
Appeal Decision

Site visit made on 24 January 2025

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 02 September 2025

Appeal Ref: APP/N5090/C/24/3341487

Land at Sopers Yard, 155 Bell Lane, London, NW4 2AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the “Act”). The appeal is made by Buren Holdings Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 27 February 2024.
 - The breach of planning control as alleged in the notice is:-
 1. The construction of hardstanding (shown in the approximate location edged in yellow on attached image 01), and;
 2. The making of a material change of use of part of the land to use as a dwellinghouse and the stationing of a caravan and erection of connecting structures (both shown edged in red on attached image 01) incidental to the making of the change of use.
 - The requirements of the notice are to:
 1. Cease the use of the land edged in red as a dwellinghouse.
 2. Restore all of the land back to the state in which it was prior to the breaches of planning control by:
 - (a) Digging up and removing from the land the hardstanding, other than those parts shown in place in attached Image 02. Hardstanding removal must result in exposure of top soil/soil in areas shown as supporting vegetation in Image 02.
 - (b) Removing from the land the caravan and demolishing the connecting structure.
 3. Permanently remove all constituent materials resulting from the works in 2(a) and (b) above from the land.
 - The period for compliance with the requirements is: five months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Act.
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Summary Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

2. The application was brought on the basis of arguments under grounds (b) and (f). Subsequently, the appellant added an additional ground (d) to their grounds of appeal. The appeal was proceeding on the basis of an inquiry. However, the appellant withdrew their ground (d) argument prior to the inquiry being opened. The parties were in agreement that, for the remaining grounds of appeal, grounds (b) and (f), an inquiry was not required. With the agreement of the parties, the procedure for determination of the remaining grounds of appeal was altered and therefore the appeal has proceeded by way of written representations.

Matters concerning the notice

3. Section 171A(1)(a) of the Act states that the carrying out of development without the required planning permission constitutes a breach of planning control. Section

173(1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

4. The description of the alleged breach, in section 3.2 of the notice, refers to “the making of a material change of use of part of the land to use as a dwelling house and the stationing of a caravan and erection of connecting structure...”. This description implies both a dwellinghouse as well as the stationing of a caravan form part of the breach alleged. It is the use of the land, as opposed to use of a building as a dwelling house that is described. The stationing of a caravan is not of itself necessarily development. The purpose for which the caravan and connecting structure is used, is not described. In the reasons for issuing the notice (section 4 of the notice), Reason 3 refers to a “caravan dwelling” thus suggesting only one structure being used for residential purposes. The requirements then refer to the cessation of the use of the land edged in red, as a dwelling house (5.1) and at 5.2(b), the removal from the land of a caravan and connecting structure. There is no requirement to cease a residential use. Various terms are used interchangeably.
5. The issues with the notice were raised with the parties. The Council provided its written comments and in doing so conceded that *‘there is a degree of ambiguity in the description of the breach as to whether or not it believes that the structure being referred to as a caravan and the items attached to it are themselves developments’*. The Council goes on to explain the difficulties it encountered in communicating with the appellant and gaining access to the appeal property. Crucially, the Council accepts that *‘in short, the LPA does not know whether what was on site at the time the Enforcement Notice was issued remained a caravan as defined in the Caravan Acts or had been so modified as to constitute operational development. The Council is of the very firm view that the ‘main’ breach is one of the making of a material change of use. In addition, there has been activity carried out incidental to the making of that change of use which may or may not represent a breach of planning control in its own right’*.
6. From what the Council has said, it appears that it is alleging use of a dwellinghouse, and therefore, it is not clear from the notice whether the Council’s concern is the residential use of the land, which has not been alleged, or the structure, or both. Within the reasons for issuing the notice, Reason 5 refers to policy D6 of the London Plan, which is concerned with housing quality and standards. However, this policy would not apply to a caravan. Furthermore, the Council has raised concern regarding the design of the ‘caravan dwelling’. If the appellant were to be given planning permission for the siting of a caravan for residential use, the caravan which is sited there could change.
7. From the Council’s evidence, it seems its concern is the residential use of the site. While the Council’s view is that the ‘main’ breach is one of the making of a material change of use, whether the structure is a building is relevant because the notice requires the caravan to be removed and the connecting structure to be demolished. The immunity periods for a building are 4 years (including the material change of use of a building to use as a single dwellinghouse), whereas the

immunity period for a material change of use is 10 years¹. It is therefore important that the appellant understands what the Council is alleging so that they understand which immunity period applies.

8. Moreover, the arguments that the appellant would need to advance in terms of a ground (b), for example, would be very different for a dwellinghouse (and whether the structure constituted operational development) and a caravan. Indeed, the appellant may wish to advance a case that the caravan is a chattel and that the allegation, which relates to a dwellinghouse, is incorrect.
9. The Council suggests the notice should be corrected, depending upon my finding as to whether the structure constitutes operational development or a caravan in law. However, it is for the Council to identify the breach it considers has occurred. The inclusion of an ambiguous allegation to cover both situations is wholly unacceptable given the potential consequences of an enforcement notice. While I note the Council had difficulty in accessing the site, Councils do have powers of entry which could have been exercised in this instance. Furthermore, were the allegation found to be incorrect, the difficulties the Council had in terms of investigating would have reasonable defence in terms of considering whether an award of costs should be made.
10. An enforcement notice must be drafted to tell the recipient fairly what they have done wrong and what they must do to remedy it. It should not be left to the appeal process (particularly since recipients do not always appeal) to decide what the alleged breach should be. The appellant has advanced their appeal on the basis that the caravan is not being used for residential purposes but is being used for storage. In the event that I had found that the structure was a building for the purposes of the Act, the case advanced by the appellant may have been quite different and therefore correcting the notice would cause injustice to the appellant.
11. Significantly, the caravan/structure/dwellinghouse had been removed by the time of my site visit and so I do not know how this part of the allegation should be corrected.
12. I do not consider that the matters raised above are such as would necessarily render the notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning control are generally stated. Nevertheless, I conclude that, for the reasons explained above, that the enforcement notice should be corrected to delete allegation 2 and its corresponding requirements².
13. The notice also alleges unauthorised operational development consisting of the construction of hardstanding. Since this allegation is identified separately and the Council's reasons for issuing the notice in relation to the hardstanding can be ascertained from the notice, I consider that the allegation relating to the construction of hardstanding can be severed from allegation 2 and this matter can be determined as part of this appeal.
14. At paragraph 3 the allegation at point 1 refers to image 01 as being the approximate location of the hardstanding, as shown edged in yellow. The requirements of the notice at step 2(a) of paragraph 5 refers to image 02 and requires the *'digging up and removing from the land the hardstanding, other than*

¹ Because the enforcement notice was issued prior to 25 April 2024

² Requirement 1: Cease the use of the land edged in red as a dwellinghouse, Requirement 2b: Removing from the land the caravan and demolishing the connecting structure; and the deletion of the words 'and (b)' from Requirement 3.

those parts shown in place in attached Image 02. Hardstanding removal must result in the exposure of top soil/soil in areas shown as supporting vegetation in Image 02'. Whilst Image 02 is attached to the notice, the image is not of sufficient clear quality and it is therefore difficult to ascertain areas of vegetation from areas of hardstanding.

15. I sought the Council's comments in relation to the clarity of the areas which were stated to be shown within Image 02 and invited the provision of a revised plan to clearly identify the area of hardstanding which the Council considered it necessary to remove. A revised plan was provided, Image 02 (Rev B), and the appellant's comments were sought in relation to this revised plan. No comments were received from the appellant.
16. At the visit I observed that areas of the appeal site which broadly correlate with areas shown as shaded black on Image 02 (Rev B) had the appearance of having been recently altered and no hardstanding was present. To this extent, the appellant appears to have undertaken works to comply with the requirement of the notice to remove the unauthorised hardstanding and so clearly understood which areas of hardstanding were required to be removed. As such, I do not consider that any injustice would be caused to any party in deleting Image 02 from the notice and replacing it with Image 02 (Rev B). I shall therefore consider the remaining ground (f) appeal as this matter relates to the allegation of the hardstanding.

Ground (b)

17. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred, as a matter of fact. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
18. The main thrust of the appellant's case under ground (b) is that the land is not being used as a dwellinghouse, nor would the caravan be a dwellinghouse and that the caravan is used for storage. However, as set out above, I have found that the notice should be corrected to delete allegation 2 and, since this no longer forms part of the allegation, there is no need for me to consider the appellant's points in this regard.
19. With respect to the hardstanding, the appellant does not dispute that hardstanding has been laid within the site and whilst comments have been made regarding the date this hardstanding was laid, this is not a matter which would be considered under ground (b)³.
20. The appellant has not shown, on the balance of probabilities, that the breach, as corrected, has not occurred and so the appeal under ground (b) must fail.

Ground (f)

21. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

³ As set out above, the appellant has withdrawn their appeal under ground (d).

22. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach of planning control.
23. The stated breach is the construction of hardstanding. This breach would be remedied by the removal of the hardstanding. A requirement that the appellant should expose top soil when there may be none below the hardstanding, would go beyond remedying the breach.
24. I shall vary the notice by deleting the requirement to 'Hardstanding removal must result in the exposure of top soil/soil in areas shown as supporting vegetation in Image 02.' The appeal on ground (f) therefore succeeds in this respect and the notice will be varied accordingly.

Conclusion

25. For the reasons given above, the appeal under ground (b) fails. I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall correct and vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Formal Decision

26. It is directed that the enforcement notice is corrected and varied by:
 1. Deleting Image 02 attached to the notice and substituting Image 02 (Rev B) attached to this decision.
 2. The deletion of the words from paragraph 3 '*And, 2. The making of a material change of use of part of the land to use as a dwellinghouse and the stationing of a caravan and erection of connecting structures (both shown edged in red on attached Image 01) incidental to the making of the change of the use.*'

So that paragraph 3, The matters which appear to constitute the breach of planning control, reads 'Without planning permission: 1. The construction of hardstanding (shown in the approximate location edged in yellow on attached Image 01'.
 3. The deletion of the words from paragraph 5 '*1. Cease the use of the land edged in red as a dwellinghouse*' and '*2b) Removing from the land the caravan and demolishing the connecting structure*'.
 4. The deletion of the words 'Hardstanding removal must result in the exposure of top soil/soil in areas shown as supporting vegetation in Image 02' from paragraph 5 step 2.
 5. The deletion of ':' from requirement 2.
 6. The deletion of the words '*a)*' and '*other than those parts shown in place in attached Image 02*' from paragraph 5 step 2(a) and their substitution with the words '*as shown shaded in black on Image 02 (Rev B)*'.

7. The deletion of the words '*in 2.(a) and (b) above*' from paragraph 5 step 3 and their substitution with the words '*1. above*'.
8. In paragraph 5, step 2 shall be renumbered step 1, and, step 3 shall be renumbered step 2.

So that paragraph 5 , what you are required to do, reads '*1. Restore all of the land back to the state in which it was prior to the breaches of planning control by digging up and removing from the land the hardstanding as shown shaded in black on Image 02 (Rev B). 2. Permanently remove all constituent materials resulting from the works in 1. above from the land.*

9. Subject to the corrections and variations above, the appeal is dismissed and the enforcement notice is upheld.

E Brownless

INSPECTOR



Planning Inspectorate

Replacement plan to be attached to the enforcement notice

Image 02 (Rev B)

