



Appeal Decision

Site visit made on 13 October 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date 15 October 2026

Appeal Ref: APP/G4620/C/24/3352202

Site at West Bromwich Street, Oldbury

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Commercial Properties Parking Limited against an enforcement notice issued by Sandwell Metropolitan Borough Council.
- The notice was issued on 21 August 2024.
- The breach of planning control as alleged in the notice is the material change of use of the Land from unallocated use to the storage of commercial vehicles and associated materials (B8).
- The requirements of the notice are to:
 - (i) Cease the use of the site for the purposes of the storage of vehicles and the storage of other materials.
 - (ii) All stored items, buildings, associated structures, and plant shall be removed from site.
- The period for compliance with the requirements is: 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Preliminary Matters

2. The appellant appealed under grounds (a), (b), (c) and (f). Following receipt of the Council's Statement of Case, it has been confirmed that grounds (b) and (c) are no longer pursued.
3. The appellant makes reference to the Costs Chapter of the Planning Practice Guidance (referred to as Planning Policy Guidance), paragraph 16-049-20140306, in its statement of case. However, an application for costs has not been made.

Matters Concerning the Notice

4. The appellant raises concerns regarding the Notice and suggests it is a nullity. In this regard, my attention has been drawn to *Koumis v SSCLG* [2015] J.P.L 882 and *Oates v SSCLG* [2017] EWHC 2716 (Admin), from which the following principle can be distilled: If an enforcement notice does not comply with section 173(1) or (3) or (4) ("the Statutory Requirements"), then it is a nullity and cannot be saved by the curative powers contained in section 176(1).
5. Section 173(1) sets out that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the

authority, the breach falls. Section 173(2) states 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.

6. The enforcement notice refers to section 171A(1)(b), whereas the allegation is 'the material change of use of the Land from unallocated use to the storage of commercial vehicles and associated materials (B8).' The appellant is, understandably confused by reference to section 171A(1)(b), which, for the purposes of the Act, is 'failing to comply with any condition or limitation subject to which planning permission has been granted.'
7. Planning permission was granted on 2 December 2022 for a proposed new access and dropped kerb, reference DC/22/67358. The Council advises that the 2022 planning application is the only relevant planning application [sic]. From the Council's evidence, it seems that (notwithstanding any arguments advanced by the appellant regarding permission DC/22/67358) it considers what has occurred is development without planning permission, rather than failure to comply with a condition attached to a planning permission.
8. While it may be possible to correct a notice which refers to the wrong subparagraph of section 171A(1) where it would not cause injustice to either party, I have other concerns regarding the Notice. Significantly, it is wholly unclear from the four corners of the Notice why the Council has taken enforcement action. Within the 'REASONS FOR ISSUING THIS NOTICE', it merely states: "It appears to the council that the above breach of planning control has occurred within the last 4 years." That does not explain why the Council considered it expedient to take enforcement action.
9. Section 173(10) of the Town and Country Planning Act 1990 ('the Act') provides that an enforcement notice must specify such matters as may be prescribed in regulations. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (ENAR) states that an enforcement notice shall specify the reasons why the local planning authority consider it expedient to issue the notice.
10. The Council has provided a statement through this appeal, which has been compiled in response to the appellant's appeal statement, and which seeks to clarify matters raised by it. The Council explains in its statement of case that the site was formerly occupied by terraced housing and that, whilst the development plan allocates the land for employment purposes, the site has no definitive pre-existing lawful use.
11. The Council's statement also states that no planning permission has been sought for buildings/structures erected on site. However, while I saw a number of Portakabin type units and other structures, the enforcement notice does not allege the erection of buildings and, notwithstanding the reference to 4 years in the Notice, appears to be relying on the principle that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied.
12. It seems from the Council's statement that it considers the unauthorised use is unacceptable from a noise and disturbance perspective and in terms of its effect

on visual amenity, though I note the development is also stated to be contrary to policy TRAN2, which seeks to manage the transport impacts of new development.

13. As pointed out in the appellant's statement of case, the Council's statement does not provide any substantive analysis and so it remains unclear what the Council's objection to the development is. Significantly, the omission of reasons from the notice cannot be corrected by the submission of reasons during the appeal. It is a prerequisite to taking enforcement action that it should appear expedient to the Council to do so. The complete omission of reasons from the notice constitutes a failure to comply with the requirements of the Act and the ENAR. The notice is defective on its face and, in my judgement, is a nullity.

Conclusion

14. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (f) 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.

M Savage

INSPECTOR