

# Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2024/E0002
<b>Appeal by:</b>	Mr Gareth Reilly, Reilly Motors
<b>Appeal against:</b>	An enforcement notice dated 22 <sup>nd</sup> February 2024
<b>Alleged Breach of Planning Control:</b>	The unauthorised change of use of building and land for the storage, display, sale, servicing, repair, the carrying out of bodywork, MOT preparation, recovery and valeting of vehicles. Unauthorised metal fence and gates. Unauthorised hard standing.
<b>Location:</b>	Land at Gulf Road, Killaloo, Londonderry.
<b>Planning Authority:</b>	Derry City and Strabane District Council
<b>Authority's Reference:</b>	LA11/2019/0037/CA
<b>Procedure:</b>	Informal Hearing on 18 <sup>th</sup> September 2024
<b>Decision by:</b>	Commissioner Laura Roddy, dated 31 <sup>st</sup> October 2024

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## Grounds of Appeal

1. The appeal was brought on grounds (a), (c), (d), (e), (f) and (g). The appellant subsequently withdrew the ground (a) appeal by correspondence dated 8<sup>th</sup> May 2024 and withdrew the ground (e) and (f) appeals in their Statement of Case (SoC).

### **Ground (c) - that those matters (if they occurred) do not constitute a breach of planning control**

2. In order for the ground (c) appeal to succeed the appellant must demonstrate that the alleged breach either does not require planning permission as it is not development; or is development that does not require planning permission. The ground (c) appeal was initially pleaded in relation to the hardstanding and fencing, although the appellant withdrew their argument in respect of the hardstanding at the hearing.
3. The fencing surrounds the site along the Gulf Road on its northwestern boundary, Foreglen Road on its northeastern boundary, between the site and the adjacent dwelling at 59 Gulf Road on its southwestern boundary and to the southeast defining the boundary with the adjacent agricultural field. The appellant confirmed at the hearing that the fencing varies slightly in height but that it is generally around 2.12m with the exception of the fencing between the adjacent dwelling and the appeal site which is less than 2m.

4. The Planning (General Permitted Development) Order (Northern Ireland) 2015 (as amended) includes, at Part 3 of Schedule 1, permitted development for minor operations. The appellant argued that the fencing was permitted development under Class A which allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The permitted development rights for fencing are subject to exclusions as set out at A1 of the legislation. This states that:

*Development is not permitted by Class A if –*

*(a) the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a road used or designed to be used by vehicular traffic exceeds 1 metre above ground level;*

*(b) the height of any other gate, fence, wall or means of enclosure erected or constructed exceeds 2 metres above ground level;*

5. The fencing between the dwelling and the appeal site is not adjacent to any road and is therefore permitted development as it is under 2m. The remainder of the fencing, at a height of some 2.12m, cannot be permitted development as it exceeds the height specified for permitted development under Part 3, Class A of the Schedule. The ground (c) appeal therefore succeeds in relation to the fencing between the dwelling and the site subject to the notice only. Consequently, the notice is amended to remove reference to this part of the fencing.

**Ground (d) – that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters**

6. Under this ground of appeal, the onus is on the appellant to demonstrate on the balance of probabilities that the alleged unauthorised development is immune from enforcement action. The appellant pleaded this ground in relation to the entirety of the development included in the EN which includes the change of use of the land and building as well as operational development comprising the hardstanding, fencing and gates. The building referred to in the notice is a garage which is within the domestic curtilage of the adjacent dwelling and was approved and built under the planning permission for that dwelling (A/2001/0679/F).

*Change of Use*

7. Section 132(3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. This would include a change of use. To achieve immunity, it must be established that a material change of use occurred before 22<sup>nd</sup> February 2019 and has continued on the same basis for a five year period.
8. At the hearing the appellant stated that the business, Reilly Motors, operated from Glenshane Road from 1983 until the land was vested for the A6 upgrade. It subsequently moved to the appeal site at Gulf Road temporarily in April 2019 while the new permanent premises were completed. The appellant stated that the business was gradually moved from the Glenshane Road site to the Gulf Road site

and that for a period of some 6 months (approximately November 2018 – April 2019) the business operated from both locations.

9. The appellant stated that the servicing works began at the Gulf Road site first and then sales began there around December 2018. They owned four car lifts and two were moved to the Gulf Road site while two remained at the Glenshane Road site during this six month transitory period. The Glenshane Road location closed permanently on 12<sup>th</sup> April 2019 and opened fully at the Gulf Road site on 15<sup>th</sup> April 2019. The business operated from Gulf Road until 1<sup>st</sup> September 2023 when it moved to the new site on Ervey Road. The appellant stated that this move took approximately one week and after the move they only used the Gulf Road site to store cars and occasionally work on vehicles.
10. The appellant considers that the use began in January 2019. In support of this the appellant has provided the following evidence:
  - Invoices or bills as follows:
    - 1 November 2018 - B4b telecoms to Reilly Motors LTD, 59 Gulf Road;
    - 4 November 2018 – EE to Reilly Motors LTD, 59 Gulf Road;
    - 4 December 2018 – EE to Reilly Motors LTD, 59 Gulf Road;
    - 1 January 2019 - B4b telecoms to Reilly Motors LTD, 59 Gulf Road;
    - 2 January 2019 - SSE Airtricity to Reilly Motors, 59 Gulf Road; and
    - 8 January 2019 - Springtown Fuels to Reilly Motors, 59 Gulf Road;
  - Letters or statements from the following:
    - Letter from Robert Reilly dated 27/08/24 stating that Reilly Motors officially relocated to 59 Gulf Road on 12<sup>th</sup> April 2019 but that the business was set up and operating from Gulf Road for approximately 6 months before this. It also states that he washed, serviced and prepped vehicles for MOT at Gulf Road over the last 6 years;
    - Email from the Director of Premier Car Parts Ltd dated 27<sup>th</sup> August 2024 stating he has supplied parts to Robert Reilly at 59 Gulf Road and 250 Glenshane Road since 2018; and
    - Letter from Johnston Car Transport (no date) stating they delivered vehicles to Reilly Motors, 59 Gulf Road from October 2018 to the end of August 2023.
  - Signed template style letters from 14 people stating they used Robert Reilly Motors at Gulf Road for a number of years to buy/service/prepare their cars for MOT. They confirm they used Reilly Motors at the Gulf Road premises as follows:
    - January 2019 – car prepared for MOT;
    - Dec 2018 – purchased car;
    - Jan 2019 – got car serviced;
    - Dec 2018 - got car serviced;
    - Mar 2019 – does not state which service was used;
    - Dec 2018 - car prepared for MOT;
    - Jan 2019 - got car serviced;
    - Feb 2019 - car prepared for MOT;
    - Jan 2019 - does not state which service was used;
    - No date - purchased car;
    - Dec 2018 - got car serviced;
    - Jan 2019 - car prepared for MOT;
    - Dec 2018 - purchased car; and

- Feb 2019 - got car serviced.
  - A social media post dated 12<sup>th</sup> April 2019 announcing the move to 59 Gulf Road from 15<sup>th</sup> April 2019.
  - A number of other invoices have been provided in relation to supply of materials etc and these are dealt with under the operational development.
11. The Council argue that the use did not begin until 15<sup>th</sup> April 2019 and rely on a social media post from the appellant on 12<sup>th</sup> April 2019. This states that:
- ‘Due to the A6 dualling project which recently started after years of being on hold, our current premises will be making way for a new dual carriageway. As such, we will be relocating on Monday 15<sup>th</sup> to temporary premises at 59 Gulf Road, Killaloo – where it will be business as normal.’*
12. They also refer to a complaint from a member of the public received on 13<sup>th</sup> March 2019. The email states that the land has been used for livestock but *‘in the past few days a section of the fencing has been removed, there is heavy machinery on site and a quantity of aggregate has been delivered’*. The appellant challenged the veracity of this complaint stating that he knew who the objector was, and that the complaint was personal. According to the appellant, works were underway to prepare the Gulf Road site from September to December 2019 and that the fencing was put in during October 2018.
13. The appellant told me that the invoices from EE and B4b telecoms were for mobile phones rather than a landline. I accept they are billed to Reilly Motors and addressed to the Gulf Road site. However, given they are for mobile phones rather than a fixed landline and, knowing the business was also run from Glenshane Road at the time the bills were issued, they are of little assistance in clarifying the date the use began on the Gulf Road site.
14. The email from Premier Car Parts, while it states that they supplied Reilly Motors at both 59 Gulf Road and 250 Glenshane Road since 2018, does not distinguish between the addresses or provide dates when they delivered to either address. It is of limited assistance in understanding when the use of the Gulf Road site alone started or ended.
15. Of the signed letters confirming the use of the Gulf Road site two do not state which service was used and one, relating to the purchase of a car, has no date. These three letters therefore do not assist in understanding when the use of the site began. Five relate to cars being serviced from December 2018 to February 2019, four relate to cars being prepared for MOT from December 2018 to February 2019 and two relate to the purchase of cars in December 2018.
16. The social media post by Reilly Motors on 12<sup>th</sup> April 2019 refers to the Glenshane Road site as the ‘current premises’ and refers to relocating to the new temporary premises on 15<sup>th</sup> April 2019. I consider this to be an unbiased and contemporaneous account of the facts at that time. The use of the phrase ‘current premises’ demonstrates to me that there was one business premises for Reilly Motors at that time and that was the site at Glenshane Road. I do not dispute that works were underway to prepare the Gulf Road site to become the temporary premises for the business during the six months before the move. However, I consider that the evidence from the appellant shows that, prior to April 2019, there was only some

sporadic and limited use of the site for storage of cars from October 2018 and servicing and MOT preparation from December 2018 – February 2019 related to the Reilly Motors business. This, combined with evidence of two car sales in December 2018, is not sufficient to persuade me that the site was used on any continuous basis during that time. There is also a gap in evidence for any use of the site related to Reilly Motors between February and April 2019. There is no persuasive evidence of continuous use for the matters stated until April 2019. I consider that, on the balance of probabilities, the use of the site and building for the matters stated in the notice began on 15<sup>th</sup> April 2019.

17. The Google aerial and street view images provided by the Council appear to show the site was still in use for the matters stated in the EN in July 2021, May 2023 and June 2023. The appellant's evidence was contradictory in relation to when the use of the Gulf Road site stopped. The appellant told me that the use of the Gulf Road site ceased for all but vehicle storage and occasional servicing after the move to Ervey Road on 1<sup>st</sup> September 2023. The agent however stated that the use hasn't been abandoned and the site continues to be used for the matters stated in the notice. No ground (b) appeal was put forward by the appellant.
18. Despite the agent's assertions that the Gulf Road site remained in use after the move to Ervey Road, no evidence was provided by the appellant in relation to the use of the site or building for the display, sale, servicing, repair or carrying out of bodywork, MOT preparation, recovery or valeting of vehicles beyond this period. The letter from Johnston Car Transport states that they delivered vehicles to the site from October 2018 to the end of August 2023. This is consistent with the appellant's oral evidence that they moved to the new permanent premises on Ervey Road on 1<sup>st</sup> September 2023.
19. In addition, the Council provided a close-up photo of the fence at the site dated 23<sup>rd</sup> February 2024. This shows a notice on the fence stating 'we have moved to 2C Ervey Road, Cross, BT47 3ET'. Another photo provided by the Council, dated 21<sup>st</sup> February 2024, shows the gate to the site locked and what appears to be the same notice relating to the business relocation on the gate and approximately 7 vehicles inside the site. This demonstrates that the use of the site for the matters stated had ceased by this time.
20. Given all of the above, I am minded to accept the appellant's oral evidence that the use of the Gulf Road site ceased in September 2023. This is consistent with the written evidence namely the letter from Johnston Transport and the photographs from the Council on 21<sup>st</sup> and 23<sup>rd</sup> February 2024. Even if I were to accept the appellant's assertions that the use of the site began in January 2019, the evidence before me suggests that the use of the site for the matters stated in the notice stopped in September 2023. The use of the site from January 2019 to September 2023 would still fall short of the continuous five year period required to be immune from enforcement action. While the appellant stated that the site remained in use for vehicle storage and occasional servicing works after the move to Ervey Road in September 2023, they presented no persuasive evidence that the site was used for these in the intervening period, between September 2023 and February 2024 when the notice was served.

21. For the reasons stated, I am not persuaded that on the balance of probabilities the use of the land and building are immune from enforcement action. The appeal on ground (d) fails in respect of the use of the land and building.

Operational Development

22. Section 132 of the Planning Act (Northern Ireland) 2011 sets out the time limits for taking enforcement action. Section 132(1) states, in relation to operational development, that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed.
23. The enforcement notice was issued on 22<sup>nd</sup> February 2024 and therefore the operational development, namely the hardstanding and fencing must have been substantially complete by 22<sup>nd</sup> February 2019 in order to be immune from enforcement action. The appellant considers that the development was substantially complete in January 2019. In support of his arguments, the appellant has provided the following invoices or bills:
- 2 November 2018 - Michael Magee Fencing to Reilly Motors Ltd, 59 Gulf Road for green pellett fencing, steel gates, steel gateposts, erect fencing, gate posts and gates;
  - 12 November 2018 - Parkes Hire for 1 day hire of a wall chaser and dust extractor to Robert and L Reilly, new House Gulf Road;
  - 26 November 2018 – Fleming to Reilly’s Motors LTD, 59 Gulf Road for 203 x 133 x 30 UB 1 # 4220 and Red Primer 2ltr;
  - 05 December 2018 - Northstone (NI) Limited to Robert Rilley, 59 Gulf Road;
  - 3 December 2018 - Claudy DIY Building Supplies to Reilly Motors, 59 Gulf Road;
  - 4 December 2018 - Robert S G Montgomery Farm Supplies to Reilly Motors, 59 Gulf Road for field gate, hanging post and closing post;
  - 6 December 2018 - Robert S G Montgomery Farm Supplies to Reilly Motors, 59 Gulf Road for supplies including sewer pipes;
  - 10 December 2018 - C P Hire Ltd to Reilly Motors, 59 Gulf Road for a water pump; and
  - 30 December 2018 - Limavady Concrete Products Ltd to Robert Reilly, 59 Gulf Road for 13 inch splayed x 67.
24. The Council argue that the development was substantially complete on 15<sup>th</sup> April 2019 referring to the social media post from the appellant in April 2023 and the complaint from a member of the public received on 13<sup>th</sup> March 2019 referred to earlier.
25. There are two invoices in relation to the fencing and gates. One is dated 4<sup>th</sup> December 2018 for a field gate, hanging posts and closing posts and the other is dated 2<sup>nd</sup> November 2018 for the supply of green pellett fencing, 2 steel gates, 2 steel gateposts and the erection of fence, gate posts and gates. The alleged unauthorised development does not include a field gate. At the hearing the appellant conceded that while a field gate had been delivered to the site and, although it was planned to be installed, it was not. It does not form part of the alleged unauthorised

development and the invoice from Robert S G Montgomery Farm Supplies on 4<sup>th</sup> December 2018 is not relevant to the matters before me.

26. In relation to the other invoice for fencing and gates, the Council argued that the fencing on site is paladin fencing and they do not consider the invoice for 'pellett fencing' relates to the fencing included in the notice. I consider that the appellant's recollection at the hearing that the fencing and gates on the site were installed in October 2018 to be consistent with the invoice from Magee Fencing dated 02/11/18. I accept that the type and colour is broadly consistent with the fencing on the site and that the invoice from Magee Fencing is for the fencing and gates included in the notice. This invoice is billed to Reilly Motors at the address of 59 Gulf Road and specifically includes for the supply and erection of fencing and gates. I therefore accept that on the balance of probabilities the fencing and gates were erected on or before 2<sup>nd</sup> November 2018 which is the date of the invoice. This is more than five years before the date the EN was issued and they are therefore immune from enforcement action. The ground (d) appeal succeeds in relation to the remainder of the fencing surrounding the site (along Foreglen Road, Gulf Road and to the rear of the site along the southeastern boundary) and the gates.
27. With respect to the hardstanding, the appellant states that the invoice from Northstone is for the aggregate used for the hardstanding on the site. However, the only description on the invoice states 'SINV' under the column 'type'. The appellant told me that this description is the code on the Northstone website for aggregate. However, nothing was provided to substantiate this claim. The onus of proof in a ground (d) appeal is firmly on the appellant. Given the lack of detail on the Northstone invoice, I am not persuaded that it relates to the hardstanding on the site. Even if I were to accept that it was for the supply of the aggregate, no evidence has been provided in relation to the installation of the hardstanding.
28. Similarly, the invoice from Limavady Concrete in December 2018, which the appellant tells me is for kerbstones, is also lacking in detail to confirm it relates to the alleged unauthorised development. It refers only to 13 inch splayed with a quantity of 67. Again, even if I were to accept it was for kerbstones, it relates only to the supply and not to the installation of same. The appellant also told me at the hearing that they were installed along the side of the road but were subsequently removed when the road was dug up circa 2020/21. Therefore, they cannot be the same kerbstones that define the area of hardstanding included on the EN which was issued in 2024.
29. The remainder of the invoices, I am told, relate to works on the garage with the exception of the invoice for the water pump which was used following a period of bad weather when the site became water logged. While I accept that works were required to convert the garage to be suitable for use as a sales area and office, the invoices relate to the supply of materials or equipment only and lack sufficient detail to persuade me that they do in fact relate to the conversion of the garage or that the works were undertaken to the garage at the time the materials were supplied. They are therefore of little assistance in understanding the timeframe for the development alleged in the notice.
30. In the evidential context I am not persuaded that, on the balance of probabilities, the hardstanding was in place prior to 22<sup>nd</sup> February 2019. The complaint to the Council

also weighs in favour of this conclusion, noting an aggregate delivery to the site in March 2019. The appeal on ground (d) fails in respect of the area of hardstanding.

**Ground (g) – that any period specified in the notice in accordance with section 140(9) falls short of what should reasonably be allowed**

31. The time period set out in the EN for compliance with the notice is 56 days. The appellant stated that they have had a number of hardships in the last five years and instead sought 180 to comply with the requirements of the notice. The Council stated, at the hearing, that they were content to allow the requested period of 180 days to ensure the work was carried out properly. As there is no dispute I am content to extend the timescale to comply with the notice. The appeal on ground (g) succeeds.

**Decision**

32. The decision is as follows:-

- The appeal on ground (c) succeeds insofar as it relates to the metal fence between the dwelling and the appeal site.
- The appeal on Ground (d) succeeds insofar as it relates to the remainder of the metal fence and gates.
- The appeal on ground (g) succeeds.
- Consequently, part 3(b) is deleted from the notice.
- The steps required at section 4 of the notice are amended to delete 4(b).
- The period for compliance at Section 4(f) of the notice is varied to 180 days.
- The notice as so varied is upheld.

**COMMISSIONER LAURA RODDY**



**List of Documents**

Planning Authority:- Statement of Case by Derry City and Strabane District Council

Appellant:- Statement of Case by MKA Planning

**List of Appearances**

Planning Authority:- Ms K Hope, Derry City and Strabane District Council  
Mr P McCahill, Derry City and Strabane District Council

Appellant:- Mr M Kennedy, MKA Planning (agent)  
Mr R Reilly, Reilly Motors (appellant)

Observing:- Ms A Roarty, MKA Planning  
Ms C McGuinness, MKA Planning