



Appeal Decisions

Site visit made on 8 July 2025

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2025

Appeal A Ref: APP/F2415/C/23/3321546

Appeal B Ref: APP/F2415/C/23/3321547

Land at Trotters Lake, Willoughby Road, Ashby Magna, Leicestershire, LE17 5NP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mr Paul Cooke (Appeal A) and Mrs Julie Cooke (Appeal B) against an enforcement notice issued by Harborough District Council.
 - The notice was issued on 3 April 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land (outlined in red) for the siting of a mobile home for residential use in the approximate location identified by black hatching on the attached plan, and shown in photograph at Appendix A of this notice.
The requirements of the notice are to: a) Cease the use of the mobile home for residential use; b) Remove from the land the mobile home and all associated structures, fixtures and fittings and hard surfaces.
 - The period for compliance with the requirements is six months.
 - Appeal A is made on the grounds set out in section 174(2)(a) and (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.
 - Appeal B is made on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990.
-

Decisions: Appeal A and B

1. The enforcement notice is quashed.

Preliminary Matters

2. Appeals A and B relate to the same site and the same enforcement notice. I have therefore dealt with them together.

Matters concerning the notice

3. The enforcement notice alleges a material change of use of the land for the siting of a mobile home for residential use. The land is outlined in red on the plan attached to the notice. The mobile home is sited adjacent to the eastern boundary of the land and its approximate location is identified by black hatching on the plan.
4. The mobile home is occupied by the appellants, who oversee the business operations on the land which, in addition to the mobile home, encompasses two fishing lakes, caravan pitches, camping, ancillary buildings associated with leisure use and hardstanding for access and parking. To the south of the land within the wider site under the appellants' ownership but outside the land the subject of the notice, there is a caravan site, additional ancillary buildings and a hatchery lake. The access to the land from Willoughby Road is shared with Holly Farm, a separate residential property.

5. Planning permission was refused in October 2021¹ for a proposal described as 'change of use of land to mixed agricultural and leisure, retention of workers dwelling and erection of hatchery in connection with proposed agricultural and leisure use, installation of hardstanding, caravan pitches, car park and retention of ancillary buildings in connection with existing leisure use (part retrospective).' That application included the land which is the subject of the notice but also an additional area of land to the south close to the site entrance.
6. A subsequent planning application was approved on 25 January 2024², after the enforcement notice had been served, for '9 caravan pitches, hardstanding (retrospective), ancillary buildings and resurfaced access relating to the leisure use'. That application included a larger area of land to the south which has been acquired by the appellants. It therefore appears that there have been changes to land ownership and occupation of the land subsequent to the issuing of the notice.
7. As alluded to above, there are several plans in the evidence before me which identify different areas of land. There are also the appellants' plans submitted with the appeals which show a reduced area of land focussed on the siting of the mobile home itself and the means of access to it³. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. The wider land including the land to the south is owned and occupied by the appellants and there is little physical and functional separation between the areas. It is therefore unclear whether the plan attached to the notice correctly identifies the planning unit. I must consider the appeal and the deemed planning application in respect of the matters stated in the notice as constituting a breach of planning control at the time of issue of the notice.
8. There is no dispute that there is a mobile home in residential use on part of the land, as alleged in the notice. Indeed, residential use on the land has been authorised through the 2024 planning permission for the caravan pitches, albeit the caravans are tied to the angling use and must not remain on the site for more than 42 days in any 6 month period. However, the residential use occupies a small part of the land outlined in red on the plan attached to the notice. Although it is unclear precisely what other uses the site was put to at the time of the notice, the evidence indicates a leisure use in association with the fishing lakes and holiday accommodation, and potentially also agriculture.
9. The evidence therefore indicates that there is a mixed use on the land and that it was in mixed use when the alleged breach took place. The concept of a mixed use is two or more primary uses existing within the same planning unit or unit of occupation. One is not incidental to the other, although there may be incidental uses associated with each primary use.
10. Consequently, the allegation in the notice is incorrect and it should have referred to all the components of the mixed use even if only one is required to cease. This is because, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities. In any event, there is not a single primary use for the siting of a mobile home for residential use, on the whole of the land.

¹ Council ref. 19/01898/FUL

² Council ref. 23/00663/FUL

³ Drawing Numbers PL-SP-001 (A) and PL-SP-001 (B)

11. It is my duty to try get the notice in order if I can, and I have wide powers of correction under section 176 of the 1990 Act, but only where no injustice would be caused to either party. Neither party has provided an adequate description of the mixed use within the red line area which might form the basis for a revised allegation. If I were to expand the allegation and the requirements of the notice, then it would potentially widen the scope of the notice which could make it more onerous to comply with and thereby cause injustice to the appellants. Correcting the allegation in such a case could also have implications for the parties' cases under the grounds of appeal and the deemed planning application and could have given rise to appeals on other grounds.
12. I have considered whether the notice could be varied by deleting the plan and substituting it with a new plan to identify the land for the siting of a mobile home in residential use. However, it is not entirely clear where the precise boundaries of that use are, and the Council has effectively authorised residential use elsewhere on the land through the 2024 planning permission. Even if it were possible to reduce the area outlined in red to correspond to the area identified by black hatching on the plan attached to the notice or the boundary of the site shown on the appellants' plans, it may still be necessary to include land which is in mixed use and that would not correctly identify the planning unit given the single occupation of the land by the appellants and the lack of physical and functional separation between the uses on the ground. For these reasons the enforcement notice is invalid and incapable of correction without injustice to the appellant or the Council.

Conclusion

13. I conclude that the enforcement notice does not specify correctly the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct or vary the notice without causing injustice. Therefore, the notice is invalid and will be quashed.
14. In these circumstances, the appeals on the grounds set out in section 174(2)(a) and (g) of the 1990 Act and the application for planning permission deemed to have made under section 177(5) of the 1990 Act do not fall to be considered.

M Ollerenshaw

INSPECTOR