

TOWN AND COUNTRY PLANNING ACT 1990

(A) APPEALS BY (1) MR F LOVERIDGE (2) MR A O'DONNELL (3) MR P FLYNN (4) MR H STOKES (5) MR D CARTER (6) MR P STOKES (7) MR O CRUMLISH AGAINST AN ENFORCEMENT NOTICE ISSUED BY WINCHESTER CITY COUNCIL ON 1 MARCH 2022 ALLEGING 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.

(B) APPEALS BY (1) MR F LOVERIDGE (2) ANTHONY O'DONNELL (3) MR P FLYNN (4) MR H STOKES (5) MR D CARTER (6) MR P STOKES (7) MR O CRUMLISH AGAINST AN ENFORCEMENT NOTICE ISSUED BY WINCHESTER CITY COUNCIL ON 1 MARCH 2022 ALLEGING WITHOUT PLANNING PERMISSION, THE BREACH OF CONDITIONS 10,11, AND 15 OF PLANNING PERMISSION 02/01022/FUL OF 2 OCTOBER 2003.

PLOTS 1, 1A, 2A, 2B, 2C, 3A, 3B, 6A, 6B, 8, 8A, 8B, 9, 9A, 9B CAROUSEL PARK, MICHELDEVER, WINCHESTER

PINS REFERENCE (A) APPEALS: (1) APP/L1765/C/22/3296767 (2) APP/L1765/C/22/3296771 (3) APP/L1765/C/22/3296773 (4) APP/L1765/C/22/3296776 (5) APP/L1765/C/22/3296778 (6) APP/L1765/C/22/3296781(7) APP/L1765/C/22/3296783

PINS REFERENCE (B) APPEALS: (1) APP/L1765/C/22/3296768 (2) APP/L1765/C/22/3296772 (3) APP/L1765/C/22/3296774 (4) APP/L1765/C/22/3296777 (5) APP/L1765/C/22/3296779 (6) APP/L1765/C/22/3296782 (7) APP/L1765/C/22/3296784

GPS REFERENCE: 09_313A

FINAL COMMENTS

ON BEHALF OF THE APPELLANTS

GREEN PLANNING STUDIO LTD

1. These Final Comments are prepared in response to the Statement of Case of Winchester City Council provided by the Planning Inspectorate on 6th July 2022.
2. GPS Ltd have not sought to respond to every single point raised by the Council within their Statement of Case full details of the Appellant's case will be provided in the Proofs of Evidence. The lack of a response to any particular point within third party representations or the Council's Statement of Case cannot be taken as agreement with it.
3. The below points relate to appeals against both Enforcement Notices, unless otherwise specified.

Nullity

4. The Appellants maintain that EN1 is a nullity due to the vagueness of requirement 3.
5. The Council state that:

'It does not matter when the change in use of the Land occurred or whether that change of use occurred at different times in different parts of the site. The requirements of the notice are simply to restore the land to the condition it was in prior to the breaches specified in the notice in each case, whenever they occurred.'
6. This is incorrect. The Council, should be able to point to a specific point in time at which they require the site to be restored to and what the condition of the site was at that point in time. They have been unable to do so. To state that the land simply has to be restored to the condition prior to the breaches lacks certainty.
7. This renders EN1 null. As set out in the Appellant's Statement of Case, we will rely on the following case law and appeal decisions supporting this. *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; [1990] JPL 814; *Payne v NAW & Caerphilly CBC* [2006] EWHC 597 (Admin); and *Oates v SoCLG and Canterbury* [2017] EWHC 2716, which all draw on

the principals in *Miller-Mead v MHL* [1963] 2 WLR 225. It is noted that the Council have not referred to any case law in support of their position.

Ground (e)

8. The Council correctly note that the obligation is on the Appellants to demonstrate in accordance with S174(2)(e) that copies of the notice(s) were not properly served causing substantial prejudice. This will be demonstrated in relation to both EN1 and EN2.
9. In particular, in relation to EN2 it will be shown that none of the Appellants received EN2 and that there is no evidence that EN2 was in fact served.
10. Reliance will be placed on the fact that no appeal has been submitted against EN3 as further evidence of the lack of proper service and necessary witness statements will be obtained.
11. Evidence will also be adduced to demonstrate that the papers were left in envelopes at the entrance to the site. Even if, the Council are able to evidence that the notices were all provided, it will be demonstrated that this is not an effective method of service.

Ground (b)

12. The Appellants maintain that the site is not lone large planning unit, but a series of smaller planning units.
13. The Council state that

'it does not matter whether the entirety of the appeal site is a single planning unit or is divided into multiple planning units. The Council will demonstrate that the breach of planning control identified in the enforcement notice is occurring throughout the land affected by the enforcement notice in either case.'

14. This is incorrect. The Council's position fails to take into account that not all aspects of the areas covered are in the same breach of planning control or that some of the areas within the red line area are not in breach of planning control at all.
15. This appears to have been acknowledged by the Council in EN1, by excluding at least one plot on the site (previously referred to as Plot 7) at where GPS understand there is no breach of planning control ongoing.
16. In excluding this plot, as with issuing separate enforcement notices for specific plots (EN3 and EN4) it is clear that the Council do consider that the site comprises a series of smaller planning units.
17. The Notices, are not capable of amendment to now reflect the smaller planning units, such would cause injustice to the Appellant's and potential Appellants who may not have appealed the Notices in the knowledge that others have already done so. In the circumstances the Notices ought to be quashed.

Ground (c) – EN2

18. The Council state that the Appellants appeal on this basis is unclear. Further detail is therefore set out below.
19. EN2 attacks the subdivision of the site.
20. The Appellants will demonstrate that whilst Condition 11 prohibits subdivision, it did not remove permitted development rights. This would need to have been expressly stated.
21. In the circumstances, the construction of fences/walls is permitted on site; the construction of fences/walls, is a separate issue to subdivision and did not require planning permission.
22. It will also be shown that in relation to a number of the plots any fences/walls and/or subdivision is now lawful through the passage of time.

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