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# Appeal Decision

Site visit made on 9 November 2010

by **B.S.Rogers BA(Hons), DipTP, MRTPI**

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

Decision date: 19 November 2010

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**Appeal Ref: APP/B2355/C/10/2134803**

**Ye Olde Boot & Shoe, 58-62 Millar Barn Lane, Rossendale, BB4 7AU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Vito Warshaowski against an enforcement notice issued by Rossendale Borough Council.
  - The Council's reference is: CLB/Z12-001110.
  - The notice was issued on 16 August 2010.
  - The breach of planning control as alleged in the notice is the unauthorised use of the flat roof of the existing single storey rear extension as a balcony entailing provision of railings, decking and garden paraphernalia.
  - The requirements of the notice are (a) to cease the use of the balcony other than as an exit in the event of an emergency in accordance with planning permission 94/354, (b) to remove from the balcony the tables, chairs, plants, pots and other garden paraphernalia and (c) to retain this area free from all such garden paraphernalia.
  - The period for compliance with the requirements is 28 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
  - Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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## Formal decision

1. I allow the appeal and direct that the enforcement notice be quashed.

### The appeal on ground (c)

2. Planning permission was granted in 1994 for the conversion of the first floor function room of the appeal property to a private flat and hotel accommodation. As part of the scheme of conversion, French doors were included to give egress from the flat to the flat roof which is the subject of this notice. The flat roof was to be bounded by balustrades and the drawings indicated that the roof was to be used as an emergency exit. Although a planning condition limits the application of the permission to the amended plans only, there was no condition controlling or limiting the use of the roof.
3. Although the railings which now enclose the roof were erected recently, there is no indication from the Council that they are not consistent with those approved in 1994 and, indeed, the notice does not require their removal. Given its designed enclosure, and intended use as an emergency access, it appears that the flat roof has always been part of the planning unit of the adjoining flat. The use for sitting out is incidental to the normal residential use of the flat and does not represent a material change of use. Had the Council wished to limit its use, it could have so done by way of a condition along the lines of model

condition 62 of Circular 11/95. Following the principle established in the case of *I'm Your Man Ltd v SSE & N. Somerset DC [1999]*, the condition limiting the permission to the amended plans, which included the notation of an emergency access, can not be interpreted as limiting the lawful use of the flat roof to that purpose alone.

4. For the above reasons, I conclude that the use of the flat roof in question for purposes incidental to the enjoyment of the use of the adjoining flat does not entail a breach of planning control and therefore the appeal succeeds on ground (c).

**The appeal on grounds (a) and (f) and the deemed planning application**

5. As the appeal succeeds on ground (c), there is no need to consider grounds (a), (f) or the deemed planning application.

*B.S. Rogers*

Inspector