F; and reinstate the wall to the flank elevation of the back addition immediately below the replacement window referred to above, using materials to match the existing flank wall so that its final appearance matches the pre-existing elevation of the flank wall of the First/Second Floor Flat, prior to the Unauthorised Works being undertaken, as shown in Photograph F attached; 5. Remove all debris resulting from compliance with requirements 1, 2, 3 and 4, cited above from the site. OR 6. Remove the unauthorised decking and fencing from the roof/parapet of the rear ground floor extension of the Property, shown outlined red in Photograph A attached; and 7. Remove the door from the flank elevation of the back addition at first floor level from the First/Second Floor Flat, as shown outlined in red in Photograph B attached; and 8. Replace the removed door (step 2) by reinstating a white painted timber framed sliding sash window to match the detailed design, size and materials of the window shown in Photograph F; and reinstate the wall to the flank elevation of the back addition immediately below the replacement window referred to above, using materials to match the existing flank wall so that its final appearance matches the pre-existing elevation of the flank wall of the First/Second Floor Flat, prior to the Unauthorised Works being undertaken, as shown in Photograph F attached; 9. Cease the use of the roof of the rear

ground floor extension as a roof terrace/amenity space including the removal of all chattels from the roof. 10. Remove all debris resulting from compliance with requirements 6, 7, 8, and 9, cited above from the site.

- The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g)] of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/X5990/W/23/3322334

Ground/Basement Floors, 108 Great Portland Street W1W 6PG and Flat 1, First/Second Floors, 108 Great Portland Street W1W 6PG

- 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 Giles Fernando against the decision of the City of Westminster Council.
 - The application Ref 22/06078/FULL, dated 7 September 2022, was refused by notice dated 20 April 2023.
 - The development proposed is 1. Improved fire access and amenity access onto a pre-existing terrace, by replacing a window with a door (completed on or before 4 February 2020) 2. Replacing a wooden parapet safety railing running between a gap in the brick parapet, with a brick in-fill in the parapet (completed in December 2019).
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Decisions

Appeal under Section 174

1. It is directed that the enforcement notice is varied by: omitting requirement 9 of Section 5 of the Notice 'What you are required to do' and renumber requirement 10 of that section as requirement 9.

Subject to the variations, the appeal is allowed in part on ground (a) insofar as it relates to the creation of a flat roof with asphalt covering, erection of infill parapet wall adjoining 110 Great Portland Street and the replacement of a window in the flank elevation of the back addition at first floor with an access door and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for creation of a flat roof with asphalt covering, erection of infill parapet wall adjoining 110 Great Portland Street and the replacement of a window in the flank elevation of the back addition at first floor with an access door at Ground/Basement Floors, 108 Great Portland Street W1W 6PG and Flat 1, First/Second Floors, 108 Great Portland Street W1W 6PG.

Otherwise, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the installation of decking over the new flat roof and installation of timber fencing on the rear parapet wall and around the rear lightwell, at Ground/Basement Floors, 108 Great Portland Street W1W 6PG and Flat 1, First/Second Floors, 108 Great Portland Street W1W 6PG on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal under Section 78

2. The appeal is allowed and planning permission is granted for 1. Improved fire access and amenity access onto a pre-existing terrace, by replacing a window with a door (completed on or before 4 February 2020) 2. Replacing a wooden parapet safety railing running between a gap in the brick parapet, with a brick in-fill in the parapet (completed in December 2019) at land Ground/Basement

Floors, 108 Great Portland Street W1W 6PG and Flat 1, First/Second Floors, 108 Great Portland Street W1W 6PG in accordance with the terms of the application, Ref 22/06078/FULL, dated 7 September 2022, and the plans submitted with it.

Procedural Matters

3. The two appeals relate to the same property, and the works that are applied for in the s78 appeal are included amongst the alleged development in the enforcement notice ('EN'). As such, I shall deal with both in a single decision letter but, where necessary, I shall distinguish between the two.
4. I held an online Pre-Inquiry Meeting ('PIM') on 15 January 2024, attended by the two parties. At this, amongst other things, I set out reservations regarding the EN.
5. My initial reading was that the Notice alleged a breach of planning control by way of operational development, but did not allege that there had been a material change of use ('mcu') of the roof. The operational development in the allegation had occurred "in connection with the unauthorised use" of the flat roof. It did not, to my mind, explicitly state that the mcu was part of the breach of planning control.
6. Furthermore, the allegation referred to the breach having occurred within the last 4 years. Contextually, using the time limits for enforcement action set out in section 171B of the Act, reference to 4 years could only relate to the operational development and not to the mcu of the roof. The relevant period would be 10 years for a mcu of that kind.
7. The Notice had two sets of alternative requirements. The first set numbered 1-5 and the alternative set numbered 6-10. Requirements 1 and 6 were similar, though the former required the removal of the parapet wall whilst the latter did not. Numbers 2 and 7 were essentially the same, requiring the removal of the door in the flank elevation; there was some additional clarification in number 7, which referred to the door being outlined in red in a photograph attached to the Notice. The reinstatement of a window where the door had been installed was in both sets of requirements, numbered 4 and 8. Both sets required the removal of all debris and the like arising from compliance with the other requirements.
8. There were substantive differences between the two sets, however. Requirement 3, in the first set, required the restoration of the roof to match its design, materials and appearance before the unauthorised works took place. This is not included in the second set of requirements.
9. Similarly, requirement 9 from the second set is not present in the first set. It requires the cessation of the use of the roof as a roof terrace/amenity space and includes the requirement to remove all chattels from the roof.
10. Thus, a recipient of the Notice had two quite distinct options. The first did not require the use of the roof to cease but required the restoration of the roof to its earlier condition. The second required the use to cease but did not require the restoration.
11. In response to my concerns, the Council told me in the PIM that it was of the view that the Notice attacked both the operational development and the mcu.

It acknowledged, though, that it would benefit from “clarification”. It was agreed that the Council would produce an amended Notice that it would consult the Appellant on; this would then be discussed in the Inquiry. I made it clear in the PIM that I would not make a ruling in the Inquiry as to whether the EN was sound but would do so in my decision letter after an assessment of the submissions.

12. The Council emailed the Planning Inspectorate on 22 January, in respect of the issue. It attached a document entitled ‘Draft proposed clarifications to the EN’, which was an amended Notice. In addition, the email submitted copies of correspondence between the Council and the Appellant on the revisions and ‘Submissions in support of the application to amend the enforcement notice’¹.

13. The submissions included an additional allegation. This was designed to address my concern and was worded

“Without the benefit of planning permission and within the last 10 years; material change of use of the new flat roof of the rear ground floor extension of the commercial premises Basement and Ground Floor, to use as a residential roof terrace by occupiers of the First/Second Floor Flat at 108 Great Portland Street”.

14. Thus, the Notice would now clearly allege the mcu had occurred and was being attacked by the Notice.

15. Consequently, amendments were proposed to the Notice’s Requirements. Of these, a number were minor alterations to the text and numbering that had no substantive bearing on the Notice. However, a fundamental change was proposed through the introduction of a wholly new requirement in the first set, which reads:

“Cease the use of the roof of the rear ground floor extension of the Basement and Ground Floor commercial premises at 108 Great Portland Street as a residential roof terrace/amenity space including the removal of all chattels from the roof”.

16. Section 176(1) of the Act sets out that I have the power to correct any defect, error or misdescription in the Notice and to vary its terms. This is subject to the proviso that doing so would not cause injustice to the Appellant or the Council. There is a duty for Inspectors to get the Notice in order, if they can, but the power is discretionary.

17. The Council cites several court cases in support of its contention that the amendments should be accepted. The judgement in *Simms v SSE & Broxtowe BC* [1998] JPL B98 reiterated the terms of s176(1) and set out that the scope for Inspectors to amend enforcement notices under the section was considerable. In *Lynch v SSE & Basildon BC* [1999] JPL 354, the Court set out that an Inspector can make a correction to put an enforcement notice on a proper footing, including broadening the scope of the EN, or removing vague requirements. Again, this was subject to the proviso that there would be no injustice. In *Dacorum BC v SSE & Walsh* [2001] J.P.L. 420, an Inspector failed to address inconsistencies between the allegation and requirements in an enforcement notice, and did not recognise that he could remove vague

¹ Jack Parker, 22 January 2024

requirements. The judgement in *H T Hughes v SSE and Fareham BC* [1985] JPL 486 set out that an allegation of operational development can be corrected to refer to a material change of use, so long as there would be no injustice to the Appellant.

18. I do not read that the EN, in its original form, included the mcu in the alleged breach of planning control. The test in section 173(2) is whether it tells the recipient fairly what they have done wrong and, subsequently, what they must do to remedy it. The Council suggest that it is merely a lack of clarity in the EN, which might be addressed without prejudice. I find differently.
19. Rather than merely clarifying the allegation, I find that the Council's proposed amendments would introduce a whole new allegation to the Notice. Furthermore, the Council admit that adding this allegation would render the EN inconsistent. To address this inconsistency, it proposed the new requirement in the first set of requirements. I do not agree that this additional requirement can be introduced without prejudice. Doing so would remove a clearly defined choice to the Appellant, which could only be prejudicial.
20. During the Inquiry, the Council suggested² that the additional allegation might remain, and the first set of requirements be withdrawn in its entirety. Notwithstanding that the Appellant indicated in the appeal that he would not be likely to take the option given by the first set of requirements, it would be an option available to him. However unlikely it might have seemed that he would follow the first set at the time of the Inquiry, the result of this change would be the removal of an option that the EN originally provided. Removing an option in this manner would be prejudicial to the Appellant.
21. I understand the Council's arguments that, as he has addressed the mcu in his submissions, the Appellant understood that the EN attacked it. However, what any Appellant might understand from an EN can be quite different from what it actually says. His addressing the matter in this way in his submissions is unsurprising, given that this had been the topic of debate with the Council and that he could not be sure what my position on the matter would be. However, an EN needs to allege clearly what a recipient has done wrong. This one does not. The EN sets out the allegation against the operational development at length and, whilst it might benefit from some modest clarification, tells its recipients clearly what they have done wrong in that regard. The words "all in connection with the unauthorised use" does not clearly convey that this, too, is being enforced against.
22. Whilst I find that the Notice is flawed, its flaws relate to the Council's misconception that it attacks the mcu. However, it is quite clear that the original allegation attacked the operational development that has taken place. Thus, the EN is not a nullity and by varying the EN's requirements I can proceed to assess the parties' cases for each ground of appeal on the basis that this is an EN alleging the unauthorised operational development described in its section 3.
23. In the Inquiry, the Council produced a digital, paginated compendium of the evidence. Where this clarifies matters, I refer to this document in the following manner (page F:182).

² James Cook, Evidence in Chief

24. It was apparent that the Appellant's statement included a 'hidden' appeal under Ground (c); this was confirmed at the pre-Inquiry meeting. The Council did not object to the Appellant running such a case, and I can see no reason to find otherwise.

Ground (c)

25. An appeal under Ground (c) is that the matters alleged in the EN do not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.

26. Section 55 of the Act defines the meaning of development and new development, dividing these into operations and material changes of use. Building operations include: the demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder. Amongst its terms, section 55 (2) defines what is not to be taken to be development as (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

27. The Appellant's case is that, of the operational development that was undertaken, those works involved in opening up the roof, replacing the rotten beams and recovering the roof in bitumen are works of repair. Therefore, he says, they do not require planning permission by reason of s55(2)(a).

28. Giles Fernando ('GF') set out in his Proof of Evidence ('PoE') that, in August 2018, the roof showed signs of wear and tear through use and had been subject to patching and piecemeal repairs. He said that as early as 2011, ponding occurred on the roof, where it dipped slightly. He refers to spongy areas in the roof and his worries that "someone might fall through the terrace". He determined that work to the roof to address this was needed and, as he discovered that it did not need to stay, decided to remove a rooflight.

29. At the rear of the flat, in the building's outrigger, is a bedroom with a dual aspect. Prior to the works being undertaken, it had windows on each face looking onto the flat roof. These were quite large sash windows that could, and were, used to gain access to the roof.

30. The oral evidence, backed by photographs show that the original roof did not have a single level. It had a break in its levels roughly halfway along its length and, it seems, another where a gutter ran across it towards its far end. These changes in levels were quite minimal. Pipes ran from the building to the far end of the roof and from there fell to drains at ground level.

31. In addition, there were at least two areas that were raised up above the general level of the roof; they can be seen, for example, in Photograph C attached to the EN. That at the far end, close to the gutter, was a minor feature. The other was a skylight which was sited between the end wall of the bedroom and the northeast end of the roof.

32. There was nothing in the evidence that gave precise measurements of the skylight. Notwithstanding this, it is clear from the evidence that this was a significant feature that took up a good portion of the flat roof. Due to its condition, it leaked and was covered for some years by a large sheet of polycarbonate, which overhung the edges of the skylight.

33. It is safe to say that the roof was in a poor state of repair before GF undertook the works.
34. Save for where there was a conspicuous gap of several feet, there was a low parapet wall running along the boundary with 110 Great Portland Street. This was infilled, to a degree, by a timber frame. At the end of the roof, there was no means of enclosure.
35. GF appointed a roofing company, GWS, to undertake works to the roof, which it described as being of a standard timber form. A letter from GWS (Page F:182) says that its work identified that the step in the roof was due to the presence of a steel beam and that a slope at its far end was due to the presence of guttering. Neither, it opined for financial and structural reasons, should be changed. This meant that GF's original plan to create a "fully flat roof" could not be fulfilled.
36. It says that two of its timber beams required replacing, as they were rotten, and, due to the need to strengthen the roof, a steel beam was inserted in place of one timber beam that ran the width of the roof. Having identified that there was no requirement to retain the skylight, this was removed. The whole of the resultant roof was given a new bitumen.
37. GWS does not say that it undertook the other elements of operational development referred to in the EN that occurred at or around this time. Those were the removal of the timber frame and its replacement by a brick infill of the same height as those elements of wall on either side. The side window serving the flat's bedroom was removed, the opening was enlarged, and a door installed in the enlarged opening.
38. Subsequently, the roof was covered in timber decking and a fence was erected at the Gosfield Street end of the roof.
39. GF said that he submitted an application under the Building Regulations on 25 July 2019 for repair to the roof and parapet. This is corroborated in the Council's submissions. The description of the works applied for on the Building Notice application form was very lengthy. However, its only reference to 'repairs' is that "trying to patch or do minor repairs" had proven "ineffective". The description does not describe what is applied for as a repair and, whilst the works were visited three times by a Building Inspector, the evidence before me does not show that Building Control regarded the works as being repairs.
40. I could not see what the resultant roof looked like at the time of my site visit, as it was covered by the decking. However, photographs, such as those in GF's PoE³, show that form of the roof, away from where the skylight was situated, did not change greatly. In the GWS letter, its Mr Sparrowhawk explains why the form of the roof could not be altered. He also confirms that there was no alteration to the height of the roof.
41. As I have said, the skylight took up a significant part of the original roof and stood well above its level. Simply removing the skylight would have left a large hole in the roof. Although I was given no detail of the work to cover the hole, this would have entailed the insertion of what would have probably been new timber beams to support the new bitumen covering.

³ Paragraph 79, Page F:29

42. Taken in isolation, the opening up of the roof, the replacement of timber beams and the covering of the resultant roof structure with bitumen would have been repair work. However, as they were undertaken contemporaneously with the work to remove the skylight and provide a new area of flat roof, all of these works need to be assessed as a single operation. Assessed in this manner, the work, which was undertaken by a professional contractor, was a building operation that materially altered the external appearance of the building. Therefore, it was development under s55 and it required planning permission and the work was a breach of planning control.

43. For the above reasons, the Ground (c) case is dismissed.

Ground (d)

44. An appeal made under Ground (d) is that, at the date the EN was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The Appellant's case related solely to the use of the flat roof as a roof terrace. As I have found that the EN did not contain an allegation that the use was a breach of planning control, I need not address the matter further.

Ground (a) and appeal under s78

45. An appeal made under Ground (a) is that, in respect of any breach of planning control alleged in the EN, planning permission ought to be granted. Given my findings on the allegation, this ground only relates to the operational development, that is to say: the works to the roof; infilling the parapet; the replacement of a window with a door; and the provision of the decking and fence.

46. The planning application that is the subject of the s78 appeal relates to the replacement of a window with a door and replacement of the timber infill with a length of brick parapet wall.

Main Issues

47. In both appeals, the main issue is the effect of the development on the character and appearance of the host building and the Harley Street Conservation Area ('HSCA') and the setting of the East Marylebone Conservation Area ('EMCA').

Reasons

48. 108 Great Portland Street ('No 108') is a multi-storey building that has a commercial use in its ground and basement floors, with residential development above. Its elevation onto Great Portland Street is formal and decorative. Its form and design is similar to other properties in the terrace and wider area. It is primarily finished in a soft red coloured brick, with architectural detailing in a light buff coloured stone. Amongst its many architectural features are bow windows across its first and second floors, and mock columns supporting an extravagant entablature.

49. There is a marked contrast between its Great Portland Street façade and its rear elevation. It, as is the case with all the rear elevations in the vicinity of No 108, is entirely utilitarian. A rear outrigger runs the height of the building and within this is the bedroom from which access has been gained to the flat roof and where a window has been replaced by the door. The flank wall of this

- outrigger and the rear wall of the main part of the building offer the only hint of decoration on the rear elevation, being finished in a glazed white brick.
50. It would appear that there was, at some point in the past, a yard area at the rear of the property. However, this has been infilled by a flat-roofed addition to the ground floor. This is the flat roof that I refer to earlier, in my Procedural Matters and Ground (c) arguments.
 51. Whilst there are differences in the design and form of the rear elevations of the properties on this part of Great Portland Street, none is of any great architectural merit. There are a number of large skylights, flat roof additions, extensive lengths of pipework draining foul and rainwater, air conditioning units, and, to the rear of 110 Great Portland Street on the boundary with No 108, a steel ventilation flue runs from a ground floor restaurant to the property's roof.
 52. The rear of Great Portland Street faces the rear elevations of properties on Gosfield Street. Again, whilst there is some variation in those elevations, they are workaday.
 53. The section of Great Portland Street in which the appeal site lies is located within the HSCA. It lies within the setting of the EMCA, in which Gosfield Street lies.
 54. Great Portland Street reflects the character and appearance of much of the HSCA. It is a mainly residential area, where the period buildings have 5 or 6 storeys, some with commercial uses at ground floor level. Large commercial buildings are found dotted throughout the area, such as the BBC studios in nearby Langham Place. Its character varies with its larger thoroughfares being busy with both vehicular and pedestrian traffic, whilst others, such as this part of Great Portland Street, are relatively quiet.
 55. As I have discussed in my reasoning for Ground (c) the flat roof, as finished before the addition of the decking, had similarities with the roof it replaced. The obvious difference being the omission of the skylight on the replacement roof. Whilst I found it to be development that materially altered the external appearance of the building, given the presence of many other flat roofs to the rears of properties in Great Portland Street and Gosfield Street, it sits comfortably in its setting. It preserves the character and appearance of the HSCA as a whole and the setting of the EMCA, and does not have a harmful effect on the host building.
 56. The removal of the timber infill from the low wall between Nos 108 and 110, and its replacement with a length of brick wall was a minor operation. The effects of this did not extend beyond the confines of the two properties. It is hard to be sure, but the colour of the brickwork would appear to be much the same as those on either side. The slight doubt arises as the older brickwork has been there for some considerable time, becoming weathered and smoke-stained. The Council set out in its submissions that it no longer objected to the infill. I find that it is entirely acceptable, preserving, as it does, the character and appearance of the HSCA without harm to Nos 108 and 110.
 57. Evidence was given as to how the replacement flat roof had been damaged as a result of its use as an amenity area by occupants of Flat 1. In response to this, GF instructed contractors to construct and install the decking that covers

the entirety of the flat roof. Its surface, I was told, is some 30cms above that of the flat roof. I saw from photographs that when first installed its bright new timber was eye-catching. However, a combination of weathering and use by occupants of Flat 1 has muted its appearance. Notwithstanding this, it appears as an alien feature in this setting that causes harm to the character and appearance of the HSCA and the setting of the EMCA.

58. The screen fencing referred to in the EN is located at the end of the flat roof, on the boundary with Gosfield Street. It is fairly high and formed from vertical boarding. It was erected to provide a measure of screening between users of the flat roof and the property facing it in Gosfield Street. It is an alien feature that causes harm to the character and appearance of the HSCA and the setting of the EMCA.
59. I agree with the parties that the harm caused by the fence and the decking is, in the words of the Framework, less than substantial. In these circumstances, this harm must be weighed against the public benefits arising from the proposal. The case put forward in this regard related to the health benefits arising from access to, and use of, the open-air amenity space. It is well-documented that access to amenity space has health benefits. However, the use of the flat roof as an amenity area is not a matter that is before me in either appeal. This being the case, it is not appropriate for me to determine whether the use of the flat roof as an amenity space provides sufficient justification to retain the decking. That use would have to be shown to be lawful, or be granted planning permission, before such a determination might be made.
60. Whilst being a material alteration, the replacement of the window with a door does not cause harm to the host building, nor any designated heritage asset. It has a neutral effect on the character and appearance of the HSCA and causes no harm to the setting of the EMCA.
61. The works to relocate a surface water drainpipe that now runs along the parapet wall was discussed, both in the parties' submissions and in the Inquiry. Prior to the work to the roof occurring, the pipe ran down the rear wall of the building and along the flat roof to fall to a drain at the rear of the property. Presently, after running down the rear wall, it runs along the parapet wall, supported by brackets, before dropping to the roof and then to the drain. The Council's position was that it would not object to the retention of the pipe, so long as it was re-routed, either along the side of the wall or along the roof.
62. However, this pipe was not referred to in the EN's allegation, nor its requirements. The works that have been carried out are building operations but, to my mind, they do not materially alter the external appearance of the building. As such, the provision of the relocated pipe would not require planning permission. Even were I to have found otherwise, the relocated pipe does not cause harm to the character and appearance of the host building or the wider area. Although I did not see another pipe running along a parapet wall, it is of a simple design and not of a particularly large diameter. It is simply seen as a small element in the cluttered scene to the rear of buildings in Great Portland Street and Gosfield Street.

Conclusion on Ground (a) and the s78 Appeal

Section 174(a)

63. In respect of the operational development referred to in the Ground (a) appeal, for the above reasons I find as follows.
64. The works to provide the flat roof, infill the parapet wall with brickwork and the replacement of a window with a door preserve the character and appearance of the host building and the HSCA, as well as the setting of the EMCA. As such, these works accord with the terms of the statutory test, Policy 1 of The London Plan March 2021 ('LP') that reflects it, and Policies 7, 38 and 40 of the Westminster City Plan 2019-2040, adopted April 2021, ('WCP') that seek to ensure that developments reflect and respond to their location and the historic environment, result in high quality design and that alterations and extensions respect the character of their host buildings and surrounding areas, respectively. It is also in accordance with the terms of the Council's 'Supplementary Planning Guidance – Development and Demolition in Conservation Areas' ('SPG'). I shall vary the Notice to reflect this. As the work has been carried out to a high standard, utilising appropriate materials, there is no need to attach conditions to the grant of planning permission.
65. The creation of the decking and timber fence cause less than substantial harm to the HSCA and the setting of the EMCA, and are harmful to the character and appearance of the host building. As it has not been demonstrated that there are public benefits that outweigh this harm, they are contrary to the terms of the statutory test. They are also contrary to the terms of TLP Policy HC1 and WCP Policies 7, 38 and 40.

Section 78

66. For the above reasons, the infilling of the parapet wall with brickwork and the replacement of a window with a door preserve the character and appearance of the host building and the HSCA, as well as the setting of the EMCA. As such, these works accord with the terms of the statutory test and, thus, I find these elements accord with the statutory test, LP Policy HC1 that reflects it, WCP Policies 7, 38 and 40 and the SPG. As the work has been carried out to a high standard, utilising appropriate materials, there is no need to attach conditions to the grant of planning permission.

Ground (f)

67. An appeal made under this ground is that that the steps required by the notice to be taken 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. In this case, the purpose of the EN is to remedy the breach of planning control.
68. The Appellant put forward two alternatives in respect of the amount of the flat roof that might be used as amenity space and the mitigating measures that would be required to achieve an appropriate solution. However, given my finding that the EN did not attack a mcu, I need not take these further. The Appellant also put forward a case relating to the reinstatement of the window. I have addressed this in my findings on the Ground (a) and section 78 appeals.

69. The consequence of the above is that the Ground (f) case put forward does not fall to be considered.

Ground (g)

70. An appeal under Ground (g) is that the period for compliance with the requirements of the EN fall short of what should reasonably be allowed.

71. The Appellant's position was based on the situation regarding the tenants of his flat. As was shown in the Assured Shorthold Tenancy Agreement, pages F:270-F:282, they have a right to renew the 6-month tenancy for a further 12 months. He says that the works required by the EN could not be undertaken when the flat is occupied, and cites the particular issues associated with the removal of the door and its replacement with a window. He said that when these factors are taken into account, the 6-month period is unreasonably short.

72. For its part, the Council is of the view that, notwithstanding the tenancy arrangements, 6-months is sufficient time to undertake the required works.

73. Given my decision on the Ground (a) appeal, my assessment of the matter is made on the basis of the corrected and varied notice. That is to say, it relates to the removal of the decking and timber fence.

74. The works to dismantle these would be undertaken entirely outside the flat, on the area of flat roof. Whilst there would be some disruption to the tenants of the flat, by reason of contractors accessing the roof and the removal of materials through the flat, this would be quite limited and unexceptional. 6 months is an appropriate period for this work to be undertaken.

75. For the above reasons, the Ground (g) appeal is dismissed.

Overall Conclusion

Section 174 Appeal

76. For the reasons given above I conclude that the Ground (a) appeal should succeed in part only, and I will grant planning permission for the creation of a flat roof with asphalt covering, erection of infill parapet wall adjoining 110 Great Portland Street and the replacement of a window in the flank elevation of the back addition at first floor with an access door, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the other installation of decking over the new flat roof and installation of timber fencing on the new parapet wall. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Section 78 Appeal

77. For the reasons set out above, the appeal made under s78 should succeed and planning permission is granted.

Roy Curnow

Inspector

APPEARANCES

For the Council:

Jack Parker	Counsel, for Westminster City Council (Instructed by Ross Fletcher)
James Cook	Westminster City Council

For the Appellant:

Nick Grant	Counsel
Giles Fernando	Appellant
Desiree Mattei	Witness
Hamer Fernando	Witness
Andrew Burgess	Planning Consultant

DOCUMENTS (Produced either shortly before or at the Inquiry)

Appellant's Opening statement
Council's Opening statement
Notice of Public Inquiry
Statement of Common Ground
Digital paginated file of appeal documentation
Summary of Council's Proof of Evidence
Licence for alterations to 108 Great Portland Street
Deed of variation and Lease Plan
Correspondence between Council and Appellant – 20 September 2023
Appeal decision APP/X5990/W/15/3010451
Supplementary Planning Guidance –
Development and Demolition in Conservation Areas
Certificate B – dated 24 October 2022 for planning application 22/06078/FULL
Council's Closing statement
Appellant's Closing statement
Photographs -108 Great Portland Street