LDC (Proposed) Report	Application number	2019/2776/P
Officer	**Expiry date**	
Kate Henry	23/07/2019	
Application Address	**Authorised Officer Signature**	
6 Conybeare London NW3 3SD		
Conservation Area	**Article 4**	

Proposal

Insertion of new window and 5x rooflights; erection of roof railings and garden fence

Recommendation:	**Refuse Permission**

Application site:

6 Conybeare is a detached, two storey, white painted brick residential dwelling with a flat roof on the eastern side of the road. The building is L-shaped and benefits from a private courtyard to the rear, within the L.

The application site is located within a planned residential estate (known as the Chalcot Estate), off King Henry's Road, dating from the 1960's. The majority of the houses on the estate are terraced; however, Nos. 4 and 6 Conybeare are both detached dwellings. No. 6 is surrounded by a grassed area of public open space, which links Conyebeare and Quickswood (the road to the east).

The surrounding area is residential in character. The application is not within a Conservation Area and the host building is not listed.

Relevant planning history:

None

Assessment:

The proposal

This application seeks a Certificate of Lawfulness (Proposed) for the following:

- Insertion of a new ground floor window on the rear elevation
- Erection of roof railings
- Insertion of 5x rooflights (4x on main roof and 1x on roof of existing roof-top store)
- Replacement garden fence

Whether the proposed works require planning permission

New window

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 covers development within the curtilage of a dwellinghouse.

Class A allows for "*The enlargement, improvement of other alteration of a dwellinghouse*".

Development is not permitted by Class A if:

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);
The proposal complies.

(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);
The proposal complies.

(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;
The proposal complies.

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;
The proposal complies.

(e) the enlarged part of the dwellinghouse would extend beyond a wall which—
(i) forms the principal elevation of the original dwellinghouse; or
(ii) fronts a highway and forms a side elevation of the original dwellinghouse;
The proposal complies.

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—
(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
(ii) exceed 4 metres in height;
The proposal complies.

(g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—
(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or
(ii) exceed 4 metres in height;
The proposal complies.

(h) the enlarged part of the dwellinghouse would have more than a single storey and—
(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse.

The proposal complies.

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

The proposal complies.

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse; or

The proposal complies.

(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);

The proposal complies.

(k) it would consist of or include—

(i) the construction or provision of a verandah, balcony or raised platform,

(ii) the installation, alteration or replacement of a microwave antenna,

(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(iv) an alteration to any part of the roof of the dwellinghouse.

The proposal complies.

Development is permitted by Class A subject to the following conditions—

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

(b) any upper-floor window located in a wall or roof slope forming a side elevation of the

dwellinghouse must be—

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and

(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

The proposal complies.

Erection of roof railings and insertion of 5 rooflights

Class C allows *for "Any other alteration to the roof of a dwellinghouse".*

Development is not permitted by Class C if:

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by

virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);
The proposal complies.

(b) the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;
The proposed rooflights would comply. However, the railings measure 1.1 metres tall and therefore fail to comply and would require planning permission.

The applicant's Supporting Statement notes that: "*The railings would not offend limitation (b) of paragraph C.1 since the existing roof is a flat roof, not a sloping roof*"; however, the Council disagrees with this interpretation of the legislation and considers that, because the railings would protrude more than 0.15 metres beyond the plane of the original roof when measured from perpendicular with the external surface of the roof, they do not constitute permitted development.

Appeal reference APP/B1740/C/12/2170502, dated 03/09/2012 (The Sail Locker) (appended to this report) is relevant. The appeal related to a roof access hatch and the Inspector noted the following:

> *"According to the agreed measurement taken during my site visit, the top of the roof hatch protrudes about 350mm above the felt surface of The Sail Locker's roof. I agree with Mr Baker that, for the purposes of Class C, this is the "original roof" of the dwellinghouse, since it was the roof of [the application site] at the time when it became a separate dwellinghouse.*
>
> *However, I disagree with his view that because the roof is what is commonly referred to as a "flat" roof, it has no slope and therefore is not subject to GPDO paragraph C.1(a). In my experience, virtually all "flat" roofs in fact have a very shallow slope (for drainage purposes), and I see no reason why The Sail Locker's roof should be an exception. The fact that the diagram on page 37 of the Technical Guidance shows a roof plane with a slope of about 20° does not alter my view on this point, as it is only illustrative of the general principle. Nor does paragraph C.1(a) require the roof plane to face a highway."*
>
> *Because the roof hatch protrudes more than 150mm above the surface of The Sail Locker's roof, I find that it breaches the restriction in GPDO paragraph C.1(a) and so it is not permitted development."*

Furthermore, Class A.1(k) specifically excludes *'(i) the construction or provision of a verandah, balcony, or raised platform'* from the definition of permitted development and the provision of the railings would allow the flat roof to be used as a roof terrace. The 'Permitted development rights for householders Technical Guidance' (April 2017) notes that: "*A raised platform is any platform with a height greater than 0.3 metres and will include roof terraces*" (page 30).

It is worth noting that the proposed railings, by virtue of their design, height and elevated position, would have a significant effect on the appearance of the host building and would be observed both in the public and private domain and therefore they constitute development as defined by section 55 of Town and Country Planning Act 1990.

To conclude, the proposed railings not only contravene the maximum height to project from the roof surface, but the proposals would lead to the creation of a roof terrace and therefore

the development would require planning permission.

(c) it would result in the highest part of the alteration being higher than the highest part of the original roof; or
The appeal decision referenced above is also of relevance here. The Inspector noted the following:

> *"For guidance on GPDO paragraph C.1(b), page 38 of the Technical Guidance refers back to the guidance on Class B, with the caveat that the latter refers to the height of the existing roof, whereas paragraph C.1(b) refers to the height of the original roof. Under Class B.1(a), the highest part of the roof of the existing dwellinghouse is defined as the height of the ridge line of the main roof [...] or the height of the highest roof where roofs on a building are flat. The guidance goes on to say that Chimneys, firewalls, parapet walls and other protrusions above the main roof ridge should not be taken into account when considering the height of the highest part of the roof [...].*
>
> *Since the highest part of the roof on a flat-roofed house is the highest roof, in the case of The Sail Locker that is its (only) flat roof. The advice that protrusions above the main roof ridge should be ignored when assessing the highest part of the roof must logically also apply to protrusions above the highest roof on flat-roofed houses. Thus the roof-lights and flue pipe, as well as all the moveable objects, on the roof of The Sail Locker should be ignored, with the result that the highest part of its original roof is the felt roof surface.*
>
> *Because the highest part of the roof hatch is higher than this highest part of the original roof, it fails to comply with the restriction in GPDO paragraph C.1(b) and so for this reason also it is not permitted development."*

In this case, the railings would be higher than the highest part of the roof (i.e. the flat roof) and therefore they are not permitted development and require planning permission.

The rooflights are flush with the roof and therefore comply.

d) it would consist of or include—
(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal
equipment.
The proposal complies.

<u>Replacement garden fence</u>

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 2 covers minor operations.

Class A allows for "*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure".*

Development is not permitted by Class A if*:*

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the

development, exceed—

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

The replacement fence is not adjacent to a highway used by vehicular traffic and therefore the proposal complies.

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

The replacement fence would measure 1.8 metres tall and the proposal therefore complies in this respect.

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

The replacement fence would not exceed its former height, or 2 metres, and therefore the proposal complies in this respect.

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

The proposal complies.

Conclusion:

The proposed new window, the new rooflights and the replacement garden fence constitute permitted development.

The roof railings do not constitute permitted development and planning permission would be required.

The Planning Inspectorate

Appeal Decision

Site visit made on 7 August 2012

by Roger Clews BA MSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 September 2012

Appeal Ref: APP/B1740/C/12/2170502
The Sail Locker, 1 Westfield Road, Lymington, Hants SO41 3PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("hereafter the 1990 Act").
- The appeal is made by Mr T Baker against an enforcement notice issued by New Forest District Council.
- The Council's reference is EN/11/0346.
- The notice was issued on 31 January 2012.
- The breach of planning control as alleged in the notice is: *Without planning permission the unauthorised installation of a roof access hatch, the erection of a decking area with wooden planters forming a balustrade and further large wooden planters with fake box hedging acting as screens on the roof of the existing single storey property, in the approximate position shown hatched red on the Plan*.
- The requirements of the notice are:
  (i) Permanently fix shut the roof access hatch.
  (ii) Remove the decking from the Land.
  (iii) Remove the wooden planters forming a balustrade and the large wooden planters with fake box hedging acting as screens from the Land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) & (f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

Decision

1. The appeal is allowed in part on ground (c) only insofar as it relates to what are described in the enforcement notice as *the wooden planters forming a balustrade and the large wooden planters with fake box hedging*, and it is directed that the enforcement notice be varied as follows:

   - in section 3, by deleting the comma after the words "roof access hatch" and replacing it with the word "and";
   - by deleting from section 3 the words *with wooden planters forming a balustrade and further large wooden planters with fake box hedging acting as screens;* and
   - by deleting requirement (iii) from section 5.

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

Reasons

Background

2. 1 Westfield Road is a single-storey, flat-roofed building which, I understand, used to form one property with the adjacent 3 Westfield Road and other adjacent land. That property was used as a shop and post office. In 2003 planning permission was granted on appeal for the conversion of 1 Westfield Road to the dwellinghouse now known as The Sail Locker. Apart from the front elevation, the other three sides of The Sail Locker directly adjoin the neighbouring houses: 3 Westfield Road to one side and part of the rear, Mariner's Cottage to the other side, and Beagley's Cottage to the remainder of the rear. First-floor windows at 3 Westfield Road and Beagley's Cottage are situated close to the edges of The Sail Locker's roof.

3. The enforcement notice is directed against what the Council regard as unauthorised operational development, not against any alleged material change of use of the roof or any other part of the building.

The appeal on ground (c)

4. The appeal on ground (c) deals separately with each element of the alleged breach of planning control, and I shall do the same.

The roof hatch

5. The appellant, Mr Baker, argues first that the installation of the roof hatch did not constitute development as it does not materially affect the external appearance of the building. In support of this argument he cites the judgment in the *Burroughs Day* case[1], in which it was held that changes involving a roof-mounted lift shaft housing, which could only be seen from the air and from the top two floors of a nearby office block, did not materially affect the external appearance of the building in question.

6. That judgment emphasised that section 55(2)(a)(ii) of the 1990 Act, which excludes certain works of maintenance, improvement or other alteration from the definition of development in section 55(1), does so on the basis that they do not materially affect the external appearance (not merely the exterior) of the building. This implies that the change must be visible from a number of normal vantage points. In addition, the change in external appearance has to be judged for its materiality in relation to the building as a whole, not a part of the building in isolation.

7. When it was installed, the roof hatch at The Sail Locker would have been easily visible at close quarters from bedroom windows at two separate adjacent houses, 3 Westfield Road and Beagley's Cottage. Having looked through those windows from the inside, I consider that these are normal vantage points from which residents look out onto The Sail Locker's roof in the course of their everyday life, notwithstanding that they are secondary windows to the bedrooms in question. The fact that the roof hatch is now concealed from those windows by artificial box hedging does not alter my finding as to its visibility, because the planters containing that hedging are not fixed to the roof and could in principle be moved or removed at any time.

[1] *Burroughs Day v Bristol City Council* [1996] 1 PLR 78; [1996] 1 EGLR 167

8. Moreover, it appears to me from the photograph at Appendix 3 to the appellant's written statement that, if the wooden planters placed along the front edge of the roof were not present, the roof hatch would also be visible from street level in Westfield Road. (Those planters are also not fixed and could be moved or removed at any time.) Certainly, without the planters the hatch would be visible from the upper front windows of houses on the opposite side of the road. These are also normal vantage points.

9. The roof is one of The Sail Locker's only two external planes, the other being its front elevation onto Westfield Road. It may be true that the roof hatch protrudes less far from the roof than did the lift shaft housing in the *Burroughs Day* case. But it is one of only a small number of fixed protrusions on an otherwise flat roof, the others including two roof-lights and a flue pipe. The Sail Locker is a small property and so, even though the roof hatch is also less tall than the roof-lights, it is a significant additional, and permanent, external feature in the context of the building as a whole.

10. Taking all these points into account, I find that the roof hatch is visible (or would be visible if the unfixed wooden planters were moved or removed) from several normal vantage points, and that when seen from those vantage points it materially affects the external appearance of the building as a whole. Hence its installation amounted to development as defined by section 55(1) of the 1990 Act.

11. Mr Baker argues further that if the roof hatch is found to be development, it is permitted by Schedule 2, Part 1, Class C of the *Town and Country Planning (General Permitted Development) Order 1995*, as amended [GPDO]. Class C permits alterations (other than enlargements) to the roof of a dwellinghouse, subject to the restrictions in paragraph C.1. Of those restrictions, two are relevant, as follows:

    C.1 Development is not permitted by Class C if –

    (a) the alteration would protrude more than 150mm beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof; [or]

    (b) it would result in the highest part of the alteration being higher than the highest part of the original roof[.]

12. According to the agreed measurement taken during my site visit, the top of the roof hatch protrudes about 350mm above the felt surface of The Sail Locker's roof. I agree with Mr Baker[2] that, for the purposes of Class C, this is the "original roof" of the dwellinghouse, since it was the roof of 1 Westfield Road at the time when it became a separate dwellinghouse.

13. However, I disagree with his view that because the roof is what is commonly referred to as a "flat" roof, it has no slope and therefore is not subject to GPDO paragraph C.1(a). In my experience, virtually all "flat" roofs in fact have a very shallow slope (for drainage purposes), and I see no reason why The Sail Locker's roof should be an exception. The fact that the diagram on page 37 of the *Technical Guidance*[3] shows a roof plane with a slope of about 20^{O} does not

[2] See paragraph 3.8(b) of the appellant's written statement.

[3] *Permitted development for householders: Technical guidance*, published by the Department for Communities and Local Government, August 2010

alter my view on this point, as it is only illustrative of the general principle. Nor does paragraph C.1(a) require the roof plane to face a highway.

14. Because the roof hatch protrudes more than 150mm above the surface of The Sail Locker's roof, I find that it breaches the restriction in GPDO paragraph C.1(a) and so it is not permitted development.

15. For guidance on GPDO paragraph C.1(b), page 38 of the *Technical Guidance* refers back to the guidance on Class B, with the caveat that the latter refers to the height of the existing roof, whereas paragraph C.1(b) refers to the height of the original roof. Under Class B.1(a), *the highest part of the roof of the existing dwellinghouse* is defined as *the height of the ridge line of the main roof […] or the height of the highest roof where roofs on a building are flat.* The guidance goes on to say that *Chimneys, firewalls, parapet walls and other protrusions above the main roof ridge should not be taken into account when considering the height of the highest part of the roof […].*

16. Since the highest part of the roof on a flat-roofed house is the highest roof, in the case of The Sail Locker that is its (only) flat roof. The advice that protrusions above the main roof ridge should be ignored when assessing the highest part of the roof must logically also apply to protrusions above the highest roof on flat-roofed houses. Thus the roof-lights and flue pipe, as well as all the moveable objects, on the roof of The Sail Locker should be ignored, with the result that the highest part of its original roof is the felt roof surface.

17. Because the highest part of the roof hatch is higher than this highest part of the original roof, it fails to comply with the restriction in GPDO paragraph C.1(b) and so for this reason also it is not permitted development.

The decking area

18. Mr Baker's arguments in respect of the decking area parallel those he makes in respect of the roof hatch: first, that it is not development as defined by section 55(1) of the 1990 Act, and secondly, that if it is found to be development, it is permitted by the GPDO.

19. Section 55(1) includes *the carrying out of building, engineering, mining or other operations* in its definition of development, and section 55(1A) provides a non-exhaustive definition of *building operations*, which includes *other operations normally undertaken by a person carrying on business as a builder*. The laying of decking is, in my experience, an operation that is quite commonly carried out by a builder, even though in this case it was done by Mr Baker himself.

20. Here, it appears to have involved laying wooden battens across the roof and nailing the decking boards to them (or vice-versa). Thus it was an operation which involved an element of construction. It was more than simply placing a pre-existing object onto the surface of the roof. Although the decking is not physically attached to the roof, there is no evidence that it is to be moved. If it were ever to be taken off the roof it would almost certainly need to be taken apart first, in view of its size and weight, or some form of lifting apparatus would be likely to be needed if it were to be removed in one piece.

21. Even if the laying of the decking was not strictly a building operation as such, I consider that in any case it constituted an *other operation* as covered by the definition of development in section 55(1). Indeed, the *Technical Guidance*

clearly envisages that it can constitute development, since on page 43 it refers to garden decking as an example of development that may be permitted by Schedule 2, Part 1, Class E. Taking all this into account, my view is that the laying of the area of decking on the roof of The Sail Locker was a building or other operation for the purposes of section 55(1) of the 1990 Act.

22. Whether or not it actually constituted development therefore depends on whether or not it materially affects the external appearance of the building[4]. I saw that the decking is, at least in part, visible at close quarters from bedroom windows at two adjacent houses, 3 Westfield Road and Beagley's Cottage, and also, in principle, from the upper front windows of houses opposite. Even if it cannot be seen at present from the windows opposite, it would be seen from them if the unfixed wooden planters forming a balustrade were to be moved or removed. All these are normal vantage points.

23. The decking, which is formed of timber boards, covers most of the roof and has a distinctly different appearance from the roofing felt which lies underneath. As I have already pointed out, the roof is one of The Sail Locker's only two external planes, and in this context I find that the substantial change in its appearance which the decking has brought about materially affects the external appearance of the dwellinghouse as a whole.

24. Turning to the question of whether or not the laying of the decking constitutes permitted development, the relevant GPDO provision is again Schedule 2, Part 1, Class C. Clearly, the decking area is higher than the highest part of the original roof, as I have interpreted that term in paragraph 16 above. Thus it fails to comply with the restriction in GPDO paragraph C.1(b), and for that reason it is not permitted development.

The wooden planters

25. A row of wooden planting boxes has been placed along the front edge of The Sail Locker's roof, and a number of other wooden planting boxes containing artificial box hedging have been placed in front of the bedroom windows of 3 Westfield Road and Beagley's Cottage. Unlike the laying of the area of decking, there is no evidence that this involved any element of construction. Instead it seems that the already-manufactured planting boxes were simply brought up onto the roof and put down in the desired position. Angle brackets have been attached to prevent them from blowing over in the wind, but they are not screwed down to the roof or the decking. The artificial box hedging may or may not have been put into some of the boxes afterwards, but I do not regard that as an act of development. Nor would the cultivation of plants in other boxes constitute development either.

26. The Council argue that the wooden planters are permanent features, as there is no evidence of any intention to move or remove them, but this is disputed by Mr Baker. In support of their argument, the Council refer to advice from their building control officers that *the use [of the roof] as a garden will not comply with the Building Regulations […] unless the planters to the front of the roof are either affixed or so substantial that they could not be moved.* However, they provide no documentary evidence of that advice, and the Building Regulations Final Certificate for the roof garden, dated 18 May 2011, as submitted by Mr Baker, makes no mention of any such requirement. Nor do I

[4] For the reasons given in the *Burroughs Day* judgment: see paragraph 6 above.

agree with the Council that the planters would need to be dismantled before they could be removed from the roof: they could simply be lowered over the front edge and down to the ground.

27. The Council also make the argument that the planters constitute a *means of enclosure* within the terms of Schedule 2, Part 2, Class A of the GPDO. This concerns the *erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.* Having regard to that context, I consider that the phrase *other means of enclosure* refers to things that are fixed in place, in the same way that a gate, fence or wall is. The wooden planters in this case do not fall into that category.

28. In effect, I see the wooden planters as belonging in the same category as the smaller plant-pots that have also been placed on the roof. It may be that in their current positions the planters are performing a screening or enclosing function, but they are small enough to be moved easily, and there is nothing to prevent them from being moved whenever Mr Baker wishes.

29. Neighbours at 3 Westfield Road and Beagley's Cottage have complained that the planters containing artificial box hedging that have been placed in front of their windows harmfully affect their daylight and outlook. This concern is reflected in the third paragraph of section 4 of the enforcement notice. But those effects, which I noted during my site visit, cannot affect my assessment of the planters' lawfulness. It is for Mr Baker to decide whether to respond to his neighbours' concerns in this regard.

30. I conclude that placing the wooden planters on the roof of The Sail Locker did not constitute development and so was not a breach of planning control.

Conclusions on the ground (c) appeal

31. For the above reasons, I conclude that the ground (c) appeal succeeds insofar as it concerns the wooden planters, and the enforcement notice will be varied accordingly. However, the ground (c) appeal fails in respect of the roof access hatch and the area of decking.

The appeal on ground (f)

32. Because of the partial success of the appeal on ground (c), it is only necessary to consider the ground (f) appeal in respect of the roof access hatch and the area of decking. In order to succeed on this ground, it needs to be shown that the requirements of the enforcement notice exceed what is required in order to achieve its purpose.

33. Dealing first with the roof hatch, the notice does not require its removal, only that it should be fixed shut. From this I infer that the purpose of requirement (i) is not to remedy the relevant breach of planning control (that is, the installation of the hatch), but to remedy the injury to amenity which, in the Council's view, has been caused by the breach[5]. This injury to amenity is clearly stated in the notice as being *a very significant loss of privacy* and *a detrimental impact in terms of noise and disturbance being experienced by residents in the adjoining dwellings.* The Council's statement makes it clear that this is due to the close proximity of windows in those dwellings to The Sail Locker's roof.

[5] See section 173(4) of the 1990 Act.

34. Mr Baker correctly points out that there is no condition on the 2003 planning permission or any other restriction which prevents The Sail Locker's roof from being used lawfully as a roof garden. However, the Council's view, as stated in the enforcement notice, is that the roof hatch *facilitates the use of the roof as a roof terrace/garden*. From what I saw during my site visit, I would agree with that assessment. There is a steep wooden staircase leading from the ground floor of the building up to the hatch and out onto the roof. There is no evidence of any similarly convenient access to the roof having existed before the roof hatch was installed. Moreover, letters from neighbouring residents indicate that regular use of the roof as a roof garden has begun since the hatch and decking were installed.

35. Requiring the hatch to be fixed shut is in my view a proportionate requirement that would prevent access to the roof via the hatch, and so remedy the injury to amenity which the Council say has been caused by the improved access to the roof brought about by the breach of planning control. It avoids the disproportionate burden that might have been placed on the appellant if the notice had required the roof hatch to be removed altogether. Nor would it unreasonably restrict access to the roof for maintenance purposes, since it is reasonable to suppose that maintenance access was gained by other means before the roof hatch was installed.

36. I note Mr Baker's argument that access to the roof could be achieved instead by modifying one of the existing roof-lights, or via a ladder from the front, but that is a separate matter. The roof hatch is the subject of the present enforcement notice, and for the reasons I have given, the requirement for it to be fixed shut is not excessive.

37. Turning to the decking area, the relevant requirement (ii) seeks its removal from the land. From this I infer that its purpose is to remedy this aspect of the breach of planning control[6], which no lesser action would achieve. If, on the other hand, the reason for the requirement is to overcome injury to amenity, I would agree with the Council that the decking, like the roof hatch, helps to facilitate the use of the roof as a roof terrace or garden. Decking areas are often laid in gardens and on terraces to facilitate sitting out, by providing a firm and well-drained surface and distributing the weight of people and garden furniture across their surfaces. It seems likely that the area of decking performs some or all of those functions in the present case, notwithstanding Mr Baker's assertion that its function is merely to provide a more attractive environment for sitting out.

38. Mr Baker does not suggest any lesser requirements which would achieve the purposes of requirements (i) and (ii). In this light, and taking all the foregoing points into account, I conclude that those requirements do not exceed what is necessary to achieve their intended purposes. The appeal on ground (f) thus fails.

Roger Clews

Inspector

[6] Section 173(3) of the 1990 Act provides that an enforcement notice shall specify the steps required to achieve, wholly or partly, the purposes set out in section 173(4) [*my emphasis*].