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## Appeal Decisions

Site visit made on 17 January 2017

**by Mr Keri Williams BA MA MRTPI**

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

**Decision date: 3 February 2017**

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### **Appeal A: APP/W1525/C/16/3150059**

**Land south of Hayes Chase, Burnam Road, Rettendon, Chelmsford, Essex, SS11 7QT**

- 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 P Herbert against an enforcement notice issued by Chelmsford City Council.
- The Council's reference is 13/00030/COND.
- The notice was issued on 7 April 2016.
- The breach of planning control as alleged is the material change of use of the land for the stationing of a caravan and the use of the land for storage in connection with a recreational use.
- The requirements of the notice are to:
  - i. Cease the use of the land for the stationing of a caravan and for storage not in connection with any lawful agricultural use of the land.
  - ii. Remove from the land the caravan, tools, timber and other construction materials, garden furniture and implements, dustbins, storage tubs, gas canisters, portable generators and any other item stored on the land.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (e) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

**Summary of Decision: The enforcement notice is found to be invalid and is quashed without consideration of the grounds of appeal.**

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### **Appeal B: APP/W1525/C/16/3151443**

**Land south of Hayes Chase, Burnam Road, Rettendon, Chelmsford, Essex, SS11 7QT**

- 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 P Herbert against an enforcement notice issued by Chelmsford City Council.
  - The Council's reference is 16/00031/COND.
  - The notice was issued on 7 April 2016.
  - The breach of planning control as alleged is the building operation of locating a container (shown outlined in blue at the approximate location on the plan attached to the notice.)
  - The requirements of the notice are to:
    - i) Demolish or otherwise remove from the land the container structure shown outlined in blue at the approximate location on the plan attached to the notice.
    - ii) Remove from the land any waste materials resulting from the actions taken in step (i).
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- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (e) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

**Summary of Decision: The enforcement notice is quashed without consideration of the grounds of appeal.**

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**Background**

1. Both appeals concern the same site. It is in a remote location beside the River Crouch, with access along a private track off the A312. The site is within the Metropolitan Green Belt. In 2011 planning permission 10/01686/FUL was granted for a landing stage and dock posts. They are in place. There are boats moored adjacent to the site and steps leading down to the moorings. When I visited there was a caravan, a shed and a container on the land and an area of hardstanding used for vehicle parking. An enforcement notice concerning the same site was issued on 24 September 2015. It alleged the material change of use of the land for external storage. That notice was quashed in appeal decision APP/W1525/C/15/3137485, dated 17 March 2016.

**The Enforcement Notice in Appeal A**

2. Section 173 of the Act as amended sets out what an enforcement notice should contain. It includes a requirement that the notice shall state the matters which appear to the local planning authority to constitute the breach of planning control. It is consistent with caselaw that an enforcement notice should tell an appellant fairly what he has done wrong and what he must do to remedy it. In this case there is ambiguity in the allegation. It is not clear if the phrase "in connection with a recreational use" applies to the caravan or just to the storage. The stationing of the caravan and the storage are not said to be primary uses themselves. Although the allegation refers to a recreational use, it does not state that a material change to that use is alleged.
3. I have considered whether these matters could be addressed using powers available to me to vary the notice. It seems to me that this could involve varying the allegation to one of "A material change of use to a recreational use of the maintenance, repair and restoration of boats and the stationing of a caravan and storage of items for the purposes of that use." Variation of the notice's first requirement would also be needed in order to reflect to allegation as varied. I must also consider whether these variations could be made without causing injustice to the main parties. These matters were drawn to the attention of the main parties and I have had regard to their representations.
4. For its part the Council has no objections to such variations and considers that they would not result in injustice. It suggests that the breach would not be materially different, that the requirements would not fundamentally change and that both parties have addressed all the relevant issues. The appellant takes a different view, observing that it is not clear that the notice was intended to allege a material change of use to a recreational use and that the notice could be seen as agreeing that such a use was lawful. It is also said that the absence of such an allegation led the appellant not to appeal on ground (d) with regard to immunity from enforcement. In the appellant's view, a variation

to refer to a material change of use to recreational use would also introduce a new allegation, resulting in injustice him.

5. While I take into account the Council's view, both the allegation and the requirement as varied would be materially different from those in the notice as issued. The allegation as set out in the notice has resulted in confusion for the appellant. It was not clear on the face of the notice whether or not the Council accepted a lawful recreational use of the land. In his evidence the appellant did refer to his view that there is a long standing recreational use. However, had the allegation been expressed as one of a material change to a recreational use, he may well have appealed on ground (d). He may have sought more comprehensive evidence to support that ground. The Council may also have sought to rebut that evidence with evidence of its own.
6. I conclude that it would not be possible for me to vary the notice to address these matters without causing injustice to the main parties. The notice is not capable of variation to address the matters I set out above. I therefore find it to be invalid and conclude that it should be quashed without consideration of the grounds of appeal.

### **The Enforcement Notice in Appeal B**

7. The two enforcement notices are inextricably linked, the first addressing the use of the land and the second addressing related operational development. The notice in Appeal B alleges a building operation of the location of a container on the land. The appeal includes ground (a), that planning permission should be granted for the container. There is a related deemed planning application to be determined. The container is used for storage related to the recreational use of the land. I have determined above that the notice in Appeal A is invalid and should be quashed. The appellant explains that the omission of an allegation of a material change of use to a recreational use in that notice led him not to appeal on grounds of immunity for recreational use of the land. The issue of whether the recreational use of the land is lawful might well be a significant material consideration when addressing the planning merits of the container. In the context of the quashing of the notice in Appeal A, if I was to proceed to consider the planning merits of the container in Appeal B there would therefore be injustice to the appellant. I conclude that the enforcement notice in Appeal B should also be quashed without consideration of the grounds of appeal.

### **Overall Conclusions**

8. Having regard to the above and to all other matters raised the enforcement notices in both appeals should be quashed. I also draw attention to section 171B(4)(b). Its effect is that if, within the appropriate 4 or 10-year period, a local planning authority has taken or purported to take enforcement action in respect of a breach of planning control, for example by serving a notice which is found to be invalid, they have a further 4 years in which to issue a second or subsequent notice. That is provided that the first notice was not already out of time and that the matter constituted a breach of planning control.

### **Formal Decisions**

#### **Appeal A: APP/W1525/C/16/3150059**

9. The enforcement notice is found to be invalid and is quashed without consideration of the grounds of appeal.

**Appeal B: APP/W1525/C/16/3151443**

10. The enforcement notice is quashed without consideration of the grounds of appeal.

*K Williams*

INSPECTOR