

Appeal Decision

Site visit made on 12 August 2026

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 8th September 2026

Appeal Ref: APP/P4605/C/25/3371221
37 Church Street, Lozells, Birmingham B19 1QN

- The appeal is made by Salih Hamed of SOH Property Ltd under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 2024/0499/ENF) issued by Birmingham City Council on 17 July 2025.
 - The breach of planning control alleged in the notice is "the unauthorised erection of a third storey extension without complying with the conditions of planning approval reference 2023/08650/PA".
 - The requirements of the notice are as follows: -
 - "EITHER:
 - 1) Demolish the unauthorised third storey extension in its entirety and remove all demolished materials from the Land and restore the roof to its condition prior to the unauthorised third storey extension being built; OR
 - 2) Carry out remedial works to the unauthorised third storey extension to comply with the terms and conditions of planning permission reference 2023/08650/PA dated 8 February 2025 including complying with the approved plans namely 'church st 37 dwg no 2 and church st 37 dwg no 3' as referenced under application 2023/08650/PA"
 - The period for compliance with these requirements is six months.
 - The Planning Inspectorate has determined that an appeal on ground (a) of section 174(2) is barred by section 174(2A). The appeal has therefore been accepted only on the grounds in section 174(2)(b), (c), (e), (f) and (g). There is no planning application associated with the appeal and the planning merits of the extension have not been considered in this decision.
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Decision

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

Reasons for the decision

Ground (e)

2. The purpose of an appeal on ground (e) is to show that copies of the notice were not served as required by section 172. This section requires a copy of the notice to be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the Council is materially affected by the notice.
 3. The Council have explained in their appeal statement that copies were served by hand on all the interested parties. The appellant has not disputed this in his
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rebuttal statement, and has requested in that statement that the appeal is upheld on grounds (b), (c), (f) and (g). I have therefore taken no further action on the appeal brought on ground (e).

Ground (b)

4. Under ground (b), the appellant maintains that the development enforced against is a rear-facing dormer roof extension to the second floor of the property and not a third-storey extension as specified in the notice. The Council do not agree: they state that the extension has been built entirely with bricks directly off an existing second-storey brick wall and does not constitute a dormer.
5. My understanding of the term 'dormer' is that it refers to a roof extension that is set back at the front. The extension referred to in the notice has a front wall that has been built in brickwork directly off the brick wall below it without any set-back. It is not what I would describe as a dormer. The description of it in the notice as "a third storey extension" is appropriate in my opinion, since this part of the house is now seen as being three storeys high when viewed from the back garden.
6. The appeal on ground (b) has therefore failed.

Ground (c)

7. The objective of the appeal on ground (c) is to show that the extension does not constitute a breach of planning control, for example because permission has already been granted for it or it is permitted development. The appellant maintains that it aligns with the original approval granted by permission 2023/08650/PA, with modifications made following officer guidance.
8. The appellant also maintains that the extension complies with planning policies and is within the scope of acceptable rear roof alterations within conservation areas, when carefully designed and not visible from the public realm, and that many similar dormers exist in the immediate area. These are 'planning merits' matters that are not under consideration in this appeal, since ground (a) has been barred and there is no planning application before me.
9. The approved plan shows that, at the sides and front, the extension should have been set back within the roof plane and should have been clad with hanging slates. The extension that has been built is markedly different because it does not have these features or appearance. There is no evidence before me that officers of the Council have approved it as it stands and it does not benefit from permitted development rights.
10. The appeal on ground (c) has therefore failed.

Ground (f)

11. The objective of an appeal on ground (f) in this instance is to show that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control that has occurred and that lesser steps would overcome the objections.

12. In support of this ground, the appellant refers to matters I have already dealt with under ground (b) and to a series of alleged procedural failings, disproportionate action and inconsistent and unreasonable enforcement by the Council. He asks me to allow the appeal on ground (f) and to vary the notice to allow for the submission of a retrospective application and for engagement to take place with the Council on minor design amendments.
13. I have considered all these allegations. The current edition of the National Planning Policy Framework (August 2026) states at Policy DM8: "Where there has been unauthorised development and local planning authorities are considering whether enforcement action is expedient, they should take account of their local enforcement plan, the impact of the breach of planning control, and the extent to which the breach would otherwise be acceptable." It seems to me that the Council have dealt with the matter in this way; in particular, they have already considered, and refused, a planning application relating to the extension as built (ref. 2024/01262/PA).
14. The notice gives the appellant the choice of either demolishing the extension or carrying out works to make it comply with the existing planning permission. These requirements are proportionate, since they are the minimum necessary to remedy the breach of planning control. The alternative of allowing a retrospective application to be made has already taken place. No "minor design amendments" have been put forward and it is clear that there could not be anything minor that would be sufficient to overcome the objections to the extension which are set out in the reasons given for the issue of the notice.
15. The appeal on ground (f) has therefore failed.

Ground (g)

16. The appellant has misunderstood what is the period allowed by the notice for compliance with its requirements. It is not 28 days, but is in fact the six-month period that the appellant states would be reasonable. I agree that this is a reasonable compliance period.

D.A.Hainsworth

INSPECTOR