



Appeal Decisions

Site visit made on 2 June 2026

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 18 June 2026

Appeal A Ref: APP/C1625/C/25/3362681

Appeal B Ref: APP/C1625/C/25/3362682

52 Bridge Mead, Ebley, Stroud, Gloucestershire GL5 4BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mrs Julie Oliver and Appeal B is made by Mr James Oliver against an enforcement notice issued by Stroud District Council.
- The notice was issued on 13 February 2025.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last ten years the material change of use of land (shaded grey and edged in black on the attached plan) from amenity use to residential use (C3) and the erection of a metal fence (indicated by a red dotted line on the attached plan) to enclose the land without the benefit of planning permission.
- The requirements of the notice are to:
Cease the use of the land shaded in grey and edged in black on the attached plan for residential (C3) use, and remove the metal fencing, as indicated by the red dotted line on the attached plan from the land and restore the land to its former condition.
- The period for compliance with the requirements is one month after this notice takes effect, being the 21.04.2025.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) of the Town and Country Planning Act 1990 (as amended) (the Act).
- 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.

Decision

1. The enforcement notice is corrected by the deletion of the time for compliance in part 6 of the notice and its replacement with “one month”.
2. Subject to this correction, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The time for compliance includes a date which has been overtaken by the appeal process. To avoid ambiguity, I shall correct the notice to remove the date and retain the period specified. I am satisfied that this causes no injustice.

Grounds (b) and (c)

4. There is overlap in the arguments on grounds (b) and (c) and it seems that the sensible way to approach these grounds is to tackle them together. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under these grounds. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. The onus firmly

rests with the appellants to show, on the balance of probabilities, that the matters alleged had not occurred and if they did, that they did not constitute a breach of planning control.

5. The appeals on ground (b) are that the alleged breach has not occurred. The appeals on ground (c) are a claim that those matters, if they did occur, do not constitute a breach of planning control. The appellants argue that the land falls within their ownership and forms part of the curtilage of their dwelling. They rely on section 55(2) of the Act which provides that the use of the land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not constitute development.
6. The appeal property forms part of the Bridge Mead estate, constructed around 2006. Part of the land to the front of the dwelling lies within the appellants' title and comprises an area of block paviour and a wall, parallel to the front elevation of the dwelling, with step leading to the entrance. Adjoining the area of block paviour is a gravel pathway which runs alongside the edge of the canal. The paved area, subject of the notice, has been enclosed by a metal railing fence and brought into exclusive domestic use. The appellants maintain that there is no evidence to support the Council's position that this land was intended as 'amenity land'.
7. Prior to the erection of the fence, the land beyond the brick wall to the front of the dwelling was open and, together with the gravel path, formed part of a publicly accessible towpath adjacent to the canal. Low timber bollards were originally positioned along the edge of the paved area at intervals of approximately 2m. In 2009, the appellants installed chains between the bollards, reportedly to discourage public access. In August 2022, these were replaced by the 1.2m high metal fence. Statutory declarations indicate that the appellants have used the appeal land for domestic purposes since 2007.
8. The Council's position is that the bollards were intended to demarcate ownership rather than to enclose private space to the front of the dwelling. The paved areas and adjacent gravel path are said to form part of the wider public realm and towpath, contributing to the character and function of the Stroud Industrial Heritage Conservation Area. This approach is reflected across the development, particularly along the canal frontage. In the vicinity of the appeal site, similar arrangements exist, with paved areas adjoining the gravelled path. Some remain open with bollards in place, while others have been enclosed in a similar manner with railings, and seemingly incorporated into private space.
9. Overall, I am not persuaded that the appeal land formed part of the domestic curtilage of the appeal property. The planning context, together with the physical and functional relationship between the land and the dwelling, points to a different conclusion. Although the land is within the appellants' ownership and may have been maintained and used by them, its original layout, openness, and accessibility indicate that it was intended to function as part of a shared open space rather than as a private garden. The subsequent enclosure appears to have arisen in response to issues of public access, rather than reflecting an original or intimate association with the dwelling.
10. This conclusion is supported by the wider context of the estate and by a previous appeal decision¹ relating to 40 Bridge Mead, to which I have been referred. In that

¹ APP/C1625/W/23/3319333

case, the Inspector identified the relevant land as forming part of the publicly usable towpath. The same understanding is reflected in the Council's pre-application advice to the appellants, dated 14 October 2022.

11. While I acknowledge that the land falls within the appellants' title, it does not follow that land in private ownership is necessarily in residential use, and such factors do not determine its planning status. I have also considered the appellants' assertion that the developer indicated the land was private with no suggestion of a shared function. However, no substantive evidence has been provided to support this claim. In any event, it is not uncommon for land within private ownership to form part of a wider planned public or semi-public amenity space.
12. Drawing these matters together, I find, as a matter of fact and degree, that the enclosure of the land into the appellants' private domestic space has altered its character and function. I am satisfied that this amounts to a material change of use as the former and current uses are materially different in planning terms. The alleged breach has therefore occurred and constitutes a breach of planning control. Consequently, the appeals on grounds (b) and ground (c) do not succeed.

Ground (d)

13. An appeal on ground (d) is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control. To succeed on this ground, the appellants must demonstrate, on the balance of probabilities, that the material change of use had occurred at least ten years prior to the issue of the notice namely, before 3 February 2015, and that such use continued without significant interruption throughout that period, in accordance with section 171B(3) of the Act.
14. In light of my findings above, it is necessary to determine when the material change of use occurred and whether, by the time the notice was issued, it had become immune from enforcement action through the passage of time. The Council contends that the material change of use arose upon the erection of the metal railings in 2022, which enclosed the land and facilitated its exclusive domestic use. The appellants, however, argue that the residential use commenced much earlier, from around 2007, and that it was formalised by the installation of chains between the bollards in 2009, which they say marked the land as private. On this basis, the appellants claim that the breach began at that time and is therefore immune from enforcement action.
15. I am not persuaded that the installation of chains between the bollards materially altered the character or use of the land. Whilst the presence of chains may have discouraged casual incursion and guided pedestrian movement, they would not have prevented access altogether, and their effect in enclosing the land was limited. The space would have remained physically and visually open, and available for use by members of the public passing along the towpath. Although the appellants and their family may have used the land in association with their dwelling, there is insufficient evidence to demonstrate that such use displaced its continued function as amenity land available to the wider public.
16. Accordingly, I find that the introduction of the chains did not give rise to a material change of use and therefore did not constitute a breach of planning control. By contrast, the situation materially changed with the removal of the bollards and the erection of the metal fence. At that point, the land became physically enclosed and

was no longer accessible for public use. This represented a clear functional and physical severance from the public realm, fundamentally altering the character of the land and its relationship with the towpath. Any prior indications of private use were, in my view, insufficient in scale and degree to amount to a material change of use before this point.

17. It follows that the residential use has not subsisted for a continuous period of ten years prior to the issue of the notice. The breach of planning control is therefore not immune from enforcement action under section 171B(3) of the Act. For these reasons, the appeals on ground (d) fail.

Ground (f)

18. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control. S173(4) of the Act provides that the purpose of the enforcement notice must be either to remedy the breach of planning control or to remedy any injury to amenity. In this case, the requirements indicate that its purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place. For success on this ground, the appellants would need to demonstrate lesser or alternative steps which would achieve that purpose.
19. The appellants contend that in preference to removing the fence, its height could be reduced to 1m, thereby complying with Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Council's position is that the erection of the metal fence facilitated the alleged material change of use of the land. It maintains that by enclosing the land, the fence is integral to the identified breach, irrespective of its height or its relationship to a highway. On this basis, the Council considers that the complete removal of the fence is necessary to remedy the breach.
20. Article 3(5) limits permitted development (PD) rights where they are granted in connection with an existing use of land, meaning that such rights cannot be relied on if the underlying use is unlawful. However, it does not apply to operational development that is independent of use (such as fences under Class A), so it does not impose a blanket bar on PD rights simply because the use is unlawful.
21. However, an enforcement notice aimed at an unauthorised change of use can lawfully require the removal of operational works that are integral to, or part and parcel of, that unlawful use, even if those works might otherwise benefit from PD rights. In this case, I have found that the material change of use arose from the physical enclosure of the land, which prevented public access and incorporated it into the appellants' private residential use. The fence is not merely incidental, it is the means by which the land is enclosed and the use maintained. As such, it is integral to, and facilitates, the unlawful use. Reducing the height of the fence would not address this fundamental issue, as the land would remain enclosed and unavailable for its former amenity function.
22. In these circumstances, I am satisfied that the steps required by the notice, including the removal of the fence, do not exceed what is necessary to remedy the breach. The requirements are proportionate to the objective of restoring the land to its previous condition and use. The appeals on ground (f) therefore fail.

SA Hanson INSPECTOR