

Hinckley & Bosworth Borough Council

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (“the Act”)

(As amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE

ISSUED BY: HINCKLEY & BOSWORTH BOROUGH COUNCIL (“The Council”)

1. **THIS NOTICE** 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 the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land lying on the South side of Shenton Lane, Upton, Nuneaton (“the Land”) shown edged in red on the attached plan (“the Plan”).

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the material change of use of the Land to a car sales and car valeting business, (sui generis use), (“the unauthorised use”), along with the erection of a timber cabin and the laying of hardstanding both used to facilitate the unauthorised use (“the unauthorised operational development”).

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last 10 years

The unauthorised use and unauthorised operational development, has taken place within open countryside in an unsustainable location, beyond an identified settlement boundary, introducing an incongruous form of development that has an adverse impact on the intrinsic

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value, beauty, open and landscape character of the countryside; and is contrary to Policies DM1, DM4 and DM10 and DM15 of the Site Allocations and Development Management Policies DPD adopted 2016, and the overarching principles of the National Planning Policy Framework (2023) including paragraphs 89 and 114.

Furthermore the unauthorised use and unauthorised operational development is likely to lead to an adverse impact on the water quality of the local water environment, thus conflicting with Policy DM7 of the SADMP and paragraph 180 of the NPPF (2023).

The Council has already considered an application for retrospective planning permission for the planning breaches identified in this notice (planning reference 22/00032/FUL), and issued its refusal decision on the 22 February 2024. As such, the Council considers that planning conditions could not overcome the objections to the unauthorised use and unauthorised operational development. A copy of the Council's decision is attached as Appendix 1 of this notice.

5. WHAT YOU ARE REQUIRED TO DO

- 1) Cease the use of the Land as a car sales and car valeting business
- 2) Demolish and remove the timber cabin, take up the hardstanding and all items associated with the unauthorised use from the Land, including but not limited to vehicles, machinery, fixtures and fittings.
- 3) Return the Land to its original profile, before the unauthorised use and unauthorised operational development took place.

6. TIME FOR COMPLIANCE

Six months from the date this notice takes effect to comply with requirements of 1), 2) and 3) as detailed in section 5.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the **31st July 2024**, unless an appeal is made against it beforehand.

Dated: 12th June 2024

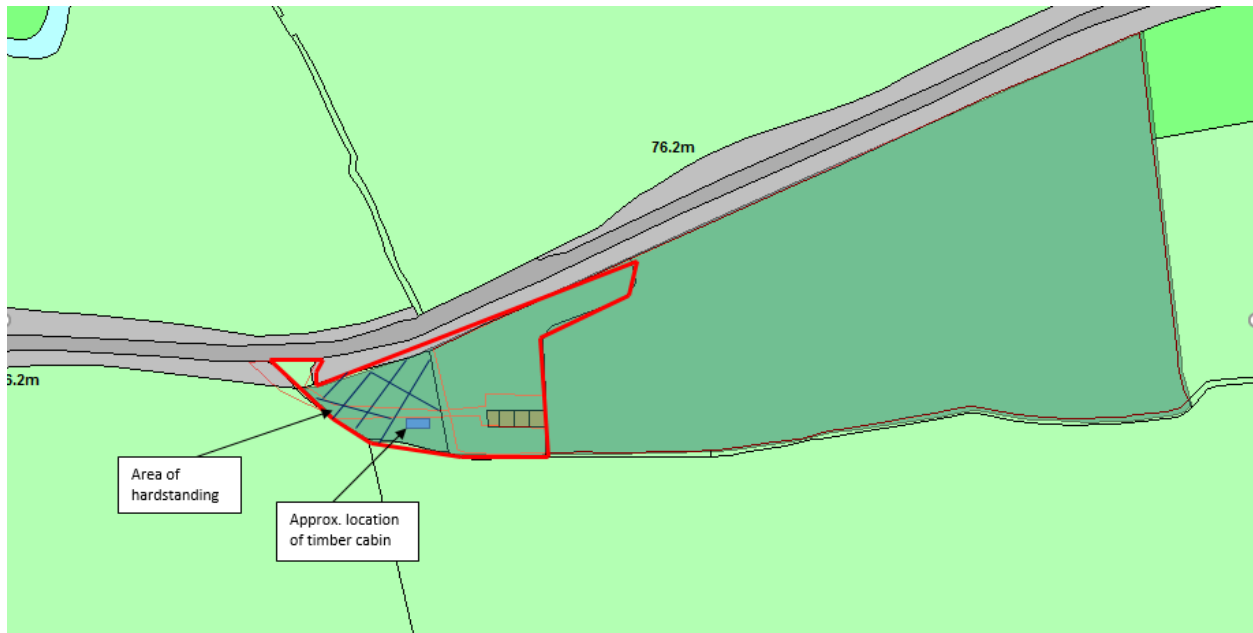
Signed:



Duly Authorised Officer
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
Hinckley, Leicestershire, LE10 0FR

THE PLAN

Land lying on the South side of Shenton Lane, Upton, Nuneaton



ANNEX

Explanatory Note

Hinkley & Bosworth Borough Council has issued an enforcement notice relating to Land at Shenton Lane Upton Nuneaton Sibson and you are served with a copy of that notice as you have an interest in the land. Copies of the notice have also been listed on the parties listed at the end of this Annex.

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of this notice which is the **31st July 2024**.

A copy of the Planning Inspectorate Enforcement appeals: procedural guide can be found using the following link:

<https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide>

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 specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

RELEVANT SECTIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

STATEMENT OF APPEAL

If you appeal against this notice, and have not already done so, you will be required by the Planning Inspectorate to submit a statement in writing within 14 days –

- (i) specifying the grounds on which you are appealing against the notice; and
- (ii) setting out briefly the facts on which you propose to rely in support of each of those grounds

WHAT HAPPENS IF YOU DO NOT APPEAL

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CHARGES PAYABLE FOR DEEMED PLANNING APPLICATIONS

A charge is normally payable, under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations, by every person who appeals against an enforcement notice under ground (a):-

that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged

The ground of appeal lapses if the deemed application fee is not paid when required. The charge is payable to the local planning authority. The charge in this case will be **£578.00**.

Further information about fees is given in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2020.

EXEMPTIONS FROM CHARGE AND CONCESSIONS

When several people appeal against the same enforcement notice, each will be required to pay the appropriate fee. Only one person (paying one fee) need appeal against a particular notice to trigger the appeal process, and to suspend the effect of all the Notices whilst the appeal is processed. However, if only one appeal is made, and is subsequently withdrawn, the enforcement notice takes effect immediately.

RETROSPECTIVE PLANNING APPLICATION

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If you make a retrospective planning application after the LPA issued the enforcement notice, the LPA may decline to determine your application under section 70C of the Act (as amended). You cannot appeal against an LPA's decision to decline to determine your planning application. Therefore if the LPA does decline any retrospective application the only way you could ask for the planning merits of the alleged development to be considered is to appeal on ground (a) on your enforcement appeal and pay the fee.

However if you (or anyone else) had already made a retrospective planning application for the same development to the LPA and it issued the enforcement notice before the time to decide the application had expired, no-one can appeal against the enforcement notice on ground (a). The applicant for planning permission can, in these circumstances, make a planning appeal if the LPA refuse or fail to determine the planning application. This is specified at section 174 (2A) (b) of the Act (as amended).

EXTRACTS FROM THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT, 1991):-

Section 171A Expressions used in connection with enforcement

- (1) For the purposes 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.
- (2) For the purposes of this Act –
 - a) the issue of an enforcement notice (defined in section 172); or
 - b) the service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

171B Time limits

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;

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- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within 10 years for any other breach of planning control (essentially other changes of use) after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent –

- the Local Planning Authority from taking of “further” enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the “second bite” provision
- where the local planning authority consider there has been deliberate concealment of a breach of planning control, in making an application for a planning enforcement order to allow them to take action after the time limits in section 171B have expired
- the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect.

172 Issue of enforcement notice

(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –

- a) that there has been a breach of planning control; and
- b) that it is expedient to issue the notice, having regard to the provision of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served –

- a) on the owner and on the occupier of the land to which it relates; and
- b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place –

- a) not more than twenty-eight days after its date of issue; and
- b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

173 Contents of enforcement notice

- (1) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.
- (2) An enforcement notice shall also specify –
 - a) any steps the local planning authority require to be taken in order to remedy the breach; and
 - b) any such steps as are mentioned in subsection (4) which the authority requires to be taken.
- (3) In this section “steps to be taken in order to remedy the breach” means (according to the particular circumstances of the breach) steps for the purpose –
 - a) of restoring the land to its condition before the development took place; or
 - b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including –
 - (i) the demolition or alteration of any building or works;
 - (ii) the discontinuance of any use of land; and
 - (iii) the carrying out on the land of any building or other operations.
- (4) The steps referred to in subsection (2) b) are steps for the purpose –
 - a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
 - b) of removing or alleviating any injury to amenity which has been caused by the development.
- (5) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (2) is to be taken and may specify different periods for the taking of different steps.
- (6) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.
- (7) The Secretary of State may by regulations direct –
 - a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and

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- b) that every copy of an enforcement notice served under section 172 shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 174.
- (8) Where –
 - a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
 - b) the notice has required the taking of steps for a purpose mentioned in subsection (4) b); and
 - c) the steps have been taken, for the purposes of the planning Acts planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

173A Variation and withdrawal of enforcement notices

- (1) The local planning authority may –
 - a) withdraw an enforcement notice issued by them; or
 - b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.

174 Appeal against enforcement notice

- (1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
- (2) An appeal may be brought on any of the following grounds –
 - a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

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- b) that those matters have not occurred;
 - c) that those matters (if they occurred) do not constitute a breach of planning control;
 - d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - e) that copies of the enforcement notice were not served as required by section 172;
 - f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
- (3) An appeal under this section shall be made either –
- a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
 - b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.
- (4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing –
- a) specifying the grounds on which he is appealing against the enforcement notice; and
 - b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4) b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) In this section “relevant occupier” means a person who –
- a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and
 - b) continues so to occupy the land when the appeal is brought.

175 Appeals: supplementary provisions

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may –

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- a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- b) specify the matters to be included in such a statement;
- c) require the authority of the appellant to give such notice of such an appeal as may be prescribed;
- d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1) c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the enforcement notice shall, subject to any order under s.289 (4A) be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

176 General provisions relating to determination of appeals

(1) On an appeal under section 174 the Secretary of State may –

- a) correct any defect, error or misdescription in the enforcement notice; or
- b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State –

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- a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and
- b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph a), b), or d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favor of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

177 Grant or modification of planning permission on appeals against enforcement notices

(1) On the determination of an appeal under section 174, the Secretary of State may –

- a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- b) discharge any condition or limitation subject to which planning permission was granted;
- c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1) c) as they apply for the purposes of section 191, but as if –

- a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- b) references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: Sections 191(5) to (7), 193(4) (so far as it relates to the form of the certificate), (6) and (7) and 194.

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(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provision of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(5A) Where –

- a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2) a) of that section;
- b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
- c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if the fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of Section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.

PERSONS SERVED WITH THE ENFORCEMENT NOTICE

Town and Country Planning (Enforcement Notices & Appeals) (England) Regulations 2002 Part 2, 5(c)

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The following people have been served with a copy of this enforcement notice:

NF Carz Limited, Land lying on the South side of Shenton Lane, Upton, Nuneaton

NF Carz Limited, 9 Corfe Close, Birmingham, West Midlands, B32 2NS

Mayko Sergiy, 9 Corfe Close, Birmingham, West Midlands, B32 2NS

Jack Lee Hemmings, Grange Cottage, Orton Lane, Sheepy Magna, Atherstone CV9 3NJ

The Owners/The Occupiers, Land lying on the South side of Shenton Lane, Upton, Nuneaton