



Appeal Decision

Site visit made on 1 April 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 April 2025

Appeal Ref: APP/C1760/C/23/3326861

Land to the west of Nightingale Pharmacy, Great Well Drive, Romsey SO51 7QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Proxima GR Properties Limited against an enforcement notice issued by Test Valley Borough Council.
 - The notice was issued on 26 June 2023.
 - The breach of planning control as alleged in the notice is the making of a material change in use of the land to use for storage purposes-Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The requirements of the notice are: (i) Permanently cease the use of the land for storage (Class B8) purposes. (ii) Permanently remove the metal container marked in blue on the plan attached to the notice and any contents stored within it, from the land edged in red.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fee has not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The Council gave written notice of the appeal to interested parties as required by the Town and Country Planning (Enforcement)(Written Representations Procedure)(England) Regulations 2002. The notification letter gives the wrong name for the appellant. However, the recipients can understand what the enforcement notice refers to and the grounds under which the appeal is made.

Background

3. The appeal premises are a small parcel of land sandwiched between a modern suburban street and a school playing field. Groups of trees covering the premises are subject to a Tree Preservation Order.¹

Ground (e) appeal

4. At s172, the Act states that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. The ground of appeal is that copies of the enforcement notice were not served as required by s172. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.

¹ Council Ref No: TPO.TVBC.1220A

5. There is no dispute that copies of the notice were served on the appellant along with two other persons. According to a recent search of the Land Registry, the appellant owns the premises. The appellant did not draw attention to any other person who, having an interest in the premises, had not been served with a copy of the notice.
6. The appellant explained that they sold the premises some years ago and there had subsequently been a failure by the purchaser to register the change in ownership. A copy of a completed Land Registry form TP1 concerning the transfer in ownership, dated July 2019 and signed by the appellant and the purchaser, was supplied. Even so, with no identified failure of service it is not within the scope of the ground (e) appeal to assess whether the appellant is an 'owner' of the premises as defined in s336(1) of the Act. That could be relevant if the Council were to contemplate further proceedings in the event of non-compliance with the notice. This is confirmed by the case law cited by the Council² which concerned criminal proceedings undertaken pursuant to s179 of the Act following a breach of an enforcement notice, as opposed to an appeal made under s174.
7. Therefore, the appellant is unable to show that copies of the notice were not served as required. The ground (e) appeal fails.

Ground (g) appeal

8. The ground of appeal is that the time allowed for complying with the notice falls short of what is reasonable.
9. Three months provides ample time for ceasing the storage use and for the remedial works-removing a single metal container and its contents from the premises-to be carried out. The works are small scale and straightforward. The premises are not fenced off and the container is accessible from the street. The time for compliance therefore strikes an appropriate balance between remedying the breach and the associated harm identified in the notice as soon as practicable, whilst not placing a disproportionate burden on the appellant.
10. I understand that the appellant does not own the container or its contents. I am also aware that in October last year the appellant obtained an Injunction which required the purchaser to comply with the notice, amongst other things. Even so, whether the appellant has done everything they could be expected to do to secure compliance with the notice has little relevance to this ground of appeal. Like the matters raised under the preceding ground, this could be relevant to any further proceedings contemplated by the Council in the event the notice is not complied with.
11. Therefore, the time for compliance is not too short; it is reasonable. The ground (g) appeal also fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Stephen Hawkins

INSPECTOR

² *East Lindsey DC v Thompson* [2001] JPL 1382