



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2025

Appeal Ref: APP/C2741/C/24/3352660

32 Westpit Lane, Strensall, York YO32 5RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Scott Holowkiewicz against an enforcement notice issued by the City of York Council.
 - The enforcement notice was issued on 12 August 2024.
 - The breach of planning control as alleged in the notice is failure to comply with condition 2 of the planning permission dated 18 September 2019 reference 19/01365/FUL, by the addition of a cantilevering balcony on the single story rear extension and the use of part of the flat roof rear extension as a roof terrace and for seating contrary to condition 4 of the planning permission dated 18 September 2019 reference 19/01365/FUL.
 - The conditions in question are numbers 2 and 4 which state that:
 - Condition 2 – The development hereby permitted shall be carried out in accordance with the following plans:- Drawing No.270-04 Rev.A (Revised 9th September 2019) Proposed Floor Drawing No.270-06 Rev.A (Revised 9th September 2019) Proposed Elevations Drawing No.270-07 Rev.A (Revised 9th September 2019) Proposed Block Plan with Roof Plan.
Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.
 - Condition 4 – The hereby approved flat roof rear extension shall at no time be used as a roof terrace or external seating area or for any other purpose incidental to the enjoyment of the dwelling.
Reason: To protect the amenity and privacy of neighbouring residents.
 - The requirements of the notice are to:
 - i) Remove from the Land the cantilevering balcony and the screens that have been added to the approved single storey element of the extension and ensure the single storey extension is constructed as per the approved plans in accordance with condition 2 of the planning permission dated 18 September 2019 reference 19/01365/FUL.
 - ii) Cease the use of part of the flat roof rear extension on the Land as a roof terrace and for seating.
 - iii) Remove from the flat roof rear extension on the Land any chairs, tables and any other paraphernalia associated with the use of a roof terrace and for seating.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by:
 - 1) The deletion of the words “part of” from section 5ii).
 - 2) The deletion of the word “of” and substitution with “as” in section 5iii).
2. Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

3. The allegation refers to the use of part of the flat roof as a roof terrace and the requirements follow however, condition four relates to the use of the entire flat roof rear extension, not part of it. I shall make minor variations to the requirements in

the interests of clarity and to correct a minor language error; doing so will cause no injustice since it does not change the notice in substance.

Preliminary Matter

4. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the grounds of appeal and dispute.

The appeal on ground (f)

5. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
6. In broad terms, the notice requires that the balcony be removed, the extension be altered to accord with the approved plans and the use of the flat roof rear extension as a roof terrace and for seating is ceased. Accordingly, its purpose is to remedy the breach of planning control.
7. The appellant suggested a lesser step which would include the retention of the cantilevered balcony, the removal of the glazed panels surrounding the balcony and the erection of a Juliet balcony to either side of the existing bedroom doors. They consider that this would provide an attractive feature, and overlooking would be the same as through the existing window. However, this is a matter which relates to and requires a consideration of planning merits.
8. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission. As such, there can be no arguments about or consideration of the planning merits of the development as built or proposed to be altered, under ground (f).
9. Similarly, whilst I acknowledge the appellant's comments regarding the need to find an alternative solution to keep the utility room watertight, this has no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
10. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

11. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of six months on the basis that the glazed floor will have to be removed, and a suitable glazed roof manufactured and fitted over the utility.
12. However, the notice requires the extension to be carried out in accordance with the approved plans, and they do not include the provision of a glazed roof over the utility.

13. In the absence of explanation about why the roof could not be provided in accordance with the approved details, within the period specified in the notice, I consider the period is reasonable. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Felicity Thompson

INSPECTOR