



Appeal Decision

Site visit made on 23 June 2026

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2026

Appeal Ref: APP/T3725/C/25/3366257

Land at 5-7 Jury Street, Warwick, CV34 4EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ian Harper against an enforcement notice issued by Warwick District Council.
 - The notice was issued on 25 April 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a balcony area to the existing rear roof on the Land as more particularly shown in photographs 1 and 2 in Annex A attached to this notice.
 - The requirements of the notice are to: (i) Remove from the roof area, the planters, furniture, and artificial grass (as more particularly shown in the photographs Annex A attached to this notice), (ii) Remove from the Land all resulting waste and materials arising from compliance with requirement (i).
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The appellant has identified what they consider to be the benefits of the alleged development, together with its effects on the living conditions of neighbouring occupiers and the character and appearance of the area. However, as there is no ground (a) appeal and thus no deemed planning application before me, I am unable to consider the planning merits of the development.

The appeal on ground (b)

3. An appeal on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The question is approached as a matter of fact, and the onus lies with the appellant to make their case on the balance of probabilities.
4. Section 173 of the Town and Country Planning Act 1990 (the 1990 Act) states that an enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with that requirement if it enables any person on whom a copy is served to know what those matters are.
5. The appeal concerns a relatively large flat roof area to the rear of the upper floor flat at 5-7 Jury Street. The notice alleges “the erection of a balcony to the existing rear roof on the Land”, as shown in photographs 1 and 2 attached to the notice.

6. Section 171A(1)(a) of the 1990 Act sets out that the carrying out of development without the required planning permission constitutes a breach of planning control. Development is defined in section 55(1) of the 1990 Act as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land. A 'building operation' as defined includes demolition of buildings, rebuilding, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on a business as a builder.
7. The wording of the allegation suggests that a building operation has taken place to erect a balcony.
8. The appellant's case is essentially that it is not a balcony, as there are no permanent fixtures on the roof in question and it is not practically accessible. I observed during my site visit that the roof area can only be accessed from the appellant's flat by climbing through the rear dining room window and then down onto the roof via a small step ladder. However, that is not necessarily determinative of whether a balcony has been erected.
9. As the roof area existed prior to the notice being served, and there is no substantive evidence to demonstrate that there has been any operational development to that area, it seems to me that a balcony has not been erected as a matter of fact.
10. The various items that have been placed on the roof, including garden furniture and accessories such as artificial grass, sun loungers, a table, planters, a trellis screen and plant pots indicate that the roof area has been adapted for use. However, the presence of moveable garden furniture, planters and artificial grass does not amount to the erection of a balcony, and in any event, these are not referred to in the allegation. The Council says that the residential nature of the flat roof and setting confirms that there is development and that the breach has occurred as a matter of fact. However, this implies a residential use of the roof area which is not what is stated in the allegation.
11. The Technical Guidance 'Permitted Development Rights for Householders' (2019) states that a balcony is understood to be a platform with a rail, balustrade or parapet projecting outside an upper storey of a building. In this case, there is no platform and whilst there are planters and a trellis along one side of the roof, there is no other enclosure around the remainder of the roof to secure the area. This supports my view that what has taken place on site does not constitute the erection of a balcony.
12. I have wide powers under section 176 of the 1990 Act to correct any defect, error or misdescription in the notice if I am satisfied that doing so will not cause injustice to any parties. Although I have considered whether I can correct the notice, any such correction to the allegation and corresponding requirements would likely be significant and potentially widen the scope of the allegation and requirements or else omit a necessary element, and thereby cause injustice to the parties.
13. All of the above considered and having regard to the evidence before me, on the balance of probabilities, I conclude that the alleged breach of planning control has not occurred as a matter of fact. The appeal on ground (b) therefore succeeds.

Other Matters

14. Although the appellant did not initially appeal on ground (c), their assertion that the matters alleged in the notice do not constitute a breach of planning control, amounts to a hidden ground (c) appeal. However, given the success on ground (b), the appeal under ground (c) does not fall to be considered.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed on ground (b) and the enforcement notice will be quashed.

M Ollerenshaw

INSPECTOR