



Appeal Decisions

Site visit made on 15 April 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal A Ref: APP/M1710/C/24/3340163

Appeal B Ref: APP/M1710/C/24/3361897

Land at Lot 10b Comley Hill, Rowlands Castle, Hampshire PO9 6DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mrs Steve Malloy (Appeal A) and Mrs Malloy (Appeal B) against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 8 February 2024.
 - The breach of planning control as alleged in the notice is within the last ten years and without planning permission, the material change of use of the land to a mixed use of equestrian and residential, including the erection of a wooden building used as a dwelling..
 - The requirements of the notice are: (i) Cease the residential use of the land. (ii) Remove from the land the wooden building in the approximate location hatched black on plan A attached to the notice. (iii) Remove all residential paraphernalia from the land.
 - The period for compliance with the requirements is nine months.
 - The appeals are proceeding on the grounds set out in section 174(2)(e) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matter

2. Whether it was expedient for the Council to issue an enforcement notice can only be considered by way of Judicial Review.

Ground (e) appeals

3. At s172, the 1990 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 notice were not served as required by s172. It is for the appellants to show why their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The methods for serving an enforcement notice prescribed in s329 of the 1990 Act include: (1)(a) by delivering it to the person on whom it is to be served or to whom it is to be given; or (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address or (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that

- address. Similar provisions exist in s233(2) of the Local Government Act 1972 for the service of a document on persons either by delivering it to them, or by leaving it at their proper address, or by sending it by post to them at that address.
5. At s329(2)(a) and (b), the 1990 Act also provides for serving an enforcement notice on persons required to be served as having an interest in premises, or occupiers of those premises, where their name cannot be ascertained. This includes by addressing the notice to 'the owner' or 'the occupier' and delivering or sending it in the manner specified in subsection (1)(a), (b), or (c); or by affixing it conspicuously to some object on those premises.
 6. Copies of the notice were served by post on the appellants at an address in Castle Road, Rowland's Castle, Hampshire. According to the Council, a search of HM Land Registry showed that the appellants were the owners of the appeal premises and gave the Castle Road property as their address. Service at an address shown on the Land Registry is considered proper service if the Local Planning Authority has not been given another address. In responding to the Council's Planning Contravention Notice dated 14 November 2023, the occupiers of the premises stated that they were the owners. The occupiers made no reference to the appellants' interest in the premises. In this respect therefore, copies of the notice were served in accordance with s329(1) of the 1990 Act and s233(2) of the 1972 Act and it follows, as required by s172.
 7. The Council stated that copies of the notice were also served on two other named individuals at the premises - the occupiers, together with copies addressed to 'the owner' and 'the occupier,' also at the premises. The Council employed a firm of process servers to serve these copies. The employee of that firm who was charged with serving the copies on behalf of the Council supplied a completed and signed statement to the effect that service took place at the premises on the date the notice was issued.
 8. The appellants dispute whether copies of the notice were served at the premises on 8 February 2024 - the date of issue. Apparently, having been away for most of the day copies of the notice were not found at the premises when the occupiers arrived back in the evening on that date. The premises are located in open countryside, with vehicle access from the nearest metalled road being via a lengthy, loose gravel surfaced track. According to the appellants, the track was significantly affected by flooding on the above date, so that the premises were only accessible by a 4x4 vehicle such as that used by the occupiers.
 9. The appellants' description of the condition of the track on the date of issue is supported by a statement provided by an interested party, who explained that on 6 and 8 February 2024 they had been unable to drive along the track to visit the premises. A local flood alert for high groundwater levels in the vicinity, issued on 7 February 2024, also supports the appellants' case in this respect. The appellants' evidence concerning the condition of the track on the date of issue is sufficiently clear and precise. There is little to cast doubt on this evidence; the Council accept that the track was 'unpassable' on the date of issue. During my visit, I observed that the track surface is very uneven in places. It is not hard to envisage the track becoming flooded following periods of heavy rainfall. Accordingly, the appellants' evidence of significant flooding adversely affecting the use of the track on the date of issue should be afforded considerable weight.

10. Against the background set out above, no explanation was offered on behalf of the Council concerning how access was obtained to the premises to serve the notice copies. Moreover, no photographs were taken to show that copies of the notice had been left at the premises. This was put down to the weather conditions. However, that does not seem entirely plausible; even during periods of heavy rain it should have been possible to take photographs. There is also no record of the time of day that the notice copies were left at the premises. Nor is there a detailed description of exactly where the copies were left or the measures employed to secure them-for example, there is no reference to affixing the documents to some object at the premises, such as the entrance gate. Therefore, the Council's evidence regarding the service of the notice copies is in my view vague and notably lacking in the aspects of detail required to make it sufficiently convincing.
11. My concerns over the shortcomings in the Council's evidence and the uncertainty this raises over the service of copies of the notice at the premises are cemented by other factors. Firstly, there are some other properties on the track in the vicinity which have an appearance not dissimilar to the premises, having similar buildings, entrance gates and boundary fencing. That being so, it is entirely possible that a visitor might find it more difficult to locate the premises during ongoing heavy rain when the track was also significantly flooded. This might occur even where the visitor is familiar with the location, such as I understand applies in this case. The Council photograph which accompanied the instructions for serving the notice copies affords a relatively limited field of view in the vicinity of the entrance, with few features to obviously distinguish the premises from nearby property. As I understand it, no other information was supplied which might have assisted the employee charged with serving the notice copies in locating the premises. This all does little to exclude the possibility that the copies of the notice could have mistakenly been left at another address nearby.
12. In addition, I am mindful that the occupiers of the premises have made no attempt to appeal against the notice. The occupiers clearly stood to lose their home of some years as a consequence of not contesting enforcement action. It is unlikely that they would have had an awareness of what steps might have been taken on behalf of the Council to record that the copies of the notice had been served. This in my view makes it less likely that the occupiers would be other than candid regarding whether the copies of the notice had been left at the premises.
13. Drawing all of the above matters together, I find that, in the individual circumstances of this case, having regard to the available evidence and on the balance of probability, the appellants have shown that copies of the notice were not served on the occupiers of the premises in accordance with s329(1) and (2) of the 1990 Act and s233(2) of the 1972 Act. It follows that copies of the notice could not have been served as required by s172.
14. At s176(5), the 1990 Act provides that where it would otherwise be a ground for determining an enforcement appeal in favour of the appellant that a person required to be served with a copy of the notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.
15. It would not be appropriate to disregard the failure to serve the occupiers of the premises. They have not been properly afforded the opportunity to take part in these proceedings. The current appeals are limited to ground (e) only. In my view,

it is highly likely that the occupiers would have made separate appeals on additional grounds had they been able to do so. This might well have included making a deemed planning application by appealing on ground (a) and paying the relevant fee. The occupiers' appeals could also have included other grounds, for example ground (f)-that the steps required to be taken by the notice are excessive, and/or ground (g)-that the time for complying with the notice requirements falls short of what should reasonably be allowed. Upholding the notice would have significant adverse consequences for the occupiers, as it would lead to the loss of their home. Therefore, the occupiers would be substantially prejudiced if the appeals were to be determined other than in the appellants' favour.

16. For the above reasons, the ground (e) appeals succeed and the notice will be quashed. It is open to the Council to issue a fresh enforcement notice, if it is deemed expedient to do so, with copies being served as required by s172.

Conclusion

17. I conclude that the occupiers of the premises have been substantially prejudiced by the non-service of the enforcement notice and this is not a case when I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeals on ground (e) succeed and the enforcement notice will be quashed.

Stephen Hawkins

INSPECTOR