



Appeal Decisions

Site visit made on 15 July 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 26 August 2025

Appeal A: APP/C3810/C/24/3350847

Appeal B: APP/C3810/C/24/3350848

Land Lying to the North of Toddington Lane, Wick, Littlehampton, West Sussex, BN17 7PN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Richard Plank of P & O Scaffolding Services Ltd and Mr Carlo Celini against an enforcement notice issued by Arun District Council.
- The notice was issued on 15 August 2024.
- The breach of planning control as alleged in the notice is without planning permission and within the last ten (10) years the:
 - a) Material change of use of the land to a mixture of general storage yard, storage of lorries and other vehicles, caravan siting and habitation and scaffolding company operation.
 - b) Operational development by the creation of hardstanding.
 - c) Operational development by the placement of shipping containers and portable offices.
 - d) Other operational development in terms of associated lighting, cess pit(s), erection of scaffolding, erection of parameter fencing exceeding 2m in height and any other associated development.
- The requirements of the notice are to:
 - a) Cease any unauthorised use of the land namely as a general storage yard, storage for lorries and other vehicles, caravan siting and habitation, and scaffolding company operation or any other unauthorised use.
 - b) Remove all hardstanding along with any resulting debris and detritus arising from the removal, returning the land to as it was.
 - c) Remove all shipping containers and portable offices and any other unauthorised development, along with any debris and detritus arising from the removal.
 - d) Remove any other operational development such as associated lighting, cess pit(s), scaffolding, any unauthorised fencing and gating, and any other unauthorised development, along with any resulting debris and detritus arising from the removal, returning the land to as it was.
 - e) Other operational development in terms of associated lighting, cess pit(s), erection of scaffolding, erection of parameter fencing exceeding 2m in height and, any other associated development. Along with any debris and detritus arising from the removal, returning the land to as it was.
- The period for compliance with the requirements is six (6) months.
- The appeals are proceeding on the ground] set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 (as amended). 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 Act.

Summary of Decision: The enforcement notice is quashed.

The Enforcement Notice

1. Defects that are fatal to an enforcement notice fall into two main categories: those that make it a nullity and those that make it invalid. In short, a notice is null if it is defective on its face, normally by missing some vital element that an enforcement notice shall include under s173 of the Act which sets out the statutory requirements of what must be said on the face of the notice. A fundamental error in the notice makes it a nullity and if an enforcement notice is found to be a nullity there is, in

effect, no enforcement notice as such; there is nothing to be corrected or subject to any ground of appeal set out under s174(2) of the Act.

2. An enforcement notice is invalid if it is flawed in some way, but not so defective as to be a nullity. An invalid notice can be corrected or varied by an Inspector under s176 provided the correction or variation will not cause injustice to the appellant or local planning authority.
3. An enforcement notice must enable the recipient to know what those matters are under s173(2) and thus may be null because the allegation is too unclear. The appropriate test is whether the notice is hopelessly ambiguous and uncertain, either as regards the description of the planning breach alleged, or the necessary remedial steps, as set out by Upjohn LJ in *Miller-Mead v MHLG* [1963] 2 WLR 225.
4. A notice must be drafted to tell the recipient fairly what they have done wrong and must do to remedy it. Irrespective of the appeals on ground (b) I have concerns regarding the matters which appear to constitute the breach of planning control and what is required to be done.
5. Firstly, paragraph 3d) of the Notice refers to “*any other associated development*”. As set out above an enforcement notice must tell the recipient fairly what they have done and must do to remedy it. I cannot see how the recipient can know the full extent of the alleged breach of planning control when the phrase “*any other associated development*” is used. I have considered whether the Notice can be amended to delete this part of the breach but in the event of me dismissing the deemed planning application on ground (a) that could unintentionally result in planning permission being granted for a breach that has not been properly identified in the Notice.
6. The lack of clarity is compounded by the fact that the description “*any other associated development*” is included in the paragraph which starts with the words “*Other operational development*” which is vague apart from the fact that the Notice then goes on to identify associated lighting, cess pits, erection of scaffolding and erection of perimeter fencing exceeding 2m in height. “*Any other associated development*” is ambiguous and very much open to interpretation which may cause uncertainty. If the two main parties have different understanding of any other associated development, then a further dispute may arise. Also of concern is the fact that planning permission could be deemed to have been unintentionally granted or refused for development.
7. Secondly, paragraph 3c) of the allegation relates to “*Operational development by the placement of shipping containers and portable offices*”, but it is not clear why the placement of the containers and portable offices is operational development. Based on the evidence before me it is more likely that the placement of shipping containers and portable offices is part and parcel of the material change of use of the land to which the enforcement notice relates rather than being operational development. An allegation of operational development can be corrected to refer to a material change of use so long as doing so would cause no injustice to the appellant. In this case the placement of shipping containers and portable offices could be added to the description of the material change of use in paragraph 3a) of the Notice. The requirements of the Notice include, at paragraph 5c) the removal all shipping containers and portable offices.

8. The appellant has not objected to this requirement and therefore, in my judgement paragraph 3c) could be deleted and the words "*placement of shipping containers and portable offices*" added to paragraph 3a) of the alleged breach of planning control the subject of the Notice. This could be done without causing injustice to the appellant.
9. Paragraph 5a) requires the cessation of "*any other unauthorised use*" without identifying with specificity what that could be. As such it is ambiguous and introduces uncertainty. Without knowing exactly what the Council has in mind here it is not possible for me to correct or vary the requirement because I may unintentionally be causing injustice to either main party.
10. Paragraphs 5a), 5c) and 5d) refer to the land being returned to "*as it was*", but there is no detail of whether this is immediately prior to the alleged breach having taken place or some other time. Further detail is required but it is not possible for me to correct or vary the Notice because it is not for me to speculate what the Council's intentions are in this respect.
11. Paragraph 5d) identifies the requirement to remove "*any unauthorised fencing and gating*", but no gating is identified in the alleged breach of planning control. The requirements of the Notice should square up with and follow logically from the allegation. One option would be to add "gating" to the allegation, but this would cause injustice to the appellant because the additional alleged breach would put them in worse off position than if the appeals had not been made. The Council may consider "gating" to be part of any other operational development but that is not at all clear. By deleting "gating" from the requirements planning permission could be granted for any gating if I was to dismiss the appeals on ground (a).
12. Finally, requirement 5e) is very unclear because it does not state what is required to be done with respect to "*Other operational development in terms of associated lighting, cess pit(s), erection of scaffolding, erection of perimeter fencing exceeding 2m in height and any other associated development*". I infer that these are parts of the unauthorised development to be removed and any debris and detritus arising from the removal also removed from site and the land returned to as it was. The paragraph mainly repeats the requirements of 5d) and so could be deleted without causing injustice to either main party without risk of part of the unauthorised development remaining following compliance with the requirements.
13. Because of the above concerns the Notice is clearly flawed. Although some of the defects are capable of being corrected or varied without causing injustice to either of the main parties, others are not. Cumulatively, the Notice is ambiguous and causes confusion and uncertainty with respect to the matters which appear to constitute the breach of planning control and what the appellant are required to do.
14. I have also noted that there is a spelling mistake in paragraphs 3d) and 5e) both of which refer to "*parameter fencing*". This is clearly an error which is capable of being corrected to read "*perimeter fencing*" without causing injustice to either main party.

Conclusion

15. Therefore, for the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct all the errors in

accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

16. In these circumstances, the appeals on the grounds set out in section 174(2(a), (b) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Formal Decision

17. The enforcement notice is invalid and not correctable. The enforcement notice is quashed.

A A Phillips

INSPECTOR