

## **Enforcement Appeal by Mr Ricky Fernandez**

**At The Bungalow Botley Road Bishops Waltham Southampton SO32  
1DR**

### **INTRODUCTION**

The appeal is made on the following grounds.

- 1 The Notice should be considered a nullity
- 2 Ground (b) The breach in The Notice has not occurred as a matter of fact
- 3 Ground (f) The required steps to comply with The Notice are excessive and lesser steps would overcome the objections

### **NULITY**

The Appellant believes The Notice is a nullity for the following reasons.

The consideration of the question of nullity must be based upon what the appellant and the average person would have understood when the EN is first read. The entitlement is to find out from within the four corners of the document exactly what is required to be done or abstain from doing ; **Miller-Mead** . That is of key importance because of the criminal sanctions that arise from failure to comply with an EN. The appellant must be told with reasonable certainty **both** what the breach of planning control is and what must be done to remedy it. **Miller – Mead; Oats v SoSCLG and Canterbury.**

There is a fundamental problem with the EN issued. The breach alleged “without planning permission, the material change of use of land from use as a single dwelling house to a mixed use as a single

dwelling house and for commercial leisure and recreational purposes that are not incidental to the lawful use as a single dwelling house.”

This allegation suggests that there are at least **two** breaches of planning taking place. One in relation to commercial leisure use and one to recreational use. **Not one** specific activity has been identified and both are ambiguous allegations.

The appellant is unable to understand exactly which of the activities taking place within the red line are in breach. The appellant’s wife keeps and rears chickens as a hobby in her free time and also stables her horse, kept for recreational purposes. Are these activities caught up in The EN.? If it was the LPA’s intention to direct the EN at the children’s swimming instruction, taking place in the pool house, this should have been identified in section 3 of The EN, for clarity.

Returning to the breaches the appellant and I must say I do not understand the meaning of “commercial leisure and recreational purposes” The first thing that comes to mind in relation to commercial leisure is gambling associated with horse or greyhound racing . As regards to commercial recreation I have no idea what this eludes to.

The allegation is **vague , ambiguous, and full of uncertainty**. If the EN was to be directed at the use of the pool for financial gain, then that should be clearly outlined in the breach in the EN and there is no need to confuse matters by the use of “commercial leisure and recreational purposes.” The question has to be asked **WHAT ARE THESE COMMERCIAL LEISURE and RECREATIONAL PURPOSES.?**

It is not until later, when reading The EN that the swimming pool is mentioned as one of the possible activities considered included in one of the breaches.

It is quite clear the LPA knew that the pool was being used for children’s swimming instruction lessons/classes. This use is clearly not leisure/recreational, it is **educational**, (“ definition The process of

giving or receiving systematic instruction”} and therefore not included in the ambiguous breach. The definition of leisure in the dictionary is “time when not working or occupied, free time.” And recreational “activity done for enjoyment when not working”. This is why none of us understand the breach

Turning to para 5 “What you are required to do”

The first step required is only applicable if the breach alleged is considered correct, which for the reasons above are not.

There has never been any parking taking place that has not been incidental to the dwelling house. Parking has been in the farmyard opposite The bungalow.

For the above reasons is contended The EN is a nullity and beyond correction without causing injustice. Should The EN be corrected to relate to a specific breach that can be understood and is clear what activity is taking place, injustice will be caused to the appellant. No opportunity will be available for a ground (a) appeal or professional input to respond to any reasons for issuing a notice The Inspector may choose to carry out his/ her own test whether The EN is a nullity.

If The EN is found to be a nullity, the notice is of no effect and the question of whether it might be amended without injustice does not arise, and there is no need to examine the other grounds of appeal, and a cost claim will follow.

**GROUND (b)**

Firstly it has to be said the appellant is unclear what specific activities are in breach, due to ambiguous and vague allegations in The EN.

However what is clear is that no known activities relating to commercial leisure and recreational have taken place. Rather than repeat the arguments put forward to support the nullity argument,

The Inspector is asked to reconsider those facts, as clearly the breaches identified have not taken place.

Although parking has not been included in section 3 the breach alleged, the appellant notes that it is a step required to remedy the breach. No parking has ever taken place within the curtilage of the dwelling. Where is the LPA's evidence of this.?

### **GROUND (f)**

The appellant is unable to determine whether the steps required are excessive without knowing exactly what specific breaches are taking place. On the face of it these steps do not relate to any breaches in The EN , as they relate to activities not taking place on the land, as explained above and therefore have to be considered excessive and unnecessary

Parking has never taken place that was not incidental to the dwelling house, it is therefore considered excessive for it be required to stop if it has not taken place .

