



Appeal Decision

Site visit made on 12 May 2026

by **V Goldberg BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2026

Appeal Ref: APP/Z2260/C/24/3344673

The Dolphin Public House, 53-55 Albion Street, Broadstairs, Kent CT10 1NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Max Williams against an enforcement notice issued by Thanet District Council.
 - The notice was issued on 19 April 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the formation of a first floor roof terrace/amenity space and the erection of a timber structure and fence to the first floor side elevation as indicated on the attached plan.
 - The requirements of the notice are to:
 1. Remove the timber structure, and fencing at first floor level
 2. Cease the unauthorised use of the flat roof as a roof terrace/amenity space
 - The period for compliance with the requirements is: 6 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - **Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**
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Preliminary Matter

1. The postcode has been taken from the appeal form and added to the address in the banner heading for completeness.

The Ground (c) Appeal

2. An appeal on this ground is that the matter alleged, if it has occurred, does not constitute a breach of planning control. The appellant's case is made on the basis that no material change of use has occurred.
3. While the Enforcement Notice (EN) does not specifically allege a material change of use has occurred, it refers to the *"formation of a first floor roof terrace/amenity space"* and the steps to be taken to remedy the breach of planning control include the cessation of the *"unauthorised use of the flat roof as a roof terrace/amenity space"*. I saw that any use the flat roof is being put to is incidental/ancillary to the residential use of the flat. The Council has also confirmed that the EN is directed at operational development. On this basis, I am satisfied that no material change of use has occurred.
4. The ground (c) appeal succeeds to this limited extent. It now falls to me to consider whether the EN can be corrected or varied to provide clarity without causing injustice.
5. It is the erection of a timber structure and fence that constitute the breach. The formation and enclosure of a roof terrace has occurred as a result of part of the

breach. To make this clear the allegation, at paragraph 3, could be corrected by replacing it with: *“Without planning permission, the erection of a fence and timber structure on the flat roof at first-floor level, resulting in the formation and enclosure of a roof terrace”*. This correction would more accurately reflect the nature of the breach as operational development, as it identifies the specific development undertaken. It also removes reference to an attached plan which the Council has confirmed does not exist. This correction would not result in any injustice to either party, as both the Council and the appellant have addressed the timber structure and fence. I shall correct the EN accordingly.

6. Section 173 of the Act requires an EN to specify the steps that the Council requires to be taken, or the activities it requires to cease, in order to remedy the breach of planning control or any injury to amenity. Accordingly, the steps set out in section 5 of the EN must align with the allegation.
7. To achieve this, Step 2 will be deleted. This variation would not result in injustice to either party, as it is agreed that the EN is directed at operational development, and the use of the roof as a terrace or amenity space does not constitute operational development. These variations do not alter the substance of the alleged breach or expand the scope of the EN but merely ensure that the requirements properly reflect the allegation to which they relate and provide precision.

Appeal on Ground (a) and the Deemed Application for Planning Permission

8. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The **main issue** is the effect of the development on the character and appearance of the conservation area.

Reasons

9. The appeal site is located within the Broadstairs Conservation Area (CA). The significance of the CA is derived from its cohesive historic townscape, including its traditional building forms, roofscape and materials, which collectively make a positive contribution to its historic architectural character and appearance.
10. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
11. The fence is visible from the public car park but does not appear visually prominent. This is because it reads as a modest continuation of the existing flank wall, within the context of a largely blank elevation facing the car park, which reduces its visual prominence in wider views. In this respect, it aligns with other plain elevations in the immediate context and, serves to screen elements behind it that might otherwise contribute to visual clutter. Whilst the development obscures views of the eaves of the roof forms it runs parallel to, views of the roofscape remain evident from the car park, and the fence does not significantly disrupt the appreciation of the existing roof forms.
12. It is acknowledged that fencing at first-floor level is not a common feature within this part of the CA. However, during my visit, I noted the presence of several timber-clad elevations at both ground and first-floor levels facing into the car park. Whilst these are not directly comparable to first-floor fencing, they do present a broadly similar visual appearance and demonstrate that timber is an established

material contributing to the character and appearance of this part of the CA. I therefore do not find that the use of timber in this instance is unacceptable in this context. I also agree with the appellant that a condition requiring the fence to be maintained in the same colour as the adjoining wall would ensure a consistent and appropriate appearance.

13. The Council indicate that no evidence has been provided to justify the fence on security grounds and crime. However, given that its appearance preserves the character and appearance of the CA, such justification is not necessary.
14. The timber structure is positioned behind the fence and connected to it. During my visit, it appeared to be used for storage. The Council accept that the structure has limited visibility from the public realm but allege that its position and height are out of keeping with the pattern of development for the area.
15. However, given its limited visibility, I find that the timber structure would not adversely affect the character or appearance of the CA. In particular, its siting behind the fence almost entirely screens it from views within the public realm. Whilst its form and scale may differ from typical built development in the area, there is a variety of building forms present such that no direct comparison can reasonably be made. Moreover, the structure is not readily appreciable from public vantage points and, as a result, no harm arises to the established pattern of development.
16. It is asserted that the fencing and timber structure formalise the roof space as a terrace and such a feature would not typically be expected at this level or in this location. However, during my visit, the enclosed area did not appear to be used as a roof terrace. Part of the roof space is narrow, with a limited gap between the timber structure and flank wall and is further constrained by changes in level and cabling underfoot, which restrict its usability. The roof covering also remains exposed and does not appear to provide a suitable surface for regular use. In the absence of any associated domestic paraphernalia, I am not persuaded that the space functions, or is likely to function, as a roof terrace.
17. For the above reasons, the development preserves the character and appearance of the CA. It therefore complies with Policies QD02, SP36, HE02 and HE03 of the Thanet Local Plan¹, and Policy BSP9² of the Broadstairs and St Peters Neighbourhood Plan. Collectively, these policies seek to ensure that development promotes and reinforces local character, safeguards heritage assets from inappropriate development, and preserves or enhances the character and appearance of the area.

Other Matters

18. Broadstairs and St Peter's Town Council has raised that the rear of the development is secured to the Broadstairs & St Peter's Town Council owned building. Whilst this may be the case, this would be a matter for the Town Council to pursue with the appellant, as matters relating to land ownership and any associated legal rights are not material planning considerations.

¹ Adopted July 2020

² Adopted May 2021

Conditions

19. A condition is required to ensure that the fence is maintained in a colour matching the adjoining wall, so that the development reads as a continuation of the wall and preserves the character and appearance of the area.

Conclusion

20. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The EN will be corrected and quashed.

Formal Decision

21. It is directed that the EN be corrected by:

- *the deletion of the words “Without planning permission, the formation of a first floor roof terrace/amenity space and the erection of a timber structure and fence to the first floor side elevation as indicated on the attached plan”. And their substitution with the words “Without planning permission, the erection of a fence and timber structure on the flat roof at first-floor level, resulting in the formation and enclosure of a roof terrace”.*

And varied by:

- *the deletion of requirement 2) in section 5 in its entirety.*

22. Subject to the correction and variation, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a fence and timber structure on the flat roof at first-floor level, resulting in the formation and enclosure of a roof terrace at The Dolphin Public House, 53-55 Albion Street, Broadstairs, Kent subject to the condition below:

- 1) The colour of the fence hereby permitted shall hereafter be maintained to match the colour of the adjoining wall.

V Goldberg

INSPECTOR