



Appeal Decisions

Site visit made on 12 May 2026

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2026

Appeal A Ref: APP/F2415/C/24/3349368

Appeal B Ref: APP/F4215/C/24/3349370

Land adjacent Elmdene, Main Street, Cotesbach, Leicestershire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mr Bradley Ward (Avectis Ltd) (Appeal A) and Mr Malcolm Cashmore (Colby Estates Ltd) (Appeal B) against an enforcement notice issued by Harborough District Council.
 - The notice was issued on 21 June 2024.
 - The breach of planning control as alleged in the notice is the material change of use of the land from open paddock land to an open storage use (the “unauthorised development”). Photographs of the land between September 2011 and January 2023 are attached as Appendix A of this notice.
 - The requirements of the notice are:
 - i) Cease the use of the land for open storage purposes.
 - ii) Remove the containers, domestic sheds and building materials from the land in their entirety, including any fixtures and fittings, along with any other structures and items related to the unauthorised storage use.
 - iii) Return the land to its previous profile before the unauthorised change of use took place.
 - The periods for compliance with the requirements are:
 - Compliance with (i) and (ii) – Six months
 - Compliance with (iii) – Nine months
 - The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - In section 3 the removal of the words “*Photographs of the land between September 2011 and January 2023 are attached as Appendix A of this notice*”, followed by their subsequent insertion after the final sentence in section 4 of the notice.
2. Subject to the above correction, the appeals are dismissed and the enforcement notice is upheld.

The Notice

3. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (“the 1990 Act”), or the terms varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
4. The last sentence in section 3 of the notice, which refers to photographs of the appeal site that are attached as Appendix A, does not refer to an act of development and therefore should be removed from the alleged breach of planning control. The sentence would be better placed within the reasons for

issuing the notice at section 4. I am able to carry out this correction, which does not alter the substance of the notice, under the powers transferred to me by section 176(1)(a) of the 1990 Act, without causing injustice to any party.

Ground (d)

5. For the appeals on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late to take enforcement action. The burden of proof is on the appellants, and the relevant test is the balance of probability. If the local planning authority has no evidence itself to contradict or otherwise make the appellants version of events less than probable, an appeal on ground (d) can succeed, provided that the appellants evidence alone is sufficiently precise and unambiguous.
6. With regard to the use of land, section 171B(3) of the 1990 Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful, the alleged unauthorised use must have commenced at least 10 years before the date of the notice and continued without any significant interruption thereafter for at least a 10-year period. The relevant date is therefore 21 June 2014.
7. The appellants contend that the appeal site has been used for the storage of construction materials for the appellants construction company Avectis Limited since 2011. In support of that position the appellants have provided documentary evidence including:
 - Statutory Declaration (Stat Dec) of Mr Malcolm Cashmore (MC) dated 22 August 2024
 - Stat Dec of Mr Bradley Ward dated 27 August 2024
 - Various photographs from 2011, 2012, 2013, and 2020 showing building materials and/or storage container on the appeal site
8. It is clear from the photographic evidence that building materials and items started being stored on the appeal site from late 2011, with the first storage container brought to site in November 2011. The Council does not dispute that the site has been used for the storage of such items, however they consider that the land was being used in connection with a planning permission¹ which permitted the construction of new dwellings on the immediately adjacent land.
9. MC refers to the construction of the dwellings on the adjacent plots and confirms in paragraph 2 of his Stat Dec that *"The development works started in and around the 4th October 2011, as is evidenced by the confirmatory email from Mr Holland dated 11th November 2011....Foundation work commenced later in October"*. MC further confirms in paragraph 2 that *"Given the limited on-site space for the storage of building materials, equipment and excavations, the appeal site was the logical area for the Contractor to utilise for storage"*.
10. In paragraph 3 of his Stat Dec MC further advises that *"As described in paragraph 1, five detached properties have been developed and sold over a period from November 2011 to July 2018, when the last property (Towton) was sold in July 2018. During that period the appeal site was in continuous use in connection with*

¹ Council Ref: 14/00930/FUL

the various construction works for those properties". The Google Earth image produced by the Council dated April 2015 supports this position, with some of the dwellings still clearly under construction at this time.

11. It appears clear therefore that the appeal site was initially used in connection with the construction of new dwellings on adjacent land. Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") permits "*The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*". Development though is not permitted where planning permission is required for those operations but is not granted or deemed to be granted. Whilst Class A does not provide a time scale for when the rights apply, as it relates to a temporary provision it cannot mean that items are allowed to remain indefinitely.
12. It is not disputed that the dwellings constructed on the adjacent land benefitted from the necessary planning permission, and it is clear from the evidence before me that the appeal site was used for the siting of moveable structures, materials, and plant required in connection with their construction which commenced in late 2011. The provision on the land of those items for the duration of the construction works would therefore have been permitted under Part 4, Class A of the GPDO.
13. Consequently, there would have been no breach of planning control for the Council to take enforcement action against whilst the dwellings were being constructed on the adjacent land. A breach of planning control would have only occurred upon the completion of those works and the associated items not being removed from the appeal site. MC also states at paragraph 3 of his Stat Dec that "*Since July 2018 various surplus materials and equipment have continued to be stored on site by Mr Ward in connection with other construction work that Mr Ward has executed on behalf of family owned properties*".
14. Whilst the exact date on which the construction of the final new dwelling was completed is not clear, it is apparent from the Google Earth image dated April 2015 that a significant amount of construction works remained at that point. The breach of planning control would have therefore occurred at some point after April 2015. A period of 10 years prior to the issue of the notice, beginning with the date of the breach, has not been demonstrated.
15. In conclusion, the appellants have failed to demonstrate, on the balance of probability, that the development subject of the enforcement notice was immune from enforcement action at the date the notice was issued. Accordingly, the appeals on ground (d) fail.

Conclusion

16. For the reasons given above, I conclude that the appeals fail. I have therefore upheld the enforcement notice as corrected.

David Jones

INSPECTOR