



Appeal Decision

Site visit made on 27 January 2026

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2026

Appeal Ref: APP/T4210/C/25/3363343

1 Pitt Street, Radcliffe, Manchester M26 3TF

- 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 Ray Ellis of KC against an enforcement notice ("EN") issued by Bury Metropolitan Borough Council.
 - The EN was issued on 20 February 2025.
 - The breach of planning control as alleged in the EN is: Without planning permission, the creation of a balcony on the rooftop of the existing rear single storey extension with obscure glazed balustrade and French doors.
 - The requirements of the EN are:
 - a) Remove the rear first floor French doors that are being used to access the rear extension's roof and reinstate the building to its previous condition.
 - b) Dismantle and remove the glazed balustrade from the rear extension's roof.
 - c) Remove all power supply points and solar lighting from the rear extension's roof.
 - The periods for compliance with the requirements are:
 - 1) To complete step 5 (a) above - 90 days after the notice takes effect.
 - 2) To complete step 5 (b) above - 90 days after the notice takes effect.
 - 3) To complete step 5 (c) above - 90 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the 1990 Act.
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Decision

1. It is directed that the EN is varied by:

- *the deletion of the entirety of the words in a), b) and c) in section 5 of the EN and their substitution with the words: "Remove the French doors and obscure glazed balustrade and reinstate the roof to its previous condition"; and*
- *the deletion of the entirety of the words in 1), 2) and 3) in section 6 of the EN and their substitution with the words: "90 days after the notice takes effect".*

Subject to the variations, the appeal is dismissed and the EN is upheld.

Preliminary Matters

2. The appellant and interested parties raise matters within their submissions regarding the planning merits of the development. However, the appellant has not appealed the EN under ground (a) and therefore, I am unable to consider these comments.
3. The appellant contends that it is their intention to turn the roof of the existing single storey rear extension into a "*green roof*". This is a matter that falls outside the scope of this appeal.

Appeal on Ground (b)

4. An appeal under ground (b) is that those matters stated in the EN have not occurred. The alleged breach is the creation of a balcony on the rooftop of an existing rear single storey extension with an obscure glazed balustrade and French doors.
5. The appellant does not dispute that the French doors have been inserted, or the obscure glazed balustrade has been erected. Their Statement of Case also states that they *"would accept the decision to cease using the roof as a balcony"* which suggests that the roof has been used as a balcony. Furthermore, interested parties have described instances when the flat roof was used as a balcony.
6. In addition, the appellant sought planning permission¹ for the retention of a *"balcony on roof of extension with a toughened obscure glazed balustrade with stainless steel post and top rail at 1100mm high"*. The Council refused the application, and it was subsequently dismissed on appeal², with the Inspector stating, *"The application form indicates the development was completed, and I was able to see this during my site visit"*
7. The evidence before me therefore indicates that a balcony had been created on the rooftop of an existing rear single storey extension with an obscure glazed balustrade and French doors.
8. The appellant states that there is no solar lighting on the roof. While this may have been correct at the time of writing the appeal statement, the test in ground (b) is whether the solar lighting had been present. Notwithstanding this, the alleged breach of planning control does not refer to solar lighting, and therefore it is not necessary for the appellant to demonstrate that it had not occurred.
9. Consequently, on the balance of probabilities, the alleged breach of planning control had occurred as a matter of fact. The appeal on ground (b) therefore fails.

Appeal on Ground (c)

10. An appeal under ground (c) is that the matters alleged in the EN do not constitute a breach of planning control. The onus of proof is on the appellant to show there has been no breach of planning control. The relevant test is the balance of probability.
11. Section 55(2)(d) of the 1990 Act states that the *"use of any buildings or other land within the curtilage of a dwellinghouse for any purposes incidental to the enjoyment of the dwellinghouse as such"* shall not be taken to involve development. Therefore, **using** the flat roof as amenity space incidental to the residential use of the house would not constitute development (my emphasis). However, the allegation does not allege a material change of use, and the EN does not require the cessation of the roof as a balcony. Therefore, the EN alleges operational development.
12. A balcony is defined within the Technical Guidance³ as *"a platform with a rail, ballustrade [sic] or parapet projecting outside an upper storey of a building"*. My

¹ Planning Ref 70189

² Appeal Ref APP/T4210/D/24/3340383

³ Permitted development rights for householder: technical guidance (2019)

observations during my site visit confirm that the alleged breach of planning control complies with this definition.

13. Although the “use” of the roof as a balcony is not part of the alleged breach of planning control, the physical works (i.e. the obscure glazed balustrade and the French doors) have resulted in the provision of a balcony. Therefore, the development must be considered as one operation and not separated into its constituent parts. As such, the alleged breach of planning control must, as a whole, benefit from planning permission granted by the GPDO.
14. The appellant has not directed me to a particular part or class of the GPDO that they assert the alleged breach of planning control conforms. However, in my opinion, the most relevant sections would be Classes A, B and C of Part 1, Schedule 2.
15. Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GPDO”) provides permitted development rights for the “*enlargement, improvement or other alteration of a dwellinghouse*” subject to various limitations. One such limitation at A.1(k) is that development is not permitted by Class A if “*it would consist of or include (i) the construction or provision of a verandah, balcony or raised platform*”.
16. Similarly, limitation B.1(e)(i) of Class B, Part 1, Schedule 2 of the GPDO relating to “*additions etc. to the roof of a dwellinghouse*” does not allow development which consists of or includes the construction or provision of a verandah, balcony or raised platform.
17. The alleged breach of planning control involves the provision of a balcony. Consequently, it is not permitted development under Class A or Class B of Part 1, Schedule 2 of the GPDO.
18. Even if the obscure glazed balustrade could be considered independently of the operation as a whole, it exceeds the height of the existing rear single storey extension’s roof. Limitation C.1(c) of Class C, Part 1, Schedule 2 of the GPDO relating to “*any other alteration to the roof of a dwellinghouse*” does not allow development that would result in the highest part of the alteration being higher than the highest part of the original roof. Consequently, it is not permitted development under Class C of Part 1, Schedule 2 of the GPDO.
19. For these reasons, the appellant has failed to show, on the balance of probability, that the matters alleged in the EN do not constitute a breach of planning control. Therefore, the appeal on ground (c) fails.

Appeal on Ground (f)

20. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy the breach of planning control.
21. The appellant asserts that to cease the use of the balcony should be enough to remedy the breach of planning control. The EN’s requirements to remove the French doors, obscure glazed balustrade, power supply points and solar lighting are therefore excessive to remedy the breach of planning control.

22. As previously discussed, the EN is not alleging a material change of use and therefore, the EN does not require the flat roof to cease being used as a balcony. It is for the appellant to decide on the advisability of using the roof of the existing rear single storey extension as additional amenity space without any alterations to the roof structure or any barrier around its perimeter.
23. The appellant considers the French doors should be retained as they do not require planning permission. I acknowledge that the insertion of the French doors may not normally be an act of development when undertaken independently however, they contribute to the provision of the balcony. The purpose of the EN is to remedy the breach of planning control. Therefore, any step lesser than the removal of the French doors would not remedy the breach.
24. The appellant outlines the benefits of the obscure glazed balustrade from a privacy, character and appearance perspective, and as a wind break. However, I do not have a ground (a) appeal before me and therefore, I am unable to consider these matters under ground (f).
25. Step (c) of the EN's requirements seeks to remove all power supply points and solar lighting from the roof of the existing rear single storey extension. However, neither of these matters are included within the breach of planning control. Furthermore, power supply points and solar lighting are not normally an act of development; there were no solar lights on the roof at the time of my site visit; and in my opinion, they are not matters that contribute to the provision of the balcony. Consequently, I will vary the EN's requirements to delete step (c). I am satisfied this can be done without causing injustice to either party as they do not form part of the breach of planning control.
26. It is not necessary for the requirements to detail the locations of the breaches of planning control. Therefore, for conciseness, I have omitted these words and amalgamated steps (a) and (b) into one requirement. The obscure glazed balcony is described inconsistently within the EN and therefore I must vary its description within the requirement to match the description in the breach of planning control. As there is now only one requirement, it is necessary for me to delete criteria (2) and (3) of the EN's compliance periods. As these variations are for precision, I am satisfied they would not cause injustice to either party.
27. For these reasons, the appeal on ground (f) succeeds to this limited extent.

Conclusion

28. For the reasons given above, I conclude that the requirements of the EN are excessive to remedy the breach of planning control. I shall vary the EN prior to upholding it. The appeal on ground (f) succeeds to that extent.

A Berry

INSPECTOR