

**APPEALS BY MR LOVERIDGE, MR O'DONNELL, MR P. STOKES, MR CARTER,
MR B. STOKES, MR CRUMLISH, MR FLYNN**

**LAND AT CAROUSEL PARK, BASINGSTOKE ROAD, MICHELDEVER,
WINCHESTER, HAMPSHIRE, SO21 3BW**

**PINS REFS: APP/L1765/C/22/3296767; 3296768; 3296771; 3296772; 3296773; 3296774;
3296776; 3296777; 3296778; 3296779; 3296781; 3296782; 3296783; 3296784; 3296503;
3296504**

Opening Statement for the Local Planning Authority

INTRODUCTION

1. Carousel Park has an extensive and complicated planning history.¹ However, in 2003, planning consent was granted for the change of use of agricultural land to a travelling showpeople's site (TSP) based on the identified needs of the district and by reference to the particular characteristics of the site, which made it suitable for TSP use. It is common ground that that permission was lawfully implemented and Carousel Park used as a TSP site in accordance with the permission. The only lawful use of the site is therefore as a TSP site in accordance with the conditions imposed on the 2003 permission. The Appellants appear to ignore that the use of land as a TSP site is a use which is distinct from, and narrower than, the use of land as a residential caravan site.² Given the evidence put forward by the Appellants about their use of the site (which is obviously not as a TSP site), there can be no sensible dispute that the use of the land was as a residential caravan site when the enforcement notices were issued and now is materially different from the use permitted by that consent. Even if the Inspector does not agree that there has been any material change in the permitted use, the Appellants do not appear to dispute that they are using the land in breach of the conditions imposed on the 2003 permission.³
2. As set out below, the Council will demonstrate that the Appellants' legal grounds of appeal are hopeless. It was obviously open to the Council to issue the enforcement notices in the terms that they did and the notices were clearly properly served. As to the Appellants' Ground (a) appeals, the Council will demonstrate that the change in use of the appeal site

¹ See Council's Appeal Statement, ¶¶32-50, and Tom Wicks' PoE, ¶¶11-29.

² Winchester City Council v Secretary of State [2015] EWCA Civ 563

³ 02/01022/FUL, LPA 1, p.32.

to a residential caravan site would not be justified, having regard to identified TSP needs in the district. The Appellants have not proposed any conditions which might otherwise address the Council's concerns and have failed to engage at all with the Council in seeking to agree appropriate conditions in the event that permission were to be granted for a residential use of the appeal site

THE ENFORCEMENT NOTICES

3. The Council issued three enforcement notices – EN1, EN2 and EN4 – on 1 March 2022 in respect of Land at Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire, SO21 3BW (the appeal site). Plans were attached to each notice indicating the relevant area of the site in each case. There was another enforcement notice – EN3 – which is not subject to an appeal. In the event that the appeals against EN1 are dismissed and EN1 is upheld, EN3 and EN4 would be withdrawn.
4. The breach of planning control alleged in EN1 is: *"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")."* EN1 required the specified use to cease, the removal of items associated with that use and the restoration of the land to its condition before the breach took place.
5. The breach of planning control alleged in EN2 is: *"without planning permission, the breach of conditions 10, 11 and 15 of planning permission 02/01022/FUL of 2 October 2003 [...]"*. The planning permission referenced in EN2 granted consent for the change of use of the site to a TSP site.⁴ Condition 10 restricted the number of caravans used for residential purposes to 3 per pitch; Condition 11 restricted the number of family pitches to 9; and condition 15 limited occupation to no more than 50 people, each for reasons related to local amenity.⁵ EN2 required each of the abovementioned breaches to be remedied.

⁴ LPA1, p. 32.

⁵ 10. *There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas but may not be occupied for residential purposes at any time.*

11. *There shall be no more than 9 family pitches on the site and the pitches may not be sub-divided at any time.*

15. *No more than 50 people shall occupy the site at any time.*

6. The breach of planning control alleged in EN4 is: “*Without planning permission, the material change of use of the Land to a residential caravan site for 10 caravans (“the Unauthorised Use”)*” with equivalent requirements to EN1.
7. Each notice provided that the time for compliance was 6 months after the relevant notice takes effect.

THE APPEALS

8. There are seven appeals against EN1⁶, each on Grounds (a), (b), (d), (e), (f), and (g). There are seven appeals against EN2⁷, each on Grounds (a), (b) [no longer pursued⁸], (c), (d), (e), (f) and (g). There are two appeals against EN4⁹, both on Grounds (a), (f) and (g). The Inspector’s powers in determining the appeal are statutorily provided: s.176(1) TCPA 1990. The Council resists the appeals in their entirety and submit the enforcement notices should be upheld.

THE COUNCIL’S POSITION ON THE APPELLANTS’ GROUNDS OF APPEAL

Preliminary issues

9. The Inspector circulated a list of issues on 22nd September 2023. As was clarified prior to the inquiry starting, the Council does not take any point on 1(b).
10. The Council disagrees that requirement 3 of EN1 is uncertain, such as to render the notice a nullity, to any extent that this point is still pursued or revived.¹⁰

The Ground (e) appeals – that copies of the enforcement notice were not served as required by s.172 TCPA 1990

⁶ 3296767 (Mr Freddie Loveridge), 3296771 (Mr Anthony O’Donnell), 3296776 (Mr Hughie Stokes), 3296778 (Mr Danny Carter), 3296781 (Mr Patrick Stokes), 3296783 (Mr Oliver Crumlish), 3296773 (Mr Patrick Flynn)

⁷ 3296782 (Mr Patrick Stokes), 3296768 (Mr Freddie Loveridge), 3296772 (Mr Anthony O’Donnell), 3296774 (Mr Patrick Flynn), 3296777 (Mr Hughie Stokes), 3296784 (Mr Oliver Crumlish), 3296779 (Mr Danny Carter)

⁸ Mr Wood’s PoE, ¶7.3

⁹ 3296503 (Mr Patrick Stokes) and 3296504 (Mr Bernie Stokes)

¹⁰ Cf. Appellants’ SoC, ¶6.

11. Copies of the notice must be served on owners and occupiers and on any other person having an interest in the land which the authority believes will be materially affected by the notice: s.172(2) TCPA 1990. Statute provides that four methods which may be used by the Council to give or serve an enforcement notice: s.329(1) TCPA 1990; and section 329(2)-(3) TCPA 1990 makes further provision on effective service. The evidence of Mr Nigel Wicks and Mr Tom Wicks for the Council will show that the notices were served in accordance with the statutory requirements and rebut specified allegations made by the Appellants that they were not served. In any event, there is no credible evidence of any substantial prejudice arising. The Ground (e) appeals are a confected distraction and must fail.

The Ground (b) appeals – those matters have not occurred

12. Ground (b) appeals are now only advanced in relation to EN1.¹¹ The onus of establishing ground (b) rests on the Appellants, even though the Appellants are responding to the Council's allegation of a breach of control.
13. The Appellants' Ground (b) appeals are misconceived, insofar as they take issue with the allegation in the enforcement notice on the basis that the Council should not have identified the planning unit to be the entirety of the site. The Appellants argue instead that each plot is a separate planning unit.
14. The Council's position is that, whatever the planning unit (i.e. whether the entirety of the appeal site or each individual plot), the matters stated in the enforcement notice have occurred as a matter of fact.
15. Whilst it is essential to identify the planning unit in order to determine whether there has been a material change of use, a notice does not have to be directed at the whole unit, nor indeed to identify it, (see Hawkey v SSE [1971] 22 P&CR 610).
16. The Council will demonstrate, in accordance with the approach in Burdle, that the appropriate planning unit against which to assess whether there has been a material change in use to be the entirety of the site. That is the case even though the site is occupied as

¹¹ See Mr Woods' PoE, ¶7.3 (and noting that there is no Ground (b) appeal re: EN4, cf. ¶7.4).

different plots: see Rawlins v SSE [1989] JPL 439. Certain parts of the site have been excluded from the notice on the basis that the occupiers of those parts are TSP or because those parts of the site are subject to an extant enforcement notice. That does not undermine the Council's approach nor does it affect whether the breach specified in the notice has occurred as a matter of fact.

17. Even if the Inspector were to conclude that individual plots on the site were separate planning units against which the materiality of any change in use need be assessed, that would not make the enforcement notice invalid, nor would it mean that the ground (b) appeal should succeed. In those circumstances, it would remain the Council's position that there had been a change in use of that part of the site from use as TSP site to use as a residential caravan site and there was nothing to prevent the Council from serving the enforcement notice in the way that it did.
18. In either case, there has been, as a matter of fact, the change in use of the land the subject of the enforcement notice to use as a residential caravan site, as set out in the evidence of Mr Nigel Wicks and Mr Tom Wicks. The appellants have not substantiated any evidence-based case to the contrary. The Ground (b) appeals must fail.

The Ground (c) appeals –those matters (if they occurred) do not constitute a breach of planning control

19. Ground (c) appeals are only maintained in relation to EN2.¹² The onus of establishing ground (c) rests on the Appellants even though the Appellants are responding to the Council's allegation of a breach of control. The Appellants case under this ground is misconceived. First, the Appellants are wrong to suggest that any of the walls or fences they refer to benefit from planning permission, whether granted pursuant to the GPDO or otherwise. That fencing which was granted planning permission through 05/01506/FUL no longer exists.
20. In any event, whether or not any walls or fences are permitted is irrelevant. The breach of planning control alleged relates to the sub-division of the plots. Irrespective of whether the Appellants could erect walls or fences within the plots, to do so in such a way which

¹² Cf. Mr Woods' PoE ¶2.16; see section 9 of his PoE where he drops Ground (c) in respect of EN4.

amounted to the sub-division of the plot gives rise to a breach of condition 11, and thus a breach of planning control. The Ground (c) appeals must fail.

The Ground (d) appeals – 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.

21. There are Ground (d) appeals in relation to EN1 and EN2. The onus of establishing ground (d) rests on the Appellants.
22. In relation to EN1, it appears to be common ground that the relevant time limit is 10 years beginning with the date of the breach (i.e., the material date in this case is 1 March 2012). The Appellants' case is that the appeal site was occupied by TSP only in eleven caravans until 11 December 2011, but in the eleven weeks to 1 March 2012, there was a material change of use to the residential caravan site described in EN1, including the stationing of approximately 100 caravans for residential use. However, they provide no evidence, let alone evidence which is sufficiently precise and unambiguous, that the breach of planning control alleged occurred by 1 March 2012 and has been active and continuous since that time.
23. In relation to EN2, the relevant time limit is 10 years beginning with the date of the breach (i.e., the material date in this case is 1 March 2012). Again, the Appellants must demonstrate with sufficiently precise and unambiguous evidence that the breach of planning control alleged in EN2 occurred by 1 March 2012 and has been active and continuous since. The Appellants' cases do not meet this test.
24. The Ground (d) appeals must fail.

The Ground (a) appeals – planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

25. The Ground (a) appeals are in effect an application for planning consent, or in the case of the EN2 appeals, an application of a discharge of conditions.

26. In determining these appeals, regard must be had to the development plan and the ground must be decided in accordance with the development plan unless other material considerations indicate otherwise: s.177(2) TCPA 1990; s.38(6) PCPA 2004. There is no burden of proof on ground (a), as such; whether planning permission should be granted is a matter of judgment for the decision-maker, having regard to all material considerations.
27. In summary, the Ground (a) appeals are fundamentally misconceived. In each case, the proposed development or removal of conditions is clearly contrary to a number of development plan policies. The material considerations put forward do not outweigh that conflict. Planning permission should not be granted in relation to the Ground (a) appeals relating to EN1, EN2 or EN4.
28. The starting point in each Ground (a) appeal is the up-to-date Development Plan.¹³
29. In relation to EN1 and EN4, the Council's position is that the proposals conflict with numerous policies in the Development Plan to such an extent that there is an overall conflict with the plan, taken as a whole. In particular:
- a. The site is outside any settlement boundary and the Council's position is that in the circumstances there is no basis for generalised residential development outside those boundaries (cf. LPP1, MTRA4 and LPP2, DM1).
 - b. In any event, the proposed development in the location would be inappropriate and unsustainable (even were the site to be considered an affordable housing 'exception site, cf. LPP1 policy CP4).
 - c. The site is safeguarded for TSP use by policy TR1 of the Traveller DPD and has been specifically allocated for TSP use by policy TR3.
 - d. Relatedly, the grant of planning permission would not meet the accommodation needs for the area in that it is not limited to occupation by GT/TSP (cf. DM4).
 - e. The unauthorised use does not satisfy the requirements of policy TR7 of the Traveller DPD in various respects, concerning sufficiency of turning spaces; safe children's play; commercial activities and adequacy of storage; or the objective criteria set out in LPP1, policy CP5.

¹³ It consists of the Winchester District Local Plan Pt 1 – Joint Core Strategy (2013) (LPP1); the Winchester District Local Plan Pt 2 (LPP2); and the Gypsy and Traveller Development Plan Document (2019) (Traveller DPD)

- f. The visual impact on the adjacent Black Wood SINC and its locality is not contained appropriately (cf. TR3, TR7 of the Traveller DPD and policies DM1, DM16 and DM23, LPP2).
 - g. Among other things, the unauthorised use is also non-compliant with design policy, connectivity, and parking (cf. LPP2, DM16, DM17 and DM18, and see also TR7 of the Traveller DPD).
30. In relation to EN2, the Council's position is that the conditions are necessary to safeguard the living conditions of occupiers of the appeal site and local amenity by controlling the occupation, density and layout of the appeal site. Moreover, the conditions are consistent with policies TR3 and TR7 of the Traveller DPD, and policies DM6, DM17 and DM18 of LPP2, and policy F, para. 18 of the PPTS. It would be contrary to the development plan and other policy to discharge the conditions.
31. Other material considerations such as important national policy support the Council's case. The Council will show that the Council is able to demonstrate a housing land supply of 5.6 years and, for the purpose of the PPTS, the Council can demonstrate an adequate 5-year supply of sites for gypsies and travellers against adopted development plan targets, which is not the case for TSP. As such, policies for the supply of traveller sites and general housing are up to date for the purpose of NPPF ¶11(d). The Council acknowledges that the evidence base for the emerging plan demonstrates that there is a need for both gypsy/traveller and TSP sites but this does not justify the loss of a TSP site, irrespective of the stated intentions of the Appellants.
32. In relation to EN4, contrary to the Appellants' position, the appeal site is not occupied by members of the GT community and does not meet that need.
33. In due course, Mr Wicks will give evidence on the planning balance in relation to the Ground (a) appeals. That balance accounts for conflict with the development plan, an identified TSP need and the safeguarding of the appeal site for such need, and the need for GT sites identified in the new GTAA, among other things. The Council's position is the material considerations advanced by the Appellants do not indicate that the decision should be made other than in accordance with the development plan; and that this should lead to the refusal of the proposals.

34. The Ground (a) appeals must fail.
35. In the event that the Inspector is minded to grant permission on the Ground (a) appeals, there is a further issue that arises in respect of the potential impact of the development on the Solent SAC and SPA, and the River Itchen SAC. In particular, given the potential for overnight accommodation to have harmful impacts on the SACs and the SPA as a result of nitrate loading, an Appropriate Assessment under the Conservation of Habitats & Species (Amendment) Regulations 2011 is required.
36. The Planning Inspector would be required to be the Appropriate Assessor of the Competent Authority and would be compelled to undertake an Appropriate Assessment in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar sites is a matter of government policy set out in the National Planning Policy Framework.
37. The potential impact from the development may be capable of mitigation by way of an off-site contribution and a Grampian condition imposed to secure a legal agreement for a mitigation package addressing the additional input which is then submitted and approved by the Council. However, the Council considers that, in order to be satisfied that such a condition was appropriate, further information would be required from the Appellant in order to determine whether there would be any impact by reason of additional net nitrate loading and, if so, what the likely level of that additional loading would be. With a view to assisting the Inspector, the Council has written to the Appellant setting out these matters and requesting that the Appellant provide further information. Ultimately, however, it will be a matter for the Appellant to establish to the Inspector's satisfaction (i.e. as the competent authority) that the grant of permission would either not be harmful or that any harms would be fully mitigated in order to ensure the integrity of the European Sites.

The Ground (f) appeals –the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control

38. There are Ground (f) appeals in relation to EN1, EN2 and EN4:

- a. On EN1, the Appellants take issue with all three requirements, but those issues are (at least in part) based upon a misreading of the wording of the requirements. The steps are necessary to remedy the breach of planning control.
- b. On EN2, the Appellants take issue with requirements 2 and 3, which would seek to restore the position anticipated by Condition 15 (cease the use of the Land for occupation by more than 50 people) and Condition 11 (Restore the layout of the Land to comprise no more than 9 family pitches). The Council contends that the steps specified go no further than to remedy the breach of planning control.
- c. On EN4, the Appellants' ground (f) case is based on the mistaken premise that the relevant area of the appeal site benefits from planning permission through the quashed appeal decision of 9 December 2011.¹⁴ The Council's position is that there is no such authorisation for use as a residential caravan park. The steps required are necessary to remedy the breach of planning control.

39. Accordingly, the Ground (f) appeals must fail.

The Ground G appeals –the period specified for compliance falls short off what should reasonably be allowed.

40. The Council maintains that 6 months is sufficient to comply with the steps in each of the three notices. No cogent evidence has been advanced to meaningfully call that into question. In relation to EN1 and EN2, the appellants have respectively asked for 2 years and 12 months to comply with the notices. The appellants have not put forward circumstances justifying such an extension. The Ground (g) appeals must fail.

CONCLUSION

41. The Council will in due course invite the Inspector to dismiss the appeals and uphold the notices as issued.

JACK PARKER
JACK BARBER

¹⁴ LPA 11

Cornerstone Barristers
26th September 2023