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## Appeal Decisions

Hearing Held on 27 April 2023

Site visit made on 27 April 2023

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 June 2023**

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**Appeal A: Ref APP/Y0435/C/22/3297869**

**Appeal B: Ref APP/Y0435/C/22/3298181**

**Hollington Wood, Newport Road, Emberton, Olney MK46 5JH ('the Land')  
shown edged red on the plan attached to the notice ('the Plan')**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Mr Carlos Williams (Special Ops HQ) and Appeal B is made by Mr Philip Solt against an enforcement notice issued by Milton Keynes Council.
  - The enforcement notice was issued on 7 April 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of part of the land and operational development comprising of the following:
    1. Unauthorised change of use of Hollington Wood.
    2. Unauthorised use of timber extraction area as a car park.
    3. The erection of objects and structures within the site to facilitate the unauthorised use of the land.
  - The requirements of the notice are to:
    - (i) Cease all activities and events which fall outside the scope of woodland management; notwithstanding or exceeding the parameters as defined within the General Permitted Development Order (2105) [as amended]. This includes any events facilitated by the owner, Airsoft, Tots Outdoor and Kids Outdoors or any other company or third-party provider/occupier.
    - (ii) Cease the use of the timber extraction area as a facility for the parking of vehicles related to any activity or event that does not fall within the lawful use of the land as defined within planning application 15/02500/ANOT.
    - (iii) Permanently remove all structures and objects from the site which are in place in connection to Airsoft, Tots Outdoor, Kids Outdoor and other events and activities which fall outside the scope of Woodland Management.
  - The period for compliance with the requirements is 3 months.
  - Appeal A is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the Act).
  - Appeal B is proceeding on the grounds set out in section 174(2) (c) (d) (f) of the Act.
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### Decisions

1. The notice is found to be a nullity and so no further action will be taken in connection with both appeals (A and B). In the light of this finding, the Council should consider reviewing the register kept under section 188 of the Act.

### Costs applications

2. Costs applications were made by Mr Philip Solt against Milton Keynes Council, and by Milton Keynes Council against Mr Philip Solt and Mr Carlos Williams (Special Ops HQ). These applications are the subjects of separate Decisions.

## Procedural matter

3. Following receipt of the written representations upon the appeals, I consulted with the parties on apparent defects within the notice and invited comments within the context of a necessary consideration nullity and validity. Such issues accordingly also formed a significant focus of the Hearing and of the questions I put to the parties. All views expressed and comments received at all stages of the appeal procedures have been taken into account in my findings.

## Reasons

4. Section 173(1)(a) of the Act says that a notice shall state the matters which appear to the local planning authority to constitute the breach of planning control.
5. Section 173(2) states that a notice complies with the above requirement if it 'enables any person on whom a copy of it is served to know what those matters are'. The test is as described in *Miller-Mead*<sup>1</sup>, namely whether the notice tells the recipient fairly what they have done wrong and what they must do to remedy it. In that case, Upjohn LJ ruled that a notice would be bad on its face and a nullity if it was hopelessly ambiguous and uncertain as regards the description of the breach or the necessary remedial steps. In the event of a nullity there is, in effect, no notice. There is nothing to be corrected or subject to any ground of appeal set out under s174(2). It is, in Upjohn LJ's words, 'so much waste paper'.
6. There are a multitude of defects with the notice in the appeal before me which cause it in my judgement to be hopelessly ambiguous and uncertain in the *Miller-Mead* sense.
7. Firstly, aside from operational development, the breach of planning control set out in Section 3 of the notice is said to constitute the unauthorised change of use of **part** of the land (my emphasis). Section 2 had already defined 'the land' as Hollington Wood shown edged red on the enforcement plan. So which part of the land is alleged have been the subject of an unauthorised change of use? Section 3.1 does not help in that regard since it refers to an 'unauthorised change of use of Hollington Wood' and, as I have highlighted above, that constitutes the whole of 'the land' as defined – and not part of it. By that logic, a reasonable reader might construe that the part of the land targeted by the notice is in fact the only part of the Wood that is explicitly mentioned within the allegation – the timber extraction area - and accordingly that the unauthorised change of use relates solely to the 'unauthorised use of the timber extraction area as a car park' (Section 3.2). There is nothing I can see within the rest of the notice which fatally contradicts or undermines that interpretation (particularly as Airsoft, Tots Outdoors and Kids Outdoors mentioned elsewhere in the document all use the area as a car park). Further the operational development referred to in Section 3.3, 'the erection of objects and structures within the site to facilitate the unauthorised use of the land' is vague and unmarked upon the enforcement plan. It could relate to objects and structures within the car park. And, very significantly, it is only the change of use of the timber extraction area to a car park which has been specified. No other specified change of use of Hollington Wood has been set out within the matters which appear to constitute the breach of planning control.

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<sup>1</sup> *Miller-Mead v MHLG* [1963] 2 WLR 225

8. It goes to the heart of the inherent ambiguity of the notice that it has become known to me during my consideration of the appeal arguments, however, that the Council takes the position that the notice is intended to target an unauthorised change of use of the whole of the land. But, in reference to my above comments, the notice does not specify what that new use is – and therefore is seriously defective in that respect. An appellant must fairly know what they have done wrong and what they must do to remedy it, which means in this case sufficient precision as to the unauthorised change of use which is being alleged. I do not agree with the view of the Council, reinforced at the Hearing, that specifying the new use is not necessary simply since ‘any use’ outside of permitted development rights is unlawful. A notice should identify with sufficient clarity which alleged use or uses constitute an alleged material change of use (MCU) of the land amounting to development without planning permission. A new use, for instance, may be ancillary to the lawful use of the land and would not constitute an act of development to which the permitted development framework applies. While it could be inferred from parts of the notice<sup>2</sup> that wargames and forestry school activities (Airsoft, Tots and Kids Outdoors) fall within the alleged MCU it is not sufficiently clear whether or not various other recreational activities and gatherings described by Mr Solt are covered by the allegation and requirements. For instance, the “Camera Club” and the Winter Solstice gathering mentioned in the papers, each of which Mr Solt was uncertain was a use which constituted an ‘unauthorised change of use’ attacked by the notice. Clearly, the implications of such lack of clarity in the allegation are serious as there are criminal sanctions for non-compliance.
9. The hopeless ambiguity and uncertainty of the notice is further reinforced by a failure, while listing development plan policies, to give reasons as to why the breach of planning control is in conflict with them. Full reasons are likely to have made the alleged breach and associated requirements clearer and easier to understand, while also forming the main issues upon which any deemed planning application would be considered. Further confusion has been caused by including reference to an entirely irrelevant policy by error (Policy DS1 of Plan:MK 2016-2031 (2019)) relating to residential settlement.
10. Added uncertainty is afforded by the failure within the notice to sufficiently specify within the requirements (with or without annotation or marking of the enforcement plan) which objects and structures facilitate the (unspecified) unauthorised use of the land and therefore need to be permanently removed. It was evident at the Hearing and site visit that the Council was seeking to target some objects and structures but not others, but this was not identified in the notice with sufficient precision, particularly given the unspecified MCU.

## Conclusions

11. I have concluded that the notice is a nullity and in these circumstances the appeals (A and B) under the various grounds set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

*Andrew Walker*

INSPECTOR

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<sup>2</sup> albeit not within the allegation set out within Section 3 itself, and bearing in mind a possible restricted interpretation of the allegation and requirements as set out in paragraph 7 of this Decision

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Carlos Williams (Appellant A)  
Neal Brett (spoke on behalf of Carlos Williams)  
Philip Solt (Appellant B)  
Stephen Solt (spoke on behalf of Philip Solt)

### **FOR THE LOCAL PLANNING AUTHORITY:**

Lakeisha Peacock (Senior Planning Officer)  
Zehn Sajid (Planning Enforcement Officer)  
Andrew Irving (Ecologist)  
Victoria Barrett (Team Leader – Planning Enforcement)

### **INTERESTED PERSONS:**

Joseph Soul (Neighbour)  
Anna Hughes (Kids/Tots  
Outdoors)

### **DOCUMENT submitted at the Hearing**

- 1 Council's rebuttal of Mr Solt's costs claim and application for full costs award against both appellants.