



Appeal Decision

Inquiry held on 28 May and 11 June 2025

Site visit made on 28 May 2025

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 15th July 2025

Appeal Ref: APP/Q3060/C/23/3336069

Millstream Court, Peveril Street, Nottingham, NG7 4AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The appeal is made by Mr Warjinder Khamba of Together Living 2 Ltd against an enforcement notice (EN) issued by Nottingham City Council.
 - The EN was issued on 15 November 2023.
 - The breach of planning control as alleged in the EN is: without planning permission, the removal of the original pitched roof and its replacement with a new flat roof structure. These works include the gable walls being raised in height to support the new roof structure and being rendered to match the rest of the gable wall with the front and rear elevations of the new roof structure being clad with composite cladding in anthracite grey.
 - The requirements of the EN are:
 - 5.1 Remove the unauthorised roof structure (including the increase to the gable walls, rendering and cladding) and
 - 5.2 Replace with a pitched slate roof to match the original.
 - The period for compliance with the requirements is: 6 calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the 1990 Act.
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Decision

1. The appeal is dismissed and the EN is upheld.

Applications for costs

2. An application for costs was made by Nottingham City Council against Mr Warjinder Khamba of Together Living 2 Ltd. This application for costs is the subject of a separate decision.

Preliminary Matters

3. The Inquiry commenced on 28 May 2025 and was initially programmed to sit for one day with a virtual sitting reserve day of 11 June 2025. However, the reserve day was required to hear all the evidence and the Inquiry resumed at the physical venue. I undertook an accompanied site visit on the first day of the Inquiry. All the oral evidence given to the Inquiry was given by sworn affirmation.

The ground (d) appeal

4. A ground (d) appeal is made on the basis that, at the date when the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The relevant time limit within which enforcement action must be taken in respect of the breach of planning control is set out in section 171B (1) of the 1990 Act and the burden of proof lies

with the appellant. The appellant's evidence does not need to be corroborated by independent evidence and, unless the Council has evidence of its own or from others to make the appellant's version of events less than probable, there is no good reason to dismiss the appeal provided that the appellant's evidence alone is, on the balance of probabilities, sufficiently precise and unambiguous.

5. The EN was issued on 15 November 2023 and there is no dispute that at that date the time limit at section 171B(1) of the 1990 Act stated that *"where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed"* and that it applies in this case. Therefore, to succeed on this ground the appellant needs to show, on the balance of probability, that the operational development that constitutes the alleged breach of planning control (the operational development) was substantially completed by 15 November 2019.
6. Whether operational development is substantially complete and how that is to be assessed was considered by the *Sage*¹ judgment. Lord Hope stated within that judgment *'that the language of the statute is open to a different interpretation and that it makes better sense of the legislation as a whole to adopt the holistic approach which my noble and learned friend has described. What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.'*
7. In this case there is no dispute that the operational development was undertaken without planning permission. However, a planning application² (the 2020 application) for the *'replacement of pitched roof with flat roof and replacement windows'* was submitted on 14 February 2020 and part of that application constituted a drawing³ (the 2020 drawing) of the proposed elevations of the appeal building. That application was refused by the Council in June 2020 and an appeal⁴ against that refusal was dismissed in December 2020. The 2020 application provides evidence regarding the totality of the operations to the roof that the appellant intended to carry out.
8. The appellant's case is that the operational development was substantially completed by the relevant date with the core external roof works being completed by 29 September 2019 and no later than early October 2019.
9. A statutory declaration (SD) completed by Cristian Sandu (Mr S), a director of 8 Ball Contractors Ltd, states that *'we were engaged to undertake the removal of the old roof and installation of a new roofThe project commenced in April 2019'*. It goes on to state that *'the roof project was completed by 29 September 2019 with the full roof structure and walls supporting the roof completed'*. An invoice dated 29 September 2019 from 8 Ball Contractors Ltd to the appellant company forms

¹ *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299

² Ref: 20/00356/PFUL3,

³ Drawing No: MC-20-04

⁴ Ref: APP/Q3060/W/20/3257776

part of the evidence before me. Mr S's SD indicates that the invoice was generated after the completion of the job.

10. However, in his oral evidence the appellant stated invoices could be generated before, during or after works as they could be used to set the agreed price for the works. Moreover, Mr S's SD appears to contradict the appellant's oral evidence that the works were completed in about 7 days. Whilst it is not explicit as to what project started in April 2019 the only references to works undertaken by 8 Ball Contractors Ltd in that SD are the roof project/removal of the old roof and installation of a new roof. As such, it is reasonable to consider that Mr S is stating that the roof project started in April 2019.
11. Additionally, the invoice is relatively scant in detail as there is no breakdown of the specific costs relating to materials, labour or scaffolding. The invoice includes a description of the works '*Removal of old Roof, Scaffolding, Timber construction, New Flat roof installation, Finished in GRP Dark Grey*', an overall unit cost, subtotal, VAT and total cost. I acknowledge that the appellant has regularly worked with the contractor and maintains that he has a relaxed attitude to contracts/invoices given his experience of property development and the value of building works he oversees. Nonetheless, in my experience, it is highly unusual for an invoice of works, especially those relating to a relatively complex project on a traditional building, to not include a breakdown of the specific costs being invoiced. That invoice makes no reference to the costs of the disposal of materials from the removal of the old roof, it is not clear whether '*Timber construction*' includes the timber frame and the timber boarding (the OSB boarding), there is no reference to the erection of the additional parts of the parapet side walls, the rendering, painting and coping of those walls, the cladding on the front and rear walls or guttering/downpipes.
12. A SD from Baetica Vasilica (Mr V), states that he occupied the ground floor and basement units from 5 May 2019 to 19 February 2020. He goes on to state the roof construction was substantially completed on 29 September 2019 as he had observed the construction progress throughout the preceding year. He also states that a significant leak occurred during that period and that the building manager, known to be affiliated with 8 Ball Contractors Ltd assured him the roof had been successfully completed.
13. Neither Mr S nor Mr V attended the Inquiry therefore their evidence could not be tested in cross examination. Both of their SDs indicate that the roof project and the construction progress was undertaken during 2019. That may have included the project planning and internal preparation works. Nevertheless, there are inconsistencies in relation to the length of the construction period in respect of the operational development between the oral evidence of the appellant and those SDs.
14. Mr Ionut Petcu (Mr P) gave oral evidence at the Inquiry and there is a SD from him which states that he resided at Millstream Court from 5 March 2018 to 18 February 2019. It goes on to state that he occupied the first floor utilising the space primarily for storage and that he lodged a formal complaint with the company overseeing the roof work due to leaks. In that SD he states that the roof was completed in September 2019. Within his oral evidence Mr P indicated that the information within the SD was wrong in that he had not resided at Millstream Court as had only stayed there when he was working late at night and on occasions to

provide security at the appeal property. As such there are inconsistencies within Mr P's evidence and given that he states he submitted a formal complaint it is surprising that neither him nor the appellant has provided any correspondence relating to that complaint. I acknowledge that Mr P affirmed at the Inquiry that the roof did not leak after September 2019 and that he remembers that the top of the building looked grey from the outside. Nevertheless, Mr P also stated in cross examination that he never went up on the scaffolding and that he thought the blue netting visible on the photographs⁵ against a dark coloured background was grey and could be the grey anthracite cladding.

15. Jamie Yorke (Mr Y) provided a signed witness statement and gave oral evidence at the Inquiry. He stated that his friend lived and lives at 234 Alfreton Road and that in September 2019 he remembers the roof being constructed at the appeal property. His oral evidence was that at a barbecue on the last Saturday in September 2019 between 16:00 and 18:00 he got talking to 2 of the builders who were on the scaffolding/roof and invited them to the barbecue that was being held in his friend's garden. He went on to state that only one of them attended the barbecue and that builder invited him to go up onto the scaffolding. He stated that he did that and saw views over the city from the top of the roof and that the outside of the roof/walls was grey. He also stated that he remembers that later in January/February 2020 the square parts of the walls were replaced.
16. I have no reason to disbelieve Mr Y's statement under cross-examination that due to the trauma of the events that took place in America on the 11 September 2001 he can now recall every activity/event he has since undertaken on each day of the month of September. Yet there is little to corroborate Mr Y's version of events such as evidence from his friend who lived/lives in Alfreton Road or the builder who took him up on the roof. Additionally, in my judgement it is highly unusual for a builder to invite a member of the public, who they had been talking to at a social event, up onto scaffolding to stand on top of a roof taking into account the health and safety implications of that invite.
17. Mr Mohammed Ameen (Mr A) gave oral evidence that he ran a bespoke carpet business from the basement of the appeal property in 2019 and 2020 and still has the use of space in the basement for storage. He stated that he had issues gaining access to the basement at times, with deliveries of carpets, due to the scaffolding and that he remembers that this was in September 2019. He also stated that he saw the roof works when going in and out of the building and remembers the issues with the membrane and it being replaced. However, under cross examination he identified the blue netting on the scaffolding as the membrane. Moreover, even given the low rent cited by Mr A, in my judgement it is extraordinary for a bespoke carpet business to store high value stock in a space that is shared, having little to no stock security, with that other occupier and that is suffering from water ingress.
18. Mr Madhanraj Singh (Mr S) told the Inquiry that he is a director of 8 Ball Contractors Ltd but he did not start working for the company until August 2021. As such, he has no first-hand knowledge of when the operational development was substantially completed. Whilst he stated he may have seen a second invoice for maintenance works to the roof he confirmed that no such invoice is before me.

⁵ NCC 12 and NCC 13

19. Statutory declarations are sworn documents which are worthy of significant weight. Moreover, the appellant and four witnesses, supporting his case, gave oral evidence under affirmation at the Inquiry. Nevertheless, there are inconsistencies in relation to the period of time the roof project was ongoing between the SD's of Mr S and Mr V and the oral evidence of the appellant. Mr S, Mr V, Mr Y, Mr P, Mr A and the appellant refer to the dates of the substantial completion of the operational development as either the 29 September 2019, the last week of September or the first week of October 2019 and in that respect their evidence is consistent. However, the operational development took place around four years before the preparation of the SDs and more than 5 years before the Inquiry, in that context, such consistency is surprising even taking into account Mr Y's memory relating to events in September.
20. The only corroborating documentary evidence is the invoice from 8 Ball Contractors Ltd but it is scant in detail. There is no evidence before me in respect of correspondence between the appellant and the contractor in relation to the collapse of the pitch roof, the proposed flat roof and any associated structural engineer's report and/or the formal complaint of Mr P about the roof leak. I would have expected that that correspondence would more than likely have been relatively easily available to the appellant and his witnesses. Additionally, there is no reference to the replacement of the cladding and membrane maintenance works in any of the appellant's written evidence and it was introduced by the oral evidence of the appellant at the Inquiry. The oral evidence of Mr Y, Mr P and Mr A referred to those maintenance works but that is unsurprising when they were all present when the appellant's oral evidence was heard.
21. Furthermore, the Council has submitted photographs that it states were taken on 26 January 2020⁶ by the complainant and photographs taken by a Council Officer, Mr Phil Shaw (Mr Sh), on the 27 January 2020⁷. The metadata associated with those photographs has also been supplied within the Council's witness, Miss Katherine Lowe's proof of evidence. Even though Mr Sh did not appear at the Inquiry the appellant conceded during cross examination that he accepted that the dates associated with the photographs were as stated by the Council.
22. Those photographs show that on those dates in January 2020 the OSB boarding was visible in parts, the timber framework behind the OSB boarding was visible in one section and dark coloured sections were visible of the 'wall' to the roofing works that faces Peveril Street. On the opposite elevation only the OSB boarding was visible on that 'wall' and scaffolding was visible on both elevations. The Council's case is that those photographs indicate that on those dates the operational development attacked by the EN was not substantially complete. Additionally, it has submitted Google Earth aerial photographs which are attributed the dates of 10 April 2019 and the 21 September 2019 by Google. On both of those aerial photographs a pitched roof on the appeal building rather than a flat roof is visible and it does not appear that any scaffolding is visible adjoining the appeal building.
23. As stated previously, the appellant's oral evidence specified that the operational development attacked by the EN was completed in around 7 days in the last week of September of 2019 and therefore it would not be visible in the aerial photograph

⁶ NCC 12, 13 and 14

⁷ NCC 19 and 20

with the date of 21 September 2019. I acknowledge that I have no reason to doubt that the works associated with that operational development could be carried out in that short period of time. Nevertheless, that oral evidence is not consistent with the SDs of Mr S and Mr V with regard to the time period for the roof project and the construction progress as highlighted above.

24. The appellant explained in his oral evidence why the anthracite cladding, that is shown on the 2020 drawing, is not visible on the photographs taken in January 2020. He stated that maintenance works to the roof were carried out, in January 2020, as he had been informed that the membrane that had been installed, under the cladding on the 'walls' of the roof, was inferior to another type of membrane. He went on to state that the cladding and original membrane was removed and then the new membrane was installed and the cladding reinstalled. As such, he stated that in those photographs the gap in the OSB boarding was to allow access onto the scaffolding to carry out the maintenance works and that the membrane and cladding were being replaced.
25. However, his signed Statement of Case states that *'the roof in question was finalised on 29 September 2019, although maintenance works occurred the following year to install a access hatch'*. There is no reference to the cladding and membrane maintenance works in the appellant's written evidence. As such, there is inconsistency between the appellant's written and oral evidence. Moreover, when a comparison is made between the photographs taken in January 2020 and those taken in February 2020⁸ it is apparent that a coping on top of the parapet wall and guttering and downpipes appear to have been installed by February 2020 and they are not visible in January 2020. I accept that the downpipes are fitted over the cladding and therefore if the cladding/membrane was in the process of being replaced the downpipes would have been removed temporarily. Yet in my judgement, there is no reason why those maintenance works to the cladding and membrane would require the removal even temporarily of the coping and guttering.
26. Furthermore, in email correspondence to the Council dated 20 May 2025, the original complainant has stated that *'the roof alterations began at the start of January 2020 and were clearly still under construction when the photos were taken and emailed to you in late January 2020'*. The identity of the complainant is not before me and they have not submitted a statutory declaration nor did they attend the Inquiry. Nonetheless, in my experience it would be very unusual for a complainant to wait around 4 months to report an alleged breach of planning control. Especially, as in this case, when they had previously objected to prior approval/planning applications relating to the building/site.
27. In addition, the application forms, dated 14 February 2020, for the 2020 application state at section 5 that the work started on 6 January 2020 and that it was not complete. I note that the description of the proposal is *'replacement of pitched roof with flat roof and replacement windows'* and that there is no dispute that the windows had not been replaced at the time of that application. Also, the appellant stated that Alison Dudley (the agent) did not visit the site in January/February 2020. Yet, the agent's correspondence⁹ with the Council on 5 February 2020 states *'I have spoken to the client and apparently he was proposing to alter the pitched roof to a flat roof by raising the eaves....I have advised him that planning*

⁸ NCC 31 and 33

⁹ NCC 24

permission would be required and that in the meantime work should stop.' There is no mention of the replacement windows in that correspondence, and she indicates that '*work should stop*'. The appellant's oral evidence is that he cannot remember speaking to the agent specifically about the operational development and that she may have spoken to his personal assistant. Yet, it is reasonable to consider that based on that correspondence that the agent believed that the operational development was ongoing at that time.

28. The appellant considers that the completion of the application form by the agent was carried out incorrectly and that in the time she has carried out work on his behalf she has been known to make mistakes. However, if she has been known to make mistakes such as these it is unclear as to why the appellant has continued to employ her to represent him. Moreover, there is no statement from the agent herself indicating that she made a mistake/s in completing the form and she did not attend the Inquiry. Moreover, the application form was completed, and her correspondence was sent in 2020 contemporary to that of the operational development occurring.
29. The Council also considers that the appellant's correspondence¹⁰ with the Council in relation to the submission of a further amended design for the operational development indicates that the appellant could not have considered that it was immune from enforcement action in October 2023. Yet the appellant in cross examination stated that he only found out about the 4-year time limit relating to immunity during the course of this Inquiry. However, given that the appellant also stated during his oral evidence that he has numerous years of experience in property development and has an extensive property portfolio it is surprising that he had not previously been made aware of the time limits for immunity. Moreover, the appellant has been professionally advised for numerous years.
30. In my judgement, the combination of; the date of the original complaint; the photographic evidence submitted by that complainant and the Council; the evidence relating to the 2020 application and the appellant's correspondence in October 2023 is compelling contradictory evidence that makes the appellant's version of events less than probable. Whilst some works to the roof may have been undertaken in 2019 when considered holistically, on the balance of probability, it has not been demonstrated with sufficient precision and unambiguity that the operational development was substantially complete, prior to 15 November 2019. The ground (d) appeal therefore fails.

Conclusion

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

D Boffin

INSPECTOR

¹⁰ NCC 44

APPEARANCES

FOR THE APPELLANT:

Dr Tarjinder Khamba	Agent acting as advocate
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He called:

Mr Warjinder Khamba	Appellant
Mr Jamie Yorke	Factual Witness
Mr Mohammed Ameen	Factual Witness
Mr Ionut Petcu	Factual Witness
Mr Madhanraj Singh	Factual Witness

FOR THE LOCAL PLANNING AUTHORITY:

Mr Daniel Henderson	Counsel instructed by Nottingham City Council
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He called:

Miss Katherine Lowe	Principal Senior Planning Officer
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DOCUMENTS

Google Earth copyright and imagery dates information

Email correspondence from complainant – 20 May 2025