



Appeal Decision

Site visit made on 30 March 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2026

Appeal Ref: APP/K2230/C/24/3353751

Land at 29C Damigos Road, Gravesend, Kent DA12 2LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Ms Dorcas Benedict against an enforcement notice issued by Gravesham Borough Council.
 - The notice was issued on 17 September 2024.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, the material change of use of the detached garage on the Property from a garage to residential use.
 - The requirements of the notice are: (i) Cease the use of the detached garage building for residential purposes; (ii) Remove the windows in the front elevation and reinstate the garage doors; (iii) Remove the flat roof dormer window and reinstate the roof to its former contour; (iv) Remove the internal staircase; (v) Remove the shower room, w/c and wash hand basin, including stud wall partition(s) and cap off all service connections; (vi) Remove the window from the rear elevation and reinstate the brickwork; (viii) Remove all residential paraphernalia associated with the unauthorised development; (ix) Remove all resultant debris and associated materials generated by the unauthorised development and compliance with the above steps from the Property utilising an authorised waste carrier.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), and (f) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Application for costs

2. An application for costs has been made by Ms Dorcas Benedict against the Council. This is the subject of a separate decision.

The appeal under grounds (b) and (c)

3. These two grounds of appeal are best dealt with together in this instance. To succeed under ground (b) the appellant needs to show that the alleged material change of use of the garage to residential use (the MCU) has not occurred, as a matter of fact. To succeed under ground (c) the appellant needs to show that the MCU does not constitute a breach of planning control, on the balance of probabilities.
4. It is alleged that the current use of the former garage (the Outbuilding) is in breach of condition 11 of planning permission reference 20010099 dated 19 October 2001 (the 2001 PP), despite that condition not being referred to in the notice. That planning permission authorised the erection of 78 dwellings with garages and car parking spaces on land east of Damigos Road and Barham Close. I have not been provided with the full details of the 2001 PP, but the appellant does not dispute that

the site benefits from this planning permission or that condition 11 applies to the Outbuilding. Condition 11 is as follows:

'The areas shown on the approved plan for the parking turning and manoeuvring of vehicles (such areas to specifically include garages) shall be kept available for such uses at all times and no further development whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 shall be carried out on the land shown, or in such a position as to preclude vehicular parking turning and manoeuvring'.

The grounds for the imposition of the condition were: *'In order to ensure that adequate parking turning and manoeuvring space exists on site'.*

5. The Outbuilding has a lawful use for residential purposes ancillary/incidental to the dwelling at the site. As such, there has not been a material change in the use of the land to 'residential use'. Moreover, a residential use of the Outbuilding would not necessarily be in breach of condition 11 of the 2001 PP, provided the Outbuilding is kept available for the parking, turning and manoeuvring of vehicles. The parking of vehicles in the Outbuilding by occupants of 29C Damigos Road would be a residential use ancillary/incidental to the dwelling. It is therefore incorrect to say that any change of use of the Outbuilding would have required planning permission, not least because a change of use has to be material to constitute development requiring planning permission¹.
6. It is clear that the description of the alleged breach is flawed, and the Council's appeal submissions indicate it intended the notice to refer specifically to an alleged breach of condition 11 of the 2001 PP. However, the Council granted planning permission reference 20210721 for *'conversion of detached garage into home office ancillary to main dwelling house'* at the site on 19 July 2021 (the 2021 PP). The approved plans for the 2021 PP show two garage doors were to be replaced with windows on the front elevation, a room was to be created within the building annotated *'toilet'*, and walls were to be thickened, presumably by insulation. Development in accordance with the 2021 PP would therefore be authorised and not in breach of condition 11 of the 2001 PP.
7. The evidence shows that the two garage doors were replaced with windows and the walls have been thickened/insulated, consistent with the approved plans for the 2021 PP, prior to that consent expiring. Other works carried out to the Outbuilding, not authorised by the 2021 PP, include the construction of a shower room, the installation of a kitchen and a rear elevation window, the installation of stairs leading to a room in the roof space, and the construction of a dormer window.
8. The works carried out to the Outbuilding exceed what is permitted by the 2021 PP, but this does not mean that the 2021 PP was not 'implemented'. Clearly, the two garage doors were removed and replaced with windows and the walls have been thickened/insulated broadly in accordance with the planning permission. On the evidence before me, I see no reasons why those works should not be taken as beginning the development approved by the 2021 PP, even though other works which may be in breach of planning control have also been carried out.
9. The MCU has not therefore taken place, and the notice is invalid and in need of correction on account of the flawed description of the alleged breach. The appeal

¹ Sections 55 and 57 of the Act

on ground (b) is therefore bound to succeed, but I have the power under section 176(1)(a) of the Act to correct any defect, error or misdescription in the notice if I am satisfied that doing so will not cause injustice to any parties.

10. On the submissions, it appears the Council's intention may have been to enforce against an alleged breach of condition 11 of the 2001 PP by the works undertaken to the Outbuilding. However, the evidence indicates works associated with the 2021 PP began within the relevant timescale, and the 2021 PP authorises the replacement of the garage doors with windows, which prevents condition 11 of the 2001 PP from being complied with. In that case, there would be no breach of planning control and the appeal under ground (c) would succeed.
11. Alternatively, if I were to accept the Council's claims that works did not commence in accordance with the 2021 PP and that the 2021 PP has since lapsed, and if I were to correct the description of the alleged breach as suggested above, the description would be very different to that initially alleged. Correcting the notice in that manner would disadvantage the appellant, as they would not have had sufficient opportunity to address those very different claims, and possibly submit alternative or additional arguments and evidence.
12. Furthermore, the reasons for issuing the notice do not relate to the reasons for condition 11 being imposed on the 2001 PP, and I note the Council's answers to question 12 of the appeal questionnaire. These state that the appellant has applied for planning permission for the same development alleged in the notice under application reference 2021033, which sought consent for '*conversion of detached double garage into granny annexe ancillary to main dwelling house*' and was refused. The questionnaire response also refers to development being restricted by an unspecified condition attached to planning permission reference 19990168. The Council's overall case is therefore somewhat confused, and the precise alleged breach of planning control it intends to enforce against is unclear.
13. In these circumstances I am unable to correct the notice without causing injustice. It will be a matter for the Council to reconsider whether there is any alternative breach of planning control at the site which is expedient to enforce against, having regard to section 171B(4) of the Act.

Conclusion

14. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (f) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

L Douglas

INSPECTOR