



Appeal Decision

Site visit made on 2 September 2025

by **Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2025

Appeal Ref: APP/H5390/C/23/3334376

First Floor Flat A, 770 Fulham Road, London SW6 5SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Ms Kristyna Simrova against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The enforcement notice was issued on 20 October 2023.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 2022/01736/FUL granted on 17 August 2022.
 - The development to which the permission relates is: Installation of French doors and a Juliet balcony to replace existing window to the rear elevation at first floor level.
 - The conditions in question are Nos 4 and 5 which state that:
 - 4) The balustrade of the Juliet balcony at second floor level in the rear elevation [DPL.01 Rev A.] hereby permitted shall be fixed flush with the rear elevation of the building at the same time as the associated doors are installed. The doors to the Juliet balconies shall open inwards only. The doors and balustrades shall be permanently retained in this form for the lifetime of the development.
 - 5) No part of any roof of the existing back addition at first floor level shall be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roof. No railings or other means of enclosure shall be erected on the roof and no alterations shall be carried out to the property to form access onto the roof.
 - The notice alleges that the conditions have not been complied with in that: The installation of a metal gate as opposed to Juliet balcony in front of the French doors located at first floor level to the rear elevation and use of the roof of the ground floor single storey rear extension as a roof terrace, is in contrary to conditions 4 and 5 of planning permission (ref: 2022/01736/FUL).
 - The requirements of the notice are to:
 - a) Remove the metal gate located in front of the French doors at first floor level to the rear elevation; and
 - b) Replace with a Juliet balcony as shown in approved drawing DPL.01 revision A of planning permission reference number 2022/01736/FUL granted on the 17.08.2022. The Juliet balcony must be fixed flush to wall and must not open; and
 - c) Cease the use of the first floor rear flat roof as a terrace.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a) and (g) 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. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a)

Main Issue

2. The appellant has suggested alternative schemes to attempt to overcome the reasons for the Council taking enforcement action. I can consider whether planning permission can be given for the retention of the development subject to additional or alternative planning conditions which could potentially involve the installation of enclosures as proposed within those alternative schemes.
3. The main issues are:
 - the effect of the breach of the planning conditions and alternative proposed schemes on living conditions at adjoining residential properties by reason of privacy and generated sound from the use of the roof as a terrace.
 - The effect of the proposed alternative schemes on the character and appearance of the building and surrounding area.

I will consider whether the conditions or any alternative planning conditions comply with the tests for planning conditions as set out in the National Planning Policy Guidance (PPG) and the National Planning Policy Framework (the Framework).

Reasons – living conditions

4. French doors have been installed serving a bedroom of the appellant's flat, facing towards the rear parts of the residential properties including gardens that adjoin the appeal site. The windows within the doors provide the ability to look towards the properties at the rear, there is currently a gate across the outside of the French doors which, when open, also enables the use of the flat roof of the property below as a terrace.
5. Walking out onto the roof, which has been laid out with artificial grass, it is possible to view down into the adjoining gardens including both of those at the rear but also those to either side. From the edge of the roof-terrace I could also get a much closer view towards and through some of the windows of the nearby buildings.
6. Furthermore, there are roof-lights installed within the roof and these serve the flat below. It is therefore to view directly down into the rooms served by the roof-lights. When I carried out my site visit, I felt very uncomfortable looking down through those roof-lights because it felt like a very intrusive thing to do even though there appeared to be some form of screen on the inside of the window. The retention of such screens could not be secured through a further planning condition even if that flat is in the same freehold ownership as the appeal site. I did not go into the ground floor flat. However, the windows will allow light into that property and also allow glimpses of the sky which in my experience can assist to make flats more comfortable places to live-in. It would be unreasonable to restrict or prevent those benefits for those adjoining occupiers.
7. I recognise that the French windows are serving the bedroom at the appellant's flat rather than other rooms within the flat. However, use of the roof as a terrace even for a limited numbers of people has a very invasive impact both for the residents at adjoining properties but also for those who live in the unit below. In the absence of evidence to demonstrate otherwise, it seems probable that activity from people using the roof will be heard in the flats below through their ceiling as well as by

adjoining neighbours when using their gardens or when they have windows that face towards the site open.

8. The notice alleges the breach of a condition requiring that the Juliet balcony across the French doors is fixed flush with the building and retained with the doors opening inwards. This, if complied with, would prevent access onto the roof. The other condition covered by the notice requires that no part of the roof is used as a roof terrace or other form of amenity space amongst other things. The 3 alternative schemes suggested by the appellant would allow for use of restricted areas closer to the French doors. However, in each case there would be use of the roof which would cause disturbance in the flat below and also potentially for each of the adjoining neighbours. Furthermore, although schemes 1 and 2 would lessen the effect of overlooking on adjoining neighbours they would still enable roof-lights to be looked through. Although in Scheme 2, the effected rooflight may not be authorised, I do not know whether it is now lawful or not. That scheme would still result in a loss of privacy for the neighbour. Each of the scheme would still lead to noise being transmitted through the roof and ceiling of the flat below.
9. In relation to the main issue, the breach of these conditions has a harmful effect on the living conditions at adjoining residential properties by reason of a loss of privacy and generated sound from the use of the roof as a terrace. This therefore does not comply with Hammersmith and Fulham Local Plan, February 2018 (LP) policies HO11, DC4 and CC1. These amongst other things seek to ensure good neighbourliness, with no detrimental impact upon privacy enjoyed by neighbours of adjoining properties and not permitting noise generating development if it would materially increase noise for occupants/users of existing noise sensitive uses. This would also not comply with key principle HS8 of the Council's Planning Guidance Supplementary Planning Document - February 2018 which supports these LP policy requirements.
10. The appellant's alternative proposals would not overcome this harm and the conditions remain necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, as required by the PPG and the Framework. The other alternative suggestion that a condition could be imposed to restrict use of the terrace to occupiers of the property would not be enforceable and also would not prevent the harm that I have identified.

Reasons – character and appearance

11. The alternative schemes as proposed show 3 different ways of installing screening on the roof which would restrict access, preventing to 3 varying degrees how close people on the roof could get to the edge of the nearby neighbours. The appeal site and those around it are largely traditional buildings which the Council has referred to as being Victorian and within the Fulham Gardens Conservation Area.
12. The area includes other similar traditional buildings with residential accommodation above a varied range of commercial uses and ground level. The rear elevations of these properties have a less ornate and more functional appearance than the front elevations and this include the use of traditional flat roofs along with newer additions such as balconies and fencing of varied appearance. In this context, it seems likely that there would be a solution to providing some form of enclosure on the roof terrace which would not look out of place within this area with a variety of enclosures including some on roofs.

Precise details could be sought by imposing a different planning condition if I were to grant planning permission.

13. In relation to this main issue, the proposed alternative schemes would not have a harmful effect on the character and appearance of the building and surrounding area. This would conserve the character and appearance of the CA. It would comply with LP policies DC1, DC4 and DC8. These amongst other things seek to secure a high-quality urban environment that respects and enhances its townscape context and heritage assets. Furthermore, they require development to be compatible with the scale and character of existing development, neighbouring properties, their setting and only being permissible if the significance of the heritage asset is conserved or enhanced.

Other matters

14. The development has not resulted in a large number of objections from neighbours. The terrace also provides a useful amenity space for the occupants of this small flat which would have benefits for their enjoyment of the property and related well-being. These positive factors and my conclusion on the second main issue do not outweigh the harm in relation to the first main issue.

Conclusion on ground (a)

15. For the above reasons, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should fail and consequently, the deemed planning application shall be refused.

Appeal on ground (g)

16. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice currently allows for 3 months for compliance and the appellant has requested 6 months.
17. The requirement to remove the existing metal gate and replace it with a Juliette balcony in accordance with the previous planning permission seems fairly straightforward. I have no evidence about any particular difficulties that there may be with instructing people with the necessary skills to carry out this work. There is also potential for intrusive harm to the neighbouring properties if the conditions are not complied with.
18. The 3 months for compliance strikes a reasonable and proportionate balance between overcoming the harm caused by the development and the ability of the appellant to organise the carrying out of the work.
19. The appeal under ground (g) is therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR