



Appeal Decisions

by **D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC**

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Appeal A Ref: APP/U1105/C/24/3342728

Appeal B Ref: APP/U1105/C/24/3342729

Higher Wick Farm, Wick, Honiton EX14 4TY

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended (the 1990 Act).
- Appeal A is made by Mr Barry Hooper of JY Hooper and Sons against an enforcement notice issued by East Devon District Council. Appeal B is made by Mrs Jean Hooper.
- The notice was issued on 18 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agricultural use to a mixed use of agricultural and Use Class B2 (General Industrial) use by virtue of the use of a former agricultural barn shown edged blue on the attached plan as a steel fabrication workshop.
- The requirements of the notice are to:
 - i. Permanently cease the operation of the steel fabrication business from the agricultural barn.
 - ii. Permanently cease the use of the agricultural barn as a steel fabrication workshop.
 - iii. Permanently remove all materials (steel girders etc) associated with the steel fabrication business from the Land
 - iv. Permanently remove all debris associated with compliance with steps (iii) from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (e), (f) and (g) of the 1990 Act. 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.

Summary of Decision: The enforcement notice is quashed.

Application for Costs

1. An application for costs was made by Mr Barry Hooper of JY Hooper and Sons and Mrs Jean Hooper against East Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The allegation in Section 3 of the enforcement notice is the material change of use of the Land to a mixed use of agriculture and Use Class B2 (General Industrial). The Land is that shown edged in red, which relates to the planning unit. This area includes three barns and external land. To provide clarity, the allegation refers to the unauthorised activity taking place within a former agricultural barn edged in blue. In fact, the blue land includes two barns and an area of forecourt.
3. The requirements are set out above. There is no requirement to cease the mixed use of the Land by ceasing the use as "Use Class B2 (General Industrial)". Instead, the requirements relate to the alleged unauthorised steel

fabrication use of the barn(s) within the blue line. Crucially, there is another barn, that falls outside of the blue line (the upper barn). The Appellants argue that steel fabrication has taken place from the upper barn for many years.

4. The consequence of the notice as drafted is under-enforcement by virtue of Section 173(11) of the 1990 Act. This provides that (a) where an enforcement notice in respect of any breach of planning control 'could have' required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
5. The Council has pointed out that requirement III relates to the whole of the Land. This requires the permanent removal of all materials (steel girders etc) associated with the steel fabrication business. As such, it is suggested that under-enforcement may not materialise, if the notice were upheld as drafted, as it would be difficult to carry on fabrication activities between the red and the blue lines if all materials are removed from the entire red line area. This point is arguable. The Appellants suggest a different interpretation, that requirement III does not cause the Land to be kept clear of materials. Moreover, the Appellants argue that requirement III concerns steel fabrication, whereas the allegation is the material change of use of the Land to mixed use of agriculture and Use Class B2 (General Industrial). It is maintained that the mixed use for agriculture and a B2 Use could continue but not use for steel fabrication.
6. In any event, the Council agrees that requirements I and II do not entirely match the description of the breach. I consider that there is another element of ambiguity because requirements I and II concern the activities said to be taking place within part of the blue line, whereas III concerns the Land as a whole. I have a duty to 'get the notice in order' and any ambiguity should be addressed. Therefore, I must consider whether I could use my powers of correction under Section 176(1) of the 1990 Act, without injustice.
7. To rectify the notice, I would make a correction as follows – "Without planning permission, the material change of use of the Land from agricultural use to a mixed use of agriculture and as a steel fabrication business". The requirements would flow from the allegation and require (i) cease the unauthorised mixed use of the Land by ceasing the use as a steel fabrication business, and (ii) remove all materials associated with the steel fabrication business from the Land. The plan would be corrected to delete the blue line.
8. The Council considers that amending the notice in this way would not cause injustice since the notice as drafted enforces against the land within the red line. The Council's says its intention is to require cessation of the use of the whole red line area, which has always been clear from the wording of the notice. It is said that the Appellants would not have taken any different action if the notice had been drafted in the way suggested by the proposed correction.
9. However, I do not agree. The suggested correction would extend the terms of the notice as it would require the alleged use of the upper barn to cease, which it does not at present. This would make it more onerous to comply with and would cause injustice to the Appellants. The requirement to permanently remove all materials associated with the unauthorised fabrication from the land

would not be sufficient to prevent the alleged B2 use from reoccurring. I note that in *Howells v SSCLG* [2009] EWHC 2757 (Admin), it was held that the power to correct a plan is not constrained to reducing an area, but the test of injustice applies, nonetheless.

10. The Council has suggested an alternative that essentially involves deleting the red line from the plan. The Council considers this would remedy the difference in wording between the allegation and the requirements without expanding the terms of the notice and causing injustice. It would reduce the scope of the notice as the Council would not be enforcing against the upper barn.
11. I accept that an enforcement notice does not have to be directed at the whole planning unit and the Council is entitled to enforce against part of a planning unit¹. However, enforcement action should be directed to the land where the unauthorised activity is taking place, unless there is some logical reason not to do so. In this case, the deletion of the red line seems to be a mechanism to overcome the error in the notice, as opposed to being a considered course of action. It would deny the Appellants the opportunity to gain planning permission for the use of the upper barn through the deemed planning application and would leave them open to future enforcement action. In addition, the correction would enable the activity within the upper barn to continue. This raises issues of natural justice for those third parties who have submitted objections to the deemed planning application.
12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance, or the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error 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.
13. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (b), (d), (e), (f) and (g) of the 1990 Act, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

14. The enforcement notice is quashed.

D Moore

Inspector

¹ *Hawkey & Others v SSE & Mid Sussex DC* [1971] 22 P&CR 610.