



Appeal Decision

Hearing held on 21 October 2025

Site visit made on 21 October 2025

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 December 2025

Appeal Ref: APP/T2215/C/25/3369066

Land at Ashlea Nursery, Birchwood Road, Wilmington, Kent DA2 7HQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Wesley Ray of P & R Investments (Kent) Ltd against an enforcement notice issued by Dartford Borough Council.
- The notice was issued on 11 June 2025.
- The breach of planning control as alleged in the notice is the material change of use of the land to a mixed use comprising:
 - i. use of land for storage purposes facilitated by siting of shipping style containers;
 - ii. the deposit and storage of building materials including building waste, fencing, decking and scaffolding equipment;
 - iii. the use of the Land for the storage of motor vehicles;
 - iv. the use of the Land for the breaking and repair of motorised vehicles;
 - v. the use of the Land as a civil engineering yard;
 - vi. the use of the Land as a scaffolding yard/s;
 - vii. the use of the Land for dog agility training
- The requirements of the notice are to:
 - i. Cease the mixed use of the Land;
 - ii. Dismantle and remove from the Land hard standing used for the purposes of the mixed use;
 - iii. Remove the scaffolding areas and equipment used in connection with the storage of scaffolding on the Land;
 - iv. Remove from the land shipping containers storage containers, portacabins and caravan;
 - v. Remove from the land all motorised vehicles stored on the Land;
 - vi. Remove from the land fencing that facilitate the unauthorised mixed use;
 - vii. Remove from the land all building material, waste, and rubble stored in connection with the unauthorised use; and
 - viii. Remove from the Land plant, machinery and material used in connection with the civil engineering yard.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The enforcement notice is quashed.

Preliminary Matter

1. At the start of the Hearing the Council submitted appeal decision APP/V0728/W/23/3314720 which is referred to in their written evidence.

The Enforcement Notice

2. The appellant argues that the enforcement notice is a nullity; firstly because it is 'hopelessly unclear' and defective on its face; secondly that the Land the subject of the Notice comprises different planning units and thirdly, there is uncertainty surrounding the alleged breach of planning control which means the steps required

to remedy the breach are similarly unclear and any additional requirements would make the Notice more onerous.

Whether hopelessly unclear and uncertainty

3. One of the appellant's main concerns with respect to the Notice being hopelessly unclear is that paragraph 3 refers to "the material change of use" along with various components of that alleged material change of use, but paragraph 4 (Reasons for Issuing the Notice) refers to "the material change of use and operational development".
4. In response to this point, the Council acknowledges that paragraph 4 a) refers to the immunity period in respect of "the material change of use and operational developments" and recognises that no operational development is specifically identified under the alleged breach of planning control set out in paragraph 3 of the Notice. The Council has also drawn attention to paragraph 3i) of the Notice which refers to "use of the land for storage purposes facilitated by siting of shipping style containers". The wording indicates that the shipping style containers facilitate the use of the land for the storage component of the wider mixed use of the Land. The appellant argues that the shipping containers are operational development as a consequence of their permanence and size.
5. If the shipping style containers are operational development the Council suggests that the words "operational development" could be inserted into paragraph 3 of the Notice without causing injustice to the appellant. In the event that the containers are not found to be operational development the Council suggests that the words "operational development" can be removed from paragraph 4 without causing injustice.
6. In this case there is clear evidence that since the containers were placed on the Land they have been moved around and been positioned in a number of different configurations. They are not physically attached to the ground and they are not fixed to each other. As such, in my judgement, they are not buildings and as such are correctly characterised in the alleged breach of planning control as being "sited" on the Land.
7. Of concern to me is the confusion between the wording "shipping style containers" in paragraph 3i) as opposed to the requirement in paragraph 5iv) to "Remove from the land shipping containers storage containers". There is inconsistency because it is not at all clear whether the "shipping containers storage containers" are the same as the "shipping style containers". This confusion is not at all helped by reference to "shipping-style containers" which is open to interpretation and debate as opposed to the various "shipping containers" which I saw on site and are easily described as such.
8. Furthermore, the confusion in the enforcement notice about "storage purposes facilitated by shipping style containers" is compounded by my understanding that at the time the Notice was served there were mobile welfare units on wheels being stored on part of the Land for use elsewhere. The Council contends that these are captured by "use of land for storage purposes facilitated by shipping style containers", but I disagree because they were not facilitating storage; they were being stored on the land. In my judgement these are quite different things because items such as welfare units are not component parts of the material change of use

- of the Land to a mixed use identified in paragraph 3 that are being enforced against.
9. At the Hearing the Council conceded that the storage of these items could be interpreted in both ways and suggested that paragraph 3i) of the alleged breach of planning control could be separated into two different parts by clarifying that “shipping-style containers” are being themselves stored on the Land. That would lead to further confusion about what is exactly meant by “shipping containers storage containers” in paragraph 5iv), causing uncertainty. Separating the two would also, in effect, add a new component to the mix of uses comprised in the alleged material change of use to a mixed use. That would leave the appellant in a worse position that had he not appealed against the Notice, clearly causing him injustice.
 10. The Notice requires the removal of various items from the Land, including those which may constitute operational development. In accordance with case law¹ an enforcement notice directed at a material change of use can require the removal of ancillary operational development if the works were intended to facilitate the unlawful use, even if they would otherwise be immune from enforcement action by the Council. According to the *Caldwell*² case that principle does not apply where the works were more than merely ancillary or secondary and are “fundamental or causative” of the change of use itself. In this case the hardstanding used for the purpose of the mixed use is causative of the breach of planning control rather than being mere ancillary or secondary to that use. Other items required to be removed under the notice, including the scaffolding areas and equipment, motor vehicles, fencing, building materials, waste and rubble and plant, machinery and material used in connection with the civil engineering yard fall within the scope of what can reasonably be described as ancillary to the mixed use.
 11. The principles established by the courts do not support the removal of operational development that is separate from a material change of use in its own right and has brought about the change of use. This is always a matter of judgement and a matter of fact and degree based on the specific circumstances of each case. In this case the requirements to remove the hardstanding is excessive in the specific context of the mixed use development being enforced against. As such the hardstanding should be separately identified as operational development as part of the alleged breach of planning control. To add the hardstanding at this stage would again put the appellant in a worse position that if he had not appealed against the Notice and therefore would cause him injustice.
 12. The requirements of the Notice should square up with and follow logically from the allegation, with regard to what an enforcement notice may require under s173(3)-(7). It is within an Inspector’s power to bring the steps into line with the allegation or make consequential changes to the requirements pursuant to the allegation being corrected. Any corrections or variations to the requirements may be made, even if they would make the Notice more onerous, so long as there would be no injustice to either the appellant or local planning authority. It should not be assumed that adding to the requirements would automatically cause injustice.
 13. I have set out above my concerns about the enforcement notice. Although I do not agree that the Notice is hopelessly unclear and defective on its face; to bring it in

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

² *Caldwell & Timberstone Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

line with the different components forming the mixed use, to correctly characterise the different components and to bring the requirements in line with the alleged breach of planning control would require corrections and variations which would expand the scope of the alleged breach and associated requirements and cause injustice to the appellant. Without such corrections and variations there is an unacceptable degree of uncertainty and inconsistency in the Notice which makes it invalid. To proceed without changing the terms of the Notice could inadvertently lead to the lawful continuation of unauthorised activities on the Land against the overall purpose of the Notice which is to cease the material change of use to mixed use purposes and associated operational development.

Planning unit/s

14. Additionally, the appellant is concerned that the Notice Plan (Plan to accompany Enforcement Notice, Ashlea Nursery, Birchwood Road, Wilmington DA2 7HQ 19/00256/ENF) does not identify precise areas of the different components of the alleged mixed use taking place or the development and/or items to be removed. I can see that in the light of the uncertainty in the alleged breach and requirements this does not help the appellant know what he has done wrong but would not be fatal in this case if the notice was in order.
15. The appellant argues that the appeal site is a series of different planning units whereas the Council's case is that there is a single planning unit with multiple occupants in different areas. It is identified as a single unit as a consequence of there being single ownership, a single unit of occupation, shared single access from the highway and a fluidity of different uses across the site. At my site visit I observed that some of the uses run into one another, that there seems to be a degree of flexibility of the different uses and the different range of uses and there are few physical boundaries between some of the different use that comprise the mixed use comprising different elements. As such it would be very difficult to identify and/or characterise the overall site as being divided into a number of separate planning units for planning purposes. As such I conclude that the Council has correctly identified the Land as a single planning unit.

Conclusion

16. Although I have found that the enforcement relates to a single planning unit. for the reasons given above I conclude that the enforcement notice does not accurately describe the alleged breach of planning control or ensure that the requirements follow logically from the allegation. It is not open for me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (b) and (f) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal decision

17. The enforcement notice is quashed.

A A Phillips INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Wesley Ray of P & R Investments (Kent) Ltd
Lee Pooley of P & R Investments (Kent) Ltd
Grace Clements of Hume Planning Consultancy
Frank White of Hume Planning Consultancy

FOR DARTFORD BOROUGH COUNCIL

Izindi Visagie of Ivy Legal
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