



Appeal Decision

Site visit made on 5 February 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 27th March 2025

Appeal Ref: APP/G2435/C/22/3309573

Land at Jeffcoats Lane, Swannington, LE27 8QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Louis Hemming against an enforcement notice issued by North West Leicestershire District Council.
 - The notice was issued on 4 October 2022.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the siting of a storage container and associated hardstanding,' ("the unauthorised development").
 - The requirements of the notice are
 1. Remove the storage container
 2. Remove the hardstanding and any associated paraphernalia from the Land
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 (the Act) (as amended).
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Decision

1. The enforcement notice is quashed.

The Notice

2. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The allegation refers to 'Without planning permission, the siting of a storage container and associated hardstanding.' The Council indicates that the notice relates to operational development only. However, the use of the word 'associated' lacks clarity and is confusing when there is no indication of what the hardstanding is associated with. The word 'associated' is commonly used to describe operational development which has taken place in order to facilitate a material change of use in accordance with the Murfitt¹ principles.
3. The wording of 'the siting of storage container' is unclear when the container is being used for storage although the parties disagree as to what that storage use is. The storage container is not just sited on the land and being stored, it is in use and stating that use in the notice would also have provided clarity.
4. The requirements of a notice need to flow from the allegation. The second requirement includes the removal of hardstanding rather than associated hardstanding and introduces 'associated paraphernalia' for the first time.
5. The reasons for the notice provide no explanation for the wording of the notice in terms of what the paraphernalia is or how 'associated' fits within an allegation

¹ Murfitt v SSE & East Cambridgeshire CC{1980} JPL 598

related solely to operational development. There is also very limited information in the reasons about the hardstanding or the use of the container for storage.

6. A notice which alleges operational development only cannot require associated items which are not identified to be removed. In view of the ambiguous terms, it is not clear if the Council assessed the breach of planning control as operational development or a material change of use when the notice was issued.
7. The Council was asked to provide clarification specifically upon the use of the word 'associated' in connection with the hardstanding and 'associated paraphernalia.' However, the Council's response was to propose deletion of all of the allegation and all of the requirements. The proposed new allegation is 'Without planning permission, the material change of use of "The Land" to a mixed use for the siting of a storage container, (The unauthorised use) and the laying of hardstanding, ("The unauthorised development").
8. The proposed new allegation no longer maintains that the siting of a storage container is operational development but is a material change of use to a mixed use. No explanation was provided as to why such fundamental changes were proposed or why the Council had changed its alleged position. The Council also proposed more onerous changes in respect of the hardstanding with an additional requirement to reinstate the land to levels that corresponded with adjacent land.
9. The proposed new allegation is also imprecise when the elements of the mixed use which would include any existing lawful use are not identified. The lawful use of the appeal site is a matter of dispute between the parties. It is also now not clear whether the Council is alleging that operational development or a material change of use or both has occurred.
10. Under the provisions of s176(1) of the 1990 Act it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice to the parties. However, the original wording lacks clarity and the proposed solution to delete the allegation and requirements in full and replace them with what would effectively be a new notice would cause injustice.
11. I had considered the option of deleting the elements of the notice which relate to the container and proceeding only with the hardstanding. However, there is very limited reference to the hardstanding in the reasons for issuing the notice. There is a single reference to it being incongruous together with the container. It is not clear if the Council included the hardstanding as it considers it to be incongruous in its own right or because it is 'associated' with the container and the use of the land.
12. The appellant's arguments in respect of the hardstanding are intertwined with the use of and access to the land and the container. Different arguments may therefore have been advanced for the hardstanding with a different allegation for the appeal site as a whole. The notice is therefore invalid.

Conclusion

13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance.

14. 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. In these circumstances, the appeal on the grounds set out in section 174(2)(c) and (g) of the 1990 Act (as amended) do not fall to be considered.

E Griffin

INSPECTOR