



Appeal Decision

Site visit made on 29 April 2026

by **Jessica Graham BA (Hons) PgDipL**

an Inspector appointed by the Secretary of State

Decision date: 2 June 2026

Appeal Ref: APP/D0840/C/24/3340536

Land known as The Flat, 30 Fore Street, Fowey, Cornwall PL23 1AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Kevin McLoughlin against an enforcement notice issued by Cornwall Council.
 - The notice, Ref: EN23/00835, was issued on 12 February 2024.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the construction of roof terrace area with glass balustrade. The approximate location of the terrace is marked by a blue 'X' of the attached plan."
 - The requirements of the notice are to:
 - 1) Cease the use and dismantle the terrace and glass balustrade shown in the approximate location by a blue 'X' on the attached plan
 - 2) Remove from the land all materials and debris resulting from the above works.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) 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.
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Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld, as corrected, in the terms set out below in the Formal Decision.

Preliminary matters

1. An application for a grant of retrospective planning permission, for "Replacement of existing composite decking and existing handrail with new composite decking and handrail to new dimensions" was made in September 2022 and refused by the Council on 3 April 2023.¹ A subsequent appeal against that refusal was submitted in September 2023 and dismissed on 16 May 2024 ("the 2024 Appeal").²
2. A revised version of the National Planning Policy Framework was published in December 2024. The revisions do not affect any matters that are determinative to the outcome of this appeal.
3. The Appellant has raised three concerns about the validity of the notice. One is that the location of the blue 'X' on the plan attached to the notice is "ambiguous and inaccurate". An enforcement notice is required to set out *the precise boundaries of the land to which the Notice relates, whether by reference to a Plan or otherwise*.³ In this case, the land to which the notice relates has been correctly identified both by reference to its postal address at paragraph 2, and through the provision of a

¹ Ref: PA22/08381

² Ref: APP/D0840/W/23/3330246

³ Per Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002

red outline on the plan attached to the notice: the blue 'X' is intended only to indicate the "approximate location of the terrace". Since there is only one terrace on the land, I am satisfied this does not give rise to any inaccuracy or ambiguity.

4. The Appellant's other concerns about the validity of the notice relate to the requirement to cease the use of the terrace, which I shall address in my consideration of the appeal on ground (c), and the question of what should be understood by the requirement to "dismantle" the terrace, which can be dealt with as part of the appeal on ground (f).

Ground (c)

5. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. It will be helpful to begin by establishing what those matters actually are.
6. S.55 of the 1990 Act explains that there are two types of development; operational development, and material change of use. The distinction matters, because the type of development that is at issue can affect the time limit available for taking enforcement action. In this case, the sub-heading of the notice makes it clear that this is a notice concerning "Operational Development", and the breach of planning control alleged at paragraph 3 is simply the operational development involved in the construction of the terrace and glass balustrade. There is no allegation that there has been a material change of use.
7. However, the requirements of the notice appear to be directed at use, as well as operational development. It is not clear, from the Council's written submissions, whether or not it might have intended the notice to allege a material change of use as well as operational development: in its Statement of Case it accepts that the use of a flat roof as a terrace can be considered a use incidental to the enjoyment of the dwellinghouse, but goes on to argue that such use requires a degree of reasonableness that is not present in this case.
8. I have the power to correct any error or misdescription the notice contains,⁴ but the Council has not asked me to use it, and in my view the situation here does not warrant "correcting" the allegation to include reference to a change in use. This is because a part of the flat roof on which the current terrace has been constructed was previously, as the Council accepts, already in use as a smaller terrace. A transfer deed for the property (then known as 1 Albert Place) dated 28 October 2011 includes the "roof terrace" within its definitions section, and goes on to set out the various rights to its access and use "for recreational purposes".
9. The terrace now under consideration covers a larger area of the flat roof than the terrace it replaced, but an increase in dimensions does not necessarily equate to a material change in use: certainly the Council has not sought to argue that such was the case here. I consider it unlikely that when the flat roof was first brought into use as a terrace this would have involved a material change in the use of the planning unit, but even if it had, the time for taking enforcement action against that breach of planning control has long since expired.
10. In short, the breach of planning control at issue here is the alleged operational development involved in the construction of the current terrace and glass

⁴ S.176(1)(a) of the 1990 Act.

balustrade, rather than a change of use. It follows that the allegation at paragraph 3 of the notice is correctly identified as operational development, but the requirement at paragraph 5(i) to “cease the use of” the terrace is not a step that may legitimately be required by the notice in seeking to remedy this particular breach of planning control. I will correct the notice by deleting that requirement.

11. The next point to consider is whether the matters alleged by the notice constitute operational development for the purposes of the 1990 Act. S.55(a)(ii) provides that operations which shall NOT be taken to include development include “the carrying out for the maintenance, improvement, or other alteration of any building of works which...do not materially affect the external appearance of the building”.
12. The judgment in *Burroughs Day*⁵ established that when interpreting these words and applying them to the facts of a case, it is necessary to consider whether the alteration materially affects the external appearance (as distinct from merely affecting the external surface) of the building, taking account of the extent to which the alteration can be seen by observers outside the building; the effect in relation to the building as a whole rather than by reference to a part of it only; the nature of the alteration; and the nature of the building itself.
13. The Appeal Site lies within the Fowey Conservation Area. While the buildings on either side are listed,⁶ No. 30 itself is not. It has a commercial unit at ground floor level which fronts on to Fore Street, but the land that is the subject of this enforcement notice is the apartment arranged over its first and second floors. The rear of the building faces the River Fowey, with the terrace located on the flat roof above the first floor of the apartment. Between the terrace and the water is the two-storey property known as No. 2 Albert Terrace.
14. I saw at my site visit that the configuration of the buildings, including the intervening pitched roof forms of No. 2 Albert Place, is such that views of the Appeal Site from the public realm are limited to those available from boats on the estuary, and from the pontoon at Albert Quay. In such views the glass balustrade can be seen, but not the floor of the terrace. However, it is not only public views that are relevant; views from inside other buildings also need to be considered. The flank wall of the adjoining property at No.32 Fore Street contains two bedroom windows, which are set at the level of the flat roof and face out on to it. The owners of that property have provided photographs which show that from the outer window, closest to the estuary, the decking and balustrade of the roof terrace are not only visible, they are highly prominent features in views toward No. 30.
15. Whether the construction of the replacement terrace and glass balustrade has *materially* affected the external appearance of the building is a matter of degree on which I have to form a judgment. I consider that in views toward the rear of the building from passing boats and the Albert Quay pontoon the glass balustrade is not an obtrusive element, but is a visible component of the building’s external appearance: in views from the outer window in the flank wall of No.32, the works have resulted in a major change to the external appearance of No.30. In my judgment the works have materially affected the external appearance of the building, and so do not fall within the exemption from development provided by s.55(a)(ii) of the 1990 Act.

⁵ *Burroughs Day v Bristol City Council* [1996] 1 PLR 78

⁶ Old Quay House Hotel is listed Grade II, as is No. 32 Fore Street

16. In conclusion, I have found for the reasons set out above that the matters alleged by the notice constitute operational development, for which planning permission was required but not obtained. The appeal on ground (c) therefore fails.

Ground (d)

17. The ground of appeal is that, at the date when the notice was issued, the time limit for taking enforcement action had expired. As discussed above, that time limit depends in part upon the type of development involved. Here, the allegation is of operational development, and the breach occurred prior to 25 April 2024⁷, so the time limit available for taking enforcement action is four years beginning with the date on which the operations were substantially completed. To succeed on this ground, then, the Appellant would need to demonstrate that the unauthorised operational development had been substantially completed at least four years prior to the date the notice was issued; that is, by 12 February 2020.
18. The Appellant's case on this ground is put on the basis that there was a pre-existing terrace on the flat roof, for a sufficient period of time to have achieved immunity from enforcement. However, that argument goes to *use*: as discussed above, the matters alleged by the enforcement notice relate solely to the operational development of constructing a replacement terrace and glass balustrade. On the Appellant's own evidence, that operational development did not commence until after the purchase of the property in May 2021.
19. I therefore conclude that at the date on which the notice was issued, the four year time limit for taking enforcement action against the alleged operational development had not expired. The appeal on ground (d) must therefore fail.

Ground (a) and the deemed planning application

20. An appeal on ground (a) is that planning permission ought to be granted for the matters alleged in the notice. In this case, the question of whether or not planning permission should be granted for the development that has taken place has already been considered by the Inspector who determined the 2024 Appeal. He decided that it should not and I have no reason to re-visit his conclusions.
21. However, that is not the end of the matter, because when determining an appeal against an enforcement notice on ground (a) it is necessary to consider whether planning permission should be granted for "the whole *or any part of* those matters or in relation to the whole *or any part of* the land to which the notice relates" [my emphases].⁸ Under the appeal on ground (f) the Appellant has put forward four alternative proposals, as "lesser steps" than the required dismantling of the terrace and balustrade. Since each would involve granting permission for part of the development already carried out, it is appropriate to assess them under ground (a).
22. The four alternatives proposed by the Appellant are (1) the provision of more privacy glazing to the balustrade; (2) the provision and maintenance of planting / soft landscaping on the terrace; (3) moving the glass balustrade to reduce the size of the terrace to the 3.8m length of the previous terrace, while retaining its current width (shown in the submitted plan labelled "Terrace alteration Option 1") and (4) moving the glass balustrade to reduce the size of the terrace to the 3.8m length

⁷ Recent changes to the legislation meant that for breaches which occur on or after 25 April 2024, the time limit is now ten years.

⁸ S.177(1) of the 1990 Act

and 3.1m width of the previous terrace (shown in the submitted plan labelled “Terrace alteration Option 2”).

23. It is important to be clear about the baseline for assessing the planning merits of these options. As discussed above, the notice does not attack the *use* of the flat roof as a terrace, and so cannot require that use to cease. This means that even if obliged to remove the current terrace and balustrade in their entirety, the Appellant would not be precluded thereafter from bringing the flat roof back into use as a terrace – and, provided no material change of use or operational development were involved, could do so without needing to apply for planning permission.
24. The Council appears to be arguing that reinstating the previous terrace would inevitably amount to development requiring planning permission, but I do not share that view. It seems to me that a small wooden balcony, enclosed by a short length of timber railing set considerably further back than the current balustrade, would be unlikely to have a material effect on the external appearance of the building. While the question of whether a use can be considered incidental to the enjoyment of a dwelling house (and not, therefore, a material change of use) is a matter of fact and degree, it can hardly be disputed that the use of part of a residential property for sitting out and amenity purposes is something which is generally associated with residential use, even though it can affect neighbours’ living conditions; and a property does not cease to be in residential use simply by virtue of being occupied by holidaymakers, or tenants, rather than owners.
25. Put simply, for the purposes of assessing the Appellant’s proposed alternatives, the principle of making *some* use of the flat roof as a terrace is accepted. As to the extent of that use, this has not been formally established by a Certificate of Lawfulness of Existing Use⁹ but in my judgment, it is tolerably clear that the use of the area of flat roof covered by the previous terrace is now lawful: either because it did not amount to development, or because if it did, it has achieved immunity from enforcement through the passage of time. This is a material consideration in the assessment of whether planning permission should be granted for any of the Appellant’s proposed alternatives.
26. Turning to the first of those proposals, the Inspector who determined the 2024 Appeal did so on the basis of a single main issue, that being the effect of the development on living conditions at 32 Fore Street. He noted that there would have been a degree of overlooking from the previous smaller terrace, but found that extending the footprint of the replacement terrace to bring it closer to the outer window in the flank wall of No.32 had exacerbated that harm, resulting in unacceptable loss of privacy. I am not persuaded that the provision of additional privacy glazing could resolve this problem. As the previous Inspector noted, the balustrade incorporates a panel of frosted glass which prevents overlooking by people seated on the terrace, but anyone standing at the balustrade to enjoy views toward the water would be able to see directly down into the affected bedroom at No. 32. This would not be prevented by the provision of additional frosted panels.
27. As to the suggestion of planting or soft landscaping, no plan or description has been provided to show how this could effectively reduce the current level of overlooking. I also note, and share, the previous Inspector’s concern that the current development’s adverse effect on living conditions at No.32 is not limited to

⁹ Per s.191 of the 1990 Act

overlooking: in addition, the increased size of the terrace provides a larger space for people to sit and congregate, increasing the potential for noise and disturbance. In summary, I find that the first two of the Appellant's four proposed alternatives would still conflict with the aims of Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030, in that the development would not protect individuals and property from overlooking and unreasonable loss of privacy, and from unreasonable noise and disturbance.

28. The other two of the four proposed alternatives would involve moving the glass balustrade to reduce the size of the terrace. In my judgment, while reducing the length of the terrace alone would not be sufficient to minimise the potential for noise and disruption, reducing both length and width – so as to achieve the same dimensions as the previous terrace – would address the harm caused by the development in its current configuration. A terrace of this size would provide a small but usable sitting-out area for occupiers of The Flat at No. 30, but would not be conducive to larger-scale gatherings. The balustrade, and the terrace it enclosed, would be set a reasonable distance back from the outer window in the flank wall of No. 32. There would still be some overlooking of this window, and of the smaller inner window. However, this is not unusual in the context of the closely-packed historic buildings which line this side of Fore Street, whose occupiers seek, understandably, to make the most of any available outdoor amenity space and any available views of the river.
29. The relocated balustrade would incorporate the frosted glass panel adjacent to the flank wall of No. 32, so as to prevent overlooking by those seated on the terrace. Even with this in place, I appreciate there would still be overlooking of the inner window. But importantly, neither window would be overlooked to any greater degree than they would if the previous terrace were simply to be reinstated. I therefore consider that the current roof terrace, reduced to the size of the previous terrace, would not result in any unreasonable loss of privacy for neighbouring occupiers.
30. Special attention and regard needs to be paid to the desirability of preserving or enhancing the character or appearance of the Fowey Conservation Area, and the setting of the listed buildings to either side of the Appeal Site. The timber used for the previous balcony and its railing is a material that better accords with the historic character of the building. However, I saw at my site visit that the use of a glass balustrade is not out of keeping in this maritime context; glazed balconies are present at many nearby properties, including the adjacent listed Old Quay House Hotel. The glass balustrade at the Appeal Site is of a simple and unobtrusive design, and does not appear incongruous.
31. Taking all of this into account, I am satisfied that moving the glass balustrade to reduce the dimensions of the terrace to those shown in the plan labelled "Terrace alteration Option 2" would preserve the character and appearance of the Conservation Area and the adjoining listed buildings. It would also accord with the requirements of Policies 12 and 24 of the Local Plan and Policy 2 of the Fowey Neighbourhood Development Plan, which together seek to ensure that new development is of high quality design and relates well to its area.
32. In conclusion, I find that the development that is the subject of the notice, and the first three of the Appellant's four alternative proposals, conflict with the relevant policies of the Development Plan. In the absence of other material considerations

of sufficient weight to overcome this conflict, planning permission for them must be refused.

33. I find that the Appellant's fourth alternative proposal, which would relocate the glass balustrade so as to reduce the size of the terrace to that which existed previously, is acceptable in planning terms and complies with the Development Plan. I shall therefore grant planning permission for the construction of the roof terrace area and glass balustrade, but with the glass balustrade (including the frosted panel) moved so as to reduce the area of the terrace to the size of the original terrace, in accordance with the dimensions shown in the plan labelled "Terrace alteration Option 2". No conditions are necessary.
34. Since the permission is for development less than that enforced against, the enforcement notice must be upheld. However the operation of section 180(1)(a) of the 1990 Act means that the notice will cease to have effect so far as it is inconsistent with this permission.

Ground (f)

35. The purpose of the notice is to remedy the breach of planning control. The appeal on this ground, therefore, is that the steps required by the notice exceed what is necessary to remedy that breach. The various alternative proposals I considered under ground (a) were put forward as lesser steps; they require no further consideration under this ground.
36. The Appellant contends that it is unclear whether the requirement to "dismantle the terrace and glass balustrade" relates to all of the existing roof terrace, or just the part which was extended. In my view it is readily apparent that the whole of the existing terrace and balustrade is included, and no correction to (or improvement upon) the wording of the requirement is necessary. In any event, the matter is now put beyond doubt by my conclusion on ground (a) above. While the grant of planning permission for a reduced version of the development will override the requirements of the notice so far as they are inconsistent with that permission, the notice will still require the dismantling of the area of terrace that exceeds the permitted dimensions.
37. The Appellant contends that this is unnecessary because it would be wasteful, and could cause damage to the new fibreglass roof beneath. However, no information to substantiate concerns about potential damage - such as difficulties arising from fused fixing points - has been provided, and in the photographs it appears that the decking used to create the terrace lies on top of the flat roof, rather than forming any integral part of it. I do not consider the requirement to remove the part of the decking that extends beyond the (now) permitted dimensions of the roof terrace to be "wasteful". It is unauthorised operational development, and its removal is necessary to remedy the breach of planning control. Further, were it allowed to remain, there is a danger it may tempt those staying at the property to use it as a functional part of the roof terrace, despite its location beyond the confines of the (relocated) glass balustrade.
38. I therefore conclude that the appeal on ground (f) should fail.

Ground (g)

39. The ground of appeal is that the compliance period specified in the notice falls short of what should reasonably be allowed. The Appellant's case on this ground was that the compliance period should be extended to nine months, as the five months specified in the notice would not provide sufficient time to obtain and review quotes for the work, then appoint a specialist contractor to undertake it during a period when the property was not occupied as a holiday let.
40. In light of the planning permission granted under ground (a), and by operation of s.180(1)(a), the dismantling and removal of the entire terrace and glass balustrade is no longer required: the works will be limited to relocating the glass balustrade, and removing those parts of the terrace which extend beyond the permitted dimensions. I am not convinced that the services of a "specialist" contractor would be necessary to carry out such works, but even if they were, five months seems to me a reasonable timetable in which to secure their completion. The date of this decision means that the works could be programmed for October, when the high summer holiday season would be over.
41. I therefore conclude that the five-month compliance period specified in the notice is reasonable, and the appeal on ground (g) therefore fails.

Conclusion

42. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for a roof terrace of the same size as that which subsisted previously, with the existing glass balustrade relocated accordingly, but otherwise I will uphold the notice with a correction, and refuse to grant planning permission in respect of those parts of the existing roof terrace which extend beyond the dimensions of the original. The requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission which I will grant, by virtue of s.180 of the 1990 Act.

Formal Decision

43. It is directed that the enforcement notice is corrected by:

- the deletion of the words "Cease the use and" from paragraph 5(1).

Subject to this correction, the appeal is allowed in part and permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for: the construction of roof terrace area with glass balustrade (incorporating a frosted glass panel adjacent to the flank wall of No. 32) located in accordance with the dimensions shown in the plan labelled "Terrace Alteration Option 2" at Land known as The Flat, 30 Fore Street, Fowey, Cornwall PL23 1AQ.

The appeal is otherwise dismissed and the enforcement notice is upheld as corrected.

Jessica Graham

INSPECTOR