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## Appeal Decisions

Hearing held on 15 October 2024

Site visit made on 15 October 2024

**by Hilary Orr MSc, MRTPI**

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

**Decision date: 29<sup>th</sup> October 2024.**

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**Land at Plot 1, West of Water Lane, Water Lane, Harrietsham, Kent, ME17 1DH (Title No: TT128891)**

**Appeal A Ref: APP/U2235/C/23/3319348**

**Appeal B Ref: APP/U2235/C/23/3319349**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Elvina Matthews and Appeal B by Jane Wood against an enforcement notice issued by Maidstone Borough Council.
  - The notice was issued on 21 February 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to a mixed use of keeping of horses and residential for Gypsies and Travellers including the stationing of caravans and associated operational works including the laying of hardsurfacing, installation of a septic tank and the erection of three stable buildings.
  - The requirements of the notice are to:
    - (1) Cease the unauthorised keeping of horses and residential use of the Land.
    - (2) Remove all caravans and those labelled as 1 & 2 and the septic tank from the Land.
    - (3) Remove the three stable buildings labelled A, B & C from the Land as indicated on the attached plan.
    - (4) Dig up and remove all the hardcore/Type 1 surfacing from the Land, including removal of concrete aprons under the stables and mobile home/s.
    - (5) Remove all timber close board fencing from the site.
    - (6) Return the Land to its previous condition/levels by ripping the ground in two directions to allow it to regenerate naturally.
    - (7) Remove all materials, rubble, rubbish and debris as a result of compliance with steps (2) to (5) above from the Land.
  - The period for compliance with the requirements is 6 months.
  - 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. The enforcement notice is quashed.

### Matters concerning the notice

2. The courts have held that an enforcement notice shall specify the reasons why the local planning authority considers it expedient to issue the notice. It should specify all policies and proposals in the development plan which are relevant to the decision to issue the notice, and the precise boundaries of the land to which the notice relates (whether by reference to a plan or otherwise).

3. At the Hearing, the appellants submitted a tree survey (BS5837:2012) commissioned by Arbtech and dated 1 April 2022. Despite its late submission the Council agreed that they had sufficient time to consider its contents. Consequently, they raised no objection to it being accepted, or the competency of the Authors. I have no reason to conclude otherwise, although the appellants were made aware of the risk of an award of costs.
4. This survey contained several plans, including a Topographical Survey (2021-132-survey plan dated 14/03/2022). From this and my site visit, it was clear that the alleged development extends well beyond the red line indicated on the notice plan. Whilst the caravans and buildings appear to be sited within the red line, a strip of some 2 metres of hardsurfacing, including a significant part of the vehicular access from Water Lane and part of the close boarded fence are sited on neighbouring land to the south, that is in separate ownership.
5. The Council confirmed that this had not been their intention and conceded that their notice plan had been incorrectly plotted, erroneously following the land Registry Title Plan, rather than the alleged development, as carried out.
6. The Hearing was adjourned to give the Council the opportunity to seek advice and consider whether they wished to withdraw the notice at the Hearing. However, they confirmed that they would not withdraw the notice and wanted the appeal to proceed to a decision.
7. The powers transferred to Inspectors in Enforcement appeals include the power to correct any defect, error or misdescription in the notice under s176(1)(a) and/or vary the terms of the notice, where the Inspector is satisfied that doing so will cause no injustice to the appellant, or the Council. Alternatively, the power to quash the notice.
8. Having considered the options available to me, in this case, amending the plan to embrace a larger area would be likely to lead to injustice, as the land outside the red line is in different ownership and that owner may not be aware of the breach, has not been served with a copy of the notice and is not a party to the appeals.
9. I note that the address on the notice is 'Land at Plot 1, West of Water Lane, Water Lane, Harrietsham, Kent, ME17 1DH (Title No: TT128891) and it refers to the attached plan. In this instance, the importance of clear identification is highlighted, due to the sub-division of a large rural parcel of land into smaller plots, or lots, of similar size with few natural reference points. Accordingly, I am not satisfied that the precise location of the site, or the breach is sufficiently clear from the address on the notice alone. Therefore, it is not simply a case of deleting the plan and relying on the address. Furthermore, the requirements effectively seek to cease a use which is outside the red line which adds a further layer of confusion.
10. For the above reasons and since the Council have declined to move to withdraw the notice, I shall quash it.

## **Conclusion**

11. For the reasons given above, I conclude that the enforcement notice does not specify, with sufficient clarity, the land where the breach of planning control is alleged to have taken place.

12. 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. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeals 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.

*Hilary Orr*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                 |                    |
|-----------------|--------------------|
| Mr Simon McKay  | SJM Planning Agent |
| Elvina Matthews | (First Appellant)  |
| Jane Wood       | (Second Appellant) |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                  |                                              |
|------------------|----------------------------------------------|
| Susan King       | Planning Enforcement Senior Planning Officer |
| Ben Barrett,     | Heritage, Landscape and Trees Officer.       |
| Katie Stephenson | Technical Officer                            |

### **INTERESTED PARTIES:**

|                 |                                                                                    |
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| Peter Titchener | Chestnut Farm, The Street, Ulcombe, Maidstone, Kent<br>Chair of the Parish Council |
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