

Appeal Decisions

Site Inspection on 1 December 2016

by Graham Self MA MSc FRTPI

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

Decision date: 13 December 2016

Appeal Reference: APP/B1605/C/16/3153664

Site at: 12 Brizen Lane, Cheltenham GL53 0NG

- The appeal is made by Mrs Claire Prosser under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Cheltenham Borough Council.
- The council's reference is 16/00205/DCUCOU.
- The notice is dated 10 June 2016.
- The breach of planning control alleged in the notice is: "Without planning permission the unauthorised change of use of the land from use as a residence to a mixed use for residential and business purposes including the storage of equipment and materials used in connection with a building contractors business".
- The requirements of the notice are: "Stop using any part of the residential property and any part of the land for the storage of equipment in connection with a building contractors business and permanently remove all equipment and materials from the land and property".
- The period for compliance is 30 days.
- The appeal was made on ground (b) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal fails.

Appeal Reference: APP/B1605/C/16/3153665

- This appeal is made by Mr Martin Prosser. All other details are the same as those summarised above.

Summary of Decision: The appeal fails.

Procedural Matters

1. There are two appeals before me with two different reference numbers because Mr and Mrs Prosser both appealed against the enforcement notice. The relevant legislation does not provide for joint appeals, so when two or more people appeal against an enforcement notice under Section 174 of the 1990 Act, each person has to be treated as a separate appellant even though they are putting forward the same case.

Ground (b)

2. Under this ground of appeal it is claimed that the change of use which is alleged to have been carried out as described in the enforcement notice has not occurred, as a matter of fact.
3. There is conflicting evidence about the past history of the appeal property. The council evidently inspected the site after receiving complaints from local residents about materials and equipment being stored at the site and about related vehicle traffic. During this inspection, according to the council's statement the inspecting officer was shown through to the back garden by Mr Prosser and was informed that no storage was taking place in connection with Mr Prosser's business. There was no evidence of the storage of materials, but the council say that "the officer was not shown the storage of equipment along the opposite side elevation of the property which was concealed from view".
4. The inspecting officer was apparently not prevented from going wherever he or she wanted to, so it is not clear why the inspection was apparently limited just to those parts which he "was shown". Be that as it may, the appellants have stated that some construction materials were temporarily kept at the side of the house for the purpose of laying a new patio and carrying out house painting.
5. The appellants argue that if the stored materials were so unnoticeable during the council's inspection that someone looking for them could not see them, the effect must have been minimal. That point has considerable weight. On the other hand, photographs submitted by a neighbour show items such as cabling, road diversion signs, lengths of pipe, numerous shovels (far more than would be normal for domestic use), and plastic barriers of the type used as safety surrounds for road works or trenches, all within the rear part of the appeal site, recognisable by the large tree which I saw. This evidence relates to the period between March and July 2016. The council say they believe that the breach of planning control as alleged in the notice had taken place "notwithstanding that all evidence of storage of materials on the land has since been removed". This statement was apparently written in August 2016.
6. I do not know exactly when the council's first on-site inspection was made, but the council mention later unannounced visits and inspection from adjoining property, when the enforcement officer viewed "the storage of equipment in excess of what could be considered reasonable for a normal residential household property". Two photographs are attached to the statement as evidence. Assuming the camera date printed on the photographs is correct, they appear to have been taken on 2 August 2016. But as the appellants have pointed out, these are clearly not photographs of the appeal property, or even of any property in Brizen Lane.
7. Many of the complaints by local residents relate to vehicles being parked, or loaded and unloaded, in the cul-de-sac. A letter from the occupier of Number 15 refers to "numerous occasions" in the early morning when she has had to wait in her driveway whilst "building equipment has been loaded from 12 Brizen Lane onto an open backed van....parked in the middle of the road to the access drive of 11 and 11A". I think an "open backed van" must be referring to a pick-up type of vehicle. It is not clear exactly what is meant by "the middle of the road to the access drive of 11 and 11A", but I take this to mean the middle of Brizen Lane where it branches to form a Y-shape, near the access drive which runs off Brizen Lane past number 12 to number 11A. This seems an unlikely position to park a vehicle while loading it with items from number 12; but there is a good deal of corroborating evidence about disturbance caused by vehicle-related activity. One

resident mentions the use of two commercial vehicles and describes them being "loaded up early in the morning often prior to 7am" and "workmen moving equipment from one vehicle to another". Another resident writes about "materials being loaded and unloaded by the garage, often very early in the mornings". A further resident refers to "various men coming and going" and vehicles "being loaded and unloaded early in the morning and at other hours of day".

8. This is a case where, for whatever reasons, relations between the appellants and other residents of properties in Brizen Lane are not good. I have to allow for the possibility that some of the written evidence submitted by nearby occupiers has been thereby affected. Objections about obstruction of the road have evidently been made by people who themselves often park in the road, and some complaints may be orchestrated or overstated. I think misunderstandings have also occurred: for example, someone arriving in a van to pick up a family friend on a Saturday afternoon appears to have been wrongly assumed to be an employee of Mr Prosser visiting for work-related purposes. Residents seeing unfamiliar vehicles have probably sometimes assumed that the drivers are calling at number 12 when that has not been so.
9. In her appeal statement (which is dated 3 July 2016) Mrs Prosser has stated that: her home is solely used as a family home; no employees or clients are required to visit the property for business purposes; no business activities are carried out at the property; and she and Mr Prosser leave for work in the morning and return home in the evening. Taking those statements at face value, I accept that Mrs Prosser's *home* (meaning the house) is only used as a family home, but that leaves open the issue of the use of the site as a whole. It may well be that no employees or clients are *required* to visit the property, but that does not exclude visits by such people, or visits by people who may, for example, be sub-contractors, not employees or clients. The term "business activities" is open to different interpretations. Bearing those points in mind, aspects of the appellants' case are less convincing than the case for the council supported by other parties, even allowing for the flaw in the council's case arising from the submission of photographs of the wrong site.
10. I also have to allow for the fact that several months have elapsed since the time when complaints were made to the council and the enforcement notice was issued, so my inspection could only be of limited value as an indication of past history. During my inspection the items I saw included about a dozen shovels or spades and a similar number of canisters of the type which could contain fuel or other liquid including some large jerricans, which were inside lidded plastic containers next to the side of the house. The objects nearby included a reel of cabling. The garage also contained a larger number of electrical or similar fittings than would be normal for a residential property. The written evidence does not mention any hobbies or other recreational activity which might explain the quantity of such items.
11. Having considered all the available evidence, I find that there was a time fairly recently when the use of the property changed to use for the mixed purposes alleged in the enforcement notice. A minor issue is that the reference to a "building contractors business" in the allegation appears to be incorrect but I return to this matter later in paragraph 13. It is possible that the mixed use was not being carried on at the time the enforcement notice was issued. Nevertheless, it is not the *use* which is being enforced against; it is the act of making a *material change of use* which constitutes development as defined in Section 55 of the 1990 Act. The location of the appeal property, where houses are grouped closely around the end of a cul-de-sac, is a factor here: this is the

sort of location where activity generated by non-residential use would tend to be more noticeable - thus causing a more "material" change for the purposes of planning law - than, for example, might happen at a location next to a main road.

12. I conclude that this development occurred, as a matter of fact. Therefore the appeal on ground (b) fails.

Other Matters - Allegation and Requirements of the Notice

13. According to the appeal statement Mr Prosser works as a communications engineer. He is evidently director of MP Solutions Ltd, which is categorised in published reference sources as a firm engaged in "construction or other civil engineering". However, it does not appear to be correct to describe his business as if he were a building contractor. It would be more accurate to refer to a communications engineering or civil engineering contractor's business.¹
14. The requirements of the enforcement notice specify, in part: "permanently remove all equipment and materials from the land and property". Although neither side has mentioned it and ground (f) - which relates to the requirements of the enforcement notice - has not been pleaded, the reference to "all equipment and materials" is imprecise. It also goes beyond the allegation, which refers to "equipment and materials used in connection with a building contractors business". This may seem a minor point but could cause difficulty since, for example, there would be no objection to items of normal gardening equipment being kept at the property, and I doubt the council really intended to impose such a sweeping requirement.
15. The points just mentioned are capable of amendment, using the powers available to me under Section 176 of the 1990 Act. This can be done without causing injustice to any party, since the effect will be to refine the requirements of the notice rather than enlarging them. I shall therefore make appropriate amendments.

Formal Decision on Both Appeals

16. I direct that the enforcement notice be corrected and varied in the following ways:
- (i) by deleting the words "a building contractors business" from both the allegation and the requirements, and substituting "a communications engineering or civil engineering contractor's business";
 - (ii) by deleting from the requirements the words "all equipment and materials" and substituting "all equipment and materials brought onto the land in connection with the contractor's business described in the allegation."
17. Subject to the above correction and variations, I dismiss the appeals and uphold the notice as corrected and varied.

G F Self

Inspector

¹ It is clear that despite the missing apostrophe in the enforcement notice ("contractors"), the intention of the enforcement notice was to refer to use by a contractor (singular) not by several contractors. As an incidental point I allow for this in my amendments.