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## Appeal Decision

Site visit made on 10 August 2016

**by Melissa Hall BA (Hons), BTP, MSc, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 September 2016**

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**Appeal Ref: APP/D3315/C/15/3141203**

**Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Nigel Dunn of Chipmunk South West Limited against an enforcement notice issued by Taunton Deane Borough Council.
  - The Council's reference is E0035/14/15.
  - The notice was issued on 8 December 2015.
  - The breach of planning control as alleged in the notice is:  
*Without planning permission, change of use of the site from B1 Office and B8 Storage and Distribution Business Use to B2 General Industrial Use as a wood processing business'.*
  - The requirements of the notice are:
    - (i) *Cease the unauthorised use of the site for wood processing and associated storage; and*
    - (ii) *Remove from the site all equipment and materials associated with the unauthorised use.*
  - The period for compliance with the requirements is one month from the date of the Notice in respect of (i) and two months from the date of the Notice in respect of (ii).
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

### Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Procedural Matters

3. Although not specified in the appeal form, the appellant's submissions relate to ground (e) in addition to grounds (a), (c) and (f). As the Council has had an opportunity to respond to the appellant's case advanced on ground (e), no party would be prejudiced by my consideration of the appeal on this basis.

4. The appellant's appeal statement also refers to a ground (b) appeal. However, it has since been clarified that this reference was made in error and no ground (b) appeal is being made.
5. In addition, the appellant claims that the unsigned and undated Enforcement Notice ("the EN") as served did not provide a copy of a plan showing the precise boundaries of the land to which it related (albeit reference to the plan was made in the EN) contrary to the requirements of Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 ("the ENAR"). The Council has not disputed this claim. Furthermore, the appellant states that as required by Regulation 5 of the ENAR, the accompanying note to the EN does not provide name and address details of parties on whom the EN was served. These matters raise the question of nullity, which I am bound to consider.
6. Following the serving of the EN, the appellant removed the wood chip processing equipment comprising of two driers and two biomass boilers from the site. The Council subsequently visited the site and wrote to the appellant on 15 February 2016 confirming that it considered that the B2 activities had been removed and the EN had been complied with.

## Reasons

7. Section 173(10) of the Act states that '*An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an EN served under s172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under s174*'. The additional matters are prescribed in the ENAR.
8. Regulation 4(c) of the ENAR states that an EN shall specify the precise boundaries of the land to which the Notice relates, whether by reference to a plan or otherwise.
9. The EN describes the land to which it relates as 'Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP ("the site") as shown edged red and shaded pink on the attached plan.' However, no plan was attached to the EN as served and the recipient would therefore need to rely on the description to identify the boundaries of the land to which the EN relates.
10. The appeal site comprises two linked buildings, part of a separate building which is in use as office and welfare facilities and a partly covered external yard. It forms part of a larger group of units at Walford Cross, which I am told have established storage and distribution uses. The unit immediately to the south is attached whilst the other units in the group are detached from the appeal site. Merely describing the appeal site as 'Walford Cross Units' does not identify the number of units to which it relates, be it linked or otherwise, nor does it distinguish those the subject of the EN from the other units within the larger group. Hence the description is not sufficiently precise to be able to identify the boundaries of the land to which the Notice relates as required by Regulation 4(c). In failing to comply with Regulation 4(c) there is also a failure to comply with section 173(10).
11. Furthermore, Regulation 5(c) requires that an EN must be accompanied by an explanatory note that shall include a list of the names and addresses of the persons on whom a copy of the EN has been served.

12. The Council has supplied the names (or identified contacts within companies) and full addresses of those persons on which it served the Notices with a covering letter in its appeal submissions. However, the list of names and addresses which appeared in the note accompanying the EN's as served appears to be incomplete, listing only the company names and little other detail.
13. These errors cannot be corrected by the explanation given and a copy of the plan provided by the Council at the appeal stage. Neither does the Council's contention that the official EN containing all relevant information required by the Act held on its Enforcement Register suffice. Unfortunately it appears that the Council has prematurely issued a draft notice that was incomplete. However, that was the official notice to those concerned and it fails to meet the statutory requirements of section 173(10) of the Act and regulations 4 and 5 of the ENAR. Accordingly, I find it is defective on its face and therefore a nullity. As the EN is a nullity, it is not capable of correction.
14. The Council also failed to sign and date the copy of the EN it served on the appellant. Although I do not find the appellant to be substantially prejudiced by this omission given that the covering letter which accompanied the EN was signed and dated, and S176(5) of the Act gives me the power to disregard non-service, it nonetheless adds to my concern regarding the completeness of the Notice as served.
15. As I have found the EN to be a nullity, the appeal under grounds set out in sections 174(2)(a), (c) and (f) to the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

### **Conclusions**

16. For the reasons given I conclude that the appeal should succeed. Since the Notice is a nullity it is of no worth as a document and no appeal can be founded on it.

*Melissa Hall*

Inspector