



Appeal Decision

Site visit made on 18 June 2025

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2025

Appeal Ref: APP/X5990/C/24/3354725

Basement front and ground floor, 27 Albemarle Street, London W1S 4HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Richard O'Dea, Il Gattopardo against an enforcement notice issued by Westminster City Council.
- The notice was issued on 27 September 2024.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years the installation of a goods delivery hatch within the pavement lights at the front of the Property, as shown outlined in red on Photograph A attached¹.
- The requirements of the notice are to:
 - a) Remove the openable double doors of the goods delivery hatch installed within the pavement lights at the front of the Property, as shown outlined in red on Photograph A attached; and
 - b) Reinstall a fixed pavement light to match the design, materials, colour and surface level of the existing adjacent pavement lights at the front of the Property, as shown outlined in yellow in Photograph B attached.
- The period for compliance with the requirements is within four months of the notice taking effect.
- The appeal is made on the grounds set out in section 174(2)(a), (c) and (f) 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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Ground (c)

1. Ground (c) is that the matters stated in the enforcement notice ("the Notice") do not constitute a breach of planning control. In this regard, the case is made that they are not development within the meaning of Section 55 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
2. Section 55(2)(a) of the 1990 Act provides that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building shall not be taken for the purposes of the 1990 Act to involve development. While the development in this case has no parallels to the situation detailed in the case of *Burroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167, that does not mean that Section 55(2)(a) cannot be applied to other scenarios, including the current one.
3. Opaque glass squares, set within concrete slabs on a forecourt to the front of the site provide light to an existing basement area. Within one of these slabs an opening has been formed and two doors have been inserted. The main material of the doors has an appearance to match the concrete slab and similarly sized opaque glass squares have been incorporated within them.

¹ Reference to the attached photograph here, and in the following bullet point are references to photographs attached to the enforcement notice.

4. While the glass squares are slightly more densely arranged than those in the adjoining slab, they are otherwise of almost identical appearance. Given that the materials are consistent and the doors are flush with the surrounding slabs, the presence of the doors, when shut, is only noticeable by the slim metal framework around the doors that facilitate their opening. Overall, my observation is that the differences in appearance are so subtle that they would only be noticed by somebody looking for the doors. They do not materially affect the external appearance of the building.
5. When open, the doors would be noticeable, with a void left in the forecourt area. Nevertheless, given the obvious hazard from a risk of falling into the basement that this would create, these doors are clearly not designed to be left open for any longer than necessary, such as might occur with, for example, a delivery hatch within a wall. Accordingly, I have no reason to doubt the appellant's assertion that this would be for a maximum of 30 minutes per day while a delivery was being received. Given the very short period of time, I find that the ability to more readily notice the open doors would make no material difference to the external appearance of the building.
6. For the above reasons, I find that the installation of the goods delivery hatch within the pavement lights is not development within the meaning of Section 55 of the 1990 Act. As development has not occurred, the matters stated in the Notice are not a breach of planning control.
7. Accordingly, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
8. In these circumstances, the appeals on grounds (a) and (f), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, do not fall to be considered.

Formal Decision

9. The appeal is allowed and the enforcement notice is quashed.

M Bale

INSPECTOR