



Appeal Decision

Site visit made on 5 August 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 September 2025

Appeal A Ref: APP/J1535/C/23/3325552

Appeal B Ref: APP/J1535/C/23/3325554

Land at Luxborough Lakes, Luxborough Lane, Chigwell, Essex, IG7 5DF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Daniel Ballard and Appeal B is made by Mr Dermott Hayes against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 7 June 2023.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use of the land for a mixed use of recreational water sports, including wild swimming, paddleboarding, bathing and fishing, as a café and for the parking of motor vehicles.
- The requirements of the notice are:
 - i. Cease the use of the land for recreational water sports, including wild swimming, paddleboarding, bathing and fishing, as a café and for the parking of motor vehicles.
 - ii. Remove from the land all portable structures including sheds, containers, inflatable swimming play equipment, tables and chairs, canoes and other boats, and any other item associated with unauthorised use and not required in connection with the lawful use of the land for agriculture.
 - iii. Break-up and/or scape clear from the land the hard surfaces formed in connection with the unauthorised use to provide parking and an access road, shown marked in blue at the approximate location on the attached plan, and remove all resulting material from the land.
- The period for compliance with the requirements is: 2 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of decisions: The appeals succeed in part and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellants have appealed the same Notice, make the same case and are represented by the same agent. I have therefore considered the two appeals together.
2. Aspects of the case made by the appellants relate to the time period over which the lakes have been used. These are arguments normally made at appeals under ground (d), but no such appeals were formally made at the time the appeals were submitted. Nevertheless, the Council has been afforded an opportunity to make representations in relation to these matters and no injustice occurs to either party in considering them. I have therefore done so as appeals on ground (d).
3. Comments of an interested party refer to a bund formed on the Land which the Council advise is subject to a separate Notice. The matter before me relates to a material change of use of the land and the Notice makes no reference to a bund. The bund is therefore not a matter for my consideration.

4. The breach of planning control is described in the Notice as a mixed use of recreational water sports, including wild swimming, paddleboarding, bathing and fishing, as a café, and for the parking of motor vehicles. The Notice also alleges there were a number of portable structures and shipping containers housing café, toilets, changing facilities and equipment used, tables and chairs, canoes and other watercraft associated with the use.
5. At the time of my site visit the café had ceased operations, I saw no aqua park inflatable swimming play equipment, and although paddleboarding was still advertised, the facilities to support its use were very limited.
6. The gravel surface created at the eastern end of the parking area provides an enclosed area for the wild swimming operation run by the appellant for Appeal B. That area contains a gravel surface, private access to the water, structures and containers associated with that element of the use, along with outdoor seating, changing and drying facilities.
7. Elsewhere on the Land I saw a small number of benches and tables and a timber shed.

The appeals on Ground (d)

8. Appeals on ground (d) are made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control.
9. The breach of planning control alleged is the material change of use of the Land, and Section 171B of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
10. To succeed on ground (d) the appellants must therefore demonstrate that, on the balance of probabilities, the use described in the Notice has occurred for a period of 10 years prior to the date the Notice was issued.
11. The Council advises they responded to a report that the land opened (or re-opened) for outdoor recreational use in May 2021 and that the lawful use of the land is for agriculture.
12. The appellants say Luxborough Lakes has been used as a recreational area for over 40 years although over time the offerings of services have changed. They state that angling has been a constant part of the uses occurring, but that there has been a change from boats and water skiing to paddle boarding, swimming, 'water park' (racing across inflatable floating obstacles) and other 'less intensive' uses.
13. Even if recreational watersports have occurred at times over a significant period of time, the appellant has not provided evidence to demonstrate what occurred on or over specific dates, along with details of any gaps in the uses occurring. In relation to the specific use before me, as described in the Notice, the appellants have not evidenced when the use in its current form first occurred. Or of it having occurred for a period of 10 years from that date, or at any time.
14. It has therefore not been demonstrated that the use has occurred for a period of 10 years from the date of the breach of planning control. Consequently, it has not

been demonstrated that no enforcement action could be taken in respect of the alleged breach of planning control.

15. The appeals on ground (d) therefore fail.

The appeals on ground (f)

16. Appeals on ground (f) are made on the basis that the steps required by the notice, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
17. The Council advises that the purpose of the Notice is to remedy the breach of planning control. That is clearly the case since the first requirement is to cease the use described in the same terms as the description of the breach of planning control in Section 3 of the Notice. The second and third requirements require the removal of items and works on or carried out on the land to facilitate that use.
18. In order to remedy the breach the requirements of the Notice must result in there being no remaining breach of planning control in relation to the matters alleged. The matter before me is therefore whether the requirements are the minimum necessary to do that, or whether there is any obvious alternative or lesser step which would achieve the purposes of the Notice with less cost and disruption to the appellants.
19. No appeal has been made on ground (a) and I have been advised of no planning permission or certificate of lawfulness granted for the use or any of its component parts, associated works or structures. Requirement 5(i) is therefore necessary, and the minimum necessary to cease the operational aspect of the use.
20. The café was located within a shipping container, which has been removed, as have the inflatable swimming play equipment, canoes and other boats. Together with the sheds and remaining containers, tables and chairs and the equipment and chattels listed in requirement 5(ii), these are (or were) part and parcel of the use which had occurred, facilitating and associated with the use. Cessation of the use therefore necessarily requires their removal in order to remedy the breach.
21. Requirement 5(iii) relates to the breaking up and/or 'scaping clear' of the hard surfaces formed to provide parking and an access road within in the area outlined in blue on the enforcement notice plan. Reference to 'scaping' is clearly a typographic error and can be corrected to "scraping" without injustice to either party. The 'hard surfaces' are in fact unbound gravel and the area is used for pedestrians rather than vehicles, is located at the end of the parking area and is not used for access.
22. Nevertheless, the appellant has not disputed its construction or that it was carried out in association with or to facilitate the use. Its removal is therefore necessary in order to remedy the breach, but the requirement should be corrected to refer to the scraping clear from the land the gravel surface without reference to use for parking and access. The rectangular area is also outlined in a similar colour of blue to that on the Ordnance Survey base plan showing watercourses and water bodies, and for clarity the plan should be replaced with one showing the area outlined and hatched in black. These corrections can be made without injustice to either party.

23. The requirements of the Notice are therefore the minimum necessary to remedy the breach of planning control and there is no obvious alternative or lesser step which would achieve the purposes of the Notice with less cost and disruption to the appellants. But it is necessary to correct requirement 5.iii to reflect the development which has occurred.

24. The appeals on ground (f) therefore succeed only to a limited extent.

The appeals on ground (g)

25. Appeals on ground (g) are made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

26. The Notice requires the cessation of operational elements of the use, and removal of the items, structures and works within 2 months.

27. The appellants advise that each component part of the use is operated by an independent business, each with staff and equipment on the Land. The only remaining element with structures or works of any significance is that relating to the wild swimming area.

28. Although the wild swimming appears to be a year-round activity, a two-month period from the date of this decision would potentially allow the summer seasonal activities to continue this year, with cessation of the operational elements and removal of the structures and chattels in October/November.

29. However, one of the temporary structures has been clad in timber, there are two shipping containers, a lightweight timber shelter, picnic benches and fencing to be removed, followed by removal of the gravel surface. It may be possible to remove these items and the equipment contained within them within a two-month period, but three months would be more reasonable, particularly considering the need for contractors to remove the containers and gravel surface.

30. The appeals on ground (g) therefore succeed in part.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decisions on Appeals A and B

32. It is directed that the enforcement notice is corrected by:

- In Section 5.iii, the deletion of the words:

"Break-up and/or scape clear from the land the hard surfaces formed in connection with the unauthorised use to provide parking and an access road, shown marked in blue at the approximate location on the attached plan, and remove all resulting material from the land"

and their substitution with the words,

"Scrape clear from the land the gravel surface formed in connection with the use, shown edged and hatched in black at the approximate location on the attached plan, and remove all resulting material from the land "; and

- The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

33. And varied by:

- In Section 6, the deletion of the words "2 months after this notice takes affect" and their substitution with the words:
 - "5.i and 5.ii: 2 months after this notice takes affect"
 - "5.iii: 3 months after this notice takes effect."

34. Subject to the corrections and variation, the appeals are dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR



Planning Inspectorate

Plan

The plan referred to in my decision.

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Not to scale

