Enforcement Appeal Decision

4th Floor
92 Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

Appeal Reference:	2024/E0017
Appeal by:	Mr Sean Millar
Appeal against:	An enforcement notice dated 24th April 2024
Alleged Breach of Planning Control:	Unauthorised use of land for motorhome facility, unauthorised outdoor electric points, unauthorised toilets structure, unauthorised coffee hut, unauthorised beer garden shelter, unauthorised outdoor bar, two unauthorised wooden cabins and two unauthorised mobile homes
Location:	Land at 401 Seacoast Road, Limavady
Planning Authority:	Causeway Coast and Glens Borough Council
Authority's Reference:	EN/LA01/2022/0068/CA
Procedure:	Remote Informal Hearing on 20th September 2024
Decision by:	Commissioner Gareth Kerr, dated 27th September 2024

Grounds of Appeal

1. The appeal was brought on Grounds (c), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act).

The Notice

2. The appeal site comprises an established public house with a car park to the side and rear. It has been operated by the appellant for the past 9 years. The car park has been used as a motorhome site without planning permission and additional facilities have been installed including electric points, toilets, a coffee hut, a covered seating area, an outdoor bar, two wooden cabins and two mobile homes.

3. The Enforcement Notice (EN) sets out ten steps numbered (a) to (j) to remedy the alleged breaches of planning control. The appellant is willing to comply with steps (c), (d), (e), (f), (g) and (h) which relate to the removal of the larger structures. His appeal is in respect of the following points:
   (a) Permanently cease the use of the land shaded blue within the site edged in red in the approximate location on the attached map as a motorhome facility.
   (b) Permanently remove all outdoor electric points from the site edged in red on the attached map.
   (i) Permanently remove all materials and rubble resulting from complying with (b) to (h) above from the site edged in red on the attached map.
   (j) Comply with (a) to (i) above within 84 days of the date on which this notice takes effect.

4. The appellant argues that the EN is a nullity because it doesn't set out how the alleged unauthorised development breaches planning control. Section 131 (1) of the Act states that for the purposes of this Act—
   (a) carrying out development without the planning permission required; or
   (b) failing to comply with any condition or limitation subject to which planning permission has been granted,

   constitutes a breach of planning control.
   Section 140 (1) of the Act says an enforcement notice must state—
   (a) the matters which appear to the council to constitute the breach of planning control; and
   (b) the paragraph of Section 131 (1) within which, in the opinion of the council the breach falls.

   It further states at (2) 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.

5. Section 3 of the EN sets out the matters which appear to the council to constitute the breach of planning control. It is sufficiently clear to enable the appellant to understand what the alleged matters are. Section 1 of the EN indicates that the alleged breach falls within paragraph (a) of Section 131 (1) of the Act. Nowhere does the Act require that an EN sets out how the alleged unauthorised development breaches planning control. It is for the Council to set out its reasoning in its Statement of Case, not in the EN itself. Nullity is a high bar that would require the EN to be so defective on its face (for instance, because it fails to include within its terms the matters referred to in the Act or that it is so ambiguous that it fails to tell the appellant what he has done wrong and what he needs to do to rectify it) that there is, in effect no notice at all. There is no evidence that this bar has been reached. The EN states what the legislation requires it to. The appellant's arguments in respect of nullity are not sustained.

Ground (c) – that the matters stated on the Notice do not constitute a breach of planning control

6. Under a Ground (c) appeal, it is necessary to establish whether the alleged breach of planning control, is development, and if it is, whether planning permission would be required. Section 23 (1) of the Act states that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The parties dispute whether the use of the land as a motorhome facility constitutes a material change of use.

7. The public house has a Country and Western theme and hosts music events with well-known Country and Western singers. The appellant argued that the parking of motorhomes in the car park only occurs on an ad-hoc basis from April to September coinciding with the music events and that the motorhome facilities are incidental to the primary use as a licensed premises. The outdoor facilities were constructed to allow for music events during the Covid-19 pandemic. Given the remote location, some attendees asked if they could park motorhomes in the car park. Initially, this was facilitated free-of-charge, but then users requested water and electricity hook up points, which were subsequently installed. A small fee is now charged to cover these costs. The appellant argues that these ancillary facilities are not development and may be considered "de minimis".

8. There were no motorhomes on the site when I visited it on the weekend following the hearing. The agent stated that he had visited the site nine times over the summer and only saw a motorhome using it on one occasion. The appellant's evidence included a diary showing the number of motorhomes on the site from May to September 2024. This indicates around 65 motorhomes staying on site over a three-month period, on at least 19 separate nights. Many nights only had one or two units present, though there were larger numbers on the first weekend in August when a music festival was held over the weekend with different acts each night. There were up to 17 motorhomes present on one of these evenings.

9. The Council consider the use of the site as a motorhome facility to be a material change of use. Their evidence highlighted how the site is advertised on social media as "Wild Wagons Camper Van Parking". They said the provision of water and electric points implies a degree of permanence. They referred to the large numbers of motorhomes present during certain music events and were concerned at the loss of car parking spaces for those attracted to events at the premises, which could result in safety issues or cars parking on the roadside. They also stated that the discharge of grey water from the motorhomes has not been assessed by statutory bodies.

10. Whether a material change of use has occurred is a matter of fact and degree in each case, having regard to the particular characteristics of the use. Although the evidence before me indicates that the use of the site by motorhomes is intermittent rather than constant, the appellant's diary suggests that the level of use is not insignificant. Whereas a car park is normally a place where vehicles are left unattended during the opening hours of the associated business, a motorhome site involves people living on the site for short periods and overnight stays. I note from the Council's evidence that it is advertised on social media as a stop for camper vans at any time during the season, not just when music events occur, and the appellant's booking diary indicates that it was occupied by motorhomes at times other than when music events were on.

11. Motorhomes parked on the site would be more visually apparent than standard cars because of their size and the surrounding flat landscape. The installation of facilities like water and electric points (for the use of which a fee is charged) and a toilet block points to a material change in the use of the land having occurred and there is potential for noise to be generated, particularly if larger numbers were staying on the site. Although the parties were not aware of any noise complaints regarding the premises, the use of the car park to facilitate tourist accommodation is materially different from its established use for car parking. I do not accept that the level of use indicated in the appellant's booking diary could be described as ancillary to the licensed premises because of the number of nights involved, the large numbers accommodated on particular nights and because it is not necessary to stay on the site to attend the music events.

12. The appellant argued that the EN was unclear because it did not state that a material change of use of land had occurred. While it is common practice for ENs in Northern Ireland to be headed "operational development", "material change of use" or "breach of condition", there is no statutory requirement that this be stated. Section 3 of the EN where the alleged breach is cited includes the words, "unauthorised use of land for motorhome facility". Accordingly, it is clear that the EN is concerned with the use

of the land, regardless of whether or not the word “material” is used. The appellant’s concerns in this regard would not invalidate the EN.

13. Section 15 of the Caravans Act (Northern Ireland) 2011 defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted (my emphasis). The appellant accepted at the hearing that motorhomes fell within the definition of a caravan, as set out above, and that if I were to find that the use of the appeal site as a motorhome facility was a material change of use, it would not benefit from any permitted development rights in the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015, either under Part 5 (Temporary Buildings and Uses) or Part 6 (Caravan Sites). As it would not constitute permitted development, I must conclude in the evidential context before me that use of the land as a motorhome facility requires planning permission. Use of this land as a motorhome facility is a material change of use and a breach of planning control and the appeal on Ground (c) on this point must fail.

Ground (f) – that the steps required by the Notice exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity caused by any such breach

14. The Council agreed with the appellant that the electric points were not “development” in their own right, but they considered them to be part and parcel of the use of the site as a motorhome facility. The Council referred to the case of *Somak Travel v Secretary of State for the Environment and the London Borough of Brent [1987] 55 P. & C.R.* which concerned whether certain operational development was integral to, or part and parcel of, an unauthorised material change of use. The Court held that although a spiral staircase connecting two floors of a building was not development requiring planning permission, it was part and parcel of the unauthorised material change of use, or was integral thereto, so the EN was correct to require its removal.

15. The outdoor electric points referred to in step (b) of the EN are fixed to the fence which bounds the car park. The appellant stated that while they could also charge electric cars, they were put in place to service the motorhomes. I consider that they are integral to the unauthorised material change of use. Following discussion of the *Somak* case at the hearing, the appellant accepted that if the use of the land as a motorhome facility was found to be a material change of use, it would be lawful for the EN to require the removal of the electric points. Furthermore, were the EN not to require the removal of the electric points, it would enable the unauthorised use to restart at any time. I am therefore persuaded that step (b) on the EN is both lawful and necessary to remedy the breach of planning control.

16. The appellant argued that step (i) on the EN is unclear in terms of the removal of materials and rubble resulting from complying with steps (b) to (h) from the site. He argued that the car park itself was constructed from stone/rubble and it would be hard to separate the materials and rubble to be removed from the stone car park which would remain. The Council considered that the EN was sufficiently clear about what had to be removed. It did not require removal of the car park. It referred only to rubble arising from compliance with steps (b) to (h).

17. The items that require removal under steps (b) to (h) are generally moveable structures such as the mobile homes and wooden cabins, other timber structures such as the toilet block, coffee hut, beer garden shelter and outdoor bar, or electrical or plumbing infrastructure. There appears to be little in the way of masonry structures that could be confused with the stone car park and I see no difficulty in separating the items to be removed from the stone car park. Therefore, the appellant's concerns in respect of step (i) are not sustained and the appeal on Ground (f) fails.

Ground (g) – that the period for compliance specified in the Notice falls short of what should reasonably be allowed.

18. Step (j) of the EN allows a period of 84 days or 12 weeks to comply with the other steps. The appellant argued that the time period for compliance should be extended to a minimum of 180 days to allow time to cancel events, sell off the cabins, mobile homes and materials, advise patrons and instruct a contractor to remove them. The appellant conformed at the hearing that forthcoming events over the winter months will be held within the bar rather than outside, so I am not persuaded that the need to cancel any outdoor events would justify an extension of the time period for compliance.

19. The appellant further stated that there are some bookings for the wooden cabins during planned events within the bar and that the removal of the structures which facilitate outdoor use may result in him having to let go up to nine staff. The Council was open to an extension to the time period for compliance given we are entering the winter season when less harm is likely to be caused. Given the absence of any noise complaints in respect of the premises, the impacts on staff and booked customers and the considerable amount of work required to remove all of the unauthorised structures, I agree that a period of 180 days should reasonably be allowed. The appeal on Ground (g) succeeds and the time period for compliance is varied to 180 days from the date of this decision.

Decision

20. The decision is as follows:-
    - The appeal on Ground (c) fails.
    - The appeal on Ground (f) fails.
    - The period for compliance as set out at section 5 (j) of the Enforcement Notice is varied to 180 days and the appeal on Ground (g) succeeds to that extent.
    - The Notice as so varied is upheld.

COMMISSIONER GARETH KERR

List of Appearances

Planning Authority:-		Mr Ciaran Rodgers Ms Elaine Olphert
Appellant:-		Mr Lee Kennedy

List of Documents

Planning Authority:-	A	Statement of Case Causeway Coast and Glens Borough Council
Appellant:-	B	Statement of Case Lee Kennedy Planning