



## Appeal Decision

Site visit made on 28 June 2023

**by Peter White BA(Hons) MA DipTP MRTPI**

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

**Decision date: 15 August 2023**

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**Appeal Ref: APP/K1935/C/22/3310739**

**Land and premises known as Car park to the side of 8 Aintree Way,  
Stevenage, SG1 5RF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Larry Urbanowski against an enforcement notice (the notice) issued by Stevenage Borough Council.
  - The notice was issued on 14 October 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a structure on the land, in the approximate position marked with a cross on the attached plan.
  - The requirements of the notice are:
    - (i) Remove the unauthorised structure built on the Land;
    - (ii) Remove and dispose of all building materials, refuse and debris emanating from the unauthorised structure and related works from the Land;
    - (iii) Any other spaces of the communal car park located on the Land affected by the unauthorised works to be returned to their original state;
    - (iv) Provide 4 no. replacement trees of a similar type and maturity to those which were chopped down to be planted in a location to be agreed by the local planning authority, with all costs for the replacement trees, their replanting and reestablishment to be borne by the owner / occupier of 4 Aintree Way.
  - The period for compliance with the requirements is: 24 weeks.
  - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

### Preliminary matters

2. During the appeal process I sought the views of the main parties on the construction of criteria (iii) and (iv) of Section 5 of the notice. I have taken those comments into account in coming to my decision.

### Reasons

3. Section 173 of the Town & Country Planning Act 1990 relates to the content and effect of an enforcement notice. S173(1)(a) & (2) require a notice to state the matters which appear to the Council to constitute the breach of planning control, and sufficiently to enable any person on whom a copy of it is served to know what those matters are. Section 173(3) requires a notice to specify the steps required to be taken.

4. The relevant test in each case is that set out in *Miller-Mead*<sup>1</sup>. It establishes that a notice which is hopelessly ambiguous and uncertain, so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission, or could not tell with reasonable certainty what steps he had to take to remedy the alleged breach, would be a nullity.
5. The alleged breach of planning control, described in Section 3 of the Notice, relates to a structure on the land "in the approximate position marked with a cross on the attached plan", but there is no cross on the plan accompanying the Notice.
6. However, the land is a small area encompassing car parking spaces, access and areas of planting, and there was only one building on the land at the time of my visit. I am therefore satisfied that it is sufficiently clear to those served with the notice which building the notice refers to, such that the error does not render the notice a nullity. It is open to me nevertheless to correct any error or misdescription under section 176(1) of the Act, provided no injustice is caused to the appellant or the LPA. In this instance, I conclude that, the notice can be corrected by removing "in the approximate position marked with a cross on the attached plan" from the allegation, without injustice to the appellant or the Council.
7. In Section 5 of the Notice criterion (iii) requires, "Any other spaces of the communal car park located on the land affected by the unauthorised works to be returned to their original state". And criterion (iv) requires trees to be planted, "in a location to be agreed by the local planning authority".
8. The reference to 'any other spaces' means requirement (iii) is imprecise and ambiguous. The Council's comments on this matter advise that in June 2022 they were concerned that, on completion, the building works would spill over onto adjoining spaces, and had already encroached on some land adjacent to the south.
9. I have not seen definitive evidence of the extent of construction at the time the notice was issued in October 2022. But an enforcement notice relates to development which had occurred at the time the notice was issued, not in relation to further works which may occur in relation to construction commenced, but which has not been completed. The appellant is also entitled to know from within the four corners of the enforcement notice itself what is required, without reference to any other document, and that is not the case. Consequently, I am not satisfied that recipients of the notice would understand the nature and extent of this requirement with reasonable certainty.
10. Similarly, the need for the agreement of the local planning authority with respect to tree planting locations in requirement (iv) requires agreement of the Council, which is not within the control of recipients of the notice. The notice itself is also not clear what the requirements of the Council would be in order to secure their agreement, which introduces significant uncertainty into that requirement.
11. There is therefore a significant degree of uncertainty introduced by requirements (iii) and (iv) of the notice. Consequently, I find the notice to be a nullity as the requirements of Section 173(3) have not been met.

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

## **Conclusion**

12. I conclude that the notice is a nullity. In these circumstances, the appeal on the ground set out in section 174(2)(b) of the 1990 Act as amended does not fall to be considered.

*Peter White*

INSPECTOR