

Appeal Decision

Site visit made on 14 April 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2026

Appeal ref: APP/A2335/C/25/3366959

Hampsey Ltd, Long Lane, Quernmore, Lancaster LA2 9EE

- The appeal is made by Hampsey Ltd under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Lancaster City Council.
- The enforcement notice was issued on 6 May 2025, Council ref: 2025/23. The appeal was made on 3 June 2025.
- The breach of planning control alleged in the notice is: Without planning permission, the engineering development consisting of land level changes and creation of hardstanding areas.
- The requirements of the notice are:
 - (i) Remove the laid concrete;
 - (ii) Grass seed the reinstated land.
- The period for compliance with the above requirements is seventeen weeks.
- The appeal was made on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 (as amended), (the Act).

Summary of decision:

The enforcement notice is invalid. It is quashed for uncertainty.

Costs application

1. The Appellants, Hampsey Ltd, made an application for an award of costs against Lancaster City Council. That application is considered in a separate decision.

Appeal land and development enforced against

2. The Appellants, Hampsey Ltd, described themselves as specialist reinforced concrete contractors. Their main business was based in Derbyshire. It is also active on the enforcement notice appeal site at Long Lane, Quernmore, Lancaster.
3. Hampsey Ltd occupy an area of 1.2ha of land and buildings fronting Long Lane on the edge of the small rural settlement of Quernmore. Two large joined buildings originally built for agricultural purposes are close to the middle of the mostly concrete surfaced appeal site. Another former agricultural building is close to the northern boundary.
4. The enforcement notice acts against the recent construction of a large concrete hardstanding area and its associated land level changes at the southern end of the Hampsey Ltd site. The hardstanding occupies a large portion of the appeal site. In my estimation it covers in excess of a 1/3rd of its 1.2ha area. At the time of my visit, it was in use as a storage area for a large quantity of steel concrete formwork and shuttering panels and fixings, to heights in parts of several metres.

Enforcement notice

5. The plan attached to the enforcement notice shows the whole area of the land and buildings occupied by Hampsey Ltd in red outline. As I understand it, particularly from my inspection of the site and the parties answers to me, the Council's notice is intended to act against only the recently concreted large hardstanding area at the southern end of the site, not the whole unit of occupation. That is not made clear in the enforcement notice. Nor does the notice plan or its description show where requirement (i) to remove the concrete is intended to apply.
6. In my view, the enforcement notice is invalid. Whilst not a nullity where such a notice may be defective on its face, (if missing some vital element that an enforcement notice 'shall' include under s.173 of the Act), it does contain such uncertainty or inadequacy that I cannot correct the notice without causing injustice. It may be that the parties to the appeal are in a position to know where and what is being enforced against. But the enforcement notice does not do that. The notice plan shows the boundary of the site occupied by Hampsey Ltd. It fails to distinguish the large southern area of the site where the concrete hardstanding that is of special concern to the Council and which was under construction when photographs, (Appendix B to the enforcement notice), were taken. The enforcement notice therefore could be read as intended to attack all the extensive concrete hardstanding areas that cover the entire site. The same ambiguity arises with the notice's requirement (i) – Remove the laid concrete. The extent of concrete hardstanding required to be removed is not to be found in the enforcement notice. Whilst there is duty of me to get the notice right, (s.176(1)(a) of the Act), I have to be satisfied that the correction or variation will not cause injustice to the Appellants or the Local Planning Authority, (*SSE & Tower Hamlets LBC ex parte Ahern (London) Ltd* [1989] JPL 757).
7. Section 173(2) of the Act says that an enforcement notice complies with s.173(1)(a) if it *'enables any person on whom a copy of it is served to know what those matters are'*. The test is set out in the case of *Miller Mead v MHLG* [1963] 1 A11 ER 459 as to whether the notice tells the recipient fairly what they have done wrong. Here, the enforcement notice, by its failure to show exactly where the allegedly unlawful concrete hardstandings have been constructed, fails that test. Upholding the enforcement notice could leave the landowners facing difficulties under s.179 of the Act, (Offence where enforcement notice not complied with).
8. The enforcement notice does not specify or describe the lawful use of the appeal site. In para. 4.2 of the notice, headed REASONS FOR ISSUING THIS NOTICE, the wording *'.. the site currently does not benefit from planning permission,'* is used. In the Council's planning appeal statement, describing the site, they said *"The site comprises of two buildings that were granted consent for the use of agricultural purposes. The buildings are traditional agricultural buildings made up of timber walls and metal sheeted roofs."* Further, on page 1 of their statement under the sub-heading 'Principle of the Development', the Council said *'The submitted appeal states that the site is a working industrial site with H&S requirements and security. However, no planning application has been submitted regarding the use of the site and therefore the last known use of the site is for agricultural purposes as indicated within the planning permissions of the two units that are within the site. The site was served a Planning Contravention Notice, which asked a number of questions regarding the site and use of the buildings, however this was not returned and therefore the Local Planning Authority has no knowledge of the working industrial site or the H&S requirements of the site.'* From that, the words in "Reasons for issuing this notice" at para. 4.2 in the enforcement notice: *'.. the site currently does not benefit from planning permission,'* is unclear as to whether the Council meant there is no planning permission for the use of the appeal site by the Appellants, Hampsey Ltd, in association with their reinforced concrete forms and shuttering business. The

Council's statement that the enforcement notice's breach of planning control was only served on land level changes and the creation of hardstanding areas was, they said, because the use of the land had not commenced, and therefore would have been premature to include that within the served enforcement notice is curious. The Appellants were clearly using the land for their business purposes. There was no need to wait for completion of the scheme and commencement of use.

9. Hampsey Ltd, in appealing the enforcement notice on grounds (a), (c) and (f) of s.174 of the Act, observed that the enforcement notice reasoning did not engage with what they considered to be the lawful use of the site as a reinforced concrete contractor's yard. That may have led the Appellants to base their planning merits appeal on the assumption the Council had accepted the change of use from the former agricultural use to use as a reinforced concrete contractor's yard had become lawful or that any change of use was inconsequential or accepted. They had not.
10. The Appellants' appeal does not properly direct them towards the question of the lawful use of not only the concreted area enforced against, but the entire Hampsey Ltd site. Their assertion that the entire site had gained a lawful general industrial and warehouse use, (Classes B2 and B8 of the Town and Country (Use Classes) Order 1987 as amended), (the Order), by the passage of time – s.171B(1)(a) of the Act, was, in my view, misplaced. The lawfulness of a claimed use cannot be achieved based upon an unsupported assertion. I cannot, in the context of this appeal against the Council's enforcement notice, have a view on whether the use of the Appellants' land at Long Lane has become lawful. It is not a matter before me.
11. Also, there was no under enforcement in relation to alleged unlawfulness of the use that allowed any presumption of lawfulness reliant upon the application of s.173(11) of the Act particularly as the enforcement notice allegation does not go to the use of the land. Even if there had been a possibility of gaining a benefit from the application of s.173(11), that would have required compliance with the requirement of the notice to remove all areas of concrete hardstanding enforced against beforehand.
12. For a formal recognition of the claimed lawfulness of the entire Hampsey Ltd site, an application for a certificate of lawfulness would need to show a continuous 10 year unlawful industrial use of the land and buildings, by producing comprehensive and exact evidence of, for example, statutory declarations and or sworn affidavits from current or former owners, employees, neighbours, or tenants. Dated evidence such as photographs, tenancy agreements, utility bills, or Council records should also be made available.
13. Whatever the lawfulness of the use of the appeal site when the enforcement notice was issued, it appears no part was being used for agricultural purposes. The Council's planning contravention notice shows they were aware of the new use. That they did not fully pursue that matter, such as formally requesting that an application for a certificate of lawfulness under s.191(1)(a) of the Act be made, left the Council enforcing against works carried out in support of the new industrial use, but not the use itself. It is not essential to set out the lawful use in an enforcement notice. But it is necessary to accurately describe the breach of planning control and its extent – here to describe not only the operational development said to be in breach of planning control, but to recognise the actual use of that development.
14. The Appellants in dealing with their ground (c) appeal appeared to assume the lawful use of the Hampsey Ltd site was for general industrial and warehouse uses falling within Classes B2 and B8 of the Order. Their statement that : *"By operation of law i.e. s173(11) the service of the EN granted planning permission for every use and operation at the AS apart from the identified breaches. The new perimeter fencing was not enforced against. Nor was any land use. Thus these are all now lawful, even if they were not beforehand."*, is incorrect. S.173(11) of the Act says: *"Where – (a) an*

enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.”. The words: “ ... any breach of planning control .. ”, refer to what is described in the enforcement notice’s allegation. They do not apply to any other possible breaches of planning control that might exist on the land.

15. Had the ground (a) appeal proceeded, the deemed application would have been of little utility for the Appellants. It would have sought planning permission for the engineering development consisting of land level changes and creation of hardstanding areas. In the absence of an agreed or certified lawful use of the land, the merits of the case to retain the hardstanding areas could not be sensibly considered. The deemed application for planning permission that would follow an appeal on ground (a) would become an uncertain proposal, not knowing whether the merits of the cases should relate to the former agricultural use, or the superseding concrete business use.
16. I consider the above uncertainties in the enforcement notice are so fundamental and incapable of correction without causing injustice that the notice is invalid.

Conclusion

17. The enforcement notice is quashed for invalidity. The appeals on grounds (c), (a) and (f) do not fall to be considered.

FORMAL DECISION

18. It is directed that the enforcement notice is quashed for uncertainty.

John Whalley

INSPECTOR