



Appeal Decision

Site visit made on 16 April 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal Ref: APP/N1540/C/22/3308817

Land at Unit 5, 2 Edinburgh Place, Harlow, Essex CM20 2DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Farrah Hussain against an enforcement notice issued by Harlow District Council.
 - The notice was issued on 15 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised Change of Use from B2(General Industrial) use to a mixed Use (Sui-Generis).
 - The requirements of the notice are:
 1. Cease the unauthorised use of the unit.
 2. Remove all items stored inside and outside of the unit associated with the unauthorised use.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) 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.
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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.

Reasons

2. Section 173(1)(a) of the Town and Country Planning Act 1990 (the Act) requires an enforcement notice to state the matters which appear to the local planning authority to constitute a breach of planning control. Section 173(2) of the Act states that a notice complies with Section 173(1)(a) if it enables 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, or the activities required to cease. If an enforcement notice does not comply with Section 173(1)(a) of the 1990 Act, it is null and cannot be saved by the powers of correction available under Section 176(1).
3. In the case of *Miller-Mead*¹ it was held that the test is whether the notice is hopelessly ambiguous and uncertain, such that the owner or occupier could not tell in what respect it was alleged that they had developed the land without permission, or could not tell with reasonable certainty what steps they had to

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

take to remedy the alleged breach. In such a case, the notice is bad on its face, and a nullity.

4. In this case, the Notice describes the alleged breach of planning control as, "Without planning permission, the unauthorised Change of Use from B2 (General Industrial) use to a mixed Use (Sui-Generis)".
5. The Notice refers to 'a mixed use (Sui-Generis)'. It does not, however, set out the component uses of that mixed use. Reading the Notice as a whole, the reasons and requirements sections of the Notice provide no further clarity on what the uses are that are alleged to have occurred. The alleged breach of planning control is of critical importance in the construction of the enforcement notice, and the Notice fails to inform the recipient with reasonable certainty what the breach of planning control is.
6. The requirements of the notice also refer to the description of the alleged breach of planning control by requiring "the unauthorised use" to cease and the removal of all items associated with "the unauthorised use". Given the absence of any clarity in relation to the alleged breach, the requirements of the notice are wholly ambiguous. Consequently, I am not satisfied that recipients of the Notice could tell, with reasonable certainty, what they were required to do to remedy the alleged breach.
7. The defects in the alleged breach and requirements of the Notice are therefore such that the notice fails to meet the requirements of Sections 173(1)(a) and 173(3) of the Act.
8. I have had full regard to the need not to reach a finding of nullity too readily, since it is in the public interest not to set the test for nullity too low. I am also conscious of the need to consider the matter in a manner which is not unduly technical or formalistic. However, I find the allegation and requirements of the notice to be so ambiguous and uncertain that the recipient would not have been able to tell with reasonable certainty how they had developed the land without permission and what steps they had to take to remedy the alleged breach.
9. As a result, I find the notice does not meet the tests laid down in *Miller-Mead*, and overall fails to comply with Section 173 of the Act. Having found the Notice to be a nullity, the alleged breach of planning control and requirements cannot be corrected.

Conclusion

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

Peter White

INSPECTOR