



Appeal Decision

Site visit made on 17 June 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2025

Appeal Ref: APP/A5270/C/23/3329805

95A Westfield Road, West Ealing, London W13 9JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Jane Marie Spriggs-Upasena against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 17 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of balustrades at second floor level to facilitate the use of the flat roof as a roof terrace.
 - The requirements of the notice are: A. Remove the balustrades and supports from the second floor level roof terrace; B. Remove any decking and furniture from second floor level roof terrace; C. Install a Juliette balcony across the doors at second floor level as shown on approved drawing DWG07 of planning permission 203212FUL, which is attached to this Notice; and D. Remove all resulting materials, debris and rubbish from the site.
 - The period for compliance with the requirements is three 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). Since the prescribed fee has 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 has lapsed.
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Decision

1. It is directed that the enforcement notice be varied by deleting steps B and C. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. A planning application made for the matter stated in the enforcement notice was refused and a subsequent appeal dismissed in October 2022¹. Planning merits considerations are not before me in this appeal. There is no deemed planning application arising from an appeal made on ground (a) and the relevant fee has not been paid.

Ground (f) appeal

3. The ground of appeal is that the requirements of the enforcement notice are excessive.
4. The appeal property is an apartment occupying the first and second floors of an enlarged end of terrace residential building. The notice attacks timber balustrades erected above the three external walls of a two-storey flat roofed extension at the rear of the building, to enclose an outdoor roof terrace at second-floor level.

¹ Appeal Ref: APP/A5270/W/22/3299256

5. An enforcement notice can have the purpose of remedying the breach of planning control, including by requiring the land to be restored to its condition before the breach took place. It can also have the purpose of remedying any injury to amenity caused by the breach. The purpose of the notice must be to remedy the breach; this is clear from the final reason for issuing the notice in paragraph 4. Moreover, steps A and D of the notice require the removal of the balustrades and the associated demolition materials from the extension roof. These steps are clearly aimed at restoring the property to its condition before the breach took place.
6. Additionally, step B requires the removal of the decking and furniture items from the extension roof, whilst step C requires the fitting of a Juliette balcony across French doors in the rear elevation at second floor level. However, an enforcement notice cannot require the carrying out of works that would go beyond remedying the breach. The allegation refers only to erection of the balustrades. No reference is made to the laying of decking. The decking is not part of the structure of the balustrades. Whilst the decking and furniture facilitate the use as an outdoor terrace, the notice does not allege a material change of use. Nor would the fitting of a Juliette balcony be of relevance in terms of restoring the property to its condition before the balustrades were erected. Accordingly, steps B and C are more onerous than what is required to remedy the breach. Steps A and D are sufficient to remedy the breach by restoring the property to its condition before the breach took place.
7. A breach of planning control can also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. In this regard, I am aware that permission was granted in October 2020 to enlarge the roof of the building². Condition No 2 attached to the permission requires compliance with the approved drawings, which amongst other things show a Juliette balcony fitted across the French doors. Condition No 5 prohibits use of the extension roof as an outdoor terrace. The permission has been implemented and remains extant. I have therefore considered the Council's suggestion that the notice could be corrected to allege a breach of the above conditions, with consequential variations to the requirements to make the development comply with the terms of the relevant permission.
8. Nevertheless, correcting and varying the notice along the above lines would in my view cause injustice to the appellant. The allegation would effectively be widened beyond the scope of that stated in the notice as issued, as matters including the decking, the absence of a Juliette balcony and the use of the extension roof as an outdoor terrace would be encompassed in the breach of conditions. The steps would also be extended to beyond what can be required to remedy the breach specified in the notice as issued, to include the matters attacked by the widened allegation.
9. Furthermore, the appellant would then be denied from responding to the corrected allegation. Although only removal of the decking is currently disputed by the appellant, I cannot reasonably be assured that they would not have made other arguments in support of their grounds of appeal, or appealed on additional grounds, had the allegation in the notice been a breach of conditions from the outset. For

² Council Ref: 203212FUL

example, it is possible that an appeal would have been made on ground (a) for carrying out development without compliance with those conditions.

10. Therefore, I shall exercise the power in s176(b) of the Act to vary the notice to delete steps B and C and the ground (f) appeal succeeds to that extent.
11. It is open to the Council to take further enforcement action in relation to any breach of the conditions attached to the above referenced permission drawn to its attention, including by issuing a fresh enforcement notice, if it is deemed expedient to do so.

Ground (g) appeal

12. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.
13. Removing the balustrades would be a relatively routine and modest task for a small firm of building contractors. There are likely to be a significant number of such contractors with the level of competence required to carry out the remedial works and who would be available to do so having been given a relatively short period of advance notice. The works are unlikely to take more than a few days at most to complete. Although there might be significant expenditure involved, there is little firm evidence to suggest that securing any necessary finance would be a particularly drawn out or otherwise difficult process for the appellant.
14. Therefore, in my view the three-month compliance period specified in the notice is not too short and is reasonable. An appropriate balance is struck between remedying the breach as soon as practicable whilst not imposing a disproportionate burden on the appellant. Extending the compliance period on the other hand would do little more than prolong the breach. The ground (g) appeal fails.

Conclusion

15. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it.

Stephen Hawkins

INSPECTOR