



Appeal Decisions

Site visit made on 13 December 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal A Ref: APP/J0540/C/24/3337916

Appeal B Ref: APP/J0540/C/24/3337917

Land and buildings at 37 West End Road, Maxey, Peterborough

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the “Act”). The appeals are made by Mr Warren Garford (Appeal A) and Mrs Christine Garford (Appeal B) against an enforcement notice issued by Peterborough City Council.
 - The enforcement notice was issued on 27 December 2023.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref: 04/00213/OUT granted on 19 April 2004.
 - The development to which the permission relates is: Erection of bungalow and garage, tractor shed and store.
 - The condition in question is no 5 which states that: ‘the occupation of the bungalow permitted shall be limited to a person employed within the crop spraying business or with agriculture.’
 - The notice alleges that the condition has not been complied with in that: ‘The Council believes that condition C5. of 04/00213/OUT condition has been breached’.
 - The requirements of the notice are to: vacate the property and land.
 - The period for compliance with the requirement is: 12 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Act.
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Decisions

1. The enforcement notice is quashed.

Matters concerning the notice

The allegation

2. Section 171A(1) of the Act sets out that failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. Section 173(1) says that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. Section 173(3) requires that an enforcement notice shall specify the steps which the local planning authority requires to be taken, or the activities which the local planning authority requires to cease in order to achieve, wholly or partly, any of the following purposes.
4. Section 173(4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition

before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

5. The recipient of an enforcement notice must be able to tell with reasonable certainty, from the four corners of the notice, what the breach of planning control is and what must be done to remedy the breach.
6. The enforcement notice identifies the breach of planning control as a breach of condition C5 of planning permission 04/00213/OUT. The wording of condition C5 and the reason for imposition of that condition upon the planning permission are also stated within the allegation. However, the Council have failed to identify what has occurred to render the condition as having been breached.
7. The Council's reasons for issuing the notice sets out, in broad terms, how condition C5 has not been complied with and thus how the breach of planning control has occurred. The breach alleged, in summary appears to be one of occupation of the bungalow by persons not employed within a crop spraying business or agriculture and I consider that it is possible to ascertain, with reasonable certainty from the four corners of the document, why the Council has taken enforcement action against the appellants and what is required to be done or abstained from doing. As such, this would not render the notice a nullity.

The reasons

8. Within its reasons for issuing the notice, the Council states that it considers it expedient to issue the Notice because there is evidence to show that the condition has been breached but not for a long enough period to make it immune from enforcement action. However, what the reasons are doing is, in effect, explaining that there has been a breach of planning control. This does not explain to the recipient of the notice why the Council considered it expedient to take enforcement action.
9. If an enforcement notice sets out no reasons why the local planning authority consider it expedient to issue the enforcement notice, it is likely to be null, because there will be a failure to comply with section 173(10) of the Act, which sets out that an enforcement notice shall specify such additional matters as may be prescribed.
10. The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002, Part 2, Regulation 4 states that an enforcement notice issued under section 172 of the Planning Act shall specify (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
11. The reason for the imposition of condition C5 is given within section 3 of the notice, 'The Matters which appear to constitute the breach of planning control'. In my judgement, it is therefore possible to glean from the four corners of the notice why the Council took enforcement action and it is therefore not a nullity on this basis.

The requirements

12. Section 173(11) of the Act provides that where (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the

requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

13. Section 5 of the notice requires the appellants to '*vacate the property and land*'. The term 'vacate' is not defined and the ordinary dictionary meaning of the word 'vacate' suggests '*to leave (a place that one previously occupied)*'. The appellants raise the point that it is unclear "who is to vacate, how long they are to vacate, and what does it mean to vacate?" If one of the appellants were to vacate the property but their spouse remained, would this comply with the requirement and is it sufficiently clear what the recipient of the notice must do to comply with it.
14. Furthermore, the requirement does not require occupation of the land in breach of condition C5 to cease.
15. Section 181(1) of the Act provides that compliance with any of the requirements contained in an enforcement notice 'shall not discharge the notice'. Under section 181(2), any requirement of an enforcement notice that a use is discontinued shall operate as a requirement that it be discontinued permanently, and so the resumption of the use at any time after discontinuance shall be in contravention of the enforcement notice. However, as worded the requirement does not provide any continuing restriction of a specified activity or use.
16. It would therefore be possible for the appellants to leave the land and buildings that they have previously occupied thus complying with the notice and then subsequently return and occupy the land and buildings once more. Since the Council had the ability to require the activity to cease but has not done so, planning permission would be deemed to have been granted for occupation of the land and buildings in breach of condition C5 by virtue of section 173(11) of the Act. This is clearly not the Council's intention.
17. I have wide powers of correction under section 176(1) of the Act, subject to the correction or variation not causing injustice to the appellants or the local planning authority. The Council has invited me to correct the requirement of the notice to include the wording '*cease occupation of the property and land in breach of condition 5 of the planning permission ref. 04/00213/OUT and ensure that any future occupation of the property and land is fully in accordance with requirements of Condition 5*'. Although correcting the notice to require the cessation of occupation of land and buildings in breach of the condition would appear to be relatively straightforward, it would make the notice more onerous to comply with and therefore this would cause injustice to the appellants.
18. The appellants have drawn my attention to the case of *London Borough of Hounslow v Secretary of State for the Environment [1981] JPL 510* and argues that the notice is hopelessly ambiguous and uncertain such as to render the notice a nullity. I have had regard to the cited caselaw which established that a notice that requires a recipient to 'comply or seek compliance' with a demolition condition attached to a planning permission was hopelessly ambiguous and uncertain. However, in this instance, the requirement is not worded to require compliance with condition C5 of the planning permission, rather it requires land and property to be vacated which is broadly stated.

19. I am mindful that, given the breadth of the statutory power under section 176 of the Act to correct error on appeal, the approach to nullity should be confined to those cases where the failure to comply with the statutory requirements in section 173 is apparent on the face of the enforcement notice itself. Whether a defect renders the notice a nullity is a matter of judgement. Some degree of uncertainty or other defect in the relevant section of the notice does not mean that there is non-compliance with the statutory requirements.
20. I have found that whilst the allegation is broadly stated, the breach alleged can be summarised as occupation of the bungalow by persons not employed within a crop spraying business or agriculture. I have also concluded that the reason for issuing the notice can be ascertained, with reasonable certainty, from the four corners of the notice. Accordingly, these matters do not render the notice to be a nullity. However, for the reasons given above, I find that the requirement cannot be corrected without causing injustice to the appellants. I therefore consider the notice is invalid beyond correction.

Conclusion

21. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
22. In these circumstances, the appeals on the grounds set out in section 174(2)(d), (f) and (g) of the Act do not fall to be considered.

E Brownless

INSPECTOR