



Appeal Decision

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/M2460/C/23/3326850

Bracknell Farm Leicester Road, Leicestershire LE9 7TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Martin Smith against an enforcement notice issued by Leicestershire County Council.
 - The notice was issued on 4 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the Land from agriculture to a mixed use for agricultural use and a waste transfer centre.
 - The requirements of the notice are to:
 - a) Cease the use of the Land as a waste transfer centre.
 - b) Remove all waste materials deposited on the Land as a result of its use as a waste transfer centre
 - c) Remove all machinery and other chattels placed on the Land for the purpose of its use as a waste transfer centre.
 - d) Return the Land to its former condition.
 - The periods for compliance with the requirements are:
 - a) Within two weeks from the date this notice takes effect
 - b) Within three (3) months from the date this notice takes effect
 - c) Within six (6) months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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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.

Matters concerning the notice

2. Section 173(9) of the Town and Country Planning Act 1990 (as amended)(the Act) states 'An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.'
3. The enforcement notice identifies four requirements: a) Cease the use of the Land as a waste transfer centre; b) Remove all waste materials deposited on the Land as a result of its use as a waste transfer centre; c) Remove all machinery and other chattels placed on the Land for the purpose of its use as a waste transfer centre; and d) Return the Land to its former condition.

4. The periods for compliance with the requirements are identified as a) Within two weeks from the date this notice takes effect; b) Within three (3) months from the date this notice takes effect; and c) Within six (6) months from the date this notice takes effect. There is no compliance period identified for requirement d).
5. The appeal was due to be dealt with by way of a hearing. However, prior to the hearing, I raised with the parties whether, given the above, the notice is a nullity. The parties have both provided comments in writing and I have taken their comments into account when considering whether the notice is a nullity.
6. I have been referred to *King & King v Secretary of State for the Environment* [1981] JPL 813, where an enforcement notice was upheld which did not expressly specify the period for compliance, but from which the period could be deduced from the four corners of the notice. However, with respect to the appeal before me, it is not possible to ascertain the period for compliance in relation to requirement d) from the four corners of the notice.
7. As confirmed in *Lynes & Lynes v West Berkshire District Council* [2002] EWHC 1828 (Admin), an enforcement notice which, on the face of it and without having to refer to evidence elsewhere, fails to specify a period for compliance as required by section 173(9) of the Act is a nullity and is therefore without legal effect. Since the enforcement notice fails to specify a period for compliance with respect to requirement d), it fails to comply with the requirements of section 173(9) of the Act and is therefore a nullity.
8. I raised a number of other matters concerning the notice in my letter to the parties. However, since I have found the notice to be a nullity, it is not necessary for me to consider those matters further.

Conclusion

9. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR