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Case Reference Number: 13/00352/S215

NOTICE VARIED BY  
APPEAL DECISION

DATED  
07-08-15

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**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

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**Borough Council of King's Lynn & West Norfolk**

**TOWN AND COUNTRY PLANNING ACT 1990**  
**(as amended by the Planning and Compensation Act 1991)(‘the Act’)**

## **ENFORCEMENT NOTICE**

**ISSUED BY: Borough Council of King's Lynn & West Norfolk (‘the Council’)**

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control within paragraph (a) of Section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The annex at the end of the Notice and enclosure to which it refers contain important additional information.

2. **THE LAND TO WHICH THIS NOTICE RELATES**

Land at 11 Church Close, Pentney, King's Lynn, Norfolk, PE32 1JJ  
("the Land") as shown shaded on the attached plan.

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission, the material change of use for the Land from dwellinghouse to a mixed use of dwellinghouse and the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such.

4. **REASONS FOR ISSUING THIS NOTICE**

It is considered that the above unauthorised development has occurred within the last ten years.

Due to the nature and number of vehicles being stored at the dwellinghouse it is considered that a material change of use of Land has occurred. The vehicles are not roadworthy and not being properly maintained and at a level that cannot be considered to be incidental to the enjoyment of the dwellinghouse as such.

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The nature and excessive storage is inappropriate and adversely affecting the quality and amenity of this residential area, contrary to the provisions of the National Planning Policy Framework (NPPF).

**5. AS THE PERSON RESPONSIBLE YOU ARE TO ENSURE THAT**

- i) The use of the Land for the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such ceases.
- ii) All vehicles stored on the Land for a purpose not incidental to the enjoyment of the dwellinghouse as such are removed from the Land.

**6. TIME FOR COMPLIANCE**

One month from the date this notice takes effect

**7. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 23RD JANUARY 2015 unless an appeal is made against it beforehand.

Date of Issue: 12-12-2014

Signed:

A handwritten signature in blue ink, appearing to be 'G. Hall'.

Mr G Hall  
Executive Director Environment and Planning

Authorised Signatory  
Borough Council of King's Lynn and West Norfolk  
King's Court  
Chapel Street  
King's Lynn  
Norfolk  
PE30 1EX

A copy of this notice has been served upon the following persons:

Paul Alexander Sangster, 11 Church Close, Pentney, King's Lynn, Norfolk,  
PE32 1JJ

In the event of an appeal against the issue of this Enforcement Notice on Ground (a) that planning permission ought to be granted, the fee payable to the Local Planning Authority is £770.00



## ANNEX

### THIS IS IMPORTANT

#### YOUR RIGHT OF APPEAL

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal ([www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs)); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that we receive your appeal before the effective date on the enforcement notice.**

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We **MUST** receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.

#### WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 7 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution, injunctive action in the High Court or County Court and/or remedial action by the Council.



## **ENFORCEMENT OF PLANNING CONTROL**

*Town and Country Planning Act 1990*

*(As amended by the Planning & Compensation Act 1991)*

### **ENVIRONMENT AND PLANNING**

King's Court, Chapel Street

King's Lynn, Norfolk, PE30 1EX

Tel: (01553) 616200

Fax: (01553) 616652

DX 57825 KING'S LYNN

Website: [www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)

A Plan showing site at: Land at 11 Church Close, Pentney, King's Lynn,  
Norfolk, PE32 1JJ



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13/00352/S215



## Appeal Decision

Site visit made on 8 June 2015

by **J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 August 2015

**Appeal Ref: APP/V2635/C/15/3003240**

**Land at 11 Church Close, Pentney, King's Lynn, Norfolk, PE32 1JJ**

- 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 Mr Paul Sangster against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The Council's reference is 13/00352/S215.
- The notice was issued on 12 December 2014.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use for the Land from dwellinghouse to a mixed use of dwellinghouse and the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such.
- The requirements of the notice are to ensure that: (i) the use of the land for the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such ceases; and (ii) all vehicles stored on the Land for a purpose not incidental to the enjoyment of the dwellinghouse as such are removed from the Land.
- The period for compliance with the requirements is one month from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.**

### Background

1. The enforcement notice was issued under the 'second bite' provision set out in section 171B(4)(b) of the 1990 Act, an earlier notice having been quashed on appeal Ref APP/V2635/C/14/2217372 on 20 October 2014 (the previous appeal). That earlier notice was not declared a nullity, as the appellant, suggests, but the Inspector considered it flawed and incapable of variation without causing injustice. The problem was that the requirements allowed for no more than six vehicles to be stored on part of the land and the Council had not appreciated that, by virtue of section 173(11) of the 1990 Act, this could result in an unconditional planning permission for the storage of 6 vehicles on the land in addition to any vehicles kept for purposes incidental to the residential use.

### Reasons

#### *Ground (c)*

2. To succeed on this ground, the appellant must prove, on the balance of probability, that the matters alleged in the notice do not constitute a breach of

planning control. The appellant contends that the vehicles are stored on the land for purposes incidental to a 3 bedroom property, being for the current and future use of the occupiers. By virtue of section 55(2)(d) of the 1990 Act, the use of land within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse as such does not constitute development.

3. Photographs taken by the Council during site visits on 26 July and 31 July 2013 show 15 vehicles on the land, namely 9 in the rear garden, 2 to the side of the house and 4 in the front garden. These remained in place when the Council visited again on 1 October 2013 and 7 February 2014 and when the previous appeal Inspector saw the site on 20 October 2014. When lodging the current appeal, the appellant confirmed that circumstances had not changed on site although, by the time of my visit, there were only 3 vehicles in the front garden and one of those appeared to be roadworthy and in use. However, the vehicles to the side of the house and in the rear garden were the same as those shown in the Council's 2013 photographs. In any event, it is the position as at the date of issue of the current notice which is relevant.
4. The appellant does not explain in the current appeal how the storage of so many apparently un-roadworthy vehicles could be incidental to the enjoyment of the dwellinghouse as such, or the way in which they are kept for his, or the other occupiers' current and future use. He appears to have told the previous appeal Inspector that they had been moved to the appeal site from lock-ups in 2011, when he had to go into hospital for an operation. He said he intended to work on them as a hobby, either to restore or modify them or to dispose of them in parts. However, the previous Inspector concluded that the storage of vehicles in this case was beyond what would normally be expected to occur as activity incidental to residential use. Furthermore, given the length of time that the vehicles had been stored without significant work being carried out on them, they were not being kept for the purposes of a hobby. Accordingly, that Inspector dismissed grounds (b)<sup>1</sup> and (c) and I see no fault in that decision.
5. Further time has now elapsed without significant work being undertaken on the vehicles and I have been advised of no changes in circumstances which would justify a different conclusion from that arrived at in the previous appeal. I therefore conclude on this ground that the appellant has failed to prove, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

#### *Ground (f)*

6. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control. The appellant contends that the requirements are excessive because they appear to indicate that all the vehicles on the site must be removed and, in the absence of an exact figure being specified, the householders and subsequent occupiers cannot know what the Council regards as incidental and therefore how many vehicles they can keep. The appellant says that the notice therefore has the effect of taking away the existing right to store vehicles on the property for purposes incidental to its use as a dwelling.
7. However, the requirements of notice do not take away existing lawful use rights; they explicitly preserve the right to keep vehicles on the land for

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<sup>1</sup> Ground (b) is that the matters alleged in the notice have not occurred.

purposes incidental to the enjoyment of the dwellinghouse as such. Although I sympathise with the concern that the number of vehicles considered to be incidental is not specified, the Council is seeking to avoid the problem which arose in the previous appeal because of the effect of section 173(11). Furthermore, whether a use of land is excluded from the definition of development by section 55(2)(d) will be a matter of judgement in the particular circumstances of any case at any given time. Householders generally cannot be told how many vehicles they can keep before planning permission may be required for a change of use and any figure specified in an enforcement notice would be arbitrary.

8. I accept that, where an enforcement notice is in place, any breach gives rise to an immediate risk of prosecution and so, even though the Council would have to prove a breach had taken place, there is a need for sufficient clarity. However, in the normal course of events householders will know when they keep vehicles for purposes incidental to the enjoyment of their dwelling as such. There may be cases around the margins where vehicles are kept and worked on for hobby purposes, or for example where vehicles used in connection with a business are parked at home. However, if the appellant proposes anything along these lines in the future he will simply need to exercise caution. Where there is doubt, there is a procedure under section 192 of the Act to establish whether what is proposed would be lawful.
9. In all the circumstances, I consider that the requirements of the notice are sufficiently clear and do not exceed what is necessary to remedy the breach of planning control. In any event, I note that the appellant himself does not suggest any lesser steps. The appeal therefore fails on ground (f).

*Ground (g)*

10. Under this ground, the appellant contends that the one month period for compliance with the notice is unreasonably short. He seeks a period of nine months for a number of reasons.
11. If there had been no appeal, the notice would have required removal of the vehicles in February, when the ground would be soft, making removal problematic, especially for the appellant, who is seriously ill. However, at the time of writing this decision, that concern about timing and weather conditions does not now apply.
12. The appellant contends that it would be difficult for any person to clear the site in one month. He does not give any detailed explanation as to why. However, it is clear that the vehicles have been immobile for some years and many of them are located in the somewhat overgrown rear garden. Removal of those vehicles may present some difficulties. I also accept that the appellant may have to employ someone to assist. Whilst the appellant may need to raise funds to do so, that is not necessarily a reason for delaying removal. As the Council points out, the vehicles are likely to have a scrap value at least, so the appellant could recoup some or all of the costs of removal.
13. The appellant is also concerned that the requirement to remove the vehicles within one month could lead to him having to remove vehicles which, in time he might be permitted to keep. It is difficult to see why that would justify a longer period for compliance and the Council has indicated that, whilst the

appellant has not stated how many vehicles he would like to retain, it is open to him to demonstrate that certain vehicles are kept for an incidental purpose.

14. I note that the notice the subject of the previous appeal gave a six month period for compliance. Whilst the reduction to one month appears dramatic, I consider that six months was especially generous and I note that some of the vehicles have now been removed. I can see no reasonable justification for the nine month period requested by the appellant. However, having regard to the work involved in removing the offending vehicles, the appellant's poor health and the likely need to employ assistance, a compliance period of 2 months would represent a proportionate response in circumstances where, by the appellant's own admission the vehicles are untidily stored. I would also stress that the Council retains the power to extend the period for compliance where it is satisfied that this is appropriate<sup>2</sup>. Furthermore, where a person can show that he has done everything he could be expected to do to secure compliance with the notice, this provides a defence to any prosecution<sup>3</sup>.
15. I will vary the notice accordingly, and to this extent only, the appeal succeeds on ground (g).

#### **Decision**

16. The enforcement notice is varied in section 6 by deleting "One month" and substituting "Two months" as the period for compliance. Subject to that variation the appeal is dismissed and the enforcement notice is upheld.

*J A Murray*

INSPECTOR

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<sup>2</sup> Section 173A(1)(b) of the 1990 Act.

<sup>3</sup> Ibis section 179(3).