

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/M1595/C/24/3346004

Brewers Farm, Brentwood Road, Orsett, Essex RM16 3HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Diana Oprea (JDR Transport Ltd) against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 14 May 2024.
 - The breach of planning control as alleged in the notice is: i. Without planning permission the material change of use of the Land to sui generis lorry parking use.
ii. The unauthorised development of the creation of an extended area of hardstanding to facilitate the sui generis lorry parking and lorry storage use, installation of gates and fences and the use of a mobile home as a booking and welfare facilities in connection with the operation of that use.
 - The requirements (and compliance periods) of the notice are:
Immediately from the date the notice takes effect;
i. Cease the unauthorised use of the Land for a sui generis lorry park, storage of lorries and any other unauthorised incidental or ancillary uses.
Within two calendar months of the date the notice takes effect;
ii. Remove from the Land the unauthorised hardstanding, including any associated planings and shingle and remove from the Land the mobile home, fencing and gates used in connection with the unauthorised use.
iii. Remove from the Land any machinery, materials, vehicles, waste, rubble and debris associated with the works carried out to comply the requirements i and ii, detailed above.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (g) of the Town and Country Planning Act 1990 as amended. Since the appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended (the Act) falls to be considered.
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Decision

1. The notice is found to be a nullity and no further action will be taken in connection with this appeal. In the light of this finding the Council should consider reviewing the register kept under section 188 of the Act.

The enforcement notice

2. The first requirement of the notice requires the unauthorised use of the land to cease 'immediately from the date the notice takes effect'.
3. Section 173(9) of 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...'. It has been held¹ that 'immediately' is not a period for the purposes of section 173(9), which should have a starting point and an end point with a period of time in between.

¹ *R (oao Lynes & Lynes) v West Berkshire DC* [2003] JPL 1137

4. As the notice fails to specify a period of time for the first requirement to be complied with, it does not accord with section 173(9) of the Act. Therefore, the notice is a nullity, without legal effect, and no further action can be taken in this appeal.

Conclusion

5. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to 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.

Andrew Walker

INSPECTOR