



Appeal Decision

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Appeal Ref: APP/P1560/C/22/3309012

Land on Western Side of 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 16 September 2022.
 - The **breach of planning control** as alleged in the notice is: Without planning permission, carrying out building operations and material change of use of land involving:
 1. Deposit of hardcore, rubble and construction of hardstanding
 2. Erection of detached timber building on concrete base
 3. Erection of timber fence exceeding 2m high along eastern and southern boundary of site adjacent to Cow Lane.
 4. Stationing of 2 mobile homes and associated timber decking
 5. Stationing of storage containers
 6. Storage of vehicles and various items of equipment and machinery
 - The **requirements** of the notice are to:
 - 5.1 Remove detached timber building and concrete base from the land
 - 5.2 Remove all waste materials resulting from 5.1 above
 - 5.3 Remove the hardcore, rubble and hardstanding from the land
 - 5.4 Remove all waste materials resulting from 5.3 above
 - 5.5 Reduce height of timber fence and other boundary enclosures to a height not exceeding 2m
 - 5.6 Remove all waste materials produced from 5.5 above
 - 5.7 Cease use of the land for the stationing of mobile homes, storage containers, vehicles and items of equipment and machinery
 - 5.8 Remove the mobile homes, timber decking, storage container, vehicles and items of equipment and machinery from the land
 - 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 section 188 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 and 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. '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. The appealed notice omits to say for what use caravans have been stationed on this site.
8. I can read the notice benevolently to deduce from the alleged "stationing of 2 mobile **homes**" that the Council is concerned with a material change of use of the land to residential use, with that being part of a mixed use alongside the "storage of vehicles and various items of equipment and machinery". Consistent with that interpretation, the notice includes requirements to "cease the use of the land for stationing mobile homes" and "cease the use of land for the stationing of...storage containers, vehicles and items of equipment and machinery". I do not find the notice hopelessly ambiguous and uncertain in this regard but, from the evidence before me, the allegation is nonetheless probably inaccurate.
9. If the caravans are stationed for "residential occupation" and items stored on the site are "associated with a local building contractor" who operates from another planning unit, it may be right to consider residential and storage uses as primary uses. However, both parties also suggest that some storage and other activities are taking place in connection with the appellant's pet rescue or pet welfare business. That begs the question as to whether the site is in a mixed use for residential, commercial storage and "pet rescue" purposes and, if so, what activities are involved in the latter and whether such use or uses is or are lawful.

10. The appellant suggests that the alleged containers and fence are required “in order to receive donations” and for “dogs exercising on the site” respectively. The Council described the site as being in a “mixed business/open storage use” without explaining what business activities they are concerned about (beyond storage) or where “residential occupation” fits into the picture. I would also question whether the storage use is entirely “open” or outdoors, given that the stationing of storage containers would normally amount to a building operation.
11. Thus, the notice is concerned with a material change of use, but the only actual uses which can be gleaned from the notice, namely residential and storage uses, do not appear to be the only activities taking place, and there is no evidence as to what may or may not be lawful. The notice is erroneous, and the next question is whether it can be corrected without causing injustice.
12. I could write to the parties and seek more information about the uses taking place on the site; it is possible that the parties would agree the facts in that regard. However, injustice would be likely to result if I corrected the notice so that it is directed at a mixed use said to include unlawful components other than storage and residential uses.
 - If the notice was corrected, for example, to allege that there has been a material change of use to a mixed use comprising a pet rescue business, commercial storage and residential use, and to require that (all components of) the mixed use must cease, injustice would be caused to the appellant because the notice would be made so much more onerous to comply with.
 - If the allegation were corrected as above, and if the pet rescue use is unlawful but not required to cease, injustice would be caused to the Council. Under s173(11) of the TCPA90, planning permission would be treated as granted in respect of the activities that the notice could have required to cease but did not.
13. There is no option of leaving the notice as it is. The allegation represents the description of development for the deemed planning application and ground (a). It would be necessary for me or any other decision-maker to understand the actual mix of uses on the site and their status. If the pet rescue business is lawful, that would change the context for consideration of the merits of what is alleged. In this case and at this late stage, correcting the notice to describe the existing mixed use more precisely would be liable to cause injustice by compromising the parties’ cases for and against the appeal.
14. In summary, the notice is concerned with a material change of use, but it fails to describe all of the uses taking place on the ground. The error could not be corrected without causing injustice to the Council and/appellant. I would quash the notice as invalid were it not for the second defect.

The Reasons for Issuing the Notice

15. 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.
16. 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

17. The notice does not properly describe the breach of planning control constituted by the alleged material change of use of land. If that were the only defect, I would find the notice invalid because it could not be corrected without causing injustice to the appellant and/or the Council. However, the notice also fails to specify the reasons why the Council consider it expedient to issue the notice, as required by s173(10) and Enforcement Regulation 4(a). I conclude that the notice is a nullity.
18. In these circumstances, the appeal on ground (a) set out in s174(2) of the TCPA90 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