

Appeal Decision

No site visit made

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 November 2025

Appeal Ref: APP/F0935/C/23/3331372

Land south of Whinnah Cottages, Lamplugh

- 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 appeal is made by Mr Peter Watson against an enforcement notice issued by Cumberland Council.
 - The enforcement notice was issued on 1 August 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised siting of 8 shipping containers to be used as a commercial storage facility and the unauthorised change of use of the land.
 - The requirements of the notice are:
 - Remove all shipping containers from the land
 - Remove any foundations and footings associated with the shipping containers from the land
 - Cease all operational use of the site in association with the shipping containers
 - Return the site back to its original state
 - The period for compliance with the requirements is 56 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The enforcement notice is quashed

Procedural Matters

1. In view of my findings that the notice is invalid, there was no merit in visiting the appeal site. Accordingly, I did not undertake a site visit.

Reasons

2. Section 173(1)(a) of the Town and Country Planning Act 1990 (the 1990 Act) states that an Enforcement Notice shall state the matters which appear to the local planning authority to constitute the breach of planning control.
3. The breach of planning control as alleged in the notice is, without planning permission, the unauthorised siting of 8 shipping containers to be used as a commercial storage facility and the *unauthorised change of use of the land* (emphasis added). The difficulty is that the notice stops there: it does not go on to say what the alleged change of use of the land is.
4. The reasons for issuing the notice at paragraph 4(a) refers to a 'commercial use of the prominent roadside location' but provide no further detail about the nature of the use that is alleged to have occurred. It might be possible to infer from reason(s) for issuing the notice that the 'commercial use' is somehow related to the shipping containers being used as a commercial storage facility

but that is not expressly stated. Moreover, the breach of planning control refers to the use of the shipping containers in the future tense ("to be used as") and not in the present tense ("are being used as").

5. The requirement in the third bullet point at paragraph 5 of the notice is to cease all operational use of the site *in association* with the shipping containers (emphasis added). This only muddies the waters further. What does 'in association' mean? The implication is that the change of use that is alleged goes beyond just the siting of the shipping containers on the land, but what precisely is that further use in association with? Does 'in association' relate to a use taking place elsewhere on the land, and is that use lawful or unlawful in planning terms? Or does 'in association' refer to a use taking place on a different site? If a 'commercial' use is alleged, what precisely is that commercial use? None of this is clear from the wording of the notice.
6. As a matter of ordinary language, this notice when read as a whole does not tell the recipient what the alleged change of use is. The wording also suggests that the breach of planning control alleged in the notice is anticipated to take place at some point in the future, rather than has occurred/was occurring on the date that the enforcement notice was issued. That is not permissible.
7. There is a secondary point here. The notice alleges the 'change of use' of the land which, in itself, is not development requiring planning permission for the purposes of section 55(1) of the 1990 Act. It is clear that the appellant has understood what the Council intended, and, in other circumstances, I would have corrected the notice to refer to a *material* change of use of the land as defined in section 55(1) of that Act. However, as drafted, the notice technically does not allege a breach of planning control.
8. The courts have held that an enforcement notice must tell the recipient fairly and within the four corners of the document what they have done wrong and what they must do to remedy that. It is not possible for the recipient of this notice to deduce and infer from a combination of the breach of planning control that is alleged, the reasons for issuing the notice and the requirements to comply with it what he is said to have done wrong.
9. This is important because the breach of planning control that is alleged in the notice to a large extent determines the grounds on which an appeal against the enforcement notice is made. If the breach of planning control alleged in the notice had been expressed more clearly, the appellant may have elected to make his appeal on more and/or different grounds.
10. For example, I cannot discount the possibility that, had he known precisely the breach of planning control that was alleged, the appellant may made on appeal on ground (b) as set out in section 174(2) of the 1990 Act, namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. There is already a 'hidden' appeal on ground (c) contained within the appellants covering letter for the appeal to the effect that four of the shipping containers are used by the appellant in connection with the agricultural use of his farm¹. This ground of appeal could have been made expressly/developed further had the breach of planning control been expressed more clearly.

¹ An appeal on ground (c) is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control.

11. In the event, the appellant made his appeal only on ground (a) as set out in section 174(2) of the 1990 Act, namely that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. I cannot discount the possibility that the appellant may have expressed his appeal on that ground differently and/or with a different focus had he known precisely the breach of planning control that was alleged in the notice.
12. Section 173(3) of the 1990 Act makes it clear that an enforcement notice shall *specify* the steps required to be taken or activities required to cease in order to achieve, wholly or partly, any of the purposes set out in s173(4): to remedy the breach of planning control or remedy any injury to amenity (emphasis added). The language used in section 173(3) is important. In particular, the use of the word 'specify' connotes a level of precision not found elsewhere in section 173: for example, section 173(1) uses the word 'state' when referring to the matters which appear to the local planning authority to constitute the breach of planning control.
13. The use of the word 'specify' in section 173(3) is clearly deliberate. It reflects the fact that non-compliance with the steps required in an enforcement notice is an offence for which the landowner may be prosecuted. It is therefore essential that the steps required in an enforcement notice are specified with due precision.
14. That is not the case in this notice. The requirement in the third bullet point at paragraph 5 of the notice is to cease all 'operational use'². The term 'operational use' does not appear in the breach of planning control that is alleged at paragraph 3 of the notice. It is essential that the requirements of a notice match as closely as possible the breach of planning control that is alleged. This requirement does not follow that principle.
15. This requirement is both vague and imprecise: for example, what is the operational use being referred to? It also conflates the two limbs of development set out in section 55(1) of the 1990 Act: i.e. operational development *and* the material change of use of land.
16. Section 176(1) of the 1990 Act provides that on an appeal under section 174 the Secretary of State may (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. For the reasons set out above, I cannot correct and/or vary the notice because doing so would cause injustice to the appellant.

Conclusion

17. For the reasons given above, I conclude that the enforcement notice does not state or specify (as appropriate) with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct and/or vary the errors in accordance with my powers under section 176(1)(a) and (b) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground (a) as set out in section 174(2) of the

² It is unfortunate that the requirements in paragraph 5 of the notice are set out as bullet points. This does not go to the validity of the notice, but it does make referencing the requirements more difficult.

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.

Formal Decision

18. The enforcement notice is quashed.

Paul Freer
INSPECTOR