Planning Inspectorate

Appeal Decision

Site visit made on 6 September 2025

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 29th September 2025

Appeal Ref: APP/X1545/C/23/3324360
Land Adjacent to Glenworth, Maldon Road, Latchingdon CM3 6LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the "1990 Act").
- The appeal is made by Mr Harry McDermott against an enforcement notice issued by Maldon District Council.
- The enforcement notice was issued on 22 May 2023.
- The breach of planning control as alleged is described in the issued notice as follows: a) The unauthorised change of use of 'The Land' to a C3 residential caravan site, with the positioning of a mobile home for residential occupation b) The erection of two outbuilding structures, dwarf walls with steps, close boarded fencing, double gates and lampposts, all incidental to the unauthorised C3 use of the 'Land' and c) The importation of materials and the operation development to create hardstanding, facilitating the unauthorised change of use to a caravan site.
- The requirements are to: a) Cease the use of 'The Land' for unauthorised C3 residential use b) Remove from the site all caravans, mobile homes, domestic and commercial vehicles and residential paraphernalia c) Demolish entirely and remove from the 'Land', all unauthorised structures, hardstanding and boundary treatments associated with and facilitating the unauthorised change of use of the 'land' and d) the removal of all vehicles, equipment, materials, paraphernalia, and waste associated with the completed compliance with requirements a) to c).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (a) (f) and (g) of the 1990 Act.

Decision

1. The enforcement notice is quashed.

Reasons

2. The challenge in ground (b) is that the matters alleged have not in fact occurred. Essentially, the appellant's claim is that the notice is a nullity. Section 173(1) of the 1990 Act states that a notice shall state – (a) the matters which appear to constitute a breach of planning control. Section 173(2) states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of the notice is served to know what those matters are. Overall, the question of nullity should not be approached in a way which is unduly technical or formalistic.

3. However, a notice might contain all the statutory elements and not be a nullity, yet it is fundamentally flawed in some other way. For example, the description of the allegation is misleading, or the requirements are too imprecise, or both. The question will then be can s176(1) powers be used to correct the notice without causing injustice to the appellant or authority.

4. The onus of proof is on the appellant and standard is the balance of probabilities. The argument is a simple one, namely, the description of the alleged breach of planning control is inaccurate because the site is in a mixed residential and commercial use. The claim is that the site is subdivided into two areas: the caravan

and its garden area are positioned to the east and a business or commercial yard area to the west. The appeal parties appear to settle on the following description: *Change of use to mixed use comprising the siting of a caravan for residential purposes and the use of the land for business purposes*.

5. Firstly, the starting point is the identification of the planning unit, but it is unnecessary to overcomplicate matters. The area identified in the site plan attached to the issued notice, which is roughly rectangular in shape, forms a single unit of occupation. The evidence presented indicates the whole site is occupied by the appellant. The general rule is that materiality must be considered in respect of the entire site, and there is no need to artificially subdivide the site into smaller, self-contained units as there does not seem to be physical and functional separateness. The appeal site is clearly delineated, making it the appropriate physical area for assessing whether any material change of use has occurred. As a matter of fact and degree, the area outlined in red forms a single planning unit.

6. The core question is whether the site was used for the alleged purposes during the period leading up to the issuing of the notice and at the date of issue. Here the Council faces an uphill struggle. The quantum of the evidence presented, including historic aerial photographs, clearly show that the previous agricultural use had changed to a single mixed use comprising residential caravan site and commercial storage or business yard. As the appellant explains, virtually all the area to the west is devoted to some kind of business activity the scale of which suggests a primary use. One might say the appellant runs a landscape gardening and demolition business from the residential caravan site, but the evidence presented does not clearly demonstrate to me that the former is ancillary to the latter.

7. The Council suggest I should correct the site plan by removing the area to the west from the allegation. It further claims that, in such a circumstance the authority reserves its right to issue a second enforcement notice covering the change of use of the land to commercial storage or business use and associated hardstanding: I find this proposition highly problematic. The notice does not have to identify or relate to the whole unit of occupation but must identify the affected land. It is open to the appellant to show that there has been no material change of use, as alleged, over the whole planning unit. It would be inappropriate, indeed contrary to established case law, to artificially subdivide the planning unit, especially where there is little, if any, evidence of physical or functional separation and there are shared and common areas and access[1].

8. The Council has powers to serve various notices seeking information from owners or occupiers. In this case, site visits by officers were made as far back as 2019. It seems attention was paid to the caravan and the erection of walls and gates. A planning contravention notice (PCN) was served in 2021 and the allegation described in the form reflected what had been witnessed. The threat of enforcement action prompted the submission of a retrospective application for the gates, wall and caravan site. That application was subsequently refused and dismissed on appeal[2].

9. Despite powers to prosecute for a failure to respond to a PCN, the bundle of evidence does not clearly show to me further searching enquiries were made once

[1] *Hawkey & Others v SSE & Mid Sussex DC* [1971] 22 P&CR 610, *De Mulder v SSE* [1973] 27 P&CR 379 [1974] JPL 230 and *Hilliard v SSE & Surrey CC* [1978] JPL 840.
[2] Council ref FUL/MAL/21/00140 appeal ref X1545/W/21/3284398 dismissed 26 September 2022.

the commercial activity had in fact started in around 2022. The latter is clearly identified in aerial images given the extent and scale of the operation. The Council concede that the site was inaccessible for thorough inspection prior to the issue of the notice and after the commencement of any commercial use. That is astonishing given its rights of entry powers.

10. In that context, the allegation, as described, is misleading because a residential caravan site does not fall within uses classified as C3 in the schedule to the UCO[3]. In addition, to reflect the meaning of "development" as stated in s55(1) to the 1990 Act, the allegation should allege a material change in the use of the whole planning unit and not merely allege an "unauthorised change of use". The allegation does not need to identify incidental uses, but the description attempts to ascribe operational development as incidental to the residential caravan site. I consider that the two outbuildings together with dwarf walls with steps, close boarded fencing, double gates and lampposts, and creation of hard-surfaced area are all likely to be supportive and facilitative of the residential caravan site.

11. The requirements are also misleading. For example, step a) requires cessation of the unauthorised C3 residential use although one might infer from requirement b) the residential caravan site use is ceased. In addition, the allegation refers to incidental operational development, yet the requirement is to remove all structures, hardstanding and boundary treatments associated with and facilitating the unauthorised change of use. Finally, the reasons for issuing are also confusing – usually, a material change of use to residential caravan site is subject to 10-year immunity period and not 4 as stated in the issued notice.

12. The planning practice guidance (paragraph 019 reference ID: 17b-019-20180222) advises that enforcement notices are not improved by over-elaborate wording or legalistic terms: plain English is always preferable. It also warns that an eventual prosecution may fail if the Court finds the terms of the notice incomprehensible to the lay person. In that context, I find the issued notice is probably not a nullity, but it is fundamentally flawed because it wrongly characterises the alleged uses and introduces degree of imprecision in the steps, which should correspond with the allegation.

13. To me, the evidence presented shows that a risky strategy had been adopted by not sufficiently or adequately pursuing enquiries. The authority should, and could, have used its powers to carry out a thorough inspection prior to the issuing of the notice, though I recognise the appellant should have completed and returned the PCN. Nevertheless, the evidence should have been properly interrogated and analysed to assess exactly the character of the land's use at the date of issue, and the relevant planning unit identified. Consideration should be given to whether the alleged operational development facilitates change of use and which immunity period applies. Perhaps that is the learning point.

14. The notice needs to be corrected in the light of my reasons above. I have carefully considered exercising the available power to correct the notice including the site plan. The correction will require substantive amendments to the description of the allegation and steps required so they flow from the alleged breach and avoid under or over enforcement. There is risk of significantly widening the scope and extent of the notice. Both appeal parties may have wanted to make different arguments if the

[3] Town and Country Planning (Use Classes) Order 1987 as amended (UCO).

notice alleged a substantially different breach or covered only part of the appellant's land. I am not satisfied no injustice is caused to the appeal parties if I am to correct the notice and site plan. The resolution is to quash the issued notice, and the Council can then go back to the drawing board and reconsider its enforcement strategy.

Conclusions

15. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the errors in accordance with my powers under s176(1) of the 1990 Act as amended, since injustice would be caused were I to do so.

16. The enforcement notice is invalid and beyond correction, and it is therefore quashed. In these circumstances, the appeal on the grounds set out in s174(2)(a), (f) and (g) of the 1990 Act as amended do not fall to be considered.

17. For completeness, I draw attention to second-bite provisions set out in s171B(4)(b).

A U Ghafoor

INSPECTOR