



Appeal Decision

Site visit made on 15 September 2026

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th October 2026

Appeal Ref: APP/J2210/C/25/3363571

28-30 St. Peters Street, Canterbury, Kent CT1 2BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Paul Roberts Development (St Peters) Ltd against an enforcement notice issued by Canterbury City Council.
- The notice was issued on 7 March 2025.
- The breach of planning control as alleged in the notice is *without planning permission, the construction of roof top plant on the Land*.
- The requirements of the notice are:
 1. *Remove all plant from the roof top of the Land.*
 2. *Remove all associated pipework and material associated with Requirement 1 from the Land.*
- The period for compliance with the requirements is: *within three months of the date of the notice taking effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the 1990 Act (as amended).

Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published by the Government on 17 August 2026. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the new Framework policies where necessary in this appeal.
4. Since the enforcement notice has been issued, the Council have granted the appellant planning permission for the extension of part of the roof to provide screening together with retrospective permission for the installation of the rooftop smoke extraction plant¹. Nevertheless, neither the enforcement notice nor the appeal have been withdrawn. As such, I have based my decision on the development that existed at the time the enforcement notice was served.

Appeal under ground (d)

5. An appeal under ground (d) is that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control

¹ Canterbury City Council Planning Ref: CA/25/00890

which may be constituted by the matters. The test of the evidence is the balance of probability, and the onus of proof is on the appellants. If the Council has no evidence to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

6. Section 171B of the 1990 Act (as amended) provides that no enforcement action may be taken in respect to any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed', unless the breach occurs on or after 25 April 2024 and the period is ten years. The relevant date therefore is 7 March 2021, as this is four years prior to the enforcement notice being issued.
7. The roof top plant referred to in the enforcement notice, consists of two sets of fan assisted vents to provide ventilation and removal of smoke should a fire occur. The mechanical ventilation is required to meet Building Regulations, as a central corridor contains no windows or openings to remove smoke in an emergency. The Councils statement of case details the planning history associated with the site and highlights that planning permission had neither been sought or granted for the mechanical ventilation system.
8. The appellant has provided an array of information pertaining to the installation of the roof top plant. Invoices for crane hire, dated emails and daily diary entries from the site manager highlight that the fan assisted vents were delivered on site and installed at the roof level on 1 March 2021. The correspondence further indicates that the ductwork for the roof top plant continued on 2 March 2021, however these were not complete as parts were missing. Nevertheless, the missing parts were delivered and installed on 4 March 2021. The appellant has also provided dated photographs showing the plant in situ on the 4 March 2021.
9. The Council allege that the roof top plant had not been substantially complete on or prior to 7 March 2021, however they offer little in the way of evidence to clarify this claim. The Councils statement of case refers to available aerial evidence in the form of two Google Earth images dated 9 March 2021 and 30 March 2021. The Council claim the first photo dated 9 March 2021 shows the roof is devoid of any roof plant. The image is very blurry, and it is difficult to distinguish roof top features clearly. However, the second photo clearly shows the roof top plant in situ on the 30 March 2021. The Council therefore consider that the plant was erected between these dates, thus post 7 March 2021.
10. The appellant has highlighted that Google Earth imagery dates are not always taken on the date depicted in the image, explaining that Google Earth's Help Centre states, *"When viewing historical images, the date indicated on the time slider means that the images shown were captured on or before that date."* The appellant highlights (in their experience) this is not an uncommon phenomenon. My understanding is that Google Earth imagery dates can be approximate, given imagery is captured and purchased from various commercial providers, thus the exact capture time may vary.
11. Given the relevant period for enforcement action was 7 March 2021 and the tight timeframe between that and the image dated 9 March, this could be within the accuracy range of Google Earth imagery, as stated above. Thus, I find this

evidence, coupled with the distorted and unclear nature of the image, not as credible as the more robust documented evidence submitted by the appellant.

12. Accordingly, on the balance of probability, the appellant's evidence is sufficiently precise and unambiguous to show that the construction of the roof top plant was substantially completed more than four years before the notice was issued. I am not persuaded that any of the matters raised by the Council reduce the weight which should be attached to the appellant's evidence and none of those matters cast significant doubt on the appellant's account of events or make it less than probable.
13. I therefore conclude, on the balance of probability, that the construction of roof top plant at the appeal site was substantially complete prior to 7 March 2021 and that on 7 March 2025 when the notice was issued it was too late to take enforcement action. The appeal has therefore succeeded on ground (d).

Overall Conclusion

14. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
15. In these circumstances, the appeal on ground (f) does not fall to be considered.

Robert Naylor

INSPECTOR