



Appeal Decision

Site visit made on 4 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 30th April 2026

Appeal Ref: APP/M1520/C/23/3335033

Land at Mount View Rhoda Road Benfleet Essex SS7 1HZ

- 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 "Act").
- The appeal is made by Mr Garry Jones against an enforcement notice issued by the Castle Point Borough Council.
- The enforcement notice was issued on 9 November 2023.
- The breach of planning control as alleged and described in the notice is as follows: *Without permission, a disproportionate extension of an existing garage building in the Green Belt as shown in it's [sic] approximate position with an X on the attached plan.*
- The requirements of the enforcement notice are to 1) Remove the unauthorised extensions to the garage 2) remove from the site all materials and equipment resulting from compliance with requirement (1), and 3) return the external walls of the pre-existing garage building to their former condition prior to the unauthorised development.
- The period for compliance with the requirements is 12 months for step 1), 13 months for step 2) and 14 months for step 3).
- The appeals are proceeding on the grounds set out in section 174(2) (a) and (f) of the Act.

Decision

1. The enforcement notice is quashed, and no further action is taken.

Matters concerning the notice

2. The written representations detail the site's planning history, which is extensive, and I will not repeat that here. However, the appellant's agent raises an important issue regarding validity, which they say has been raised with the Council. For reasons that will become clearer later, these concerns require close attention prior to tackling any grounds of appeal.
3. My initial step is to consider, by way of rhetorical question - has the Council described accurately the alleged breach of planning control¹. Additionally, there are several aspects which require careful consideration to ensure that the notice is correct. Corrections can be made by utilising the powers available, but only if the notice is not null or that any amendment satisfy the essential test of avoiding injustice to the parties concerned². If corrections risk injustice, the power cannot be safely exercised just to save a notice: in such cases, it will be quashed.
4. Defects that are fatal to an enforcement notice fall into two main categories: those that make it a nullity and those that make it invalid. The current approach to the question of nullity is to be found in the *Oates* judgment of the High Court³. This explains the previous legal authorities on the topic. Several principles emerge from this judgment, including that the test in relation to

¹ Applying the principles established in the following cases: *Hammersmith LBC v SSE and Sandra* [1975] 30 P and CR19 and *R v SSE and LB Tower Hamlets, ex parte Ahern* [1989] JPL 757. I must get the notice in order if I can and there is no statutory requirement to seek the appeal parties' comments before I address the notice.

² Section 176(1)(a)(b) of the Act – On an appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

³ *Oates v SoCLG and Canterbury* [2017] EWHC 2716 (*Oates*).

nullity is best understood not as one of hopeless ambiguity, but rather as a failure to tell the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.

5. The first principle identified in *Oates* is that if an enforcement notice does not comply with s173(1), (3) and (4) of the Act, described as the statutory requirements, then it is a nullity and cannot be saved by the curative powers contained in s176(1). In summary, the law requires a notice to state the breach, if it is development without planning permission or breach of condition, and to specify the steps. Sub-section (2) of s173 explains that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. In the context of this appeal, the substantive point is the description of the alleged breach of planning controls and the requirements, and there can be no room for doubt. Plain English is better than overly complicated or legalistic terminology and getting the grammar right is essential.
6. The alleged breach of planning control is described in the banner above. I have italicised the text. In the context of the law, s55(1) of the Act explains *development* means, among other things, the carrying out of building operations on land. The latter being described in s55(1A) sub (a) to (d). Confusingly, the description of the alleged breach of planning control describes the unauthorised development as “...*Without permission, a disproportionate extension of an existing garage building in the Green Belt...*” The inference is development without obtaining planning permission, but, more problematic, is the use of the adjective “*disproportionate*”. The latter describes something as lacking proportion, relatively too large or small, long or short. In addition, reference to the site’s location in a policy designated area is superfluous. Based on the available evidence, an existing outbuilding or garage has been extended and altered but, essentially, the breach is the carrying out of operational development without the benefit of planning permission, or extension and alteration of the outbuilding marked with an X on the plan attached to the issued notice.
7. The problem with the notice is further compounded by the way in which requirement 1) and 3) in section 5 to the issued notice are framed. The requirement is to remove the *unauthorised extensions* in the plural, yet the allegation refers to a single extension: one is left wondering how many extensions the notice attacks given the two-story addition to the garage. In a similar vein, step 3) requires the recipient to return the external walls of the *pre-existing garage building* to their former condition prior to the unauthorised development. However, it is unclear what is the pre-existing building and there is no scope to require improvements even if the result is that compliance with the notice renders the building insecure or open to the elements. Indeed, it may be excessive in some circumstances to require that the land is restored to its previous condition. It would be for the appellant to carry out any improvements needed, seeking express planning permission if necessary. Given the potential liability that comes with a failure to comply with an enforcement notice, there is no room for complacency or errors in the steps required because they must be precise.
8. The final issue affecting quality is the framing of the reasons for issuing the notice. Clearly, expediency is in the gift of the local planning authority (LPA), but any harm caused by the extension/s must be clearly explained in the reasons for taking enforcement action. Section 4 sub (2) of the issued notice simply recites applicable national planning policy and states there are no very special circumstances to justify inappropriate development. It is unclear if the harm arises from extensions and alterations of the building because it results in disproportionate additions over and above the size of the original building. Given the proximity of the outbuilding to the host dwelling, it is uncertain if the LPA regards the the former as the latter’s adjunct.

9. I do not go as far as declaring the issued notice a nullity because it contains vital elements under s173 of the Act. That said, the issued notice is, I am afraid, fundamentally flawed and requires wholesale corrections before the ground of appeals are tackled. In reaching my decision, I have given close attention to whether it would be appropriate to exercise the available power to correct the notice. Implementing such a correction would necessitate significant changes to the issued notice in terms of the description of the alleged breach, reasons for issuing and steps required. I am conscious that making such substantial alterations could lead to a considerable expansion of its scope and effect. Had the notice correctly alleged operational development comprised in the extension and alteration of the outbuilding marked X, it is plausible that both parties to the appeal may have presented different arguments or evidence in support of their respective cases. Given these concerns, I am not persuaded that correcting the notice, even at this late stage, would avoid causing injustice to the parties involved in the appeal. As a result, I do not consider it appropriate to exercise the correction power in this instance.

Conclusions

10. Perhaps the lesson here is to keep matters simple but be alive to the use of correct grammar and terminology when describing the allegation and framing the whole notice document using plain English avoiding unnecessary punctuation marks and language, thus opening the door to nullity or invalidity arguments. The allegation must be clearly stated and the requirement flow from the breach, and the reasons for issuing setting out the harm caused by the alleged breach as stated in the notice: not simply repeating national planning policy. Flip-flopping from one description to another adds to the confusion.
11. My findings might be disappointing, but I must get the notice in order if I can and, clearly, on this occasion, I cannot exercise correction powers given the significance of the drafting errors and, in my planning judgment, inviting further comment on the matters prior to issuing this decision was unnecessary. Having considered all other matters raised, the resolution is to quash the issued notice, and the Council can go back to the drawing board and reconsider its enforcement strategy⁴.
12. For all the above reasons and having considered all other matters raised, I conclude that the issued notice is not a nullity, but it still contains errors, defects and misdescription which cannot be corrected without causing injustice. In these circumstances, the appeal on the grounds set out in section 174(2) (a) and (f) of the Act, and the application for planning permission deemed to have been made under s177(5) of the Act as amended do not fall to be considered.

A U Ghafoor

INSPECTOR

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