



Appeal Decisions

Site Visit made on 27 June 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 13 August 2024

Appeal A Ref: APP/E2530/C/24/3337083

Appeal B Ref: APP/E2530/C/24/3337084

**Land at Brandon Wood Clay Shooting Ground, Stubton Gorse Farm,
Brandon Road, Stubton**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Crane's Nest (Appeal A) and Steelwell Consultancy Limited (Appeal B) against an enforcement notice issued by South Kesteven District Council.
- The enforcement notice was issued on 14 December 2023.
- The breach of planning control as alleged in the notice is The material change of use of land through the carrying out of Clay Pigeon Shooting (Sui Generis) without permission, and breach of condition 1 of S00/0471, shooting in excess of 50 days a year.
- The requirements of the notice are 1. Ensure that the land, shaded blue, is used for Clay Pigeon shooting or other shooting activities as permitted by planning permission S00/0471, by not shooting on more than 50 days per calendar year and limiting shooting activities to group bookings rather than a public pay and enter enterprise. A copy of the Decision Notice related to S00/0471 and relevant letters have been attached to this Notice; 2. Cease all Clay Pigeon shooting or other shooting activities on any Land not shaded blue within the land edged red.
- The period for compliance with the requirements is 2 months.
- The appeals are made on the grounds set out in section 174(2)(a) (Appeal A), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), in relation to Appeal A, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: No further action is taken.

The Enforcement Notice

1. Under s176(1) of the Town and Country Planning Act 1990 (the 1990 Act), an Inspector may correct any error, defect or misdescription in a notice, provided that doing so will cause no injustice to the appellant or Council. If injustice would be caused, the notice will not be correctable and therefore invalid.
2. However, if a notice is so defective on its face that it does not amount to an enforcement notice at all, then it is null and the question as to whether corrections would cause injustice cannot arise. That might be the case if the notice is hopelessly ambiguous and uncertain or omits to state what is prescribed under s173 of the 1990 Act or under the Town and Country Planning (Enforcement Notices and Appeals) Regulations 2002.

3. On 9 July 2024, I wrote to the parties to draw their attention to the fact that the enforcement notice subject to these appeals alleges that there has been both a material change of use of land without planning permission and a failure to comply with a condition imposed on a planning permission. Read together with the plan attached to the notice, it is apparent that the different breaches relate to different areas within the land edged red: the alleged change of use being within the area shaded grey and the alleged breach of condition being within the area shaded blue.
4. I referred in my letter to the fact that the ground (a) appeal cannot give rise to a deemed planning application in respect of the whole site. I raised concerns as to whether correcting the notice might cause injustice and I suggested that the Council withdraw the notice. I have carefully considered the parties responses to my letter in the light of the statutory provisions for planning enforcement.
5. S171A(1) of the 1990 Act states that for the purpose of this Act – (a) carrying out development without the required planning permission; **or** (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. Correspondingly, s173(1)(b) of the 1990 Act states that an enforcement notice shall state **the paragraph** of section s171A(1) within which, in the opinion of the authority, the breach falls [my emphasis added].
6. Since the notice in this case alleges that there has been both development without permission **and** a failure to comply with a condition, it refers to breaches of planning control described under both s171A(1)(a) and (b). Paragraph 1 of the notice only refers to s171A(1)(a), and the logic of s173(1)(b) is that the notice should just refer to one subsection of s171A(1). However, the allegation encompasses breaches as described under both subsections.
7. As noted above, an enforcement notice is null if it does not comply with s173 of the 1990 Act. I have reflected on this question and cannot square the allegation with the provisions of s173(1)(b). By alleging that there has been both development without planning permission and a failure to comply with a condition imposed on a planning permission, the notice fails to state the breach of planning control in the manner required by s173(1)(b).
8. On that basis, I find that the notice is null. Adding weight to that assessment, s177(5) provides that, where the notice is appealed on ground (a) – as is the case here – the appellant shall be deemed to have made **a** planning application in respect of the matters stated in the notice as constituting a breach of planning control. S177(5) is not drafted to facilitate more than one deemed planning application and yet the notice raises expectations that permission could be granted both for the alleged material change of use over one area, **and** for the development previously permitted (ref: S00/0471) over a separate area without compliance with the disputed condition.
9. Even if the notice is not null, it would need to be corrected having regard to the provisions of s173(1)(b). However, the notice could not be corrected to allege there has been an unauthorised material change of use of the whole site, because the use of the area shaded blue on the plan for clay pigeon shooting is permitted. The notice could not be corrected to allege there has been a breach

of condition in respect of the whole site because the aforementioned previous planning permission did not extend to the areas shaded in grey on the plan.

10. From their responses to my 9 July letter, the main parties have rejected a proposition that I should correct the notice so that it only alleges either the material change of use or breach of condition, as confined to the respective areas. It is simply not possible to correct the notice so that there is, potentially, one effective permission for the site as a whole.

Conclusion

11. I have given very careful consideration to whether the notice can allege, as it does, separate breaches of planning control falling under both s171A(1)(a) and (b) over the respective areas of the appeal site. Following thorough reflection of the relevant legislation and evidence, I have reached the conclusion that the notice does not comply with a statutory requirement, namely s173(1)(b) and is a nullity.
12. In these circumstances, the appeals on grounds (a), (b), (c), (f) and (g) 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 Decisions

13. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. 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.

R Merrett

INSPECTOR