



Appeal Decision

Site visit made on 19 June 2025

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 July 2025

Appeal Ref: APP/X5990/C/24/3340653

50 Eastbourne Terrace, London W2 6LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by CSHV IUK ET OFFICECO Limited against an enforcement notice issued by Westminster City Council.
- The enforcement notice was issued on 8 February 2024.
- The breach of planning control as alleged in the notice is, in summary, the failure to comply with conditions imposed on planning permission ref 19/07378/FULL granted on 5 February 2020.
- The development to which the permission relates is: Demolition of existing buildings and redevelopment of the site to provide a 6 storey (plus existing lower ground floor) 'L' shaped building, including terraces, a plant room, a green roof and solar panels at roof level to comprise 2 x A1 (retail shops) units and 1 x flexible A1 (retail shop) / A2 (financial and professional services) / A3 (café and restaurant) unit at ground floor level and B1 (office) floorspace at part ground floor and all upper stories. Erection of 7 residential townhouses, incorporating concealed roof terraces and landscaped areas to the front on Chilworth Mews.
- The conditions in question are nos 18 and 31 which state that:
18) Notwithstanding the outline servicing plan submitted, you must apply to us for approval of a detailed Servicing Management Plan in relation to the commercial premises. You must not occupy the commercial premises until we have approved what you have sent us and abide by the terms of the Servicing Management Plan at all times.
31) All servicing must take place from the loading bay shown on the drawings (whether enclosed in a structure or not) and this area shall only be used for this purpose and servicing must only take place between 07.00-20.00 on Monday to Saturday and 10.00-16.00 on Sunday and Bank Holidays. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.
- The Notice alleges that the conditions have not been complied with in that: The site is not being serviced in accordance with the conditions and approved Servicing Management Plan ("SMP"). This includes servicing of the Property outside of the permitted hours, deliveries/collections taking place on Chilworth Mews rather than within the loading bay, increased noise and disturbance by use of the loading bay for refuse collections early in the day, the failure of tenants to use the booking system and the failure of the site management team to manage the operation of the site in accordance with permitted hours and requirements of the SMP.
- The requirements of the notice are:
 - a) All servicing of the Property shall be undertaken fully in accordance with the requirements of Condition 18 of planning permission dated 5 February 2020 (LPA Reference: 19/07378/FULL) and in full accordance with the approved Servicing Management Plan by Steer dated September 2020 (Appendix 2) as discharged by approval of details application (LPA Reference: 20/02855/ADFULL); and
 - b) Servicing of the Property shall take place in full accordance with the permitted hours set out within Condition 31 of planning permission dated 5 February 2020 (LPA Reference: 19/07378/FULL).
- The period for compliance with the requirements is: within one month of the Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), 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 dismissed, planning permission is refused, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The Enforcement Notice

1. 50 Eastbourne Terrace was developed as a large commercial building fronting Eastbourne Terrace and Craven Road, and a terrace of townhouses fronting Chilworth Mews. Vehicular servicing access for the commercial buildings and a fire escape are provided on Chilworth Mews, either side of the terrace of dwellings. Condition 18, subject of the Enforcement Notice (“the Notice”) clearly only relates to the commercial premises. There is less certainty in respect of Condition 31, but the Council has not suggested that the restrictions on servicing outlined therein apply to the residential property.
2. The Notice identifies the whole of the above site, including the residential properties, none of which have been served with copies. The Council suggests that the plan attached to the Notice (“the Notice Plan”) could be amended to exclude those dwellings on the basis that the alleged breaches relate to commercial servicing. At my site visit, I saw that the dwellings appeared to be a largely separate entity to the, much larger, commercial building. They do not appear to have any relationship to any of the commercial functions or accesses to those parts of the building. Therefore, I see no reason why injustice would arise if I were to correct the Notice Plan to exclude the residential properties. Any future search of the Land Charges Register should reveal the corrected Notice.
3. Having made such a correction, the residential property owners and occupiers would have no interest in the land to which the Notice relates and would not need to be served with copies. Whether or not there has been correct service in respect of the remainder of the land is a matter that I shall deal with in the appeal on ground (e).
4. The appellant has suggested that they are complying with conditions 18 and 31 and that a requirement to fully comply with the conditions is vague as they don’t know what to do. Whether or not there are breaches of planning control in respect of conditions 18 and 31 is a matter for the ground (c) appeal.
5. However, an enforcement notice must provide reasonable certainty to the recipient about what they have done and what they are expected to do. If necessary, before determining the appeal, I have a duty to put the Notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (“the 1990 Act”) include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
6. In this case, the alleged breach of planning control sets out various things that are said to have occurred. There are essentially five allegations:
 - Servicing outside the permitted hours;
 - deliveries/collections taking place on Chilworth Mews rather than within the loading bay;
 - increased noise and disturbance by use of the loading bay for refuse collections early in the day;
 - the failure of tenants to use the booking system; and

- the failure of the site management team to manage the operation of the site in accordance with the permitted hours.
7. While this sets out what is alleged to have happened, these allegations are presented as an open list by way of the word ‘including’. That introduces uncertainty in that the recipient would not know whether there were other problems with the way that the site is being operated.
 8. This uncertainty infects the requirements set out at section 5 of the Notice because requirement a) is a generally stated need to ‘fully’ comply with condition 18. Only if all the alleged breaches are clearly set out can the recipient know what remains to be done to avoid any ongoing breach of the condition.
 9. Requirement b) makes clear what needs to be done in respect of condition 31. However, it targets only the servicing hours, which is inconsistent with the allegation which also alleges a breach of the other part of the condition relating to servicing from the loading bay.
 10. Thus, I find that the Notice must be corrected to provide certainty by deleting the word ‘including’ from the list of alleged breaches. If it is then found, on the ground (c) appeal, that the 5 matters alleged are a breach of planning control, it would be clear what had to be done to remedy the breach of planning control in order to ‘fully’ comply with the condition.
 11. A further correction should be made to the requirements, such that they cover all alleged breaches of condition 31. The simplest way to deal with this would be to add reference to condition 31 within requirement a). That would mean that requirement a) dealt with the Servicing Management Plan (“SMP”) and the loading bay, with requirement b) dealing with hours of servicing.
 12. These corrections would simply add clarity and consistency to the Notice. In the event that the Council believes there to be other breaches of the conditions that are not included by the 5 alleged matters, they would be at liberty to serve a further enforcement notice. As will be seen later in my decision, hours and servicing from the loading bay is also covered by the SMP, so adding reference to condition 31 in requirement b) would not introduce another requirement. Therefore, no injustice would arise from these corrections.

The appeal on ground (e)

13. Ground (e) is that copies of the Notice have not been served as required by S172 of the 1990 Act. S172(2) requires the Notice to be served on (a) the owner and occupier of the land to which it relates; and (b) on any other person having an interest in the land.
14. The Council served notices seeking to ascertain the owners and occupiers of the land and says that no responses were received. While I note that position, at my site visit, it was easy to identify Vapiano (a restaurant), Ultimate Performance (personal training), and Treelogy (a coffee shop) which had an overt street presence. Moreover, the presence of the coffee shop, accessed from within the building, is a clear indication that the main reception is accessible by the general public and, from there, I also easily saw the names of 6 other occupiers in large letters adjacent to the main reception desk.

15. The names of those on which the Notice is stated to have been served do not easily translate to business names advertised on the ground, but it seems more likely than not that only Vapiano, Ultimate Performance, and two other, upper floor, businesses (in addition to the building owners) were directly served with copies.
16. Despite the lack of response to the formal notice, given that simple observation is sufficient to easily identify further occupiers, I find that inadequate steps were taken to identify the occupiers of the site. I note that the Council also served the Notice on “the owner” and “the occupier”. However, it has not explained how those were served and, consequently, how it can be known whether the building occupiers would be aware of the Notice. Accordingly, I find that the Notice has not been served as required by S172 of the 1990 Act.
17. Nevertheless, S176(5) of the 1990 Act provides that, where it would otherwise be a ground for determining an appeal under S174 in favour of the appellant that a person required to be served with a copy of the Notice was not served, I may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
18. In this case, the Notice refers to the servicing of the commercial units. Commercial tenants clearly have an interest in that. However, the SMP subject of this appeal, places clear responsibility for compliance with it on the building management team (“BMT”). That is contracted to a private company by the building owner and whose knowledge of servicing at the site has clearly informed the appellant’s submissions.
19. Moreover, the SMP places responsibility with the BMT to disseminate information of the servicing protocols to the buildings’ tenants and to place sanctions against them for non-compliance. In this way, the individual tenants have no say in what the servicing arrangements are, they are simply required to comply with the SMP, and compliance is, ultimately, the responsibility of the appellant and its appointed BMT. It has, therefore, not been demonstrated that the individual tenants who were not properly served with a copy of the Notice have been substantially prejudiced by the failure to do so.
20. Accordingly, I conclude that the appeal on ground (e) should fail.

Ground (c)

21. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. In my previous discussion about the Notice, I outlined that there were 5 allegations. Before dealing with those, it is important to distinguish between the requirements of conditions 18 and 31 and how they relate to the alleged breaches.
22. Condition 31 is an explicit control on the permissible servicing hours. Alongside that, it requires all servicing to take place from the loading bay on Chilworth Mews. The loading bay is an enclosed, internal structure, from where deliveries and collections can be made to and from the entire building via internal service routes.
23. The condition clarifies that servicing includes loading and unloading goods from vehicles and putting rubbish outside the building, but that is not a closed list or exclusive definition. While condition 31 may clarify that all servicing must be from the loading bay, activity associated with general servicing is not a matter stated in

the Notice as being a breach of planning control. The matters stated are clearly associated only with hours, deliveries/collections, refuse, and the use, by tenants, of the booking system.

24. Condition 18 requires compliance with the agreed SMP. The SMP requires all deliveries to take place via the loading bay and reiterates the hours set out in condition 31. Tenants of the building are required to ensure deliveries take place via the loading bay by booking slots via an online tenant portal (the booking system). The SMP also details various objectives seeking to minimise traffic to the site, including through coordinating deliveries between tenants, but there is no suggestion in the allegation that those matters are being breached.
25. It is important to note that the SMP primarily sets out procedures for deliveries to the appeal site. It does not set out any procedures for other servicing activity; it only refers to general servicing in respect of the permissible hours and mirrors condition 31. Nor does the SMP control vehicles parking on the public highway, including those that might be waiting for a slot in the loading bay. There would be no breach of the SMP in that regard if, ultimately, the delivery was made to the loading bay, or no delivery occurred at all.
26. Thus, while there is evidence of a tanker parking on Chilworth Mews to carry out jet washing of the waste pits at the site, that does not form part of the matters alleged even if it were considered a servicing activity covered by condition 31. No breach in respect of other servicing activities is alleged.
27. The Council is evidently also concerned about the servicing of 40 Eastbourne Terrace from the shared loading facility, but that is not relevant to my decision on this ground (c) appeal.

Servicing outside the permitted hours, refuse collections early in the day, and failure to manage the operation in accordance with the permitted hours

28. The first, third and fifth alleged breaches outlined in the bullet points above are interlinked.
29. Very few incidences of this have been reported because much of the Council's concern about servicing hours revolves around refuse collections in the early morning (but within the stated hours). Early morning collections are not a breach of condition 31. A seemingly isolated incidence following confusion over servicing hours on a bank holiday in May 2023, does not seem to have been repeated.
30. The SMP (and so condition 18) states a preference for early afternoon refuse collections. The evidence before me shows very few morning waste collections. The preference for early afternoon collections, therefore, appears to be being followed and the wording cannot preclude occasional activity in the mornings. While one aim of the SMP might be to control noise, it does not impose any specific noise controls. I find that, on the balance of probabilities, there has been no breach of the SMP in this regard.
31. There are reported cases of window cleaners visiting before 7 am on 12 June 2023 and on another occasion, parking in a resident's bay. This is not a delivery and, so, there was not a breach of condition 18. The appellant accepts that it was servicing, but also confirms that the window cleaners arrived early and did not service the building until 7am. In any case, the appellant indicates that

subsequently, alternative parking arrangements have been agreed with the window cleaners and there is no substantive evidence to cast doubt on the appellant's position that this has not re-occurred.

32. Since this time there is record of a very recent delivery just after 5 am on 1 March 2024, but the appellant has indicated that access was denied and so servicing did not take place. I have nothing to cast doubt on that version of events and, therefore, I find that on the balance of probabilities there was no breach of condition 31 or the SMP.
33. There was another reported incident involving a delivery at 4.38am, that the appellant has been unable to comment upon in detail. As such, there is little evidence. However, as it appeared to concern a food delivery driver, given the time of day and commercial nature of the appeal site, the appellant's assertion that it was probably an attempt to deliver to the wrong address rather than to service the appeal site is probable.
34. Therefore, on the available evidence, breaches of the hours component of condition 31 appear to be very rare, and potentially only two infringements within the last two years. On this basis, when the Notice was served, and between then and my decision, I find that there has not been a breach of the hours component of condition 31, nor the hours set out in the SMP. It also follows from this that the BMT have not failed to manage the site in accordance with the permitted hours.

Servicing not within the loading bay and the failure of tenants to use the booking system

35. Based on estimations during the planning application phase, the SMP anticipates that up to 35 service vehicles per day could visit the site. It appears that the vast majority of deliveries take place, successfully, within the loading bay and so there is no indication of widespread failure to use the booking system.
36. However, there is substantive evidence of a number of occasions where delivery slots may not have been booked. Where a slot has not been booked, the SMP includes sanctions for non-compliance. The sanctions appear to be enacted by the BMT and this has resulted in the deliveries being turned away. As this process is a clear part of the SMP, the temporary waiting of a vehicle on the public highway, or outside the loading bay while access is refused is part of the protocol and not a breach of it.
37. In spite of that, there are also recorded examples of goods being delivered to the site from vehicles parked in Chilworth Mews via the fire escape doors on the Mews, or walked around to other entrances on Eastbourne Terrace or Craven Road. It appears to be a fairly regular occurrence with a ground floor restaurant tenant. Those are clear infringements of the protocols set out in the SMP that state that no deliveries will be accepted by tenants other than from the designated loading bay.
38. The onus of proof on this ground is with the appellant and there is no particular evidence (for example) as to how frequently this tenant successfully manages their deliveries in accordance with the SMP, nor a comprehensive record of discussion with them.

39. As noted above, the BMT have refused deliveries to the loading bay in accordance with the sanction protocol in the SMP. However, other than a reprimanding email in respect of deliveries to the front door, the appellant has provided no substantive evidence of how seeming continued non-compliance has been investigated, or whether steps have been taken to identify the reasons for non-compliance. The SMP indicates that deliveries can be withheld until this has been done.
40. Given the repeat occurrence with the same tenant, it has not been demonstrated that, on the balance of probabilities, these are isolated events that are insignificant as a proportion of total breaches. Nor does a simple reminder to the tenant to use the loading bay appear to have worked. In this regard, there has been a breach of the SMP (and by extension condition 18) as well as that part of condition 31 that requires, all servicing to take place from the loading bay.

Conclusion on ground (c)

41. Of the five alleged breaches of planning control detailed in the Notice, on the balance of probabilities, I have found no breach of condition 31, or the SMP controlled by condition 18 insofar as they relate to the servicing hours. By extension there has been no failure of the site management team to manage the operation of the site in accordance with the permitted hours. I find that the first third and fifth matters that I have outlined do not constitute a breach of planning control.
42. I also conclude that there is no breach in respect of the alleged failure to use the booking system. This is because the SMP details sanctions against non-compliance that are being adhered to by the BMT, in that they are turning deliveries away. The SMP is operating as intended in that regard.
43. However, there are still repeated instances of deliveries being made from Chilworth Mews to other external doors of the premises. That is a breach of the SMP and it has not been demonstrated that, on the balance of probabilities, this is being effectively managed through the SMP sanctions. This is a breach of conditions 18 and 31.
44. With regard to the above, the appeal on ground (c) succeeds to a large extent. In respect of the matters described in the second bullet point, the appeal fails.
45. I shall correct the Notice by removing reference to the matters described in all but the second bullet point. I shall also make a consequential correction in respect of requirements of the Notice by deleting requirement b) that refers only to servicing hours.

Ground (a)

46. Ground (a) is that the conditions being breached should be discharged. The SMP covers a wide range of matters beyond the narrow area that has been breached. Discharging the condition would remove all control over matters, including those where there has been no breach and its operation is assisting in avoiding harm to the local area. The appellant does not dispute that some control in this regard is necessary and does not present a detailed ground (a) case.
47. I have considered granting permission for part of the matters by imposing a new condition, such as allowing the identified breach of planning control to continue so there could be deliveries made from Chilworth Mews rather than within the loading

bay. However, such unregulated activity would clearly run against the servicing and management principles intended for the site and would cause unacceptable congestion and harm to pedestrian safety.

48. The appeal on ground (a) must, therefore, fail.

Ground (f)

49. Ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control. Following my corrections to the Notice only requirement a) relating to compliance with Condition 18 and the SMP remains. The purpose of the Notice is to secure compliance with the condition and, thereby to remedy the breach of planning control. Whether lesser steps might remedy injury to amenity is, therefore, not relevant in this case.
50. While the appellant indicates that, as an alternative to formal enforcement action, dialogue could also resolve the dispute, in order to remedy the breach of planning control, it is necessary to comply with the condition. Having established what activities at the site are in breach of the SMP, and correcting the allegation to reflect only that, it is clear what must be done.
51. The fact that only a small part of the SMP is being breached, no lesser steps, short of fully complying with the condition (and by extension the SMP) are available. Accordingly, the appeal on ground (f) must fail.

Formal Decision

52. It is directed that the enforcement notice is corrected and varied by:

- At Appendix 1, the removal of the plan attached to the Notice, and its substitution with the plan annexed to this decision.
- In Section 3, 'The Breach of Planning Control Alleged', delete the text in its entirety and replace with the text:

"The failure to comply with Conditions 18 and 31 pursuant to planning permission granted on 5 February 2020 (LPA reference: 19/07378/FULL), which state:

18) Notwithstanding the outline servicing plan submitted, you must apply to us for approval of a detailed Servicing Management Plan in relation to the commercial premises. You must not occupy the commercial premises until we have approved what you have sent us and abide by the terms of the Servicing Management Plan at all times.

31) All servicing must take place from the loading bay shown on the drawings (whether enclosed in a structure or not) and this area shall only be used for this purpose and servicing must only take place between 07.00-20.00 on Monday to Saturday and 10.00-16.00 on Sunday and Bank Holidays. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.

Condition 31 and the Servicing Management Plan (SMP) by Steer dated September 2020 submitted pursuant to condition 18 and approved by

application 20/02855/ADFULL, are being breached by way of deliveries/ collections taking place on Chilworth Mews rather than within the loading bay.

- In Section 5 'What You Are Required To Do',
 - in Paragraph a) insert the text "Condition 31 and" before the text "Condition 18". Delete the text "; and" and replace with the text ". "; and
 - Delete paragraph b) in its entirety.

53. Subject to the corrections, 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 1990 Act as amended.

M Bale

INSPECTOR



Planning Inspectorate

Annex - Plan

