

## The Planning Inspectorate

### ENFORCEMENT NOTICE APPEAL FORM (Online Version)

**WARNING:** The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

**Appeal Reference: APP/L1765/C/22/3296773**

#### A. APPELLANT DETAILS

Name

Address

Preferred contact method

Email  Post

#### A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes  No

#### B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes  No

Name

Company/Group Name

Address

Phone number

Fax number

Email

Your reference

Preferred contact method

Email  Post

### C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

Winchester City Council

Date of issue of enforcement notice

01/03/2022

Effective date of enforcement notice

12/04/2022

### D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes

No



Does the appeal relate to an existing property?

Yes

No



Address

Carousel Park  
Basingstoke Road  
Winchester  
Hampshire  
SO21 3BW

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes

No



What is your/the appellant's interest in the land/building?

Owner



Tenant



Mortgagee



None of the above



Did you/the appellant occupy the land/building under a written or oral licence BOTH on the date the enforcement notice was issued AND on the date of making this appeal?

Yes

No



What is your/the appellant's involvement with the land/building?

Occupier

### E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes

No



(a) That planning permission should be granted for what is alleged in the notice.



The facts are set out in

the box below

Without prejudice to grounds (b), (d) and (e), the Appellant contends, that pursuant to Ground a) planning permission should be granted for the breach of planning control as alleged.

The Enforcement Notice alleges:

"Without planning permission, the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use ("the Unauthorised Use")."

The Appellant will demonstrate that the most relevant Local Plan policies are out of date and therefore the weighted balance in paragraph 11 of the NPPF is engaged, and that the development complies with National Policy.

The site is occupied by a mixture of people and the site provides accommodation for:

- Gypsy and travellers
- Travelling Showpeople
- Households requiring affordable housing.

In the alternative, the Appellant will demonstrate that the Council is, and as at the time of the Enforcement Notice was, unable to demonstrate:

- A five-year supply of gypsy and traveller pitches
- A five-year supply of travelling showpersons sites
- A five year housing land supply

Paragraph 11 and footnote 8 of the NPPF will be engaged as a result of the above.

It will also be demonstrated that the Council are unable to demonstrate sufficient affordable housing provision.

The Appellant will establish, that any alleged harms, as a result of the development will not significantly and demonstrably outweigh the benefits of the development (material considerations), when assessed against the policies in the NPPF when taken as a whole.

Within the Enforcement Notice the following harms are alleged:

1. The land is allocated for travelling showpeople in order to meet an identified need and impact on the amenities of the occupiers

It will be demonstrated that the occupation of the site by those not fitting the definition of travelling showpeople will not result in a loss of accommodation for those who are travelling showpeople as implied.

The site previously allowed space for storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out. The occupation of the site by others will be where that storage would have taken place and will not result in a loss of accommodation for those who are travelling showpeople.

With reference to various case law, it will be demonstrated that the site is a form of affordable housing; mobile homes are to be considered affordable housing, in comparison with houses and as such this site meets a need for affordable housing in the area.

It will be demonstrated that there is a need for gypsy and traveller pitches in the area, which this site is able to contribute towards.

2. Impact on the countryside/SINC

It will be demonstrated that the existence of mobile homes etc is an established characteristic of the area.

The Appellant will set down that the development sought is in-keeping with the immediate character of the wider area.

If the Inspector considered appropriate a landscaping scheme could be conditioned so as to reduce any harm.

3. Site density

The Council's case is that the site is one large mixed use planning unit. It will be shown that the site has different densities at different points (supporting the Appellant's ground b argument).

The mixed-use permission was to permit storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out. There is therefore no harm resulting from the density of the site.

4. Insufficient space for vehicle turning

It will be shown that any conflict between pedestrians and vehicles is minimised.

The issue of vehicle turning spaces is a matter for site licencing and as such should not prevent the grant of a permission.

5. Adequate open space for children's play

It will be shown that the development is capable of complying with caravan site licencing in this regard and if necessary (it is after all a matter for site licencing) any permission can be conditioned appropriately.

6. Absence of details of wastewater infrastructure, including a foul drainage assessment and surface water drainage and the safe storage of waste and recycling.

It will be shown that the development is capable of complying with the caravan site licensing and if necessary (it is after all a matter for site licensing) any permission can be conditioned appropriately.

7. Commercial activities are taking place on the land

This allegation is not fully set out. Any permission can be conditioned appropriately to restrict commercial use.

8. Location – away from existing settlements

The Council state that the site is away from existing settlements. It is unclear if they are alleging that the site is unsustainable, isolated or both, the Council will need to confirm following which the Appellant will respond.

It will be demonstrated that the site is in compliance with Policy H PPTS.

Material considerations in favour of the appeal

The material considerations outlined below will be advanced in favour of the appeal. Those material considerations include but are not limited to are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply, failure of policy, if necessary, the personal circumstances of the site occupants (personal need, health, education, and the best interests of the child).

Need

Taking into consideration the latest available estimations of need for gypsy and traveller sites in the District, GPS Ltd are of the view that the relevant GTAA underestimates the level of need in the District.

The need for housing, affordable housing and for travelling showpersons sites will also be demonstrated. These are all material considerations of significant weight.

Lack of suitable, acceptable, affordable sites

Alternative sites must be available, acceptable and affordable (*Angela Smith v Doncaster MBC*). It appears from all of the available information that there are no alternative available sites for the Appellants to move to and there seems little likelihood that there will be in the foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Five-year land supply

The LPA are unable to demonstrate a five-year land supply of deliverable land for housing, gypsy and traveller sites and travelling showpersons. A lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission. The lack of a five-year land supply is a material consideration of significant weight in favour of the appeal.

Failure of policy

The Council's failure of policy in relation to the provision of the following will be set down:

- Gypsy and traveller pitches
- Travelling showperson sites
- Housing land supply
- Affordable Housing

The LPA do not currently have policies capable of delivering the required level of housing/pitches.

The LPA are working towards too low a figure and will inevitably fail to meet the actual level of need in the District. Failure of policy is a material consideration of significant weight in favour of the appeal.

Personal circumstances

Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can then be included to outweigh any harm.

These will be set down with appropriate weight indicated. In any event, the proposed site residents easily fulfil the definition of gypsy and travellers as per Annex 1 of the PPTS.

#### Best Interests of the Children

The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ).

#### Planning balance

If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, the Appellant will demonstrate that, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted.

#### Permanent or temporary consent

It is common sense as well as case law Court of Appeal Judgment Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194 that a temporary consent means the harm is reduced. The appropriate time frame for a temporary consent will be considered in the Hearing Statement.

#### Human Rights Article 8 considerations

The Appellant will demonstrate that there is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was not crystallised upon in the publication of AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin), but has existed for a number of years.

#### Best Interests of the Child

The best interests of the children are to enable them a safe environment where they have access to education and healthcare. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests.

There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed.

It is submitted that the welfare and wellbeing of the child can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

The facts are set out in

the box below

The Appellant will demonstrate that there are errors in the Enforcement Notice which are not capable of amendment and the Enforcement Notice ought to be quashed.

The Enforcement Notice alleges that there is one large mixed use planning unit. It is notable that the expediency report does however state that the Council are unclear whether this is the case and acknowledges that the site may in fact comprise a number of small planning units.

The site is not one large planning unit. Each yard is owned and used individually, it will be shown, with reference to the tests in Burdle, that the site comprises a series of smaller planning units.

As such the breach of planning control as alleged cannot have occurred.

It is noted that in Enforcement Notices 3 and 4 (issued on the same day) the Council have identified two smaller planning units which are individual yards. There is no reason why these yards are any different to the others on site which have not been categorised as separate planning units.

It is noted that in 2010 the Council issued six separate enforcement notices covering original plots 1, 2, 3, 7, 8 and 9, and there has never been any suggestion by the Council, the then appellants, or indeed any of the Inspectors determining the appeals against those notices, that that approach was incorrect, merely that there were small errors in the areas covered by two of the those notices.

The Enforcement Notice is not capable of remedy. It would not be possible to reduce the red line area to reflect the numerous planning units on site. Any change in the red line area in this way would also prejudice potential Appellants who may not have appealed this Notice is the knowledge that others have already done so.

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

The facts are set out in

the box below

Without prejudice to ground (b) it will be demonstrated that the material change of use of the site occurred more than 10 years prior to the issue of the enforcement notice the time for enforcement pursuant to Section 191(B) Town and Country Planning Act 1990 has passed.

The Appellant will demonstrate that the material change of use took place the weeks immediately following the issue of the Appeal Decisions on this site dated 11th December 2011, which were subsequently quashed in the Courts.

Reference will be made to and reliance placed upon to aerial imagery, witness statements, evidence submitted and accepted in previous appeals at this site along with the prior appeal decisions

(e) The notice was not properly served on everyone with an interest in the land.

The facts are set out in

the box below

Given that the Council allege over 100 caravans are on site, it seems that the Council are unlikely to have served all individuals with an interest in the land. The Council have not provided a list of the individuals served with the notices. As such there is no evidence that they have complied with their requirements

Upon first receiving instruction in relation to the notices issued at the Appeal Site, reference was only made by our clients to one enforcement notice suggesting that not all were served.

The Council are put to proof that they have served all individuals with an interest in the land.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

Without prejudice to the aforementioned grounds, requirement 3 of the Enforcement Notice is excessive.

Requirement 3 requires the restoration of the "before the breach of planning control took place."

Different parts of the site were developed at different times, supporting the ground b claim above that different planning units exist.

Notwithstanding, as the Council contend that there is one large planning unit, the breach can only have occurred at one point in time. The Council therefore need to set down when the breach occurred and at what point in time the restoration needs to be dated back to. This would have different effects for different parts of the site.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

The time for compliance is 6 months. The Appellant considers that at least 2 years is required taking into account the lack of a five-year supply of gypsy and traveller pitches and travelling showpeople pitches, housing along with the lack of affordable housing, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

## F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

2. Hearing

3. Inquiry

You must give detailed reasons below or in a separate document why you think an inquiry is necessary. The reasons are set out in

the box below

There will be multiple Appellant's submitting appeals in relation to this Enforcement Notice and other Enforcement Notices issued at the site. The Appeals will all need to be joined and determined together.

There are numerous issues to be discussed including, five year housing land supply, gypsy and traveller need, character and appearance, affordable housing etc.

A ground d claim is also made as such any evidence will need to be on oath.

The matter will be extremely complex and an inquiry is required.

(a) How long do you estimate the inquiry will last?

20 day(s)

(b) How many witnesses do you intend to call?

2

(c) Is there any further information relevant to the inquiry which you need to tell us about?

Yes

No

If so, please explain the relevant information below

There will be multiple Appellant's submitting appeals in relation to this Enforcement Notice and other Enforcement Notices issued at the site. The Appeals will all need to be joined and determined together. Green Planning Studio are aware of 7 Appellants submitting appeals.

Each Appellant is likely to call at least 2 witnesses on their behalf.

GPS were involved at the previous appeals in this site, which were determined 9 years after the enforcement notices were issued. The most recent redetermination of that appeal sat for 15 days. We

consider that there are more potential appellants here and additional issues that have been raised, as such we have estimated a period of 20 days

### G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes  No
2. Are there any planning reasons why a fee should not be paid for this appeal? Yes  No

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

### H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes  No

Please give details, including our reference number(s), if known.

There will be multiple Appellant's submitting appeals in relation to this Enforcement Notice and other Enforcement Notices issued at the site. The Appeals will all need to be joined and determined together.

### I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

see 'Appeal Documents' section

02. Plan (if applicable and not already attached)

see 'Appeal Documents' section

### J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

**Signature**

Mr. Matthew Green

**Date**

11/04/2022 18:07:24

**Name**

Mr. Matthew Green

**On behalf of**

Mr Patrick Flynn

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our



[privacy notice.](#)

## **K. NOW SEND**

### **Send a copy to the LPA**

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:  
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

**You may wish to keep a copy of the completed form for your records.**

## L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

**You will not be sent any further reminders.**

Please ensure that anything you do send by post or email is clearly marked with the reference number.

### The documents listed below were uploaded with this form:

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 01. The Enforcement Notice.  
**File name:** EN 1 Whole Site.pdf

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 02. The Plan.  
**File name:** EN 1 Whole Site - Plan.pdf

**Completed by** MR. MATTHEW GREEN

**Date** 11/04/2022 18:07:24