

Appeal Decisions

Site Inspection on 24 July 2019

by Graham Self MA MSc FRTPI

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

Decision date: 06 August 2019

Appeal Reference: APP/P0119/W/18/3218412

Site at: 44 Gages Road, Kingswood, BS15 9UG

- The appeal is made by Mr Edward Baker under Section 78 of the Town and Country Planning Act 1990 as amended against a refusal of planning permission by South Gloucestershire Council.
- The development was described in the application as:
"Application is for continued use of a domestic garage after it has been separated from the house, the house has now been sold and the garage retained. The garage has the same domestic contents in as when it was associated with the house. It will not be used for business use. I have moved to a house with out *[sic]* a garage and want to continue to use the garage for storage of all the usual items that everyone tends to keep in their garage at home".
- The council's reference is PK18/4385/F.
- The refusal notice is dated 6 December 2018.
- In their refusal notice the council described the development as:
"Change of Use of ancillary residential garage to storage building (Class B8) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) and associated works. (Retrospective)"

Summary of Decision: The appeal fails.

Appeal Reference: APP/P0119/C/18/3219398

Land adjacent to 44 Gages Road, Kingswood Bristol BS15 9UG

- The appeal is made by Mr Edward Baker under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by South Gloucestershire Council.
- The council's reference is COM/18/0331/BUS/1.
- The notice was dated 18 December 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the change of use of a residential outbuilding and associated land (Use Class C3), to an independent storage use (Use Class B8).
- The requirements of the notice are:
 1. Cease the storage use of the site; and
 2. Remove the fencing subdividing the land from 44 Gages Road (as shown in the approximate position of the green line on the attached plan.
- The period for compliance is one month.

- The appeal was made on ground (a) as set out in Section 174(2) of the 1990 Act. An application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal fails, although the enforcement notice is varied. The notice as varied is upheld.

Procedural Matters

1. There is a slight difference in the site addresses specified above for each appeal. This is because in line with normal practice I have quoted the address from the application in the case of the Section 78 appeal and from the enforcement notice for the enforcement appeal. In practice both appeals relate to the same site, which was once part of the plot of 44 Gages Road and is now separated, so is more appropriately described as adjacent to Number 44.

Section 78 Appeal and Ground (a) of Section 174 Appeal

2. The appeals both refer to the same development, so I consider them together here. The main points of dispute concern the effects of the change of use on the residential amenities or character of the area, having regard to relevant planning policies.
3. The garage building was evidently formerly used as a garage in connection with the residential occupation of the house at 44 Gages Road when Mr Baker lived there. The house has been sold without the garage and a fence has been erected to separate the land around the garage from what is now the reduced plot of the house.
4. I can understand why Mr Baker considers that the use of the garage has not changed after being separated off from the house at Number 44. He also states that the garage will not be used for business purposes. The main problem with this argument is that the planning permission being sought is for independent storage use, and if planning permission were to be granted for such use, it would be impracticable for the planning authority to control what could happen. It is also necessary to bear in mind that intentions can change, and Mr Baker could sell or let the site to someone wanting to use it in a different way.
5. Conditions can be imposed on planning permissions, but any such conditions have to meet certain tests - among other things, they have to be enforceable. Mr Baker is apparently willing to have conditions imposed but the council have rightly drawn attention to the difficulty of framing suitable conditions. It would not be practical to try to list in a condition all the specific items which could be stored in the building, and terms such as "domestic storage" or "residential storage" would be too imprecise to be enforceable. For example, the tool-cabinets and tools which I saw in the garage might or might not be considered "domestic" depending on information which has not been supplied in evidence. Other examples of the sort of difficulty likely to arise are the pallet trolley which was standing outside the garage under a cover at the time of my inspection and the nearby pile of commercial-size container sacks, which I doubt could reasonably be regarded as "domestic" items.¹

¹ The use of the land outside the garage is relevant because the use enforced against involves the "planning unit" (that is to say, the site as a whole including what the enforcement notice describes as "associated land"), not just the garage building itself.

6. Similarly, trying to control the times when access to the site would be allowed (for example, to safeguard against disturbance to neighbours at unsocial hours), or the frequency of visits, or the noise of loading and unloading, or the type of vehicle used, would also be almost impossible to enforce.
7. I have considered the possibility of imposing a personal condition aimed at restricting future use to Mr Baker, but that would not be effective since any person can change their habits, so such a condition could not in practice control the way the site is used. Personal conditions can also cause legal problems where (as in this case) an applicant or appellant is not the owner of the site.²
8. Mr Baker has criticised the council on the grounds that "they can't be bothered to come up with any conditions for domestic usage" - but he has not suggested conditions, even though he has apparently discussed his case with "various property professionals and solicitors". Some of those professionals and solicitors might perhaps have suggested a legal undertaking under Section 106 of the 1990 Act to control the future use of the site, since controls by that means can be more effectively enforceable than planning conditions; but that remains a doubtful possibility and in any case the appellant has not submitted any such undertaking.³
9. So far, the use of the site has apparently not caused any complaints by immediate neighbours and only limited objections by other local residents. A nearby occupier has contended that the development is out of keeping with the area and "may well" create noise and traffic problems. A local resident's objection to the original planning application is mainly about the appearance of the garage building being out of keeping with the area. The appearance and planning status of the building itself are not matters before me, since the appeals only concern the use of the property.
10. One of the effects of the development has been to leave the house at 44 Gages Road with a much smaller plot, no garage and restricted off-street car parking space. A new vehicular access in front of the house at Number 44 appears to have been formed fairly recently, with a new length of lowered kerb. The access and parking space here is laid out in such a way that a car would have to be reversed either off or into the road at a point close to the junction between Gages Road and Woodstock Road (closer than the access to what was originally the garage for Number 44 at the appeal site). The amount of parking space at Number 44 is also below current modern standards, and could cause increased on-street parking at a point close to the road junction where visibility for drivers and pedestrians is important for safety reasons.
11. I do not know whether specific permission has been granted for the changed access and parking arrangement at Number 44, but accesses where vehicles are likely to be reversed into or off the highway close to road junctions are in principle undesirable from a road safety viewpoint - which is probably why the garage for Number 44 was originally sited away from the junction, like the garage for the semi-detached pair property. Since the changed layout was apparently caused by the separation of the appeal site from Number 44 the highway safety concerns I have described are a supplementary objection to the development, though not by themselves decisive.

² The site is evidently owned by Mr Edward Baker's brother, Mr Lyndon Baker.

³ Section 106 undertakings cannot be imposed like conditions - they have to be submitted well before an appeal gets to decision stage.

12. Decisions on planning applications must have regard to planning policies, including those in the adopted development plan for this area. Of the policies referred to in the enforcement notice, the most relevant one is probably policy PSP 8 of the Local Plan⁴, which provides that development proposals will be acceptable provided that they do not create unacceptable impact from noise or disturbance.
13. In summary, I judge that this is the sort of development which seems relatively harmless at first sight but could have uncontrollable harmful effects on the residential amenities and character of the area, mainly through noise and disturbance. A basic problem here is that the site is located between houses in a fairly quiet residential part of Kingswood. This is not a suitable location for what would in effect be a small warehouse or storage unit, and the difficulty of defining and controlling exactly how the premises could be used is in itself an obstacle to granting planning permission.
14. Taking all the above factors into account, I conclude on balance that there were sound reasons for the council's decision to refuse planning permission and then to take enforcement action. Therefore the appeals do not succeed.
15. In reaching that finding I have noted Mr Baker's view that the council, or a local councillor, has been pursuing him unfairly.⁵ He also raises concerns about the future of the appeal site if the refusal of planning permission is confirmed. He mentions the idea of putting a small house on the site and the council's refusal to discuss anything, as a result of which Mr Baker has evidently started a complaint procedure with the local government ombudsman. I am only empowered to decide the appeals before me on planning grounds and it would not be proper for me to comment on matters falling within an ombudsman's jurisdiction, or on how the site could or should now be used.
16. I have also taken into account the history described by Mr Baker in support of his case, including his statement that a buyer for the house and garage could not be found after 18 months on the market in poor market conditions, and that separating off the garage meant that the sale price could be reduced so the buyer could afford the house. That is a weak argument - the mention of poor market conditions suggests that there were pricing or other market-related reasons (such as the condition of the property) why the house and garage were difficult to sell. Be that as it may, those aspects of the site's history do not outweigh the planning objections to the development.

Requirements of the Enforcement Notice

17. Although ground (f) of Section 174(2) of the 1990 Act has not been pleaded,⁶ the appellant's statement mentions that when the appeal site was separated from the house at 44 Gages Road "the house retained ownership of the fence, so it is not

⁴ The full title is evidently: "South Gloucestershire Local Plan: Policies, Sites and Places Plan Adopted November 2017".

⁵ I am here paraphrasing the appellant's representations only approximately, for reasons relating to libel law. (Some details in one of the appeal statements could be adjudged libellous and I do not repeat them here because any person who repeats a libel could be considered to have committed libel).

⁶ Ground (f) is a claim that the requirements of an enforcement notice exceed what is necessary to remedy the breach of planning control.

my property to remove". I take that to mean that Mr Baker does not own or have any control over the fence. Nor apparently does his brother.⁷

18. An enforcement notice directed at an unauthorised change of use of land can validly require operations (such as the erection of a fence) to be undone if the operation facilitates and is integral to the unauthorised use.⁸ The fence clearly provides a useful screen and boundary marker but whether it is strictly integral to the disputed use or makes the use possible is debatable. In any case, as far as I can tell from the information available to me, the enforcement notice was not served on the owner or owners of 44 Gages Road, so it seems likely that despite being notified later about the appeal, the owner or owners of that property would not have had any chance to appeal against the notice and may not even be aware that the enforcement notice as issued affects their fence.
19. In these circumstances, injustice or unfairness could be caused to neighbouring owners if the enforcement notice were to be upheld with its requirement for removal of the fence. It also appears that Mr Baker would not have the legal right to remove the fence. Therefore I consider it appropriate to vary the notice so that the requirements do not include removing the fence.

Formal Decisions

Section 78 Appeal (Reference APP/P0119/W/18/3218412)

20. I dismiss the appeal.

Section 174 Appeal (Reference APP/P0119/C/18/3219398)

21. I direct that the enforcement notice be varied by deleting sub-paragraph 2 from the requirements (in part 5 of the notice headed "What You Are Required to Do"). Subject to that variation, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector

⁷ The notice was evidently served on the appellant and his brother Mr Lyndon Baker. The appellant states that the house and the appeal site are in separate ownership and that his brother owns the garage. The council's statement also refers to the site and No 44 as having been formally subdivided on the Land Registry, indicating separate ownership. Mr Edward Baker evidently does not own Number 44, and since the appeal site is apparently owned by Mr Lyndon Baker, the house must now be owned by someone other than Mr Edward Baker or Mr Lyndon Baker, although this is not stated clearly in the submitted evidence.

⁸ This principle has been confirmed in court judgments, the most well-known being *Murfitt v Secretary of State for the Environment* [1980] Journal of Planning Law 598; and *Somak Travel v Secretary of State for the Environment* [1987] Journal of Planning Law 630.