



Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2025

Appeal A Ref: APP/U5360/C/23/3323177

Appeal B Ref: APP/ U5360/C/23/3323179

37 Horton Road, London E8 1DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Ms Jules Mann and Appeal B by Mr Les Starr against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 26 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a shipping container.
 - The requirements of the notice are to:
 1. Remove the shipping container as shown in appendix 1.
 2. Make good all damage to the property resulting from the removal of the unauthorised works as listed above; and
 3. Upon completion of the above steps, remove all materials, debris, waste, and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is one month.
 - The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The enforcement notice is quashed.

Reasons

2. In accordance with section 173(1) of the Act, a planning enforcement notice must state, 'the matters which appear to the local planning authority to constitute the breach of planning control' and it must be stated in such a way that it 'enables any person on whom a copy of it is served to know what those matters are' (section 173(2)). In other words, the allegation must be clear.
3. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party.
4. The breach of planning control as alleged in the notice is without planning permission, the *installation* [my emphasis] of a shipping container.
5. Shipping containers are typically found to constitute a use of land, rather than operational development. However, it is not clear from the allegation whether the Council consider the container to be a material change of use or operational development, and nor is the section 171B immunity period set out in the notice or explanatory note, so it is not possible to infer what development the Council consider to have occurred.
6. The Council's submission takes me no further since it addresses Part 4 Class A and Part 1 Class E of The Town and Country Planning (General Permitted

Development) (England) (Order) 2015 (as amended). Part 4 Class A relates to temporary buildings and structures and Part 1 Class E concerns the provision of buildings etc within the curtilage of a dwellinghouse. Part 1 Class E would be irrelevant if the Council considered the container to constitute a use of land.

7. Accordingly, even if I were minded to correct the notice I would not know how. If the container were to be described as operational development the time limit would be four years, and in the case of a material change of use, 10 years. In either case I cannot discount the possibility that the appellants would have made their cases differently, or that they may have chosen to lodge their appeal on grounds other than or in addition to ground (c) on which the appeals were made.
8. For these reasons, I am not able to correct the breach of planning control without potentially denying the appellants the opportunity to appeal on one or more other grounds of appeal that they might have elected to pursue. That would cause them injustice.

Conclusion

9. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. 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.
10. In these circumstances, the appeals on the ground set out in section 174(2)(c) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR