



Appeal Decisions

Hearing Held on 14 April 2021

Site visit made on 15 April 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH July 2021

Appeal A1 Ref: APP/X1545/C/20/3249912

Appeal A2 Ref: APP/X1545/C/20/3249913

Land at The Barn, Honeypot Lane, Tolleshunt Knights CM9 8ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A1 is made by Mr Malcolm Payne and appeal A2 is made by Mr John Payne against an enforcement notice issued by Maldon District Council.
- Enforcement notice A, numbered ENF/12/00267/03, was issued on 28 February 2020.
- The breach of planning control as alleged in the notice is:
 - a. The unauthorised material change of use of the Land to a mixed use comprising of external and internal storage use, a workshop a caravan site for the stationing of a caravan (marked as C on the attached plan) used for residential purposes and the use of part of the building B2 (its location and approximate extent shown hatched in blue on the attached plan) for residential purposes.
 - b. Unauthorised operational development for the material external alterations to the building marked B1 on the attached plan and the erection of shed associated with the use of the caravan.
- The requirements of the notice are
 - a. Cease the unauthorised use of the land for external and internal storage purposes and remove from the land all items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
 - b. Cease the unauthorised use of the land as a workshop and remove from the land all items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
 - c. Cease the unauthorised use of the land as a caravan site for residential purposes and remove from the land all caravans, sheds, items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
 - d. Cease the unauthorised use of the part of the building on the land hatched in blue for residential purposes and remove from the building and the land all fridges, kitchen units, sinks, couches, cupboards, washing machines, vacuum cleaners, clothing, items, paraphernalia or detritus associated with the unauthorised use.
 - e. Demolish the building marked as B1 on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
- The period for compliance with the requirements is three months.
- Appeal A1 is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
- Appeal A2 is proceeding on the grounds set out in section 174(2), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are allowed and the enforcement notice is quashed following correction of the enforcement notice in the terms set out below

in the Formal Decision.

Appeal B1 Ref: APP/X1545/C/20/3249914

Appeal B2 Ref: APP/X1545/C/20/3249915

Land at The Barn, Honeyput Lane, Tolleshunt Knights CM9 8ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal B1 is made by Mr Malcolm Payne and appeal B2 is made by Mr John Payne against an enforcement notice issued by Maldon District Council.
- Enforcement notice B, numbered ENF/12/00267/04, was issued on 28 February 2020.
- The breach of planning control as alleged in the notice is:
 - a. Unauthorised material change of use of the Land to residential (use class C3) with associated operational development.
- The requirements of the notice are
 - a. Cease the unauthorised use of the Land as a single dwellinghouse marked as DH on the attached plan (use class C3) and remove from the land all items, paraphernalia or detritus associated with the unauthorised use.
 - b. Demolish the building marked DH on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
 - c. Demolish the shed associated with the unauthorised residential use of the Land and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
 - d. Remove from the Land the fence or other boundary treatment enclosing the curtilage of the unauthorised single dwellinghouse marked DH on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are allowed and the enforcement notice is quashed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal C1 Ref: APP/X1545/C/20/3249916

Appeal C2 Ref: APP/X1545/C/20/3249917

Land at The Barn, Honeyput Lane, Tolleshunt Knights CM9 8ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C1 is made by Mr Malcolm Payne and appeal C2 is made by Mr John Payne against an enforcement notice issued by Maldon District Council.
- Enforcement notice C, numbered ENF/12/00267/05, was issued on 28 February 2020.
- The breach of planning control as alleged in the notice is:
 - a. The unauthorised material change of use of the Land to a mixed use comprising of external and internal storage use, a workshop a caravan site for the stationing of a caravan (marked as C on the attached plan) used for residential purposes, change of use of the land shaded red, to residential (use class C3) with associated operational development and the use of part of the building B2 (its location and approximate extent shown hatched in blue on the attached plan) for residential purposes.
 - b. Unauthorised operational development for the material external alterations to the building marked B1 on the attached plan and the erection of shed associated with the use of the caravan.
- The requirements of the notice are:
 - a. Cease the unauthorised use of the land for external and internal storage purposes and remove from the land all items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
 - b. Cease the unauthorised use of the land as a workshop and remove from the land all

- items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
- c. Cease the unauthorised use of the land as a caravan site for residential purposes and remove from the land all caravans, sheds, items, vehicles, materials, waste, paraphernalia, detritus or debris associated with the unauthorised use.
 - d. Cease the unauthorised use of the part of the building on the land hatched in blue for residential purposes and remove from the building and the land all fridges, kitchen units, sinks, couches, cupboards, washing machines, vacuum cleaners, clothing, items, paraphernalia or detritus associated with the unauthorised use.
 - e. Demolish the building marked as B1 on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
 - f. Cease the unauthorised use of the Land as single dwellinghouse marked as DH on the attached plan (use class C3) and remove from the land all items, paraphernalia or detritus associated with the unauthorised use.
 - g. Demolish the building marked as DH on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
 - h. Demolish the shed associated with the unauthorised residential use of the Land and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
 - i. Remove from the Land the fence or other boundary treatment enclosing the curtilage of the unauthorised single dwellinghouse marked DH on the attached plan and remove from the land any resulting or associated items, materials, waste, paraphernalia, detritus or debris.
- The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary Decision: The appeals are allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Applications for costs

1. Before the Hearing an application for costs was made by Mr Malcolm Payne against Maldon District Council, revised following the hearing. After the hearing an application for costs was made by Maldon District Council against Mr Malcolm Payne. These applications are the subject of separate Decisions.

Preliminary Matters and The Appeals on Ground (b)

2. The appeal under ground (a) relates only to enforcement notice A, such that if that enforcement notice were quashed there would be no other consideration of the planning merits of the case.
3. The provisions of s176(1) of the Town and Country Planning Act 1990 (the Act) give Inspectors wide ranging powers to correct or vary enforcement notices in order to get them "in order", provided that such alterations would not result in substantial injustice to any party. At the hearing a number of matters were discussed that I consider may require corrections or variations to one or more of the notices. I also indicated that if there were a lot of corrections or variations, even if individually they were minor, that could result in sufficient changes such that there would be injustice to the appellants that may lead to

all three notices being quashed. Having considered each of the three enforcement notices, despite the need for a number of amendments to each, I do not find this sufficient in itself to quash any of the notices.

4. An appeal on ground (b) is that the matters described in the notice have not occurred. The appeals on this ground only relate to enforcement notices B and C. In this case, given the nature of the issues raised, I consider it would be appropriate to deal with them together.

The three enforcement notices and the planning unit

5. During the hearing, I summarised the alleged breaches of planning control as contained within the enforcement notices as follows:

Notices A and B: two uses, being (A) a mixed use (comprising storage, workshop, caravan used for residential purposes and use of part of a building for residential purposes) and (B) a separate residential use of the area shaded red;

Notice C: a single mixed use comprising all the uses set out in notices A and B.

6. In addition, notices A and C included alleged breaches of operational development relating to the building marked B1 on the site plan and a shed next to the caravan within each breach of planning control.
7. Essentially, the uses set out within the breaches of planning control in notices A and B differ from that in notice C. Both cannot be correct. Therefore, I must consider what the use(s) is/are on the site and, depending on my determination, quash whichever notice(s) incorrectly describe the use.
8. The focus of this relates to whether there is a single planning unit comprising the area edged green, or whether the area shaded red is a separate planning unit from the rest of the area edged green.
9. The area edged green on the site plan attached to the enforcement notices comprises a mix of uses. The owner and his partner live within the caravan referred to in the notice. There is storage of items related to hobbies and landscaping and construction businesses associated with him, his sons and step-son. The storage is both within the buildings and the surrounding yard. Building B2 is also used as a workshop and a dayroom in association with the caravan.
10. The area shaded red is within the area edged green on the site plan and covers a rectangular area that contains a building and an area of land around it. The building has two extensions, a large extension to one end and a flat roofed porch. It is occupied as a dwellinghouse.
11. The occupants of the dwellinghouse have changed over time but have always included a son or step-son of the owner of the site. The dwellinghouse has a modest garden area but it is unclear whether it is wholly within the area shaded red. Access and parking for the dwellinghouse is located within the yard, which is within the area edged green but outside the area shaded red. Since occupation of the building as a dwellinghouse, the occupants have stored materials and equipment, both for their work and personal possessions, and

parked their vehicles within the yard area. Their use of the whole site reflects that of the occupants of the caravan. This suggests the occupation of the dwellinghouse is linked to the wider yard within the area edged green, such that the dwellinghouse is part of the mixed use.

12. In addition, the area shaded red appears to approximately locate the dwellinghouse such that it is sufficient to identify the residential use as part of a mixed use, as alleged by enforcement notice C. However, it does not appear to contain the whole of the garden area associated with that use, nor the access and parking. As a result, it does not provide precise boundaries. If the dwellinghouse were a separate use as alleged in notice B, precise boundaries would be required by Paragraph 4, Part 2 of the Town and Country Planning (Enforcement Notice and Appeals) (England) Regulations 2002. As amending the site plan in the enforcement notices subject of notice B would include more land than is currently within the site plan, this may result in injustice to the appellants. Consequently, I am not able to make that correction.
13. Taking all these factors into account, I conclude that the overall use of the yard, including the area shaded red, is a single planning unit comprising a mixed use including the dwellinghouse. As such, the planning units and breaches of planning control described in the enforcement notices A and B must be incorrect and so these notices will be quashed.
14. As a result, there is no appeal under ground (a) to be determined and appeals under the other grounds of appeal will only proceed in relation to the appeals against enforcement notice C. Nevertheless, I will set out the other changes that would be required to all three notices in this section of my decision for completeness.

Whether the breach of planning control was under section 171A(1)(b) of the Act

15. The header at paragraph 1 of all the notices specifies that the breach of planning control falls within section 171A(1)(b) of the Act. However, it was accepted by the Council that this should have referred to section 171A(1)(a) of the Act. In addition, the descriptions of the breach of planning control do not expressly state that development has not taken place without planning permission. Section 173(1)(b) states that enforcement notices shall state the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. This would require correction.
16. It was agreed at the hearing that the header at paragraph 1 of the notices should be corrected to refer to section 171A(1)(a) of the Act and that the phrase "without planning permission" should be included at the start of the description of the breaches of planning control for additional clarity. It was accepted by the appellants that they had interpreted the notice in line with these corrections, such that there would be no injustice arising.

Typographical error

17. Within the descriptions of the breaches of planning control at section 3 of the enforcement notices under appeals A and C a comma is missing between 'workshop' and 'a caravan site'. This is a minor typographical error whose correction would not cause injustice to any party. These enforcement notices would need to be corrected with the insertion of those commas.

Enforcement notices B and C

18. It was accepted by the appellants that the matters described in enforcement notices B and C, insofar as they relate to the dwellinghouse marked DH on the site plan, have taken place albeit they suggest not in the manner described in the notices. As such, the appeals under ground (b) would be bound to fail. I have, therefore, dealt with the matters raised in their submissions either within these preliminary matters or within the appeal under ground (d).
19. My attention has been drawn to the planning enforcement order under sections 171BA, 171BB and 171BC of the Act relating to the development set out in enforcement notice B and that element within enforcement notice C that relates to the dwellinghouse use. Where there has been concealment of a breach of planning control, or anything that goes to make up that breach, a planning enforcement order enables the local planning authority to take enforcement action in respect of the apparent breach or any of the matters constituting the apparent breach within the enforcement year. The effect of this is that enforcement action, such as issuing enforcement notices, can take place after the time limits set out at section 171B of the Act but within that enforcement year. The appellant has accepted that the enforcement notices were served within the enforcement year.
20. My attention has been drawn to the judgement in *Jackson v Secretary of State for Communities and Local Government* (SSCLG), also known as *Bonsall v SSCLG*, [2015] EWCA Civ 1246 where it was argued that those developers had concealed the breach of planning control such that they deliberately deceived the relevant local planning authorities. It was found that the tests set out in *Welwyn Hatfield Council v Secretary of State for Communities and Local Government* [2011] UKSC 15, [2011] 2 A.C. 304 (Welwyn) could continue to be applied following the insertion of sections 171BA, 171BB and 171BC into the Act. No planning enforcement order had been issued in those cases and, in that regard, they differ from this case such that these judgements are not directly relevant to these appeals.
21. In this case, the planning enforcement order means that the issues raised by the tests set out in *Welwyn* were effectively considered by the Magistrates Court in making the order. It is not for me to overturn the planning enforcement order, that would only be possible through an appeal of the Magistrates Court's decision. That means an appeal under ground (d) relying on immunity periods under section 171B of the Act relating to the matters set out in the order cannot succeed.
22. Section 173(1)(a) of the Act requires enforcement notices to state the matters that constitute the breach of planning control. Section 173(2) sets out the test for this description, which is that it should enable any person on whom a copy of the enforcement notice is served to know what those matters are.
23. Enforcement notices B and C describe the change of use to a dwellinghouse as the "unauthorised material change of use of the Land to residential (use class C3) with associated operational development". I understand that the Council consider the use of land changed and a dwellinghouse was constructed upon it. This led to them stating that the change of use occurred within the last ten years at section 4 of the enforcement notices. However, the appellants' case is that the building was constructed and used as a garage before the building was

- converted into residential use. As a result, they suggest that period should be four years.
24. My attention was drawn to the definition of 'land' as set out at section 336 of the Act, that includes buildings. On that basis, the description of the development within the notice would be accurate whether the building had been constructed as a dwelling or the use had changed from its original purpose. In both cases there were works that could be described as operational development.
25. Consequently, understanding what the Council consider is the breach of planning control relies on the reference to the period over which the use has taken place as set out at section 4 of the enforcement notices. Given the effect of the planning enforcement order set out above, this would be immaterial insofar as this relates to the dwellinghouse in enforcement notices B and C.
26. Taking account of all the above, it was clear to the appellant what the matters constituting the breach of planning control were. As a result, I consider that the descriptions of the breach of planning control in enforcement notices B and C do not require amendment in relation to the dwellinghouse.
27. I note that, in section 4, the enforcement notices set out that the breach of planning control occurred within the previous ten years. There are no requirements to specify such a period on enforcement notices, although it is normal practice. In this case, it is helpful in confirming how the Council view the breach of planning control, being the change of use of land to residential and the construction of a dwellinghouse. Nevertheless, it also indicates that this is a period after which the breach may become lawful under section 171B of the Act.
28. The appellant suggests that the development was the change of use of a building to a single dwellinghouse, where the breach of planning control would be four years. However, the existence of the planning enforcement order means that the immunity period for the dwellinghouse is irrelevant, such that its inclusion is somewhat misleading in indicating that there would be an immunity period. As a result, the enforcement notices under appeals B and C would need to be corrected with the following explanatory sentence in section 4 after the sentence ending "the last ten years":

Appeal B

"However, as a result of the planning enforcement order at the site, enforcement action may be taken against the use of the land as residential even if the normal time limit under section 171B of the Act has expired."

Appeal C

"However, as a result of the planning enforcement order at the site, enforcement action may be taken against any breach of planning control including the use of the land as residential even if the normal time limit under section 171B of the Act has expired."

Building B1

29. The description of the breach of planning control in appeals A and C refer to "Unauthorised operational development for the material external alterations to the building marked B1 on the attached plan ..." and the requirements of the notice require its removal. The requirements indicate that the Council consider this is a new building, in which case the description would understate the breach of planning control in relation to this building.
30. Building B1 as marked on the enforcement notice site plan comprises a timber framed structure on a brick plinth that I was able to view on my site visit. I understand that significant works were carried out to the building that ceased some years ago. The brick plinth remains from the previous building. The walls above the brick plinths are timber framed and replace the original breeze block and brick walls. Some of the timber trusses within the roof were re-used and strengthened with a significant number of additional timber trusses. When work ceased, new internal walls were in the process of construction and floors were being laid. Some external works also remain to be completed. Consequently, the walls and much of the roof is new such that, as a matter of fact and degree, I consider that the building is new.
31. As a result, I consider that the breach of planning control on enforcement notices A and C is misleading. It would be better described at paragraph b. as "Unauthorised operational development comprising replacement of the building marked B1 on the attached plan ...". However, this is a substantial change to the breach of planning control. It means that the appellants would not have known what the matters were at the time the enforcement notice was served and, if I were to vary the notice in this way, this would cause injustice to the appellant.
32. The alternative would be to remove the above section from paragraph b. from the breaches of planning control on enforcement notices A and C and delete the corresponding requirement. This would also be a significant change but would not result in injustice to the appellant. Given that the Council could serve another notice relating to this part of the breach of planning control, nor would there be injustice to the Council. On that basis, I propose to correct these enforcement notices in this way.

Sheds

33. There are two small garden sheds adjacent to the caravan and within the garden to the dwellinghouse. Enforcement notices A and C refer to a single shed associated with the use of the caravan within the description of the breach of planning control and require it be removed in the requirements of the notice.
34. The second shed is probably outside the red area outlined on the site plan attached to the enforcement notices. It is not specifically mentioned within any of the descriptions of the breaches of planning control, but is required to be removed in the requirements of the enforcement notices subject of appeals B and C. However, the Council suggest it is caught by the reference to associated operational development relating to the change of use of the land to residential.

35. As set out above, the description of the breach of planning control is not particularly detailed or precise insofar as it relates to the dwellinghouse, nor are the precise boundaries of the red area identified. Nevertheless, the erection of the shed would have been operational development so would be covered by the description at section 3 of the notices. As a result, I do not consider that the description of the breach of planning control needs amending in this regard.

Storage use

36. The enforcement notices refer to a mixed use including external and internal storage use and the requirements refer to items, vehicles, materials, waste, paraphernalia, detritus or debris stored. This indicates a variety of storage although is not precise.
37. I understand that the storage relates to personal items such as fishing and camping equipment, items owned by various construction and landscaping businesses associated with the owner of the site and his family, vehicles of various types and various items of hardcore and scrap. The items being stored have moved around the site from time to time. Consequently, the storage is a mix of uses that does not fit within any single use as defined by the Town and Country Planning (Use Classes) Order 1987, so is sui generis.
38. Although the appellant has queried whether the description of the storage uses was precise, it is clear they understood what those matters are in accordance with Section 173(2) of the Act. Taking account of all the above, the descriptions of the storage uses within the enforcement notices is sufficiently accurate that it does not need correction.

Conclusion

39. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notices subject of appeals A and B and the plan attached to the notice subject of appeal B is incorrect. Consequently, these appeals succeed. Enforcement notice C should be corrected insofar as it relates to building B1 so, to that extent, appeals C1 and C2 also succeed
40. The enforcement notices subject of appeals A and B will be quashed. In these circumstances, the appeal on ground (a) of appeal A1 and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended will not be considered.
41. As a result, only the following grounds of appeal relating to the enforcement notice, subject of appeal C, will be determined.

The Appeal on Ground (d)

42. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The alleged breach in enforcement notice C constitutes a material change of use to a mixed use and operational development. Although the mixed use comprises a number of individual uses, that mixed use is a single use itself. Similarly, as the mixed use and operational development are all contained within the description of the alleged breach, they would constitute a single breach of planning control.

- Consequently, if it were possible to take enforcement action against one element of the mixed use, neither that part of the breach of planning control, nor the breach as a whole, would benefit from the lawfulness conferred by Section 171B of the Act. In that case, an appeal on this ground would fail.
43. The mixed use alleged in the breach of planning control under enforcement notice C includes the residential use of the area shaded red to residential with associated operational development. As set out above, that part of the alleged breach of planning control is subject of the planning enforcement order.
44. Section 171BA(2) of the Act states that enforcement action can be taken in respect of the apparent breach or any of the matters constituting the apparent breach that are set out in the planning enforcement order. The description of the breach of planning control within the planning enforcement order is the change of use of the land shaded red to residential (use class C3) with associated operational development.
45. In this case, the description of the breach of planning control in enforcement notice C includes the exact wording in its entirety from the planning enforcement order. It is clear, therefore, that enforcement action can be taken against that part of the breach of planning control. For the reasons set out above, as that forms part of the breach of planning control, enforcement action can be taken in respect of the breach of planning control as a whole.
46. As I have determined the whole site to be one planning unit, in practice the impact of the planning enforcement order extends to a wider area than the planning enforcement order actually covers. Therefore, to ensure that there are no issues of natural justice arising from this I need to consider whether appeals A or C under ground (d) would have succeeded if the planning enforcement order had not been made. The enforcement notice was issued on 28 February 2020. Consequently, if there had not been a planning enforcement order, the mixed use of the site constituting the breach of planning control on enforcement notices A and C would have become lawful were it to have continued for a period of 10 years beginning with the date on which the use had started.
47. Prior to occupying the caravan on the site, the appellant had lived in the house at Krissimon Farm. At this time, he used the appeal site in much the same form as it is currently used, with external and internal storage and workshop. However, this was associated with his occupation of that house; there was no caravan and what is now the dwellinghouse had not been constructed. Those uses, both of Krissimon Farm and the yard that forms the appeal site, were integrated as a single planning unit.
48. I understand that the house burnt down in 2009. It was rebuilt and subsequently sold, with the details for sale produced in October 2010 and the sale taking place in 2011. It was at that point that the house was sold that the yard was split from the house, dividing the planning unit into two.
49. For these reasons, based on the evidence provided and on the balance of probability, I consider that the mixed use described in the enforcement notice commenced when the house was sold and the planning unit was split into two. That was less than 10 years before the enforcement notice was issued on 28 February 2020. So even if the planning enforcement order had not been made,

the breaches of planning control set out in enforcement notices A and C would not have become lawful under Section 171B of the Act prior to the issue of the enforcement notices.

50. For these reasons, I conclude that the appeal under ground (d) must fail.

The Appeal on Ground (f)

51. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements of the enforcement notice seeks to cease the unauthorised uses of the land; remove the associated items including caravans, sheds, vehicles, materials, etc; and demolish building B1, the dwellinghouse, shed and boundary fence for the dwellinghouse. These requirements seek to restore the land to its condition before the breach took place. Therefore, the purpose of the requirements of the enforcement notices are to remedy the breach of planning control.
52. The appellant suggested that the requirement to cease the storage use and remove all vehicles would stop them being able to park their vehicle on the land when they visit. There are a number of vehicles stored on the land, such as classic Minis, and the requirement would secure their removal. However, it would not preclude the temporary parking of vehicles on the land ancillary to any lawful use.
53. The requirements of the notice require the removal of all fridges, kitchen units and sinks from the building hatched in blue on the site plan. The appellant suggests that they should be able to retain these items to allow them to prepare food and drink whilst lawfully using the site. However, that would not fully remedy the breach of planning control that includes use of part of the building on the land hatched in blue on the site plan for residential purposes.
54. For the reasons given above I have removed the breach of planning control relating to building B1 from the enforcement notice. Consequently, requirement e. should also be removed.
55. The requirement relating to the use of the land used as a single dwellinghouse relates to the use of the building and the land around it. As set out previously, the definition of 'land' in the Act also includes buildings. Consequently, the requirements of the notice referring only to land do not need varying.
56. The notice requires the demolition of the dwellinghouse. The planning enforcement order relates to both the use of land for residential purposes and the operational development related to that. As set out above, the building cannot, therefore, be lawful and allowing the building to remain would not fully remedy the breach of planning control.
57. The shed associated with the dwellinghouse forms part of the associated operational development described in enforcement notice C and the planning enforcement order. Consequently, it forms part of the matters constituting the apparent breach such that enforcement action can be taken against the building. The requirement to remove the shed seeks to remedy the breach of planning control.

58. Since an appeal on ground (a) has not been made against enforcement notice C, there is no deemed application for planning permission before me. Hence, I am unable to consider granting planning permission for part of the existing development to remain. Allowing part of it to remain would not fully remedy the breach of planning control.
59. As a result, I conclude that, other than requirement e., the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal succeeds on ground (f) to the extent that requirement e. should be deleted.

The Appeal on Ground (g)

60. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
61. Enforcement notice C includes a dwellinghouse and caravan used for residential purposes. The occupiers will need to find new accommodation and I need to take account of their rights under the Human Rights Act 1998 and have due regard to the Public Sector Equality Duty. I have taken into account the circumstances in which the appellant under appeal C1 came to occupy the site following his home being destroyed in a fire. On that basis, I consider that the three month period provided in enforcement notice C falls short of what should reasonably be required to allow the residents of the site to find alternative accommodation.
62. I also note that the storage and workshop on the site contain items, materials and tools that have taken many years to accumulate by the appellants and their family. Given the potential difficulty with finding an appropriate location for these to be stored and moved, this adds weight to my conclusion that the period specified in the notice for compliance falls short of what should reasonably be allowed.
63. The appellant has suggested a period of between 6 to 12 months to comply with the notice. My attention has been drawn to the effects of Covid-19 and lockdowns that may affect the ability of the residents to find suitable alternative accommodation. Taking all the above into account, I consider a period of 12 months to comply with the enforcement notice under appeals C would be reasonable.
64. For these reasons, I conclude that the appeal under ground (g) should succeed.

Formal Decisions

Appeals against enforcement notice A

65. The enforcement notice is quashed.

Appeals against enforcement notice B

66. The enforcement notice is quashed.

Appeals against enforcement notice C

67. It is directed that the enforcement notice is corrected and varied by:

- the deletion of "... paragraph (b) of section 171A(1) ..." and substitution of "... paragraph (a) of section 171A(1) ..." in the header at paragraph 1;
- the description of the breaches of planning control at paragraph 3 shall begin with the phrase "Without planning permission:" prior to paragraph a;
- within the descriptions of the breaches of planning control at section 3 insert a comma between "workshop" and "a caravan site";
- the deletion of paragraph b. in the descriptions of the breach of planning control at section 3 and substitution with "b. The erection of shed associated with the use of the caravan.";
- in section 3 insert after "... the last ten years.": " However, as a result of the planning enforcement order at the site, enforcement action may be taken against the use of the land as residential even if the normal time limit under section 171B of the Act has expired.";
- the deletion of requirement e. from section 5 of the enforcement notice and consequential re-lettering of the following paragraphs;
- the deletion of 3 months and the substitution of 12 months as the period for compliance.

68. Subject to the corrections and variations, the enforcement notice is upheld.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Russell Forde BEng(Hons) PGDipTP MRTPI Smart Planning

Malcolm Payne Appellant

Dan Payne

Richard Payne

John Payne Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Leigh MA MRTPI Lead Specialist Place, Maldon District Council

Vikki Bowles Senior Case Worker, Maldon District Council