

Appeal Decision

Site visit made on 29 August 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 4th September 2025

Appeal Ref: APP/J1915/C/24/3341743

Land to the west side of Robins Nest Hill, Little Berkhamsted SG13 8LS

- The appeal is made by Remo Gabriele under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/23/0128/ENF) issued by East Herts District Council on 1 March 2024.
 - The breach of planning control alleged in the notice is "the unauthorised formation of an access onto a classified highway by the removal of hedgerow and the erection of wooden fence posts, railings and an access gate".
 - The requirement of the notice is to "Remove the gate and the fencing from the land".
 - The period for compliance with the requirement is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c) and (e). An application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting the breach of planning control.
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Decision

1. The appeal is allowed and the notice is quashed.

Reasons for the decision

The appeal on ground (e) (that copies of the enforcement notice were not served as required by section 172)

2. Section 172 requires a copy of the notice to be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. The appellant, who is the owner of the land, states that an existing tenant on the land (a beekeeper) was not served with a copy of the notice.
 3. In response, the Council state: they carried out a Land Registry check and served a copy on the appellant, who was identified as the owner in the title document; they also served a copy on someone named in an earlier planning application; there was no indication of an occupier in that application and they had no reason to serve any other persons; and no prejudice has been caused to any other persons who may have an interest in the land.
 4. I conclude from this statement that the Council accept that the existing tenant referred to by the appellant was not in fact served with a copy of the notice. No representations have been received from the tenant during the appeal process.
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5. The Council had an obligation to carry out adequate prior investigation to identify the owners, occupiers and other persons having an interest in the land in order to ensure compliance with section 172. There is no indication in this instance that the Council questioned the owner or exercised their powers in sections 171C or 330 to require further information from him.
6. The Council's appeal documents show that the site of the access was visited by their officer and several photographs of it were taken at the time, but the land to which the notice relates is very large and there is no indication that other parts of the land were inspected. The only photograph of the wider area takes in the view over separately-owned land to the north, towards an authorised access that is gated and locked and is I understand unavailable for use by the owner. The beekeeper tenant uses a narrow strip of land near the boundary some distance to the south of the allegedly-unauthorised access and it may be that his occupation of this land was overlooked when the Council's visit took place, because the focus of attention was on the access.
7. I am authorised by section 176(5) to disregard the fact that the tenant was not served with a copy of the notice if he has not been substantially prejudiced by the failure to serve him. At the time of my visit the area in use for beekeeping contained twenty-seven hives kept for the commercial production of honey. I understand that the allegedly-unauthorised access is the tenant's only means of access to the hives. If the tenant had been served with a copy of the notice, his rights of appeal would have been explained to him in the accompanying documents; he could have put forward material considerations not referred to in the owner's appeal about the effect of the notice on his business; and he could have raised additional grounds of appeal. In these circumstances, it is clear that he has been substantially prejudiced by the failure to serve him and that the power in section 176(5) cannot be exercised.
8. I have therefore concluded that the appeal should succeed on ground (e). As a result, the notice has been quashed and grounds (a),(b) and (c) of the appeal no longer fall to be considered. Attention is drawn to the provisions in the Act relating to the taking of further enforcement action by the Council in these circumstances and to the shortcomings in the requirements of the notice that the appellant has referred to.

D.A.Hainsworth

INSPECTOR