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## Appeal Decision

Site visit made on 10 November 2020

**by Felicity Thompson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 December 2020**

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**Appeal Ref: APP/B5480/C/20/3250320**

**Land on the north-west side of Willoughby Drive (south plot), Rainham RM13 8JP**

- 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 appeal is made by Ms Michelle Landers against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 5 March 2020.
  - The breach of planning control as alleged in the notice is, without the benefit of planning permission:
    1. The material change of use of the land edged in black in the site plan attached to the notice in Green Belt to motor vehicle storage and repair yard and use for the storage of metal containers; AND
    2. Unauthorised development through the erection of a shed with corrugated roof measuring approximately 6 metres wide by 4 metres deep and 5 metres high.
  - The requirements of the notice are:
    1. Cease the use of the land edged in black in the attached site plan in Green Belt for repairing of motor vehicles and storage of motor vehicle parts; AND
    2. Remove the shed with corrugated roof measuring approximately 6 metres wide by 4 metres deep and 5 metres high; AND
    3. Remove all metal containers; AND
    4. Clear the land of scrap metals, equipment and debris associated with the unauthorised use; AND
    5. Return the land back to the condition before the unauthorised use started.
      - The period for compliance with the requirements is two months.
      - The appeal is proceeding on the grounds set out in section 174(2) (e) and (b) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is corrected by:
  - 1) Substituting the site plan attached to the issued enforcement notice with the one attached to this decision, and;
  - 2) by the deletion of the words "edged in black" and the substitution of the words "edged red" in section two of the notice and both allegation number one and requirement number one, to reflect the corrected plan.
  - 3) The deletion of Land Registry title number EGL466942 in section two of the notice.
2. Subject to the above corrections, the appeal is dismissed, and the enforcement notice is upheld.

### **Preliminary Matters**

3. Representations from local residents refer to the merits of the development enforced against. However, as there is no appeal on ground (a) and no deemed planning application for me to consider, the planning merits of the development are not relevant to my decision.
4. Although the appellant referred to the appeal being made only in respect of land in their ownership, where an appeal is made, it is against the enforcement notice as issued, including all land to which the notice relates.

### **The Enforcement Notice**

5. The black edging on the plan attached to the enforcement notice is drawn around two areas of land, plot one (as identified in the appellant's evidence) owned by the appellant and plot two owned by the Council, this is not a matter in dispute. The appellant's case is essentially that they are not responsible for the breaches of planning control alleged in the notice and, that they have not taken place on their land.
6. It appears that the appellant's father previously rented plots one and three (not subject of the enforcement notice) and used plot two for grazing horses. In 2004, the appellant purchased plot one and continued to rent plot three but ceased the use of plot three in around 2007/8 when the land was sold to a Mr Terry Chambers. They continued to graze horses on plot two until around 2009 when Mr Chambers allegedly took over the use of this land.
7. The appellant maintains that since 2009, the only part of the appeal site owned or occupied by them is plot one and that the developments, as set out in the allegation, have not taken place on their land. They wrote to the Council to explain this and asked them to amend the enforcement notice accordingly however, it appears that the Council did not respond.
8. The Council have not sought to address this matter, specifically where in relation to the plots the breaches are ongoing. The submitted photographs show the building and motor vehicle storage and repair yard and metal containers to be within plot two. This is consistent with what I observed at my site visit.
9. It appears, that the Council considered, based largely on the appellant's and their families previous use of the land (plots one, two and three), that they are responsible for the entire area subject of the enforcement notice. However, whether or not the appellant is responsible for the breaches of planning control taking place on plot two, there is no evidence that the breaches, as set out in the notice, have occurred on that land owned by the appellant.
10. I have powers to correct a defective enforcement notice. It appears to me that the plan attached to the notice is incorrect. It does not accurately identify the land to which the notice relates as it includes the adjacent land owned by the appellant, on which there is no evidence that the breaches of planning control as set out in the notice are or have taken place.
11. Consequently, I will correct the notice by amending the plan so that it relates to the area where the breaches of planning control are taking place, exercising my powers under s176 of the Act, as I am satisfied that the notice can be

corrected by substituting the site plan with the one attached to this decision without causing injustice to either party.

**The appeal on ground (e)**

12. An appeal on this ground concerns whether the enforcement notice was properly served on everyone with an interest in the land.
13. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land.
14. As the *land* to which the notice relates, as originally served, includes land in the appellant's ownership, it is necessary for the Council to have served the notice on them, whether or not the appellant is responsible for the breaches of planning control.
15. Whilst the appellant maintains that somebody else is responsible for the breaches, there is no substantive evidence before me to identify who that person is and what their interest is in the land.
16. The Council has not said that it has served a Planning Contravention Notice or used its powers under s330 of the Act to obtain information about the address of the occupier. However, they stated that they carried out their own investigations and gathered no evidence that Mr Chambers was occupying plot two. Additionally, they stated, albeit no evidence was provided to demonstrate, that the notice was hand delivered to the owners and occupiers of the land.
17. Consequently, I cannot conclude that any other person who should have been served with the notice has not. Therefore, the appeal on ground (e) fails.

**The appeal on ground (b)**

18. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
19. Notwithstanding the dispute about the area of land identified by the enforcement notice as originally served, a matter which I have already addressed, there is no dispute between the parties that the breaches as set out in the allegation have occurred.
20. Consequently, based on the submitted evidence and my own site observations, I conclude as a matter of fact that the breaches, as alleged, have occurred. The ground (b) appeal therefore fails.

**Conclusion**

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

*Felicity Thompson*

INSPECTOR



# Plan

This is the plan referred to in my decision dated: 01 December 2020

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