



Appeal Decision

Site visit made on 30 July 2026

by **V Goldberg BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th August 2026

Appeal Ref: APP/Y9507/C/24/3346288

A23 Diner, London Road, Pyecombe, Brighton, West Sussex BN45 7FJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Bektas Kara against an enforcement notice issued by South Downs National Park Authority.
- The notice was issued on 16 May 2024.
- The breach of planning control as alleged in the notice is: Within the last 10 years and without planning permission the material change of use of the land from a business use (roadside cafe) to a mixed use of a business use and a car storage use, plus within 4 years and without planning permission the construction of one structure being used for storage and repair of vehicles, and two shipping containers for storage of vehicles. And within 4 years and without planning permission the erection of fencing of more than one metre in height adjacent to the highway.
- The requirements of the notice are to:
 - i) Cease the use of the Land for storage of personal vehicles not incidental to the approved business use of the Café
 - ii) Remove the erected structure and storage containers from the site
 - iii) Remove the fencing leaving the original post and rail fencing in place
 - iv) Remove from the Land all materials and debris resulting from the compliance of the above steps
- The periods for compliance with the requirements are:
 - i) Four (4) months from the day this Notice takes effect.
 - ii) Four (4) months from the day this Notice takes effect.
 - iii) Four (4) months from the day this Notice takes effect.
 - iv) Four (4) months from the day this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

The Enforcement Notice

1. As there is no requirement for an allegation to identify the former use or specify immunity periods, the allegation is corrected to remove references to the previous use of the land and the 10 and 4 year time periods. In addition, the mixed use is amended to include the repair of vehicles, as the structure is alleged to be used for both the storage and repair of vehicles. Given that the structure and shipping containers facilitate the storage and repair of vehicles, and the fencing demarcates the extent of the land used for that purpose, the allegation is corrected to reflect their role in facilitating the alleged use and more accurately describe the alleged breach of planning control.
2. Accordingly, the allegation is corrected so that it now alleges, without planning permission, the material change of use of the land to a mixed use comprising a roadside café and the storage and repair of vehicles, facilitated by the erection of a structure used for the storage and repair of vehicles, two shipping containers used

for vehicle storage, and fencing exceeding one metre in height adjacent to the highway.

3. Requirement (i) in Section 5 of the Enforcement Notice (EN) requires the cessation of the use of the Land for the storage of personal vehicles not incidental to the approved business use of the café. This requirement is varied to require the cessation of the use of the Land for the storage and repair of vehicles to align with the corrected allegation. Reference to the storage of personal vehicles not incidental to the café use is also unnecessary, as the storage of cars is a distinct activity that would not ordinarily be associated with or incidental to the use of the land as a roadside café. Consequently, the varied requirement is sufficient to remedy the alleged breach of planning control.
4. Requirement (ii) of the EN requires the removal from the Land of the erected structure and storage containers. However, the allegation refers specifically to shipping containers rather than storage containers. Accordingly, Requirement (ii) is varied to require the removal of the structure and shipping containers to align with the corrected allegation.
5. Requirement (iii) of the EN requires the removal of the fencing but does not specify the type of fencing to which it relates. In the interests of precision, the requirement will be varied to make clear that it refers to the timber lap fencing which facilitates the alleged material change of use. As the removal of that fencing is sufficient to remedy the breach, there is no need for the requirement to refer to the retention of the original post-and-rail fence. Requirement (iii) will therefore be varied accordingly.
6. Section 6 of the EN refers to the period for compliance with the various requirements set out in the notice. Although a separate compliance period is listed for each requirement, all requirements are subject to the same period of four months. The EN is therefore varied to specify a single compliance period of four months for all requirements.
7. The correction and variations would not result in injustice to either party. This is because they do not alter the substance of the alleged breach of planning control, the requirements of the EN or the periods for compliance. Instead, they clarify the allegation and ensure that the requirements accurately reflect the breach alleged. The corrections and variations therefore provide a more accurate description of the alleged breach and the steps required to remedy it.

Preliminary Matter

8. The appellant's final comments confirm that the ground (e) appeal has been withdrawn and that the ground (c) appeal is being pursued only in relation to the erected fence. As a result, the appellant concedes that the material change of use alleged has occurred. Accordingly, the appeal will proceed on that basis.

The Ground (c) appeal

9. An appeal on this ground is that the matter alleged, if it has occurred, does not constitute a breach of planning control. It is for the appellant to demonstrate, on the balance of probabilities, that the development is not a breach of planning control, either because it does not constitute development requiring planning permission or because it benefits from deemed or express planning permission.

10. The appellant asserts that the fencing constitutes permitted development. It is argued that the sections of fencing exceeding one metre in height are not adjacent to the highway, owing to the presence of an intervening grass verge between the fencing and the highway. The appellant further asserts that the section of fencing which is adjacent to the highway does not exceed one metre in height.
11. In determining whether the development benefits from permitted development, it is necessary to consider Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). This provision of the GPDO relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure and details that development is not permitted where a gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, following the carrying out of the development, exceed one metre above ground level.
12. The dispute between the parties relates to whether the parts of the fence that exceed one metre in height are adjacent to a highway. The term "adjacent to a highway" is not defined within the GPDO. In ordinary terms, however, it denotes a relationship of proximity and does not necessarily require direct physical contact with the highway. The presence of an intervening feature between the fence and the carriageway does not, in itself, preclude the fence from being adjacent to the highway. The relevant question is whether, having regard to the circumstances of the site, the fence forms part of the boundary treatment alongside the highway and is sufficiently proximate to it to be regarded as adjacent.
13. Having regard to the evidence before me, including my site visit, I am not persuaded by the appellant's argument. The fence appears to have been erected as a single building operation and forms a continuous enclosure around the site. The section along the frontage runs parallel to the highway and forms part of the site's boundary treatment. Whilst the appellant refers to an intervening grass verge and vegetation between the fence and the carriageway, I observed that the land between the upper end of the site and the highway comprises an overgrown and relatively narrow embankment. The bank is steeper than it is wide and does not provide any meaningful separation between the fence and the highway. Consequently, these features do not materially diminish the relationship between the fence and the highway. Viewed as a whole, the fence reads as a roadside boundary enclosure adjoining the highway.
14. Even if I were to find that parts of the fence are not adjacent to the highway, this would not alter my overall conclusion. I agree with the Council that the fencing at the upper end of the site forms the end wall of a structure that has been partially removed. That section connects directly to the remaining fence and, when viewed as a whole, creates a single, continuous enclosure around the site. Whilst the appellant seeks to distinguish between individual sections according to their relationship with the highway, I do not consider the development can be disaggregated in that way as it was erected as a single building operation. Furthermore, it functions as a single, continuous enclosure around the site. I therefore find that the fence does not benefit from permitted development rights under Schedule 2, Part 2, Class A of the GPDO.

15. Accordingly, the appellant has failed to demonstrate, on the balance of probabilities, that the erected fence does not constitute a breach of planning control. The appeal on ground (c) therefore fails.

The Ground (f) appeal

16. An appeal on ground (f) is brought on the grounds that the steps required by the EN to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the EN as constituting a breach of planning control, or, as the case may be, remedy any injury to amenity which has been caused by such breach.
17. The alleged breach is the material change of use of the land to a mixed use comprising a roadside café and the storage and repair of vehicles. The purpose of the EN is to remedy that breach by securing the cessation of the unauthorised use and the removal of those items associated with it. Whilst the appellant contends that the notice should require only the removal of the erected structure, shipping containers and associated materials and debris, compliance with those requirements alone would not remedy the breach. The storage and repair of vehicles could continue on the land notwithstanding the removal of those structures. Consequently, the cessation of the unauthorised use is necessary to secure compliance with the notice.
18. I acknowledge the appellant's contention that there is no clear threshold at which the parking of vehicles becomes the storage of vehicles and that vehicles associated with the lawful use of the site may continue to be present. However, the notice does not require the removal of vehicles ordinarily associated with any lawful use of the land. Rather, it seeks to remedy the unauthorised material change of use identified in the allegation. In my view, the requirements of the notice achieve that objective.
19. As the purpose of the EN is to remedy the breach of planning control, the cessation of the storage and repair of vehicles is necessary to secure compliance. I therefore find that the requirements of the notice are appropriate and do not exceed what is necessary to remedy the breach. The appellant has not advanced any lesser measures that would achieve the same result. Consequently, the ground (f) appeal fails.

The Ground (g) appeal

20. An appeal on ground (g) is brought on the grounds that the period specified for compliance falls short of what is reasonable. The appellant seeks to extend the period from four to eight months to arrange the removal and relocation of the containers and vehicles on site as well as the disposal of relevant materials.
21. However, the appellant has not demonstrated that it would not be possible to appoint suitable contractors and complete the required steps within the four month period specified in the notice. Whilst I accept that the site is located adjacent to the busy A23, I observed that access is available from a sizeable lay-by, which would facilitate the loading and removal of vehicles, containers and other materials. Moreover, the works required are relatively straightforward in nature and do not involve complex engineering operations or significant site remediation.

22. The requirements of the notice are limited to ceasing the use of the land for the storage and repair of vehicles, removing the erected structure, shipping containers, fencing and all materials and debris resulting from compliance with those requirements. These are practical measures that are capable of being undertaken concurrently and do not appear to necessitate an extended programme of works.
23. In determining what constitutes a reasonable period for compliance, I have had regard to the planning harm arising from the unauthorised use and the need to secure the timely remediation of the breach of planning control. The four-month period strikes an appropriate balance between allowing sufficient time for the appellant to organise contractors, relocate vehicles and containers, and clear the site, whilst ensuring that the breach does not persist longer than necessary.
24. On the evidence before me, I am not persuaded that the compliance period is unreasonable or that an extension to eight months is justified. Accordingly, the appeal on ground (g) fails.

Overall Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

26. It is directed that the enforcement notice is corrected by:

- the deletion of the words:

“Within the last 10 years and without planning permission the material change of use of the land from a business use (roadside cafe) to a mixed use of a business use and a car storage use, plus within 4 years and without planning permission the construction of one structure being used for storage and repair of vehicles, and two shipping containers for storage of vehicles. And within 4 years and without planning permission the erection of fencing of more than one metre in height adjacent to the highway” in section 3 of the enforcement notice

and their substitution with:

“Without planning permission, the material change of use of the land to a mixed use comprising a roadside café and the storage and repair of vehicles, facilitated by the erection of a structure used for the storage and repair of vehicles, two shipping containers used for vehicle storage and fencing exceeding one metre in height adjacent to the highway”.

And varied by:

- the deletion of requirement (i) in section 5 of the enforcement notice and its substitution with:

“Cease the use of the Land for the storage and repair of vehicles”

- the deletion of requirement (ii) in section 5 of the enforcement notice and its substitution with:

“Remove the erected structure and shipping containers from the site”

- the deletion of requirement (iii) in section 5 of the enforcement notice and its substitution with:

“Remove the timber lap fencing”

- the deletion of i)- iv) in section 6 of the enforcement notice and their substitution with:

“Four (4) months from the day this Notice takes effect”.

27. Subject to the correction and variations, the appeal is dismissed, and the enforcement notice is upheld.

V Goldberg

INSPECTOR