



Appeal Decision

Site visit made on 25 October 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 1 November 2019

Appeal Ref: APP/M0655/C/19/3222436

8 Larkspur Grove, Great Sankey, Warrington WA5 1BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Chelsea Ruane against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice was issued on 11 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use from communal car park to residential garden and the construction of associated fencing and gates.
- The requirements of the notice are to remove the unauthorised fencing shown blue on plan drawing ref: 01-01-02-01 Rev AP1.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

The Notice

1. The allegation concerns a material change of use from communal car park to residential garden. The appellant claims the previous use of the land was not communal car park. It is also argued that the current, unauthorised use is not residential but is a car parking space. There is no appeal on ground (b), that the matters alleged have not occurred as a matter of fact. Hence, I have considered whether I can correct the notice. The Courts encourage a very wide use of the power to correct a notice, provided there would be no injustice to the appellant or the local planning authority.
2. While there is no need to specify the previous use in allegations concerning a material change of use, it is better if this is accurately described as it assists in understanding the alleged breach. In this case, the site formed part of a larger car park. Whether or not it was communal is not relevant. It is sufficient to refer to the previous use as car park.
3. The appellant further argues that the land is not in a residential use. However, I saw that it has been enclosed and now forms part of the garden. This is a residential use, irrespective of whether it remains as a car parking space for the use of the occupants of the house.
4. Consequently, I consider I can correct the allegation to "the material change of use from car park to residential and the construction of associated fencing and gates". The correction is relatively minor and I consider it would address the appellant's concerns without injustice.

5. The allegation includes reference to operational development, the construction of associated fencing and gates. The use of the word “associated” indicates that the Council considers the operational development to be integral to and part and parcel of the change of use, rather than forming a separate allegation. I agree that the operational development has facilitated the unauthorised use. However, there is a discrepancy in the reasons for using the notice. It is stated that the breach has occurred within the last four years.
6. The time limits for taking enforcement action where there has been a breach of planning control concerning a material change of use are set out in section 171B(3) of the 1990 Act as amended. In the case of a material change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The notice is therefore incorrect in its specification of four years.
7. There is no dispute about the date of the alleged breach and no appeal on ground (d) that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Therefore, I consider I can correct this element of the notice without injustice.

The appeal on ground (a) and the deemed planning application

Main Issue

8. The appeal on ground (a) is that planning permission should be granted for the matters stated in the notice. The terms of the deemed planning application are derived from the corrected allegation. Hence, planning permission is sought for the material change of use from car park to residential and the construction of associated fencing and gates. The main issue is the effect of the development on highway safety.

Reasons

9. The appeal relates to a residential property and its associated garden and car parking area. The property has two car parking spaces, located adjacent to the rear garden within a wider shared parking area. One of the spaces, that closest to the garden, has been enclosed by a timber fence with a front opening gate.
10. The Council is seeking a visibility splay of 2.4 metres by 25 metres on both sides of the car parking space in order to meet the requirements for Manual for Streets. A pedestrian visibility splay of 2 metres by 2 metres is also sought. The development does not provide these visibility splays, however, it does not automatically follow that there would be a danger to all users of the road and interference with the free flow of traffic, as alleged.
11. The car parking space is within a relatively small parking area located to the side/rear of the houses. The single vehicular access to the car park is via an estate road that passes under one of the houses. Vehicles manoeuvring into or out of the enclosed space would not interfere with the free flow of traffic as the car parking space is not accessed directly off a through road. Any vehicles using the car park would most likely be there for the specific purpose of parking. There is no free flow in the same way as occurs on classified roads or along busier estate feeder roads.

12. The car parking space abuts the garden of the appeal property, hence, all vehicular traffic would approach from the opposite side or the front. Visibility to the front would be maintained when the gate is open. Any vehicles approaching from the side would not be travelling at speed due to the limitations of the car park. Furthermore, it is highly likely that the drivers of the vehicles would be aware of each other due to layout and proximity of the parking spaces. Similarly, pedestrians would be likely to be aware of traffic movements within the parking area given its relatively small size. Moreover, the car park is not part of a pedestrian or cycling route. Any people walking legitimately in the car park would be accessing their vehicle or entering/leaving their property. As such, I do not consider that the development presents a danger to all road users.
13. I conclude that the development would not have an adverse effect of highway safety in accordance with Policy QE6 of the Warrington Local Plan Core Strategy (2014) which, among other things, seeks to protect residential amenity including the consideration of highway safety. The development meets the aims of the National Planning Policy Framework insofar as it seeks to avoid an unacceptable impact on highway safety.

Conclusion

14. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.

Formal Decision

15. It is directed that the enforcement notice is corrected by:
- i) the deletion of the word "communal" before "car park" in paragraph 3;
 - ii) the deletion of the word "garden" after "residential" in paragraph 3;
 - iii) the replacement of the word "four" with the word "ten" in paragraph 4.
16. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use from car park to residential and the construction of associated fencing and gates on land at 8 Larkspur Grove, Great Sankey, Warrington WA5 1BP referred to in the notice.

Debbie Moore

Inspector