
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 July 2025

Appeal Ref: APP/X2220/C/23/3319900

Land at 63A East Cliff, Dover CT16 1LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Karen Walker against an enforcement notice issued by Dover District Council.
- The enforcement notice, numbered ENF/22/00098, was issued on 21 February 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised erection of a raised decked platform.
- The requirements of the notice are:
 1. Cease access to and the use of the raised decked platform area as a balcony, for sitting and standing out purposes.
 2. Demolish the unauthorised raised decked platform, balustrades and associated development, fixtures and fittings and repair/make good all surface finishes resulting from removing fixtures and fixing from external walls.
 3. Install and permanently fix in place a 1100mm high, non-climbable restraining balustrade, with no more than 100mm gaps between any vertical infill panels or spindles, across the full width of the first-floor double door opening.
 4. Remove all resultant materials, rubble and rubbish from the land arising from steps 1 to 3 above.
- The period for compliance with the requirements is by 7 April 2023.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and variations as set out in the Formal Decision below

Procedural matters

1. The appeal has been made only on ground (f) as set out in Section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act), namely that the requirements of the notice exceed what is necessary. In these circumstances, there is no benefit to be gained from a site visit. I am therefore satisfied that I can determine this appeal on the written evidence that is before me.
2. Much of the evidence set out on the Appeal Form relates to matters that should properly be considered under an appeal on ground (a) as set out in Section 174(2) of the 1990 Act, namely that planning permission ought to be granted for the matters stated in the notice. For example, the potential for overlooking of the neighbouring property would fall within that category.

3. However, because an appeal has not been made on ground (a) and the requisite fee has not been paid, I am unable to take that evidence into account.
4. The occupiers of a neighbouring residential property have submitted a representation objecting to the erection of the raised decked platform on the grounds, amongst other things, of loss of privacy. For the same reason as stated above, I am unable to take that representation into account, other than insofar as it relates to the appeal that has been made on ground (f).

The Enforcement Notice

5. The breach of planning control alleged in the notice correctly refers to the erection of the raised decked platform as being 'without planning permission' in the first instance but then subsequently describes it as being 'unauthorised'. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The use of the word 'unauthorised' in this context is therefore inappropriate. I shall correct the notice accordingly. The same word also appears in the requirement at paragraph 5.2 of the notice, and I shall delete it also.
6. The requirement at paragraph 5.2 of the notice requires, in part, the raised decking platform to be 'demolished'. In the interest of clarity, and shall vary this requirement by adding the words 'and remove' after the word 'demolish'.
7. The requirement at paragraph 5.2 of the notice requires, in full, to demolish the raised decked platform, balustrades and associated development, fixtures and fittings and repair/make good all surface finishes resulting from removing fixtures and fixing from external walls. However, the breach of planning control as alleged in the notice is simply the erection of a raised decked platform. No more, and no less. All that follows in the requirement at paragraph 5.2 in terms of balustrades and associated development is not only vaguely worded, but also forms no part of the breach of planning control that is alleged in the notice. I shall therefore delete the reference to balustrades and associated development in the requirement at paragraph 5.2.
8. The requirement at paragraph 5.1 of the notice is to cease access to and use of the raised decked platform area as a balcony, for sitting and standing out purposes. The period of compliance with the notice is not phased so as to require that access and use of the raised decked platform must cease significantly before the requirement at paragraph 5.2 must be complied with.
9. The requirement at paragraph 5.2 of the notice, as I propose to vary it, includes to demolish and remove the raised decked platform. It follows that compliance with the requirement at paragraph 5.2 of the notice at about the same time as the requirement at paragraph 5.1 of the notice would render the latter completely otiose, given that there would then be no raised decked platform to access and use. I shall therefore delete the requirement at paragraph 5.1 of the notice in its entirety.
10. The breach of planning control alleged in the notice is, without planning permission, the erection of a raised decked platform. The requirement at paragraph 5.3 of the notice is to install and permanently fix in place a 1100mm high, non-climbable restraining balustrade, with no more than 100mm gaps between any vertical infill panels or spindles, across the full width of the first-floor double door opening.

11. This requirement of the notice therefore goes well beyond what is necessary to comply with the notice, namely the removal of the raised decked platform (plus the removal any materials, rubble and rubbish directly arising from that). It is therefore excessive. I shall accordingly delete the requirement at paragraph 5.3 in its entirety.
12. I fully recognise that without a safety balustrade of some description in place there would be health and safety issues arising from the potential use of the flat roof for sitting out ,etc. However, that is a matter that for consideration and compliance under a different legislative regime.
13. The period for compliance with the requirements as stated in the notice is by 7 April 2023. Clearly, now that an appeal has been lodged against the issuing of the notice, that date has been overtaken by events. By my calculation, the period of time between the date on which the notice was issued and the date on which it was to have taken effect is 45 days. I shall therefore substitute this period of time as the new period for compliance.
14. I am satisfied that no injustice would arise from correcting and varying the notice in these respects.

The appeal on ground (f)

15. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary them) include the demolition and removal of the raised decked platform. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.
16. The appellant proposes two lesser steps that, in her view, would achieve the purposes of the notice with less cost and disruption. These are: (a) the erection of a fence that extends approximately 4 metres across from the left-hand wall that blocks the window at the top of the neighbour's property, and (b) a reduction in the extent of the raised decked platform. I shall consider these lesser steps in turn.
17. Whilst the erection of a fence might safeguard the privacy of the occupiers of the neighbouring property, on the limited information available to me I cannot discount the possibility that it may constitute development requiring planning permission in its own right. Moreover, the erection of a fence would not achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred by the demolition/removal of the raised decked platform.
18. I recognise that reducing the extent of the raised decked platform could potentially overcome or reduce the overlooking of the adjoining property. This would depend not only on the extent to which the raised decked platform was reduced, but also on the location of the residual element of the raised decked platform that was left in situ.

19. The difficulty is that I not been provided with a plan showing the extent and location of the raised decked platform that would remain. Absent that plan, it would not be possible for me to vary the requirements of the notice with the precision necessary to ensure that the appellant could demonstrate that it had been complied with. Given the serious consequences for not complying with an enforcement notice, this could cause difficulties for the appellant. Furthermore, a reduction in the extent of the raised decked platform would not achieve the purpose of the notice.
20. The appellant points out that there is a colony of bats occupying a cave at the end of her garden. Bats are a protected species and I recognise that disturbance of them would be an offence. However, there is no evidence before me to show the compliance with the notice could not be achieved without disturbing the bats.
21. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. I therefore conclude that the requirements of the notice, as I propose to modify them, are not excessive. Accordingly, the appeal on ground (f) fails

Conclusion

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

Formal Decision

23. It is directed that the notice is corrected by:

- in paragraphs 3 and 5.2 of the notice, deleting the word 'unauthorised'

24. It is directed that the notice is varied by:

- deleting the requirement at paragraph 5.1 of the notice in its entirety
- deleting paragraph 5.2 of the notice in its entirety, and substituting there the words 'Demolish and remove the raised decked platform, fixtures and fittings and repair/make good all surface finishes resulting from removing fixtures and fixing from external walls'
- deleting the requirement at paragraph 5.3 of the notice in its entirety
- in paragraph 7 of the notice, deleting the words 'The notice takes effect on 07/04/2023 unless an appeal is against it beforehand' and substituting there the words 'The period of compliance with the notice is 45 days'.

25. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR