



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 January 2026

Appeal Ref: APP/N1920/C/24/3355625

26 Aycliffe Road, Borehamwood, Hertfordshire WD6 4JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Daniel L Toma against an enforcement notice issued by Hertsmere Borough Council.
 - The notice was issued on 21 October 2024.
 - The breach of planning control as alleged in the notice is: Construction of detached garage and development of front and side boundary treatment.
 - The requirements of the notice are: 1. Permanently remove the detached garage located adjacent to the east elevation of the property. 2. Permanently remove the gates and fencing that are taller than 1m and are adjacent to the highway used by vehicular traffic or reduce the height of the front boundary treatment to no more than 1m. 3. Permanently remove the resulting materials from the land and make good any damage following completion of the above requirements.
 - The period for compliance with the requirements is: 4 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The one ground of appeal under s174(2)(f) of the 1990 Act does not require any visual inspection of the development carried out to assess its impact on, for example, the character and appearance of the area or on neighbouring living conditions. I was, therefore, able to determine the appeal based on the submitted written evidence. No party has been prejudiced by this course of action.

Reasons

3. Regarding the detached garage, the enforcement notice attacks its construction and requires it to be permanently removed. Furthermore, all resulting material is required to be removed from the land and any damage made good following completion of the removal works. The purpose of the notice is therefore to remedy the breach of planning control under s173(4)(a) of the 1990 Act only. On its face, the requirements do no more and no less than meet the purpose of the remedying the breach of planning control by restoring the land back to its original state. The appellant only has concerns about the requirements as they pertain to the garage.
4. A less excessive step argued by the appellant would be to modify the garage to meet the conditions and limitations of the planning permission granted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) for the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of

the dwellinghouse. Specifically, the height of the garage and its eaves could be lowered to meet criteria (e) and (f) of a Class E building.

5. However, the GPDO does not grant retrospective planning permission. Therefore, if a building in the curtilage of a dwellinghouse has been erected, it would only be permitted by the GPDO if it met the height limitations under Class E when it was erected or constructed. If the building exceeded those limits, it would not be permitted under the GPDO even when it was subsequently altered. It follows that varying an enforcement notice to require modifications, such as reducing its height, would not serve to remedy the breach of planning control.
6. Also, Class E buildings are only granted planning permission if they are required for a purpose incidental to the enjoyment of the dwellinghouse. I note that in response to a question in a Planning Contravention Notice served by the Council, it is stated the garage is used for “storage and car park”, but this does not explain why a building of this substantial size and design, even after a possible modification, would be reasonably required. In the appellant’s appeal statement, other than stating that the use of the garage is incidental to the enjoyment of the dwellinghouse, there is no information on how the garage is used and whether, in incidental terms, it is reasonably required of the primary residential use.
7. Moreover, by virtue of s173(11) of the 1990 Act, where an enforcement notice in respect of any breach of planning control could have required any building to be removed, but does not do so and where all the requirements of the notice have been complied with, then, so far as the notice did not require, planning permission shall be treated as having been granted by virtue of s73A of the 1990 Act for the construction of the building. That would be an unconditional planning permission. Given that I do not know how the building is used, ending up in this position would not be appropriate in this case.
8. In pursuit of a lesser remedial option, I have also considered whether the permitted development right to erect a Class E building lawfully, after the appeal building has been removed, would be a realistic and substantive fallback position. However, as there is no information about whether the appellant would re-erect another building and whether its purpose would be incidental to the enjoyment of the dwellinghouse, I attach little weight to this fallback.
9. I have considered carefully the GPDO modification suggestion that would be a less punitive alternative that could be achieved with less cost and disruption to the appellant. However, for the reasons given, that is not an appropriate course of action. The steps required to be taken by the notice do not exceed what is necessary to remedy the breach of planning control pertaining to the construction of the garage. Consequently, the ground (f) appeal fails.

Conclusion

10. The appeal should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR