The Planning Inspectorate

Appeal Decisions

Inquiry held on 25 – 27 April 2023

Site visit made on 27 April 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

3 Appeals at Land situated at Lyndon Thomas Ltd., Birchfield Springs, Rushton Road, Desborough, NN14 2QN
Appeal A Ref: APP/L2820/C/20/3253535
Appeal B Ref: APP/L2820/C/20/3253536
Appeal C Ref: APP/L2820/C/20/3253537

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (TCPA).
- The appeals are made by Lyndon Thomas Limited (Appeal A), Lyndon Thomas (Appeal B) and Samantha Thomas (Appeal C) against an enforcement notice issued by Kettering Borough Council (now North Northamptonshire Council).
- The notice, numbered ENFO/2016/00136A, was issued on 1 May 2020.
- The breach of planning control as alleged in the notice is the material change of use of the land to a mixed *sui generis* use comprising of:
  A) the use of the land for the winning, working, storage and sale of minerals;
  B) the use of the land for the unauthorised importation, storing, processing, sorting, transferring and depositing of waste materials;
  C) the use of the land for the storage of plant, machinery and vehicles associated with uses A and B above (processors/crushers);
  D) the use of the land for the storage of plant hire machinery and storage of parts for the purpose of hire;
  E) the residential use of the land, through the stationing of a timber lodge marked A on the Plan with decking, a shed and a caravan;
  F) the use of the land for a fishing lake business;
  G) the erection of a building, patio and boundary walls hatched in yellow on the Plan, which is part and parcel to the mixed use;
  H) the use of the land for mechanical repairs, vehicle maintenance, plant maintenance and the storage of mechanical tools;
  I) the erection of a building hatched in blue on the Plan, which part and parcel to use (H);
  J) the unauthorised formation of a pond and two lakes, laying down of hardstanding and access roads, pillars and toppings, perimeter walls and gates above 1m adjacent to the high road part and parcel with use (F) above;
  K) the creation of a haul road that is shown on the Plan hatched in orange, that is part and parcel of a mixed use; and
  L) the siting and stationing of a portacabin on the land marked B on the Plan for the purpose of an office that is part and parcel of the mixed use.
- The requirements of the notice are to:
  Step 1: Cease the unauthorised mixed use of the land;
  Step 2: Remove any buildings, hardstanding accesses, patio, pathways, ancillary debris, machinery, machinery parts, tools, plant, plant machinery and vehicles associated with the mixed use from the land;
  Step 3: Cease the residential use of the land and remove the associated timber Lodge, decking, shed and caravan from the land and all accompanying residential paraphernalia and debris;

Step 4: Remove all perimeter boundary pillars, toppings, walls and gateways from the land adjacent to the high road;
Step 5: Remove all waste materials and minerals from the land;
Step 6: Cease all excavations on the land;
Step 7: Deconstruct the haul road and remove all associated materials from the land that is approximately shown hatched; in orange on the Plan;
Step 8: Cease use of the office that is part and parcel of the unauthorised mixed use and remove the facilitating portacabin and all its ancillary utilities and debris from the land (location approximately marked B on 'the Plan);
Step 9: Deconstruct and infill all excavations forming the lakes and the pond and restore the landform to the condition that existed before the breach of planning control took place;
Step 10: Restore the land to how it was prior to the unauthorised development (including in terms of topography).

- The periods for compliance with the requirements are: Steps 1 & 6: On the day the notice takes effect (save for the residential use, see Step 3). Steps 2 and 3: 6 months; Step 4: 1 month; Steps 5, 7, 8 & 9: 3 months; Step 10: 12 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal originally brought on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed as the Secretary of State directed that this would be EIA development and an Environmental Statement has not been submitted.

Decisions

APP/L2820/C/20/3253535, APP/L2820/C/20/3253536 & APP/L2820/C/20/3253537

1. The enforcement notice is quashed.

Applications for costs

2. Application for costs have been made by the Council against the appellants and by the appellants against the Council. These applications are the subjects of separate Decisions.

Planning history

3. The relevant planning history of the site includes the grant of permission[1] (the 2010 permission) for the construction of a fishery comprising 3 lakes, stock pond, various ancillary buildings, a car park and a temporary residential mobile home. Two applications for non-material amendments (NMEs) to this permission were granted in 2015 & 2016[2] for external changes to the facilities building (the building marked in yellow on the plan attached to the Enforcement Notice (EN)).

4. The 2010 permission is subject to a number of conditions, some of which require details to be submitted for the further approval of the Council. Details pursuant to conditions 3, 6, 8, 10 and 14 were approved in 2010 and condition 7(1) was approved in 2011. Condition 1 requires the development to commence within 3 years of the date of the original permission and conditions 4, 5, 9, 11, 12 and 13 relate to the operation of the fishing business and the provision of the approved access and car parking area before the business operation commences. Condition 2 was a temporary permission for a temporary dwelling for someone employed in the fishery business and this expired in 2013.

[1] Ref: KET/2010/0242
[2] Refs: KET/2015/0523 & KET/2016/0600

5. There was no condition requiring compliance with specified plans but the 2010 permission states that it grants permission *'for the development as described and in accordance with the application and plans submitted'*.

6. In March 2020, the Council issued an EN covering a similar mixed use to that described in this appeal, which was then withdrawn prior to the issue of the current EN.

Preliminary Matters

7. The dispute between the parties centres firstly on the Council's submission that the 2010 planning permission has not been validly implemented within the 3 year time period specified in condition 1. It consequently considers that the permission has now lapsed. Secondly, the Council submits that, in any event, the activities that have taken place on site do not all relate to the construction of the lakes and have introduced a new, mixed use on site for which there is no planning permission.

8. The appellants consider that the permission has been implemented and that this was previously agreed by the Council who have since changed their stance on the matter. They also maintain that the allegations relating to a mixed use are incorrect and the Enforcement Notice (EN) is incapable of correction without prejudice to them.

9. The Secretary of State has issued a screening direction confirming that the alleged mixed use is development that requires an Environmental Impact Assessment (EIA) and the submission of an Environmental Statement (ES) before a planning application for it could be considered.

10. The appellants do not want to apply for permission to run a minerals, waste or plant hire operation on the site but were advised that an ES for an appeal on ground (a) could not be limited to parts of the alleged mixed use and would need to cover all the elements of that use as required by the EIA Regulations[3].

11. As the possibility for an appeal on ground (a) in respect of this EN has now lapsed, the appellants are unable to re-apply for the fishing lake use (as also included in the allegations) through these appeals.

Main Issues

12. I therefore consider the main issues in these cases are:

    on Ground (b): whether all the allegations that are claimed to comprise the unauthorised mixed use have occurred as a matter of fact and, if they have not, whether this should result in the quashing of the enforcement notice;

    whether the 2010 planning permission has been and remains validly implemented and if has;

    on ground (c): whether the allegations relate to that permission are consequently authorised;

    If these grounds fail then, on ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control or injury to amenity and on ground (g): whether the time for compliance is reasonable.

[3] Reg 41

Site and surroundings

13. The appeal site is an area of rural land on the outskirts of the village of Desborough. It is bordered by Rushton Road to the north and slopes down towards where the River Ise runs in a valley to the south. The land has been developed by the construction of 3 fishing lakes, one of which has a pathway around it that is not yet complete, and a stock pond. There are presently 2 entrances to the site off Rushton Road and buildings on the site include an incomplete facilities building, a machinery store, 2 greenhouses, a portacabin and a small storage shed.

14. I am told the final plans for the site include the completion of the car park and facilities building, the construction of a hatchery building and further landscaping works. Both site entrances have temporary gates; one leads to the proposed car parking area next to the facilities building and the other is a haul road running towards the eastern side of the largest lake.

Reasons

15. The main thrust of the disagreement between the parties is that the Council submits that the 2010 permission has lapsed and consequently there is no extant permission for the development of the lakes or any works associated with them. It considers that all work that has taken place on site amounts to a mixed use for which there is no planning permission. The appellants maintain that the permission was implemented and that this had previously been accepted by the Council.

16. It is the case that the site has been the subject of ongoing monitoring by the Council since works to construct the lakes began and, prior to the EN being issued, Council Officers had confirmed on several occasions that they had inspected the site and concluded that the work being carried out was in accordance with the permission.

17. The Council told the Local Government Ombudsman that the works were in line with the 2010 permission in an Inquiry 2013. The fact that 2 applications for NMEs were accepted in 2015 and 2016 and subsequently granted supports this view. If the original permission had lapsed by the time these were submitted they would, presumably, not have been registered as valid.

18. Also, in 2018, the Council was concerned that traffic accessing the works was causing a problem for the local community and issued a Community Protection Order (CPO) requiring the completion `of the works granted in the 2010 permission by the end of 2018. This also confirms that, at that time, the Council considered the permission to be extant. At the Inquiry, it was agreed by the Council's planning witness that works that could amount to implementation of the 2010 permission began within 3 years.

19. It therefore seems to me that there is sufficient evidence to confirm that the scheme had been validly implemented through the works carried out on site between 2010 and 2018, although this does not, of course, mean that subsequent development is necessarily authorised.

20. Nevertheless, it is also the Council's case that the whole of condition 7 is a 'condition precedent' that was required to have been discharged before any development, other than remediation works, commenced on site. It submits that as parts 2 and 3 of condition 7 have not been discharged, this condition is breached and the works already carried out have not, therefore, implemented the 2010 permission.

21. The first part of condition 7 states that no development *'other than that required to be carried out as part of an approved scheme of remediation'* is to be carried out until parts 1, 2 and 3 of the condition have been complied with. Part 1 requires the submission and approval of a remediation scheme and, as noted above, this has been discharged. Part 2 requires notification to be given to the Council 2 weeks prior to commencement of '*the remediation scheme works'*, and that these are carried out as approved.

22. Part 3 relates to any '*unexpected contamination'* and associated remediation work that is found to be required whilst carrying out the *'approved development'*. The Council is to be notified of this and remediation works then carried out as required by part 2. Clearly, the *'unexpected contamination'* referred to in part 3 can only be identified once work on the development approved in the planning permission has commenced. Consequently, parts 1, 2 and 3 cannot all be completed before the main development begins, meaning that condition 7, in its entirety, is unlikely to be a true 'condition precedent'.

23. Section 8 of the Land Investigation Report that was submitted with the planning application was subsequently approved as the remediation scheme required by part 1 of condition 7. The Report envisaged both permanent residential development and fishing lakes being part of the development on the application site and the only required remediation identified in it relates to the possible creation of a residential garden. The residential mobile home applied for was subsequently only granted a temporary permission and there were no residential garden areas created or planned.

24. As there is no permanent dwelling permitted and I have seen no evidence that a residential garden was ever created, there was no remediation work to be carried out in respect of this and no works about which notice needed to be given to the Council. I therefore conclude that there has been no failure to comply with part 2 of condition 7 in this respect.

25. The Council also suggests that the Report requires any *'capping material'* brought onto site to have been tested. In the approved section entitled *'Remediation Strategy'*, para 8.3.2 states *'In proposed garden/landscaped areas of the residential area, an imported capping layer (cover system) of chemically 'clean' soils will be introduced to sever the pathway between contaminants and end-users.'* The next section, 8.4 covers *'Specification for imported capping materials'* and requires them to be *'sampled and tested to demonstrate they are 'fit for purpose' before being brought onto site'*. The Council suggests that this applies to the materials brought onto site to change the contours of the land and create and line the lakes and that the condition has been breached because testing has not been done.

26. However, it seems to me that this fill material is not a *'capping material'* or a *'cover system'* brought onto the site for the purpose of isolating any areas of contaminated ground from contact with users of the site. There is no evidence that any ground contamination has been found whilst creating the lakes or that the material brought onto the site under an Environmental Permit is intended for this purpose.

27. Any such material is, in any event, subject to the restrictions of the Environmental Permitting regime. I conclude therefore that the fact that parts 2 and 3 have not been discharged do not invalidate the permission, which I consider had been implemented within the 3 years required by condition 1.

28. The Council also submits that the works that have taken place to construct the lakes and ancillary development differ so widely from the application plans that the 2010 permission should no longer be considered valid. The appellants, however, submit that all the development on site is associated with that permission and, whilst there are some accepted deviations from the original plans, there is no condition requiring strict compliance with the plans and the changes are not material to the operative part of the permission.

29. I have concluded that the initial works, that were well underway before the EN was issued, implemented the 2010 permission. Even if the details of what has been constructed on site since 2018 do not fully accord with the plans submitted with the planning application and are subsequently found to be unauthorised, this does not necessarily mean that all the operations on site constituted separate uses, unrelated to the formation of the lakes.

30. It is important to establish the correct definition of any mixed use on the site because, as noted above, the appellants did not wish to apply for planning permission for the whole of the alleged mixed use and have not been able to present an appeal on ground (a) (that planning permission should be granted for the alleged breach of planning control) without including all the disputed allegations set out in the EN.

31. The mixed use cited in the EN contains elements that the appellants claim are not separate uses in their own right but are part of the works required to construct the fishing lakes. They have explained that they do not have the experience to inform a specialist study or the resources to undertake a full EIA and produce an ES in respect of all the operations that they deny have taken place at the site. They state that they have only ever intended to use the land for the fishing lake business permitted in 2010.

32. If they are correct about any of the allegations for which there is an appeal on ground (b) and the EN is corrected to exclude them, the appellants would have been deprived of the chance to apply for planning permission for any unauthorised development related to the fishery business that may have actually occurred on site, either through an appeal on ground (a) or subsequently through a revised planning application, as an extant EN against the development would then be in place.

33. An ES was required for at least some, if not all, of the matters comprising the alleged mixed use. In my opinion, it is apparent from the evidence submitted that an appeal on ground (a) for planning permission for that particular mixed use would have been likely to have little chance of success. Whilst I have powers to correct the EN, I consider that, if it is found that not all those components of the alleged unauthorised mixed use that the Council claims are unrelated to the fishing business have, in fact, taken place, the appellants would be prejudiced if those incorrect elements were to be subsequently removed from the EN and the notice upheld.

34. Turning now to those matters that the appellants claim have not occurred as discrete uses unconnected to the fishing lake business, firstly, **allegation A** cites the use of the land for the *winning, working, storage and sale of minerals*. It relates, in particular, to blue clay and ironstone that has been excavated from the site. Although some of this material has been retained for use in the development, the surplus has been removed and sold.

35. The Council notes that areas of the site where no lakes were proposed were excavated and considers that the amount of material exported is excessive when compared to the extent of the approved lakes. The appellants claim that it was necessary to take most of the blue clay found during the lake excavations off site as it was unsuitable for use in recontouring the land. They claim that material from other areas on site was excavated to use instead and the cost of the removal operation meant that any money received for the blue clay did not result in a profit.

36. Whether or not a profit was made from the material does not affect the question of whether the operation to dig out and remove the clay from the site was a distinct and separate use amounting to a different development to that of forming the lakes. It was clear from the outset, and recorded by the Council in site notes and the report to the Ombudsman, that significant engineering works would be needed to construct the lakes. This would involve considerable amounts of material being excavated and, in my view, it would not be unreasonable to expect that some of this would have to be taken off site.

37. There was no evidence provided by the Council to counteract the claim that the blue clay was unsuitable for use on site and the fact that more than expected might have been moved or that it was subsequently sold does not necessarily mean that a different use that is unconnected with the construction of the lakes had been created or was taking place in isolation from the primary use of the site.

38. In a letter to the Council dated April 2019 Northamptonshire County Council described the operations taking place on site as '*engineering activities*' with no indication that those activities involved mineral extraction. As this letter was specifically concerned with the possibility of enforcement action, this indicates that the County Council had not identified this as a matter of concern at that time, which was when significant development activity was taking place on the site. I therefore find that item A has not, as a matter of fact, taken place as a separate element of a mixed use on the site, unrelated to the construction of the lakes.

39. A**llegation B** relates to the suggestion that the land has been used for the '*unauthorised importation, storing, processing, sorting, transferring and depositing of waste materials'*. The appellants have explained the problems that were encountered when trying to contour the land to avoid banking it too steeply around the edges of the lakes and, as noted in the previous paragraphs, why some of the excavation material was not suitable or plentiful enough the achieve this. The appellants do not dispute that a significant amount of inert waste has been brought onto the site to raise land levels where necessary for the levelling of the lakes and to infill areas where unsuitable material was removed. As such, they submit that this activity was related to the construction works and note that an Environmental Permit (EP) for it was obtained from the Environment Agency.

40. The material brought onto the land did include a percentage of general waste at a level apparently permitted, some of which the appellants chose to screen out and remove from site. Once again, the letter from the County Council of April 2019 does not mention any distinct waste operation taking place. They do record that this was occurring at another, unconnected, site discussed in the same letter and the inference to be drawn is that, had it been happening at the appeal site, this too would have been mentioned.

41. The amount of waste material brought onto the site for the re-contouring of the land may be significantly in excess of that which would have been needed to construct the lakes as shown on the application plans and could, I consider, require a variation to the planning permission. However, it does not mean that the operation comprises a use that is separate and distinguishable from the works that were being undertaken to construct the lakes.

42. The Council has submitted photographs of various items that are clearly not imported inert waste. They include household rubbish that the appellants explain was fly-tipped in the site entrances and then needed to be brought onto the site to be piled up for disposal. A pile of tyres seen in the photographs was then later used to define the edges of the haul road constructed to access the lake workings, which changed route as needed. There were crushers and screeners seen on site by the Council but again the appellants submit that, whilst sorting and screening of the imported material did occur, this was only to bring it up to the standard required for use in the lakes project. Rejected material was then transported off site or sold from it.

43. Again, it appears to me that these activities were part and parcel of the works to construct the lakes, apart from the disposal of the fly-tipped material which was the landowner's responsibility to deal with but did not amount to a separate waste transfer operation or business. I therefore conclude that allegation B did not, as a matter of fact, occur as anything other than a use ancillary to the construction of the lakes.

44. Following on from this, **allegation C** relates to plant and machinery used in connection with allegations A and B. As I have found that these allegations have not occurred as separate uses, this allegation must also be incorrect.

45. Turning to **allegation D**, this relates to the use of the land for the storage of plant hire machinery and storage of parts for the purpose of hire. **Allegation L** is connected to this and relates to the use of a portacabin on the site as an office for the appellants' plant hire business.

46. There is no dispute that plant and machinery from that business have been used in the construction of the lakes. Therefore, there will have been times when machinery has been stored on site whilst in use for that purpose. Mr Thomas (the appellant in appeal B) explained that, when needed for use on the appeal site, machinery might be brought directly from its previous hire location to be used to work on construction of the lakes. Similarly, if it was needed elsewhere to fulfil a request from a customer it would be sent out from the appeal site, as business requirements and subsequent financial benefits were given priority over the lakes project.

47. I accept that the appeal site covers a significant area and the apparently large numbers of machines sometimes noted on site are not necessarily inconsistent with the scale of the operations being undertaken there. The site is clearly now set up as fishing lakes with ancillary operational development intended to serve it. Nevertheless, it seems to me likely that, at some point over the years taken to bring the site to its current condition, the plant hire business was using it as a base. The business did not, until recently, have its own site where machinery that was not out on hire could be stored and it made use of yards in other ownerships. However, I was told that there are between 150 and 180 pieces of plant and machinery owned by the business and the only evidence relating to where other items were being stored at that time was for a yard which only took about 6 items at a time.

48. Whether or not there were other locations being used, the appellant did not provide any details of these to the Council, despite requests at the time. From the evidence provided and the number of traffic movement to and from the site, it seems to me more likely than not that machines were being kept at the appeal site even when not being used to construct the lakes. This was also a concern raised by the Council in the CPO of 2018. It would have been convenient for the appellant to do this and, whilst it might not have been the only site where such plant was kept, I consider, on the balance of probabilities, that the site was used to store plant on behalf of the business.

49. It also appears that, at times, the portacabin office was used by the appellants for conducting their plant hire business, as claimed in allegation L, in addition to being used as a site office for the lake construction. The address was used in advertisements for the business and computers and employees were noted by the Council to be carrying out work directly relating to it in the portacabin. Consequently, the appeal on ground (b) fails in respect of these allegations.

50. **Allegation E** relates to an unauthorised residential use of the land taking place on the land. The appellants claim that the timber lodge, shed and caravan on the site were being used by an employee working on the site and for a night watchman. However, condition 2 of the 2010 permission expired in 2013 and, from the evidence submitted by the Council, there was clearly a full-time residential use occurring when the EN was issued. Although the residential use has now ceased, this component of the mixed use was nevertheless unauthorised and was not necessary to facilitate the construction of the fishing lakes and the appeal on ground (b) in respect of it fails.

51. **Allegation F** relates to the use of the land as a fishing lake business. There is no appeal on ground (b) in respect of this and whether it is currently authorised is covered by the appeal on ground (c).

52. There is also no dispute between the parties that the operational development cited in **allegations G, I, J and K** has occurred as a matter of fact. It is the appellants' case however that these items are all associated with the development and subsequent use of the land for a fishing lake business as granted by the 2010 permission and are not part and parcel of a mixed use. These allegations include items such as a patio, the haul road and boundary walls and gates that are not shown on the 2010 application plans but which the appellants claim are not material changes. These allegations have occurred, are currently unauthorised and are part of a mixed use.

53. **Allegation H** relates to the use of the land for carrying out mechanical repairs, vehicle maintenance, plant maintenance and the storage of mechanical tools. There is no dispute that these activities have occurred but the appellants again say that it was all in connection with the machinery in use for the construction of the lakes. Given my findings on allegation D, I consider that it is most likely that both scenarios occurred, with maintenance and carried out both on plant being used on the site and plant waiting to go out on hire. This component of the mixed use was therefore unauthorised and the appeal on ground (b) in respect of it fails.

54. I have found that the site was not being used for the winning, working, storage and sale of minerals or the storing, processing, sorting, transferring and depositing of waste materials as individual elements of a mixed use unconnected to the development of the fishing lakes.

55. However, I have found that there was an unauthorised mixed use occurring on the site at the time the EN was issued, and this included a residential use and use as a plant hire business with ancillary maintenance and repair works and storage, even though these uses now appear to have ceased. There is also unauthorised operational development and, in the absence of the other unauthorised uses on the site, I consider this is therefore associated with the fishing lakes project. Nevertheless, the combination making up the actual mixed use is different to that alleged in the EN.

56. The Council also submits the lake development has not been carried out in accordance with the submitted plans and, because the variations are considered to be significant and material, this also means that the permission has not been properly implemented and is no longer valid.

57. The appellants accept that the development that has taken place is not in accordance with the submitted plans or the NME approvals but nonetheless maintain that these changes are not material and should not be the subject of enforcement action.

58. Nevertheless, whichever of the above alternatives apply, I have found that the operations on site that are the subject of allegations A, B and C were related to the construction of the lakes, whether still authorised or not and the mixed use allegation is therefore incorrect in any event.

59. I have already concluded in previous paragraphs that I am unable to correct the allegation by deleting those elements of the mixed use that have not in fact occurred without prejudice to the appellants. The appellants have also not had the chance to appeal any refusal of planning permission for the retrospective amendments to the fishing lake scheme and, in the circumstances, I conclude that the only option is for me to quash the EN in its entirety.

Other matters

60. Following the conclusions set out above, it will be open to the Council to consider whether it would be expedient to issue another EN under the provisions of s171B(4)(b) of the TCPA, to cover the items that I have concluded did occur as part of a mixed use at the time the original EN was issued. Although at my site visit there was no indication that there was any use other than the fishing lake business taking place, if the Council has valid concerns that the actual mixed use I have identified above might re-occur and objects to this, it could consider whether to take this action.

61. It also has the option to consider whether to take enforcement action against the deviations from the originally permitted scheme, as it has not been constructed in accordance with the submitted plans. It could now also accept a retrospective application for the works that have been carried out, to regularise the situation in terms of the use of, and operational development on, the site.

62. I have taken note of the concerns and complaints from the local community who have, no doubt, been adversely affected during the many years the development has taken to get to the stage that it had reached at the time of my visit. The vast majority of letters that I received on the subject spoke of the excessive amounts of traffic coming to and from the site through what should have been quiet country roads and the consequent detrimental impact on living conditions in the vicinity.

63. At the Inquiry, I expressed my concerns that the residents would be subject to even more disruption and disturbance should the requirements of the EN be carried out in full, whether or not these could be achieved within the time set by the EN. No doubt this will be a matter that will be carefully considered by the Council when drafting any future enforcement requirements.

Conclusions

64. From the evidence before me, and for the reasons given above I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeals succeed on ground (b) to that extent.

65. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

66. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act as amended do not fall to be considered.

Katie Peerless

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christian Hawley of Counsel He called:	instructed by Thrings Solicitors
Mr Lyndon Thomas	Appellant
Mr Neil Osborn BA(Hons) MRTPI	DLP Planning Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

John Barrett of Counsel	instructed by North Northamptonshire Council
He called:	
Lucinda Lee	Interim Senior Planning Officer North Northamptonshire Council
Andrew Gray MSc TP MRTPI MSc UP&R MIED	Aitchison Raffety for North Northamptonshire Council

INTERESTED PARTIES:

Cllr. Jim Hakewill	Rothwell Mawsley Ward Councillor North Northamptonshire Council

DOCUMENTS

Doc 1	Opening Statement for the Appellants
Doc 2	Opening Statement for the Council
Doc 3	Signed Statement of Common Ground
Doc 4	Costs application from the Council
Doc 5	Closing submissions from the Council
Doc 6	Closing submissions from the Appellants
Doc 7	Costs response and reciprocal costs application from the Appellants
Doc 8	Costs response and Council's final comments on its costs application
Doc 9	Final costs comments from the Appellants
Doc 10	Letter from Cllr J Hakewill