



Appeal Decision

Site visit made on 29 July 2025

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/A4710/C/24/3354965

Land at Mill Fold Cottage, Mill Fold Way, Ripponden HX6 4DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act")
 - The appeal is made by Mr John Wade against an enforcement notice ("EN") issued by Calderdale Metropolitan Borough Council.
 - The EN was issued on 7 October 2024.
 - The breach of planning control as alleged in the EN is: Without planning permission, the alleged unauthorised change of use from agricultural land to use for provision of tourist facilities including caravan/motorhome pitches, glamping pods, washroom and associated works and engineering operations comprising the formation of access to glamping pods/washroom on the Land (as indicated in the digital photographs attached to this notice in Appendix 1).
 - The requirements of the EN are:
 - (i) Cease use of Land for provision of tourist facilities including caravan/motorhome pitches, glamping pods, washroom and associated works as seen in the digital photographs attached to this Notice at Appendix 1
 - (ii) Demolish/dismantle/remove the buildings used as glamping pods as seen in the digital photographs attached to this Notice at Appendix 1
 - (iii) Demolish/dismantle/remove the washroom as seen in the digital photographs attached to this Notice at Appendix 1
 - (iv) Remove from the Land the access to glamping pods/washroom and any associated base course, kerbing, edgings, and granular stone as seen in the digital photographs attached to this Notice at Appendix 1
 - (v) Remove all materials and debris from the Land affected arising from compliance with requirement 5(i) to 5(iv) above and reinstate the Land to grass to match the grass in the adjacent fields.
 - The period for compliance with the requirements is: For 5(i) to 5(v) above: 3 (Three) months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the 1990 Act. 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 1990 Act.
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Decision

1. The EN is quashed.

Preliminary Matter

2. Section 174(2A)(a) of the 1990 Act (as inserted by s118 of the Levelling-up and Regeneration Act, 2023) says, "*An appeal may not be brought on the ground specified in subsection (2)(a) if (a) the land to which the EN relates is in England, and (b) the EN was issued at a time after the making of an application for planning permission that was related to the EN*".

3. Planning permission¹ was refused by the Council on 23 November 2022 for the part retrospective change of use from grazing land to the provision of tourist facilities including caravan pitches, glamping pods, a washroom and associated works (“the 2022 application”). The location plan submitted with the 2022 application included the access up to Mill Fold Way and part of the land within the appellant’s ownership. An appeal against the Council’s decision was not lodged.
4. Within two years of the 2022 application having ceased to be under consideration, the Council issued an EN for the alleged breach of planning control as detailed in the banner heading above. Consequently, it is necessary for me to establish whether the EN was issued after a “*related planning application*” was made to determine whether the ground (a) appeal is barred by the 1990 Act.
5. The land affected by the alleged breach of planning control is shown edged red on the EN plan. The land encompasses the whole of the appellant’s land ownership and therefore, it is larger than the land included within the 2022 application. As such, the EN breach alleges the change of use of the larger area of land from “*agricultural land to use for provision of tourist facilities*”. This contrasts with the 2022 application which sought permission to solely change the use of the smaller area of land.
6. Consequently, granting planning permission for the 2022 application would not have involved granting planning permission for the matters specified in the EN as constituting a breach of planning control. On this basis, ground (a) is not barred by s174(2A) of the 1990 Act.

Matters Concerning the Notice

Alleged Breach

7. For a change of use to amount to development there must be a material change in the character of the use that the land is being put to. Therefore, the alleged breach of planning control is “*the unauthorised material change of use*” (my emphasis) rather than “*the unauthorised change of use*”. Therefore section 3 of the EN must be corrected in this regard. Both parties’ cases are based on the allegation amounting to development. No injustice would therefore arise from this correction.

Requirements of the EN

8. You cannot cease the use of the land to remove buildings therefore, requirement (i) must be varied to remove reference to glamping pods, the washroom and associated works. Other requirements within the EN seek to resolve these matters and therefore their exclusion from requirement (i) would not cause injustice to the Council.
9. The alleged breach of planning control and the requirements must align. Therefore, it is necessary for requirement (iv) to be amended to refer to the development as described in the alleged breach. As this variation is for precision, it would not cause injustice to either party.
10. The appellant is best placed to know the condition of the land prior to the alleged breach of planning control. Accordingly, requirement (v) must be varied to omit reference to the grass being reinstated to match the grass in the adjacent field.

¹ Planning Ref 22/00326/FUL

Requiring the land to be returned to its former condition is less onerous. Therefore, I am satisfied that the EN can be varied in this way without causing injustice.

Reasons for Issuing the EN

11. The land shown on the EN plan includes the land within the 2022 application. The 2022 application was refused for four reasons, including insufficient information regarding the effect of the development on flood risk. The Environment Agency also objected to the planning application and the evidence before me does not suggest that this objection has been overcome. The reasons for issuing the EN exclude flood risk. Amending the reasons for issuing the EN to include flood risk would expand the scope of the EN, which would cause injustice to the appellant.

EN Plan

12. As previously stated, the alleged breach of planning control (as corrected) refers to the material change of use from *“agricultural land to use for provision of tourist facilities”*. It also alleges that the material change of use has taken place on the whole of the land edged red on the EN plan. The appellant asserts that this is incorrect; instead, they state that the extent of the material change of use is limited to the area edged red on the location plan submitted with the 2022 application. This has not been disputed by the Council. From the information before me, and what I witnessed on my site visit, I have no reason to disagree with the appellant’s assertion.
13. I can correct the EN through the substitution of the plan so long as the matter has been canvassed with the parties, and where the correction would not cause injustice. As such, I invited comments from both parties. The Council agreed that the EN plan could be corrected, and they submitted an amended plan for consideration. However, the appellant believed that correcting the plan would cause them injustice.
14. The land included on the Council’s revised EN plan extends to an intermediate area between the larger area shown on the EN plan and the smaller area shown within the 2022 application. It is unclear why the Council chose the revised area. However, it incorporates land not used for tourism purposes and excludes the access onto Mill Fold Way. Consequently, accepting the Council’s amended EN plan would not overcome my concerns.
15. If I correct the EN plan so that it matches the land shown within the 2022 application, the 2022 application would become a *“related planning application”*. Consequently, granting planning permission for the 2022 application would have involved granting planning permission for the matters specified in the EN as constituting a breach of planning control and therefore, ground (a) would be barred by s174(2A) of the 1990 Act. This would cause injustice to the appellant.
16. I could correct the alleged breach to include all the uses that are occurring within the larger area of the EN plan and only require the tourism use to cease, the associated buildings to be demolished, and the land to be returned to its former condition. However, the evidence before me does not suggest that the larger area is a single planning unit, and correcting the alleged breach in this way would broaden the scope of the EN, thereby causing injustice to the appellant.

17. Furthermore, I do not have a definitive list of what uses or operational development are taking place on the larger area of land. I may therefore inadvertently grant deemed planning permission for some unspecified use/development by virtue of s173(11) of the 1990 Act, which would cause injustice to the Council.

Conclusion

18. For the reasons given above, I conclude that the EN does not specify with sufficient clarity the alleged breach of planning control, the reasons for issuing the EN, and the land where the breach of planning control is alleged to have taken place.
19. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. Therefore, the EN is invalid and will be quashed.
20. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b) and (g) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

A Berry

INSPECTOR