



Appeal Decision

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 Ref: APP/X5990/C/24/3357866

**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 Mr Moise Zemmour 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 raised timber decking with timber supports at rear ground floor level on the flat roof of the basement storey of the Property.
- The requirements of the notice are:
 1. Remove the raised timber decking at rear ground floor level (as shown in attached Photograph A1) and the timber framework under the timber decking (as shown in attached Photograph A2);
 2. Restore the flat roof to its former condition (as shown in attached Photograph A3);
 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)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended).

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal is one of three relating to different aspects of development at the 101 West deli/bakery. The other two appeals, by a different appellant, relate to air conditioning/refrigeration units (APP/X5990/C/24/3357914) and extraction flues (APP/X5990/C/24/3357871).
2. 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.
3. This appeal relates to decking which has been installed a little higher than ground floor level beyond the rear ground floor and over the basement level.
4. The Council advise that planning permission was refused in July 2024 for the installation of raised timber decking over rear flat roof and 1.8m high timber fence in association with the use of cafe at ground floor level (Ref: 23/04327/FULL). That decision was not appealed.

The appeal on ground (b)

5. Appeals on ground (b) are made on the basis that the matters constituting the alleged breach of planning control have not occurred.

6. The thrust of the appellant's case is in fact one relating to whether a material change of use has occurred. That is a matter for ground (c), and I have therefore considered those arguments in relation to that ground of appeal below.
7. The appellant's remaining case relates to the description of the breach, as described in Section 3 of the Notice. He claims there is no roof or structure beneath the decking, but that it is a rear garden space at natural ground level.
8. The photographs provided by the Council of the partially constructed decking clearly show a timber framework installed in part on an existing structure, which appears to be the flat roof of a basement structure. It also indicates that the pre-existing structure with a flat roof may not have extended to the full extent of the rear external area, or that there were level differences across that area. That level difference was also clear to me at my site visit, where the height of the decking above the structure below it was greater near the building, where the air conditioning/refrigeration units have been installed.
9. The appellant has not disputed that raised timber decking with timber supports has been installed, and I witnessed it at my site visit. The appellant's part retrospective application for the 'installation of raised timber decking over rear flat roof' also supports the description set out in the Notice.
10. Nevertheless, only part of the decking may have been constructed 'on the flat roof of the basement storey of the property', and for clarity, these words should be deleted from the description of the alleged breach. Read as a whole, the Notice, with its photographs of the development, is clear what the development constitutes, and no injustice would arise to either party were I to make that correction. I shall do so in my Formal Decision.
11. On the balance of probabilities, the evidence before me therefore indicates that the development alleged in the Notice has occurred, but not entirely as described in the Notice.
12. The appeal on ground (b) therefore succeeds in part.

The appeal on ground (c)

13. Appeals on ground (c) are made on the basis that the matters, if they occurred, do not constitute a breach of planning control.
14. The appellant's case is that the works are not development for the purposes of the Act and that there is no material change of use.
15. In relation to the works, the appellant claims that the works amount to a change in the material of the roof of a structure, and are *de minimis*, not meeting the threshold for development under Section 55 of the Act. And that the placement of decking boards constitute maintenance.
16. However, I concluded above that the works were not limited to development above an existing flat roof. It is also clear from the Council's photographs of the partially built decking that those parts which make contact with the roof sit on top of it, rather than being a part of it. That was also clearly the case at my site visit, where it was apparent that there was a significant gap between the decking and at least parts of the structure below it, and that it was sufficiently raised above it to require

steps up onto it. Neither is the decking and its supporting structure maintenance of any existing building; it is clearly a new and independent structure.

17. Section 55 of the Act defines development as the carrying out of building, engineering, mining and other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land. Building operations includes structural alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. Section 55(2) excludes certain activities from development, including the carrying out of maintenance, improvement or other alteration of any building works which do not materially affect the external appearance of the building.
18. The timber framework supporting the decking and the installation of the decking boards are typical of operations normally undertaken by a person carrying on business as a builder. The decking makes a notable change to the rear yard area and materially affects the external appearance of the building. The construction of the decking, including the structure supporting it, is therefore development, and planning permission is required for it under Section 57 of the Act.
19. There are no 'permitted development' rights¹ for works of this nature, and no planning permission has been granted for the structure. The installation of raised timber decking with timber supports is therefore development without planning permission, and neither party have advised that any Certificate of Lawfulness has been issued for the development.
20. The Notice does not allege a material change of use, and that is therefore not a matter for my consideration.
21. As corrected, the matters alleged in the Notice constitute a breach of planning control, and the appeal on ground (c) therefore fails.

The appeal on ground (d)

22. Appeals on ground (d) are made on the basis that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control.
23. The appellant confirms that this ground of appeal relates only to the lawfulness of the use of the rear garden space, not to the construction of the decking.
24. As the Notice relates only to the construction of the decking with its timber supports, and not to use, this ground of appeal cannot succeed.
25. Photograph A2 attached to the Notice is date stamped 16 August 2022. It shows the partially constructed structure which later supported the decking was not substantially complete four years before the Notice was issued in 2024.
26. Even considering transitional provisions², the time limit for taking enforcement action under Section 171B(1) of the Act had therefore not expired, and the appeal on ground (d) therefore fails.

¹ Under the Town and Country Planning (General Permitted Development) (England) Order 2015

² Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

28. It is directed that the enforcement notice is corrected by:

- In Section 3, the deletion of the words "on the flat roof of the basement storey of the Property".

29. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR