



Appeal Decision

Site visit made on 23 April 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2025

Appeal Ref: APP/J1535/C/24/3345636

Land at Colemans Farm, Toot Hill Road, Stanford Rivers Ongar Essex CM5 9QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “1990 Act”).
 - The appeal is made by Mrs Lucie Cleminson against an enforcement notice issued by the Council of the London Borough of Epping Forest.
 - The enforcement notice was issued on 7 May 2024.
 - The breach of planning control as alleged is the material change of use of the land to provide tourist accommodation and for associated recreational activities.
 - The requirements of the enforcement notice are to: 1) Cease the use of the land for the provision of tourist accommodation and associated recreational activities 2) Remove the structures associated with the unauthorised use (shown marked in orange at the approximate locations on the attached plan) from the land 3) Remove from the land all fencing, decking, and any other item associated with the use of the land to provide tourist accommodation and for associated recreational activities, and 4) Remove from the land any materials resulting from the works carried out at steps (2) and (3).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (d) and (f) of the 1990 Act. Since the prescribed fees have 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 as amended have lapsed.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. The appellant raises concerns about the notice. I have a duty to consider any defects within the issued notice and, where possible, make any necessary variations or corrections to put the notice in order subject to the essential test¹. As a legal document, it is important that the notice is legible on its face, without needing to infer or imply its meaning.
3. The issued notice relates to a parcel of land accessed from Colemans Lane via a narrow and unmade track. Located to the rear of a small group of properties, the land is part of open fields within a rural landscape and setting. There are numerous trees providing cover as well as ponds and hedges. There are three small buildings known as The Coop, The Nook and The Trap and each one is located close to a pond. There is also a purpose-built tree house.
4. Section 173(1) of the 1990 Act states that a notice shall state – (a) the matters which appear to the local planning authority to constitute a breach of planning control: and (b) the paragraph of s171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) states that a notice complies with

¹ S176(1) allows correction of the notice subject to no injustice caused to the appellant or local planning authority.

- subsection (1)(a) if it enables any person on whom a copy of the notice is served to know what those matters are.
5. The notice sets out that it has been issued by the Council because it appears to them there has been a breach of planning control under s171A(1)(a) of the 1990 Act. A breach of planning control under s171A(1)(a) is the carrying out of development without the required planning permission. In addition, the notice makes clear that the breach of planning control has occurred within the last 10 years.
 6. The notice was issued on 7 May 2024 but served on 1 May 2024. However, the Council acknowledges the typographical error. They explain all parties with a material interest were properly served with copies of the notice not more than 28 days after its issuance and not less than 28 days prior to its effective date of 10 June 2024. More fundamental is the description of the alleged breach, which, for the following reasons, I find very confusing.
 7. The issued notice describes the breach of planning control as follows: *the material change of use of the land to provide tourist accommodation and for associated recreational activities*. It is unclear to me whether “tourist accommodation” and “associated recreational activities” form primary uses, or one is ancillary or incidental to the other. If truly ancillary, there is no need to refer to it in the allegation because of the functional link. Moreover, describing the land-use as tourist accommodation is far too vague. A “tourist” is travelling or visiting a place for pleasure and “accommodation” is a room, group of rooms, or a building in which someone may live or stay. The evidence presented clearly shows that visitors use The Coop, The Nook, The Trap or the tree house for short stays and holidays, because they provide separate and self-contained facilities for independent cooking, washing and sleeping.
 8. The extent of the relevant planning unit is also unclear. Although the Council’s stance is not clear from the submitted documents, it seems they regard the area outlined in red in the notice site plan as a single planning unit, because it is physically separate. However, the red line covers a large area and includes a long track. There are pathways and car parking spaces, but these are part and parcel of the land’s use. It is unclear how all the outlined area is used for tourist accommodation and associated recreational activities.
 9. The reasons for issuing the notice refer to the erection of four recreational buildings, fencing and decking. It might be apt to define each building, including areas immediately around and about, as forming a separate planning unit. This is because The Coop, The Nook, The Trap and the tree house each provide viable facilities for day-to-day living thus forming a physically and functionally separate and self-contained unit of residential accommodation.
 10. The evidence shows that the buildings have been erected to facilitate a kind of residential use for short-term stays. These buildings relate to glamping facilities which is undertaken by individuals for short stays in rural locations and is a land-use. I too consider that the operational development merely provides accommodation for persons utilising the countryside for various activities whilst visiting the area. To this end, the accommodation allows individuals to stay within the countryside before or after undertaking outdoor activities such as walking, fishing, hunting, outdoor sport and other activities.

11. It may be the case that glamping differs in nature from camping or other kind of residential use. However, glamping offers more substantial permanent accommodation akin to a small dwelling or cabin as well as more amenities, rather than a temporary tent, caravan or similar structure with very few amenities. The Coop, The Nook, The Trap and tree house are used in connection with glamping, which provides accommodation for tourists. When the evidence about the purpose of the land's use is considered in combination with the permanent nature of the buildings, in my assessment, the character of the use is better described as glamping or for holiday purposes.
12. The so-called Murfitt principle is derived from *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598. A notice directed at an material change of use can require the removal of ancillary operational development within the 10-year immunity period even if the 4-year limit has passed if the works were intended to facilitate the unlawful use. The principle was reviewed by the Court of Appeal in *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467. The enforcement notice was challenged on grounds that it could not lawfully require the removal of operational development as such development was immune from enforcement action as a result of the expiry of the relevant time. It was held that the Murfitt principle only applies where the operational development is deemed "ancillary" to the change of use. Where operational development has brought about the change of use then the Murfitt principle cannot apply.
13. The Council say that prior to the installation of The Coop, The Nook, The Trap and tree house portable structure known as the "Tiny House" was occupied by glampers. These moveable structures were sited on the land. Additionally, treetop cabins had also been installed. While this structure may have been moveable and transient in appearance, the nature of the buildings to which the issued notice relates are permanent and substantive in built form and design. They are fixed to the ground and do not have a fleeting character.
14. The laying of hard standing to create parking areas is probably ancillary. However, when the nature of the accommodation provided is taken together with separate facilities for independent cooking, washing and sleeping, I take the view that the operational development targeted by the issued notice is not ancillary or subordinate. They are fundamental to or causative of the change of use of the land on which they stand for glamping or holiday purposes. I consider there is overreach in the requirements.
15. It follows therefore that the allegation should explicitly reflect use of the land for glamping or for holiday purposes, or the erection of holiday accommodation or buildings, or a combination of both. The time limits will also need further consideration because the 10-year limit applies to material change of use, but the operational development carries 4-years (the breach occurred prior to the change in the time limit harmonisation).
16. It seems to me that the Council described the unauthorised use by simply copying the description from several planning applications, which relate to the use of the land for purposes of recreation or tourism². To me, that is a risky enforcement strategy because the authority should, and could, have analysed the character of the land's use, defined the extent of the relevant planning unit, and considered if

² Ref EPF/1397/18, EPF/2472/21 and EPF/1211/22, and APP/J1535/W/23/3332524 and APP/J1535/W/3332525 dismissed.

the alleged development comprises the carrying out of operational development, or change of use, or both. Perhaps that is the learning point.

17. The notice needs to be corrected in the light of my reasons above. I have carefully considered exercising the available power to correct the notice. The correction will require substantive amendments to the description of the allegation and steps required so they flow from the alleged breach and avoid under or over enforcement. There is risk of significantly widening the scope and extent of the notice. Both appeal parties may have wanted to make different arguments if the notice alleged a substantially different breach. I am not satisfied no injustice is caused to the appeal parties if I am to correct the notice. The resolution is to quash the issued notice, and the Council can then go back to the drawing board and reconsider its enforcement strategy.

Conclusions

18. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under s176(1) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and is quashed. In these circumstances, the appeal on the grounds set out in s174(2)(e), (d) and (f) of the 1990 Act as amended do not fall to be considered. For completeness, I draw attention to second-bite provisions set out in s171B(4)(b).

A U Ghafoor

INSPECTOR