



Appeal Decision

Site visit made on 30 November 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH DECEMBER 2022

Appeal Ref: APP/P0119/C/22/3303845

**Land at Garages Off Henfield Crescent, Oldland Common,
South Gloucestershire BS30 9SF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kevin Worlock against an enforcement notice issued by South Gloucestershire Council.
 - The notice was issued on 21 July 2022.
 - The breach of planning control as alleged in the notice is the change of use of the land from residential garages to a storage yard.
 - The requirements of the notice are: 1. Permanently cease the use of the land for the storage of non-residential items. 2. Permanently remove all non-residential items from the land. 3. Permanently remove the fence.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by the deletion of step 3. Subject to this variation the enforcement notice is upheld.

Background

2. The appeal site contains a small row of communal residential garages and an associated forecourt. The garages occupy a 'backland' situation, being largely surrounded by residential gardens. Access to the garages is via a private drive, alongside which and adjacent to the forecourt is a public footpath.

Ground (f) appeal

3. The ground of appeal is that the requirements of the enforcement notice are excessive.
4. An enforcement notice can have the purpose of remedying the breach, including by discontinuing any use of the land or by restoring the land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173(4)(b).
5. Steps 1 and 2 of the notice require the unauthorised use for the purposes of storage to cease and the removal of all incidences of that use from the site. Step 3 requires a wire mesh fence, around 1.8 m in height erected adjacent to the footpath, to be removed. This is because the Council consider that erecting

the fence has facilitated the unauthorised use. The effect of complying with these requirements would be to restore the site to what the Council regarded as its condition prior to the breach taking place. Therefore, although the Council's written statement refers to remedying an injury to amenity, the notice is clearly aimed at remedying the breach.

6. A notice which, as in this case, attacks a material change of use, can legitimately require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might constitute permitted development, or be immune from enforcement action, so that the land is restored to its condition before the change of use took place¹. Nevertheless, in my view erecting the fence has not facilitated the unauthorised use in the same manner as, for example, the laying of a hardstanding or the stationing of storage containers might have. The enclosing of land by walls and fencing can occur for all sorts of reasons that are not necessarily directly related to its use. The appellant's wish to prevent the occurrence of theft and anti-social behaviour at the site could be equally relevant to the lawful use as residential garages. Consequently, I have difficulty with the fence being regarded as part and parcel of and integral to the unauthorised storage use.
7. Moreover, the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 2 Class A, grants planning permission for the erection of a gate, fence, wall or other means of enclosure of up to 2 m in height above ground level where, as in this case, the development is not adjacent to a highway used by vehicular traffic. The notice cannot take away the appellant's lawful rights to carry out development permitted by the GPDO. The appellant is still likely to require the site to be secured when it is in use as residential garages, for the reasons set out above. The type of fencing erected is not especially unusual in a communal context and in any event, the GPDO imposes no restriction in this respect. As a result, there is a realistic prospect of a comparable fence of a similar overall height and length being erected more or less immediately following compliance with the notice.
8. Consequently, even if it had been the case that step 3 does not require the appellant to do more than is necessary to remedy the breach, it serves no useful purpose in the context of this particular site. Steps 1 and 2 are sufficient for the purpose of remedying the breach. I shall vary the notice to delete step 3 accordingly.

Conclusion

9. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Stephen Hawkins

INSPECTOR

¹ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.