



Appeal Decision

Site visit made on 15 July 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2025

Appeal Ref: APP/X5990/C/24/3347727

The Fourth Floor Unit, 57 Poland Street, London W1F 7NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Dwight Okechukwu (Big Smoke Corporation Limited) against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 5 June 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 timber decking, a raised timber enclosure, metal balustrades around the roof edge, and five metal framed canopies with the removable fabric roofs and side plastic panels on the flat roof of the Property to create a roof terrace ("the Unauthorised Works") which has resulted in the intensification of the use of the flat roof of the Property.
 - The requirements of the notice are to:
 - 1) Remove the following works:
 - a. the timber decking at roof level shown shaded in blue on Plan 1 and partially shown in photographs A to D and F;
 - b. the raised timber decked enclosure from the roof level shown shaded in green on Plan 1 and annotated in Photographs A and B;
 - c. the five metal canopies and any attached fabric roofs and plastic side panels from the roof level shaded in yellow on Plan 2 and annotated in Photographs A, B & D;
 - d. the metal balustrades with attached plastic green foliage located around the edge of the roof area shown shaded red on Plan 2 and annotated in Photographs A, B, C & E
 - 2) Restore the roof level of the Property to its previous state before the works took place;
 - 3) Repair any damage caused to the Property by implementing Steps 1 and 2 using materials to match the construction appearance of the existing Property; and
 - 4) Remove from the Property all waste materials equipment and debris created as a result of fulfilling Steps 1,2 and 3
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Decision

1. 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.

Appeal on ground (a)

2. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the breach of planning control stated in the notice. Where an appeal on ground (a) is duly made, an application for planning permission is deemed to have been made.

Main Issues

3. The main issues are: whether the development would preserve or enhance the character or appearance of a conservation area; and the effect of the development on the living conditions of occupiers of surrounding properties, with particular regard to privacy, and noise and disturbance.

Reasons

Conservation area

4. The appeal site is the roof area of 57 Poland Street, accessed via fire escape stairs from the fourth floor unit. It is located in the Soho Conservation Area (the CA), which has a dense urban character and a range of uses positioned along narrow streets. In the vicinity it features tall buildings with a sense of cohesion in shape and form. Notably, from street level, the roofscapes appear subtle and uncluttered, allowing the narrow street layout and building facades to be readily experienced.
5. The alleged breach comprises the installation of timber decking, a raised timber enclosure, metal balustrades, and five metal framed canopies with removable fabric roofs and side plastic panels at the side, which has the effect of creating a roof terrace. I observed numerous upper floor terraces in the surrounds. While those adjacent to the site are modest in footprint, larger examples exist along Poland Street to the east. The materials of these terraces are akin to the decked floor and black metal railings of the development. In this context, the decked floor, metal railings, and footprint of the development do not appear out of place.
6. However, the alleged breach also refers to the raised decked enclosure and metal framed canopies. While the canopies were not in place at the time of my visit, it remains that an appeal on ground (a) relates to the alleged breach of planning control stated in the notice. The canopies, including their roofing and side panels, and the raised decked enclosure, are sizeable features both in their own right and when viewed together, which dominate the site and appear as bulky additions.
7. While views of the canopies and timber enclosure from street level are limited, they can be readily experienced from the upper floors of surrounding properties. Viewed in the context of nearby upper level terraces, which appear subtle, uncluttered, and free from substantial structures, the canopies and raised timber enclosure are incongruous, and result in the site appearing visually jarring. In addition, the materials of the canopies, with a fabric roof and plastic side panels, fail to reflect or respect the character and materiality of surrounding built form.
8. Overall, the development is out of place and imposing, causing visual harm to the site itself and to the contribution it makes to the surrounding character and appearance. As such, it neither preserves nor enhances the character or appearance of the CA. Its effect is localised, equating to 'less than substantial' harm. Nevertheless, the Framework makes it clear that great weight should be given to the conservation of heritage assets.
9. The Framework specifies that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against public benefits of the proposal including, where appropriate, securing its optimum viable use. Public benefits of the scheme have not been put forward by the appellant, beyond reference to the balustrade being

necessary for safety reasons. Even if I were to find this to be a public benefit, I do not find that this outweighs the harm of the development as a whole to the CA.

10. For the reasons given, the development neither preserves nor enhances the character or appearance of the CA. As such, it fails to comply with Policy HC1 of the London Plan 2021, Policies 38, 39, and 40 of the City of Westminster City Plan 2019-2040, and the Development and Demolition in Conservation Areas Supplementary Planning Guidance insofar as they seek to ensure development is sympathetic to the character and appearance of the area and heritage assets.

Living conditions

11. The notice alleges the development facilitates increased use of the appeal site. The appellant argues that the site has been an area for lunch breaks and general relaxation for some time. However, little evidence is provided. Even if such use had previously taken place, it is reasonable to find it would have intensified due to the development providing facilities such as decked floor, covered canopies, raised decked enclosures, and railings, which encourage sitting out for longer periods.
12. The appeal site is close to residential buildings at 14-16 Marshall Street and Sandringham Court. It sits at the same level as, or higher than, dwellings in these buildings with facing habitable room windows. Due to the elevated position of the site and the limited separation distance from these windows, clear and direct views into the associated residential properties are possible from the appeal site.
13. This results in actual and perceived overlooking of these dwellings, which negatively impacts the enjoyment of the affected rooms by occupiers. Accordingly, the increased use of the site as a roof terrace, as facilitated by the various elements of the development, has undue privacy and overlooking impacts. The appellant states that faux leaves attached to railings at the site prevent this. These were not in place at the time of my visit but, given the limited height of the railings, attaching such leaves would not prevent the overlooking identified above.
14. The increased use of the site for sitting out will also lead to additional noise arising from the comings and goings of users and associated conversations, perceptible by the occupiers of 14-16 Marshall Street and Sandringham Court due to their proximity. While the area contains a range of uses and other terraces, the scale of the appeal site and the nature of the various facilities provided by the development create the possibility for a significant number of users of the terrace for prolonged and unrestricted periods of time. As such, even noting the character of the surrounds, such increased noise associated with the development will likely result in undue disturbance to occupiers of 14-16 Marshall Street and Sandringham Court.
15. For the reasons given, the development has a significant adverse effect on the living conditions of occupiers of surrounding properties, with particular regard to privacy, and noise and disturbance. As such, it fails to comply with Policies D13 and D14 of the London Plan 2021, and Policies 7 and 33 of the City of Westminster City Plan 2019-2040 insofar as they seek to ensure that amenity is protected, including that unacceptable impacts in terms of overlooking and noise are managed and prevented.

Other matters

16. The appellant points out that the canopies have been removed and will not be reinstated, and that planning permission should be granted on that basis. This represents an alternative scheme to that before me. However, even if I were to find that this alternative scheme formed part of the matters to which the notice relates, it remains for the reasons set out above that the decking, raised decked enclosure, and railings of the development result in harm.

Conclusion

17. For the reasons given above, I conclude that the appeal on ground (a) should not succeed, and I shall refuse the deemed application for planning permission.

Appeal on ground (f)

18. An appeal on ground (f) is brought on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach. Section 173(4) is clear that a notice can remedy the breach of planning control by: making the development comply with the terms of any planning permission which has been granted in respect of the land; by discontinuing any use of the land; or by restoring the land to its condition before the breach took place.
19. The alleged breach of planning control is, without planning permission, the installation of timber decking, a raised timber enclosure, metal balustrades around the roof edge, and five metal framed canopies with the removable fabric roofs and side plastic panels at the appeal site to create a roof terrace which has resulted in the intensification of the use of the flat roof of the appeal site. The requirements are to remove these works and restore the roof of the appeal site to its previous state, repairing any damage and removing any waste, debris, materials, and equipment. As such, the purpose of the enforcement notice in this instance is to remedy the breach of planning control.
20. The appellant has submitted an appeal on ground (f). However, limited further justification for this ground is provided, nor are any lesser requirements suggested, albeit that the canopies have now been removed. I observed the appeal site during my visit, and noted the presence of the development identified in the enforcement notice. From my observations the only way to remedy the breach would be to remove the development in its entirety and to restore the appeal site to its prior condition, as outlined in the requirements of the notice. Given the purpose of the notice, the requirements are not therefore excessive.

21. For the reasons given, the appeal on ground (f) fails.

Overall conclusions

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

C Rafferty

INSPECTOR