



Appeal Decision

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 August 2025

Appeal Ref: APP/P1560/C/22/3308415

Land at Forty Winks, Cow Lane, St Osyth, Clacton-on-Sea, CO16 8JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 by Mrs Susan Tandy o/b A1 Pet Welfare & Rescue Centre against an enforcement notice issued by Tendring District Council on 9 September 2022.
 - The **breach of planning control** as alleged in the notice is: Without planning permission carrying out building operations and a material change of use of land involving:
 1. Erection of detached storage/garage building
 2. Siting of 3 residential mobile homes
 3. Siting of detached portable timber-clad structure.
 - The **requirements** of the notice are to:
 - 5.1 Remove [the] detached storage/garage building from the land
 - 5.2 Remove all waste materials resulting from 5.1 above
 - 5.3 Remove 3 mobile homes from the land and associated operational development including hardcore bases, decking and related building operations
 - 5.4 Remove all waste materials resulting from 5.3 above
 - 5.5 Remove detached portable timber-clad structure from the land and any associated operational development
 - 5.6 Remove all waste materials produced from 5.5 above
 - The **period for compliance** with the requirements is: three (3) months.
 - The appeal is made on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.
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DECISION

1. The notice is found to be a nullity, and no further action will be taken in connection with the appeal. In the light of this finding, the local planning authority should consider reviewing the register kept under s188 of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

2. In view of my decision and the reasons for it, I have determined this appeal on the papers. It was unnecessary for me to visit the site.

THE ENFORCEMENT NOTICE

3. Under s176(1) of the Town and Country Planning Act 1990 ('the TCPA90'), an Inspector may correct any error, defect or misdescription in an enforcement notice provided that will cause no injustice to the appellant or the Council. If injustice would be caused, the notice will be not correctable and invalid.
4. A notice is null if it is so defective on its face that it does not amount to an enforcement notice in law at all and the question as to whether corrections would cause injustice cannot arise. That might be the case if the notice is hopelessly

ambiguous and uncertain, or its contents do not include what is required under s173 of the TCPA90 and under the Town and Country Planning (Enforcement Notices and Appeals) Regulations 2002 ('the Enforcement Regulations').

5. The notice in this case is defective in two respects: the matters which appear to the Council to constitute the breach of planning control (the allegation) and the reasons why the Council consider it expedient to issue the notice.

The Allegation set out in the Notice

6. Under s173(1)(a) and (2) of the TCPA90, an enforcement matter shall state the matters which appear to the local planning authority to constitute the breach of planning control, so as to enable any person served with a copy of the notice to know what those matters are. However, as set out in the banner header above, the notice alleges that there has been a material change of use of land without specifying what the material change of use was to or the unauthorised use(s).
7. Storage is a use, but the alleged 'erection of detached storage/garage building' does not show that the Council intended to enforce against a material change of use to storage. On a straightforward reading, the notice appears to attack that building as a form of operational development with the word "storage" perhaps included simply as a descriptor. The notice does not tell me whether storage is a lawful or unlawful use of the land. It also does not tell me whether storage is the sole primary use of the land, a primary component of a mixed use or merely incidental to one or more primary uses.
8. 'Mobile home' is a colloquial term for a caravan, but the stationing of such is not "development" that requires planning permission. Caravans are moveable by definition; their siting is not a building operation. Development takes place where the stationing of a caravan facilitates a material change in the use of the land but, if that occurs without the requisite planning permission, any enforcement notice issued must specify the unauthorised use because caravans can be placed on land for different purposes.
9. In this case, the allegation of 'siting of 3 **residential** mobile **homes**' [my emphasis] suggests that there was probably a material change of the land to residential use. However, it is not clear whether the Council considers that to be the sole primary use of the land, perhaps with storage taking place on an incidental basis, or if they are concerned that the land is in a mixed use for residential and storage purposes. That confusion arising from the allegation is compounded by the notice failing to require the cessation of any use.
10. Thus, the notice does not enable any person served with a copy to know the matters which appear to the local planning authority to constitute the breach of planning control. In this regard, the notice is null because it fails to comply with s173(1)(a) and (2), and it is hopelessly ambiguous and uncertain.
11. Any finding that that a notice is null must be based strictly on the contents of the notice alone. I will record, however, that the site is probably not simply used for residential and storage purposes; the parties have also referred in their evidence to "car racing activities", "pet rescue business", an office for "MOT test centre management" and an "office/rest room use".

12. Where land is in a mixed use, the notice should describe all components of that mixed use, including any that are lawful. It should require the cessation of the unauthorised mixed use, so that the unlawful components are discontinued. Accuracy in that regard is essential for the appellant to contest the notice on any legal grounds, for both parties to address the planning merits and, if necessary, for the Council to enforce the notice later.

The Reasons for Issuing the Notice

13. Under s173(10) of the Town and Country Planning Act 1990 and Enforcement Regulation 4, an enforcement notice shall specify (a) the reasons why the local planning authority consider it expedient to issue the notice **and** (b) all relevant policies and proposals in the development plan.
14. In this case, the 'Reasons for Issuing this Notice' are simply that the alleged development "does not have planning permission and is contrary to the relevant policies in the Tendring District Local Plan 2013-2033 and Beyond...including..." In other words, the notice specifies development plan policies but not the planning harm which makes those policies relevant. The notice omits to include what is required under s173(10) and Enforcement Regulation 4(a).

CONCLUSION

15. The notice does not enable the appellant to know the matters that appear to constitute the breach of planning control, as required by s173(1)(a) and (2). It does not specify the reasons why the Council consider it expedient to issue the notice, as required by s173(10) and Enforcement Regulation 4(a).
16. I conclude that the notice is a nullity. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under s177(5) of the TCPA90 do not fall to be considered.

Jean Russell

INSPECTOR