



Appeal Decisions

Site visit made on 12 January 2026

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2026

Appeal A Ref: APP/X5990/C/24/3357914

The buildings and associated land at basement and ground floor, 101 Westbourne Grove, London W2 4UW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act").
 - The appeal is made by Mrs Inbar Hagai of 95-101 Westbourne Road LLP against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 15 November 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 three air conditioning units at rear ground floor level of the Property.
 - The requirements of the notice are:
 - 1) Remove the three air conditioning units at rear ground floor level (as shown in attached Photograph C1) and any associated wiring, fixtures and fittings;
 - 2) Restore the Property to its former condition, making good any damage caused by the installation and/or removal of the air conditioning units;
 - 3) Following compliance with Steps 1) and 2), remove any resulting waste materials and detritus from the Property.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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 ("the DPA").
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Appeal B Ref: APP/X5990/C/24/3357871

The buildings and associated land at basement and ground floor, 101 Westbourne Grove, London W2 4UW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Inbar Hagai of 95-101 Westbourne Road LLP against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 15 November 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 two extract ducts at rear ground floor level of the Property.
 - The requirements of the notice are:
 - 1) Remove the two low level extract ducts at rear ground floor level of the Property (as shown in attached Photograph B1) and any associated fixtures and fittings;
 - 2) Reinstate the glazing removed to facilitate the installation of the duct, which currently protrudes from the window, and restore the Property to its former condition, making good any damage caused by the installation and/or removal of the ducts;
 - 3) Following compliance with Steps 1) and 2), remove any resulting waste materials and detritus from the Property.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Summary of decisions: Appeal A is dismissed and the enforcement notice is upheld with corrections, and Appeal B is dismissed and the enforcement notice is upheld, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeals each relate to different aspects of development at the 101 West deli/bakery, which also has seating areas and operates as a café. The building as a whole comprises 4 storeys and a basement, and the ground floor and basement levels are in use as the 101 West bakery/deli. The upper floors are in residential use, and the property is located within the Westbourne Conservation Area.
2. Appeal A relates to air conditioning units installed at the rear of the building at ground floor level, although the appellant's submissions clarify that the units run air conditioning and a fridge freezer. They are clearly identified on the annotated photograph within the Notice, and no injustice would arise to either party were I to correct the allegation in Section 3 and requirements 5(1) and 5(2) of the Notice to "air conditioning / refrigeration units". I shall do so in my formal decision.
3. Appeal B relates to extraction flues running from the basement and vertically along the rear wall of the ground floor, and a short duct protruding through a window at a high level on the rear ground floor wall.
4. A further appeal (APP/X5990/C/24/3357866) relating to decking has been made by a different appellant and is subject to a separate decision.

Appeal A on ground (a)/the DPA

5. Appeals on ground (a) are made on the basis that planning permission should be granted for the matters alleged to be in breach of planning control.
6. The main issues are:
 - The effect of the development on the living conditions of neighbouring residents in relation to noise; and
 - Whether the development preserves or enhances the character or appearance of the Westbourne Conservation area.

Living conditions

7. At street level, the ground floors of properties on Westbourne Road in the vicinity of the appeal site are in use as shops, cafes and other uses within Class E of the Town and Country Planning (Use Classes) Order 1987. At the rear, the upper floors are in residential use, as are all storeys of Westmont Court, on Monmouth Road, including its basement.
8. The taller buildings at 103 Westbourne Road, and the one-and-a-half-storey height of the ground floor at No 101, creates an enclosed courtyard with solid walls on three sides. The fourth side is open to the rear of Westmont Court, where there is a further courtyard at basement level outside a basement flat.
9. As a consequence of this layout, a large number of windows serving residential units face the courtyard, and any noise generated within it is likely to be reflected from the high walls both of adjoining developments and residential flats.
10. The Council reports that residents have made complaints of noise, and some have made representations at appeal. There is therefore the possibility of harm to living conditions arising from noise from the units, but no noise assessment has been carried out by the appellant.

11. It is also possible, but not certain, that a suitably qualified consultant, in preparing a noise assessment, may have been able to recommend measures to reduce or mitigate the effects of noise. But in the absence of any such assessment, and associated mitigations, I cannot be certain that the effects of noise from the air conditioning/refrigeration units is not, or will not be, harmful to the living conditions of residents.
12. In conclusion, in the absence of an acoustic assessment and associated mitigation measures, with the evidence before me the development is harmful to the living conditions of neighbouring residents. The development therefore conflicts with The London Plan (2021) ("TLP") Policy D13 and D14 and City of Westminster City Plan 2019-2040 (2021) ("CP") Policies 7, 33 and 38. Together these policies require noise generating development close to residential uses to mitigate and manage noise impacts. They also state that development proposals should not normally be permitted where they have not clearly demonstrated how noise and other nuisances will be mitigated and managed.

Character and appearance

13. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Westbourne Conservation Area ("WCA").
14. The Westbourne Conservation Area Audit (2002) ("WCAA") records how the WCA developed from a hamlet with fields to a metropolitan suburb in the space of around 15 years from the 1840s. Its significance is associated with its historic architecture and unified townscape as mid-Victorian suburban development, but the architecture in Westbourne Grove is more varied with some Regency and Edwardian designs. The WCAA advises that new development should be judged on how well its design answers the prevailing architectural typologies.
15. The building at 101 Westbourne Grove marks the southernmost edge of the WCA. In fact, it may be that the air conditioning/refrigeration units themselves are outside of the WCA but within its setting. The rear of the building, in facing brick with its distinctive bond and traditional metal windows, is architecturally interesting, despite the clutter of drainage pipework, flues, vents and wiring.
16. Whether the air conditioning/refrigeration units are within the WCA or its setting, despite their inherently modern designs, they are relatively discreetly sited on or close to the rear wall of the ground floor. The appellant advises the units could be enclosed, such that they would preserve the character and appearance of the WCA (or its setting) and would not harm its significance. I agree that would overcome the harm occurring and a planning condition which required a scheme to be submitted for enclosure of the units could be imposed on any planning permission granted.
17. In conclusion, subject to a suitable planning condition, the development would preserve the character and appearance of the WCA and its setting and would accord with CP Policies 7 and 38. Together these policies require development to protect and positively respond to local character and the historic environment.

Other matters

18. The appellant advises that the air conditioning/refrigeration units are essential to the operation of the use, which is a valued community resource and contributes to the local economy. I weigh this matter in the planning balance below.

The planning balance

19. Subject to a planning condition, the effect of the development on the character and appearance of the WCA is neutral in the planning balance. But the need for the air conditioning/refrigeration units for the operation of the use attracts moderate weight in favour of the development. However, with the information before me, the development harms the living conditions of neighbouring residents, which together with the associated conflict with development plan policies attracts significant weight. The need for the development therefore does not outweigh the harm arising.

The appellant's alternative

20. As an alternative to removal of the units the appellant claims that any noise concerns could be addressed through the installation of acoustic barriers or soundproofing material around the equipment, or through restricting the operational hours of the development.
21. No designs or detailed proposals have been put before me, and no limitation on specific hours of use has been proposed. But a simple enclosure around all or parts of the air conditioning/refrigeration units would be directly related to the development and limited in scale, such that it could be required by planning condition and would be part of the matters subject to the Notice.
22. However, even if overall noise levels could be reduced at certain times associated with the use of the air conditioning, at least one of the units is a refrigeration unit for the freezer, which is likely to be in operation at all times. There is no technical information before me in relation to noise matters, and I therefore have no information relating to the nature and levels of noise generated above background levels, and whether there are specific times at which the noise is particularly harmful. It is therefore not possible to establish the level of any mitigation required or the times at which use could be limited to maintain adequate living conditions for residents, or whether such measures could make the development acceptable in planning terms.
23. The appellant has therefore not demonstrated that harmful effects on the living conditions of neighbouring residents would not occur, with or without these measures. The development would therefore not be made acceptable by the appellant's proposed alternative measures.

Overall conclusion on ground (a)/the DPA

24. The harm to the living conditions of neighbouring residents would therefore remain, along with conflict with the development plan. There are no other material considerations that require a decision to be made other than in accordance with the development plan, and the appeal on ground (a) therefore fails.

Appeal A on ground (f)

25. Appeals on ground (f) are made on the basis that the steps required to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy the injury to amenity caused by the breach.
26. In this case the purpose of the Notice is to remedy the breach of planning control (in its entirety), by requiring, as corrected, the removal of the air conditioning / refrigeration units and the restoration of the property to its former condition.
27. The appellant's alternative mitigation measures sought to remedy the injury to amenity, rather than the breach of planning control, and I therefore considered them as part of the appeal on ground (a). However, I have not granted planning permission for the development, as existing or modified, and there is no other planning permission the appellant could comply with in order to remedy the breach of planning control.
28. There are therefore no lesser steps before me that would remedy the breach of planning control, and the steps set out in Section 5 of the Notice are the minimum required to remedy the breach. There is therefore no obvious alternative to the requirements set out in Section 5 of the Notice.
29. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

30. Appeals on ground (g) are made on the basis that the period specified for compliance with the Notice falls short of what should reasonably be allowed.
31. The appellant's case is that the 3 month time period is too short and would not enable the appellant to commission and conduct an acoustic assessment and submit a retrospective planning application or alternative proposal. She therefore seeks a period of 9 months.
32. I found in relation to ground (a) that the failure to commission a suitable noise assessment significantly weakened the appellant's case. Had one been prepared it may have informed whether or not a retrospective planning application may have been successful or whether an alternative proposal was needed. Although I have some sympathy with the need to secure a planning permission for some form of refrigeration unit in particular, the Notice was issued in November 2024 and the appellant has had more than a year to commission a noise assessment to inform existing or alternative developments, in addition to the two years the Council advises passed before the Notice was issued.
33. The appellant has therefore had ample time to undertake this preparatory work before applying for planning applications for the existing or alternative development but has not done so, and I must also consider the ongoing harm to the living conditions of neighbouring residents.
34. Three months is sufficient time to carry out the works of removing the three units and associated wiring, fixtures and fittings, restore the property to its previous condition and remove any resulting waste. Overall, balancing all these considerations, 3 months is a reasonable time period.
35. The appeal on ground (g) therefore fails.

Appeal B on ground (g)

36. The appellant's case is that the 3 month time period to remove the extract ducts and restore the property to its former condition is too short and would result in the closure of the bakery section of the use, with the loss of jobs. She seeks 9 months to submit and obtain planning permission for an alternative extraction system.
37. The appellant's only ground of appeal on Appeal B relates to the time period to comply with the requirements of the Notice. The Notice was issued in November 2024, and the appellant has therefore already had a period of more than 9 months to apply for planning permission (or validate the planning application made) and carry out any subsequent works of modification.
38. I can therefore see no reason to afford the appellant further time beyond a 3 month period, and to do so would be unreasonable to neighbouring residents.
39. The appeal on ground (g) therefore fails.

Conclusion on Appeal A

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

Conclusion on Appeal B

41. For the reasons given above, I conclude that Appeal B should not succeed. I shall uphold the enforcement notice.

Formal Decisions

APPEAL A:

42. It is directed that the enforcement notice is corrected by:
- the deletion of the words "air conditioning units" and their substitution with the words " air conditioning / refrigeration units" in Sections 3 and 5.
43. 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.

APPEAL B:

44. The appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR