

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/23/3320989

A. APPELLANT DETAILS

Name	Mrs Bridie Doran
Address	Plot 2 Pony Paddock Forest Road Denmead Hampshire PO7 4QX
Email	appeals@gpsltd.co.uk
Preferred contact method	Email <input checked="" type="checkbox"/> Post <input type="checkbox"/>

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	Mr. Matthew Green
Company/Group Name	Green Planning Studio Ltd
Address	Unit D Lunesdale Shrewsbury Upton Magna SY4 4TT
Phone number	01743 709 364
Fax number	01743 709 385
Email	appeals@gpsltd.co.uk
Your reference	23_1274 Pony Paddock

Preferred contact method

Email Post

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

Winchester City Council

LPA reference number (if applicable)

23/00024/CARAVN

Date of issue of enforcement notice

22/03/2023

Effective date of enforcement notice

26/04/2023

D. APPEAL SITE ADDRESS

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

Yes No

Address

Plot 2 Pony Paddock
Forest Road
Denmead
Hampshire
PO7 4QX

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

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 the remaining grounds, the Appellant seeks planning permission for the breach of planning control as alleged.

There has been a previous appeal decision on this site. This appeal differs significantly for the following reasons:

- It will be demonstrated that there is an immediate unmet need for gypsy and traveller sites (GPA would have been able to show that this was the case prior to the Lisa Smith judgment, but that judgment makes the ability of the Council to argue otherwise largely removed).
- For the same reasons as above the LPA cannot demonstrate a five-year supply of gypsy and traveller sites.
- A unilateral obligation will be provided showing that suitable credits to mitigate for the nitrates issue will be purchased should permission be granted.
- The site was used for many years for the keeping of horses and the stationing of a caravan for

residential use. S.57(4) of the Town and Country Planning Act 1990 ("the Act") sets down that the previous lawful use can be reverted to. This provides a fallback position and the baseline for assessing this site. S.57(4) could not be relied upon in the previous appeal because it was a s.78 appeal.

The Enforcement Notice alleges the following harms:

- Inappropriate development in the countryside.
- Impact on character and appearance.
- Failure to make provision for Solent Disturbance and mitigation charge zone.
- Nitrate neutrality

The PPTS determines within policy C that gypsy and traveller sites are acceptable in principle in the countryside, providing they do not dominate the nearest settled community.

There are two elements to this test to be engaged for proposed development to be strictly controlled.

The first is that development has to be in open countryside, and the second is that development has to be away from existing settlements. These have to be engaged in combination to enable new development to be "very strictly limited" in accordance with paragraph 25.

The appeal site is neither located in an area of open countryside or away from existing settlements. As such paragraph 25 of the PPTS is not engaged.

It will be shown, with reference to the existing character in the area that the development is broadly in line with the prevailing character of the surrounding area. In terms of impact on the appearance of the surrounding area this is negligible given the extent of existing tree and shrub screening. The appeal site causes significantly less harm to the character and appearance of the area than those plots surrounding it which have been granted planning permission.

A legal agreement will be produced before the Hearing to secure mitigation for the additional nitrates that the development could place into the Solent Special Protection Area.

Material Considerations

When the fallback position is taken into account the stationing of a caravan for residential purposes on the appeal site is policy compliant.

If any harm is identified then the general material considerations that would apply to any gypsy family will outweigh that the weight that could be attributed to that harm, such that a permanent planning permission can be granted.

Those material considerations are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply of gypsy and traveller pitches, failure of policy, the likely location of additional gypsy pitches in the district and the fallback position created by the effect of s57(4) of the TCPA 1990.

If necessary, personal circumstances of the site occupants (personal need, health and education) and the best interests of the child can be added to the balance.

Need

Taking into consideration the latest available estimates of need for sites in the latest Gypsy Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (October 2016) Green Planning Studio are of the opinion that the GTAA underestimates the level of need in the district.

However, even if the GTAA is found to be an accurate assessment of the level of need in the district, on its own figures and in light of the recent judgment in Lisa Smith v SOSLUH&C in the Court of Appeal, there is an immediate need in the district.

This adds significant weight in favour of the appeal.

Lack of Suitable, Acceptable, Affordable Alternative Sites

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

Failure of Policy

The LPA have an ongoing failure of policy either as a result of the GTAA underestimating the level of need in the district, or as a result of the LPA discriminating as to which travellers should be accounted for when establishing the requirement for additional pitches in the district, the LPA are working toward too low a need figure and will inevitably fail to meet the actual level of need in the district.

Reference will be made to the Court of Appeal judgment of Lisa Smith v SOSLUH&C to demonstrate that the Council's approach to gypsy and traveller allocations is discriminatory and therefore unlawful.

The ongoing failure of policy carries significant weight in favour of the appeal.

Lack of a five-year land supply

The LPA are unable to demonstrate a five-year land supply of deliverable land for gypsy and traveller sites which the government required them to do by 27th March 2013. The lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission, either on a temporary or a permanent basis.

The lack of a five-year land supply should attract considerable weight in this appeal.

Likely location of Gypsy sites in the District

The countryside designation covers a significant area of the district, excluding the main settlements, therefore limiting available land for gypsy and traveller sites in sustainable locations and outside of the countryside. This must be a material consideration in considering any windfall site located in the countryside. Moderate weight should be attached to the fact that some gypsy sites are likely to be located in the countryside.

S57(4) Previous Lawful Use

The EN alleges that a change of use has occurred from agricultural use to mixed use. This is incorrect as the site previously had a mixed use of the stationing of a mobile home for residential purposes and the keeping of horses.

Under S57(4) of the Town and Country Planning Act 1990 the appellant is entitled to revert back to the previous lawful use of the land. This will be subject to further investigation by Green Planning Studio.

Personal Circumstances

Personal circumstances only need to be considered if the Inspector finds 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 be added into the pot to outweigh any harm. These will be set down and appropriate weight indicated. If

personal circumstances need to be taken into account to outweigh the harm then the permission granted would be subject to a personal condition.

Permanent or Temporary Consent

If the Inspector concludes that the material considerations do not outweigh the harm to justify a permanent consent, then clearly a temporary consent falls to be considered consistent with the NPPG. It is common sense as well as case law that a temporary consent means the harm is reduced.

The appropriate time frame for a temporary consent will be considered in the appeal statement.

Human Rights and Best Interests of the Child

The Human Rights Act 1998 Article 8 rights of the site occupants and best interests of the child are clearly engaged and will be advanced. 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) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children’s Act 2004 s.11(1)).

(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 alleged breach of planning control has not occurred as a matter of fact.

The breach of control as alleged in the Section 3 of the Enforcement Notice ("EN") is:

"Without planning permission, the material change of use of the Land from agricultural to a mixed use for residential use of a caravan and storage of caravans and the laying of scalplings to facilitate the mixed use.."

As stated above, the EN alleges a change from 'agricultural' however the previous lawful use of the land was a mixed use of the stationing of a mobile home for residential purposes and the keeping of horses.

No storage of caravans has taken place on the land. The site is in use for the stationing of caravans for residential purposes.

As a matter of fact, the breach of control as alleged in the EN has not occurred.

(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.

(e) The notice was not properly served on everyone 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

Requirements 1 – 5 of the EN are excessive, and lesser steps would overcome the objections. In relation to 5(1). The EN does not allege a use of the residential use of the site, but the residential use of a caravan. The requirement therefore goes further than the breach alleged and is therefore excessive. In relation to 5(2) no storage use has taken place. In relation to 5(3) only caravans associated with the breach can be required to be removed. Given enforcement notices have an ongoing effect it is important the requirement is not wider than the breach alleged. In relation to 5(4) only the scalplings associated with the breach and in the area identified on the plan can be required to be removed. As drafted this requirement is excessive. In relation to 5(5) 'the area' is not specified. It cannot apply to the whole site as much of the site is covered by tarmac and concrete that is not attacked by the notice and is lawful through the passage of time.

(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. This is an unreasonable and insufficient time period to allow the occupants to find suitable alternative accommodation and then re-locate. A 2-year compliance period is sought.

F. CHOICE OF PROCEDURE

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

1. Written Representations

2. Hearing

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

the box below

There are complex issues arising with the nitrates which may need discussion in person. The personal circumstances and need are important to this case and the Inspector may want to question the witnesses about these matters and have a discussion about need and the changes since the previous appeal decision.

Is there any further information relevant to the hearing which you need to tell us about? Yes No

The Council have not identified the Ground A fees on the documents accompanying the Enforcement Notice. This should result in the Ground (a) being fee exempt due to the Council's failure.

3. Inquiry

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
- the box below

The Council have not identified the Ground A fees on the documents accompanying the Enforcement Notice. This should result in the Ground (a) being fee exempt due to the Council's failure.

H. OTHER APPEALS

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

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:
 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

25/04/2023 15:28:03

Name

Mr. Matthew Green

On behalf of

Mrs Bridie Doran

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: 23_00024_ENF (2).pdf

Completed by MR. MATTHEW GREEN

Date 25/04/2023 15:28:03