



Appeal Decisions

Site visit made on 7 January 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal A Ref: APP/J1915/C/23/3320844

Appeal B Ref: APP/J1915/C/23/3320845

Land at Plots 9-11, Ford Lane, Aston, Hertfordshire, LU3 2JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Victoria Mircea (Appeal A) and Mr Dumitru Andrei Dahorie (Appeal B) against an enforcement notice issued by East Hertfordshire District Council.
 - The notice was issued on 12 April 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to use for the siting of a caravan, and storage. Without planning permission operational development comprising the erection of buildings and structures, including pigeon loft, sheds, shelters and climbing frame.
 - The requirements of the notice are to:
 - 1) Cease the use of the Land for the siting of a caravan and storage.
 - 2) Remove the caravan from the Land.
 - 3) Remove all items stored on the Land (including wood and waste)
 - 4) Remove from the Land all buildings and structures, including pigeon loft, sheds, shelters and climbing frame.
 - 5) Remove from the Land all the resultant materials following compliance with 4 above.
 - 6) Restore the Land to its condition prior to the unauthorised development.
 - The period for compliance with the requirements is two months after the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The enforcement notice is quashed.

Reasons

1. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. Prior to my determination of the appeal, I shared my concerns regarding the notice with the parties. I have taken account of all representations in reaching my decision.
3. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. With this in mind, I consider each of the matters alleged in the notice in turn, as follows.

Material change of use

4. The appeal site comprises an 'L' shaped enclosed parcel of land on a wider site, parts of which have been sub divided into smaller parcels. The evidence indicates that the appellants occupy and are the tenants of only the 'L' shaped parcel, although an adjoining parcel also appears to be in use by them. Nevertheless, my determination is in respect of the 'L' shaped parcel that is the target of the notice.
5. The Council say that the lawful use of the appeal site is for the purposes of agriculture. However, this reference to a former agricultural use appears to be to the use of the appeal site as part of a much larger field parcel, prior to its sub division. Whilst an enforcement notice alleging a material change of use need not recite the use of the land prior to the change, the notice must be accurate in describing the use that has resulted in the material change.
6. The notice alleges a change of the entirety of the appeal site to a use for 'the siting of a caravan, and storage'. On its face, what appears to be alleged is a mixed use of the appeal site. A mixed use is one where the land is put to two or more activities and it is not possible to say that one is incidental to another or that the two uses are physically and functionally separate.
7. With regard to the activities taking place on the appeal site, at the site visit I observed a variety of animals being kept in enclosures on the land or within units (to use a neutral term). Section 336 of the 1990 Act defines agriculture as including such activities as the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land). It is likely that some of the animals present on the site are being bread and/or kept for the production of food, wool, etc, including the pigs, goats and chickens. The same cannot be assumed for some of the other animals I saw, including dogs, pigeons and rabbits. Such animals are more likely to be kept or bred for the purposes of recreation.
8. Despite what I observed on site, there is no reference in the notice to the keeping or breeding of animals for any purpose, whether that be for agriculture, recreation, or for some other purpose. In their grounds of appeal the appellants refer to an agricultural use of the site and they say that the units on site were erected to keep animals. The Council has also confirmed that the land was used for the keeping of animals just before the notice was issued, albeit the number of animals were much less than observed at the site visit. It acknowledges that this was for the purposes of agriculture. The indication is, therefore, that, whilst the use of the land for the keeping and breeding of animals for another purpose has occurred since the notice was issued, the keeping of animals for the purposes of agriculture is a use that was ongoing at the time the notice was issued.
9. In view of the above, it is more likely than not that the allegation of a material change of use is not correct. Whilst the allegation refers to new uses taking place, which I will come to below, there is no reference to the use or uses for the keeping of animals for the purposes of agriculture. Furthermore, in its suggested correction to the notice, the Council does not include reference to agriculture or the keeping of animals. The correction suggested does not, therefore, overcome my concerns with regard to the accuracy of the allegation.
10. Turning to the other activities referred to in the notice, whilst the allegation is of a storage use, the notice is a little ambiguous in that it does not specify what items

are being stored on the land in breach of planning control. Whilst I note that the third requirement of the notice refers to wood and waste, these are only two of the items the notice seeks the removal of. The requirement is the removal of 'all' items stored on the Land (including wood and waste)'. I observed stacks of what appeared to be pre-used timber of varying sizes and there was a part built unit on site, where the pre-used timber appeared to have been used in its construction. However, I also observed a variety of other items, including plastic containers of varying sizes, rabbit hutches in one of the units on site, scaffolding poles, plastic mesh, and metal railing panels.

11. The allegation is of an unspecified storage use. Whilst the recipient of the notice would be certain that it targets wood and waste and that they must remove wood and waste from the land, there is no certainty with regard to the other items that are the target of the notice and that must be removed in order to comply with its terms.
12. The Council has suggested the correction of the storage element of the allegation to include the words 'including wood and waste', but this would not overcome the uncertainty with regard to the other items that are intended to be the target of the notice. The list that could be included in the notice need not be exhaustive and could remain an open list. However, if it were to include the types of items that the Council has observed on the site and that it objects to, the appellants would have the necessary degree of certainty with regard to how they should respond to the notice in their appeal and/or what they must do to comply with its terms. Having regard to what is before me, what those other items are is not obvious to me.
13. As for the other element of the use alleged, whilst at the time of my site visit I did not see a caravan on the appeal site (I was asked to observe a caravan on adjoining land), this is not detrimental to the notice. The notice must specify the matters that appear to the Council to constitute a breach of planning control, whether those matters existed at the time the notice was issued or took place some time before. An appeal can still be made, despite the cessation or removal of the matters alleged to have occurred.
14. Notwithstanding the above, I find the description of 'the siting of a caravan' to be ambiguous. Ordinarily, a mobile caravan is sited (or stationed) on land to be put to a particular purpose. This might include a place to provide secure and dry storage, or for a residential use (i.e. providing accommodation for a person to live in). If not used for a particular purpose, the caravan would be regarded as being sited on the land for the purposes of its storage. It would appear that the Council had not intended the notice to target the storage of a caravan on the site, otherwise it would have simply alleged a single use of the site for storage, rather than referring to the storage use and the caravan separately. The Council have suggested that the allegation should refer to the use of the caravan 'for health and safety purposes'. As such, the Council are of the view that the caravan was being put to some use. However, that use is not clear from the four corners of the notice.
15. I have considered whether I could correct the notice, as suggested by the Council. As well as referring to the use of the caravan for animal food storage, I note that the term 'health and safety' is used by the appellants in their submissions. However, I am not clear what is meant by this term and whether this is an accurate description of how the caravan is used. It is also not clear to me how a use for the

purposes of health and safety might take place as part of a mixed use or whether it is a single use of part of the appeal site taking place within a planning unit of its own.

16. Bringing all of the above together, I find the notice to be defective with regard to the allegation of a material change of use. It is not, however, so hopeless as to make it a nullity. I have considered whether or not the notice could be corrected. However, for the reasons given above, I cannot be satisfied that any corrections I have considered would accurately describe the breach of planning control in this case. Even if I were, I am concerned that any correction that would be needed would bring about a fundamental change to the allegation of a material change of use. In these circumstances, the appellants' approach to their appeal might have been different and made on different grounds, had the notice been more clear from the outset. The appeal process is not intended to evolve in order for the parties to respond to substantial corrections to a notice.

Operational Development

17. The notice alleges 'operational development comprising the erection of buildings and structures, including pigeon loft, sheds, shelters and climbing frame'. The notice does not, however, indicate the location of the 'buildings and structures' that are the intended target of the notice. Although this might not be necessary in other circumstances, it is necessary in this case, for the following reasons.
18. At the site visit I observed a significant number of units of varying sizes and means of construction. Some appeared to have been recently erected, and others appear to have organically evolved in terms of their construction. The notice refers to 'sheds' (plural). Whilst I saw a larger unit used for various purposes, I could not see any other unit on site that could be regarded as a shed, rather than an animal shelter. Furthermore, I did not observe any unit that was obviously a climbing frame.
19. The Council has provided photographs of the units that it says were on site before the notice was issued. Other than the unit I now recognise as the pigeon loft, I could not identify the other units shown and their location at the site visit. The Council has suggested a correction to the notice, with reference to a plan. The plan has not, however, been provided that might assist in providing some certainty with regard to the units that are the intended target of the notice.
20. As I note above, a notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. The notice does not achieve this and is, therefore, invalid for this reason. I have considered whether or not I could correct the notice. However, for the reasons given, I cannot be satisfied that any correction would provide the necessary degree of certainty with regard to the intended target of the notice.
21. Whilst I note the appellants' grounds of appeal are briefly stated, I cannot be satisfied that, had there been more certainty with regard to what was intended to be the target of the notice, they might have approached their appeal in a different way or made their appeal on additional grounds.

Conclusion

22. For the reasons given above, I conclude that the breach of planning control alleged in the notice is not correct and that I am not able to correct it. Even if I were, it is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since I cannot be certain that injustice would not be caused were I to do so. The enforcement notice is invalid and will be quashed.
23. In these circumstances, the appeals on grounds (a), (c), (f) and (g) set out in section 174(2) of the 1990 Act do not fall to be considered.

Formal Decision

24. The enforcement notice is quashed.

J Moss

INSPECTOR