

Appeal Decision

Hearing held on 28 August 2024

Site visit made on 28 August 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/J1535/C/22/3301682

Land at Greenacres, Bassetts Lane, Willingale, Ongar CM5 0QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Henry Lowe against an enforcement notice issued by Epping Forest District Council.
- The notice, reference ENF/0344/19, was issued on 20 May 2022.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - i) The change of use of the land to create a new planning unit for use as caravan site for use by Gypsy's and Travellers (the "Unauthorised Use");
 - ii) The laying of hardstanding in the approximate location shown hatched black on the attached plan;
 - iii) The formation of a new vehicular access in the approximate location marked A on the attached plan accessed off Bassetts Lane.
- The requirements of the notice are to:
 - i. Cease the Unauthorised Use of the Land;
 - ii. Remove all caravans including mobile homes and touring caravans from the Land;
 - iii. Remove all residential paraphernalia associated with the Unauthorised Use from the Land. This includes, but is not limited to gas bottles, furniture (such as tables and chairs), pallets, fire bins, children's play equipment and toys;
 - iv. Remove all private and commercial vehicles associated with the Unauthorised Use from the Land;
 - v. Remove the hardstanding from the Land;
 - vi. Stop up the vehicular access to the Land shown in the approximate location marked A on the attached plan;
 - vii. Make good the land by spreading sufficient topsoil to level land and then grass seeding the newly spread topsoil so that in time the land returns to grassland;
 - viii. Restore the hedgerow shown in the approximate location marked between A and B on the attached plan with native species of plants at spacing similar to the adjacent hedgerow to the north and south of the marked location;
 - ix. Remove all resultant rubble, debris, tools, plant and machinery from the Land that result from compliance with steps i) to viii) above.

- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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.

Summary of Decision: The enforcement notice is a nullity and no further action is taken.

Preliminary Matters

1. This appeal was discussed at the same hearing as an appeal against an enforcement notice concerning land to the north, which is within the same land ownership and occupied by members of the appellant's extended family. (appeal reference APP/J1535/C/23/3317791). The matters for consideration and the cases presented by the appellants and the Council were similar in both appeals. Nevertheless, each enforcement notice and appeal are considered on their own merits and a separate Decision will be issued for each appeal.

Planning and site history

2. The land known as Greenacres extends along the eastern side of Bassetts Lane, extending further eastward towards the northern end (the Greenacres site). The land has for many years been owned and occupied by the Lowe family and is around 2.66 hectares (ha) in area. The planning history is the context for and informs the enforcement notice and the current appeal.
3. The planning history dating back to 1996 was considered at some length at a planning inquiry held in 2016 (where I was the Inspector), as set out in the Decision document dated 13 June 2017 (the DL). Two decisions were issued. In both cases, the relevant area of land was the Greenacres site.
4. The first decision quashed an enforcement notice and substituted a new condition 2 on the original planning permission granted in 1996. Planning permission also was granted on the deemed planning application for the stationing of a residential home without complying with condition 2 attached to planning permission ref EPF/50/96 dated 18 November 1996, subject to the other conditions attached to that permission. A new condition was imposed that made the permission personal to William Lowe senior and also limited occupation to William Lowe senior and specified members of his family.
5. The second decision (appeal ref. APP/J1535/A/14/2225844) granted planning permission for a material change of use to a mixed use for purposes of agriculture and a residential caravan site, subject to 6 conditions. The permission related to the area of 2.66 ha and, in summary, the conditions control occupation, number of pitches and required a site development scheme. The DL explains the reasoning behind the description of the development granted permission, which took into account the 1996 permission and the provisions and case law on sections 73 and 73A of the Act. I concluded the application (ref EPF/0657/14) and related appeal should be considered as seeking permission for development carried out without planning permission under section 73A (not section 73 as the appellant

argued) and that to do so would not cause injustice given the evidence and submissions made at the inquiry.

6. The grant of a permission for a mixed use amounted to a new stage in the planning history of the site and conditions were attached accordingly. The 2017 permission now regulates the use and development of the land. On 5 October 2017 the Council approved a site development scheme, submitted in compliance with condition 6. The statement of common ground for the current appeal confirms that the Council and the appellant agree the lawful use of the Greenacres site is the mixed use for purposes of agriculture and a residential caravan site.
7. In April 2020 Mr Henry Lowe made a planning application to vary conditions 1, 3 and 6 attached to the 2017 permission. The plan of the proposed development showed an area enclosed by post and rail fencing to the south of the approved caravan site and served by a new access off Bassetts Lane. On the western part of the defined area on plan were sited two mobile homes and two touring caravans, together with hardstanding near the entrance.
8. The Council refused permission in June 2020 and an appeal was lodged. The Council issued an enforcement notice on 25 September 2020 alleging non-compliance with conditions 1, 3 and 6. Appeals against the notice and the earlier refusal were heard at a hearing on 26 May 2022. The two appeals were dismissed by decisions dated 24 October 2022.
9. A week prior to the hearing the Council issued a second enforcement notice against the same development but alleging a material change of use and operational works – the notice under consideration in this appeal. The Inspector confirmed in the October 2022 decisions that the second notice was not taken into account in reaching the conclusions on the two appeals.
10. The facts on the development reported by the Inspector were not disputed but the statement of case for the current appeal explains why the appellant does not agree with the Inspector's conclusions on the creation of a new planning unit. Several concerns also are raised on the reasoning for the section 78 appeal. The decisions were not challenged for the reasons the appellant explains. The decision letter is a consideration, bearing in mind the importance of consistency and maintaining confidence in the planning and appeal processes. Nevertheless, it is open to me to come to different conclusions if there are sound reasons and the evidence to do so.
11. On the appeal site visit in August 2024 the land occupied by the appellant appeared to be divided into 5 pitches extending across the full width of the site. I noted 3 static and 6 touring caravans, some caravans appeared to be stored rather than occupied. There were numerous sheds/dayrooms and animal pens. A track linked the main site access and the pitch near the eastern boundary. Hardsurfacing was extensive. A second access, gateway and track had been formed further to the north. A strip of overgrown land and hard surfacing along the northern boundary were enclosed by close boarded fencing. Significant changes have occurred to site layout and physical features since the last appeal visit in 2022.

The Enforcement Notice

12. An enforcement notice is a nullity if a defect is evident on the face of the document and it is missing a vital element derived from the statutory requirements set out in section 173 of the Act. In effect there is no notice at all and therefore nothing that can be corrected or form the basis of an appeal. An appropriate test, derived from the *Miller-Mead* judgement¹, is whether the notice tells the recipient fairly what they have done wrong and what they must do to remedy it. Additional principles have emerged through case law. Consideration of whether a defect renders the notice a nullity must be viewed in context. Of particular relevance is the importance or otherwise of that part of the notice which contains the defect, whether or not it is inextricably bound up with the remainder of the relevant section of the notice and whether the notice would otherwise be valid in its absence. In considering nullity, the approach to the exercise should not be unduly technical or formalistic.
13. The enforcement notice is directed at a material change of use and operational developments. The notice contains all the elements required by section 173 of the 1990 Act: the matters that appear to constitute the breach of planning control, with reference back to paragraph (a) of section 171A(1); the steps to be taken to remedy the breach and the compliance periods for doing so; and the date on which the notice is to take effect. The notice also has a plan attached to show the land to which it relates.
14. However, there is a complicated planning history related to the Greenacres site. The enforcement notice is confusing, primarily because of the description of the alleged material change of use and the area of land shown on the plan. In this regard, Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires that an enforcement notice specify the precise boundaries of the land to which it relates, whether by reference to a plan or otherwise. Therefore a plan should be accurate if it is to identify the land.
15. The Land identified by the notice plan is the whole Greenacres site, the area of the 2017 permission for a mixed use. The alleged breach of planning control read in conjunction with the plan indicates the material change of use relates to the use of all the Land as a caravan site. This understanding is contrary to the alleged creation of a new planning unit, which is not separately defined. The Reasons introduce a further contradiction. Intensification is stated to have occurred but that would not be consistent with the creation of a new planning unit. It is difficult to relate the reasons to the defined area of Land.
16. The stated requirements also relate back to the Land, requiring the use as a caravan site to cease and removal of all caravans and residential paraphernalia. The recipients may have thought that all caravans would have to be removed, including those authorised through the 2017 permission. Such an outcome was not the intention of the local planning authority.
17. In December 2022 at the statement of case stage in the appeal the Council acknowledged that the plan was incorrect. Two plans were submitted that

¹ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 WLR 225

purported to show the new planning unit, where the Land covered the southern part of the Greenacres site. At the Final Comments stage another amended plan was submitted that identified the Land as a smaller area. At the hearing the Council confirmed this was the correct plan. This process within the appeal indicated that the local planning authority was very uncertain about the extent of the land to which the notice relates.

18. In respect of the operational development, the area of hardstanding identified by black hatching on the original plan was significantly changed in size and shape on the final amended plan. This error alone would not make the notice a nullity but it is a further factor that would not assist the recipient's understanding of the contents of the notice.
19. In conclusion, the enforcement notice as issued did not tell the recipients fairly what they had done wrong and must do to remedy the alleged breach. When considered in context of the planning history the incorrect identification and definition of the Land on the plan attached to the notice and the failure to identify the new planning unit were fundamental errors that affected the meaning of the entire notice. The resultant high level of ambiguity and uncertainty meant the notice was a nullity.

Conclusion

20. I conclude that the notice is so defective on its face it is without legal effect and is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(b), (c), (a), (f) 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.

DECISION

21. 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.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Director, Green Planning Studio Ltd
Henry Lowe	The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Emily Temple	Director, ET Planning Ltd
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INTERESTED PARTIES:

Peter Davies	Local resident
Willingale Parish Council	

DOCUMENTS submitted at the hearing

Signed witness statement of William Lowe

Statement of common ground.