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## Appeal Decisions

Site visit made on 31 August 2017

**by V F Ammoun BSc DipTP MRTPI FRGS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 September 2017**

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**Appeal Ref: APP/E2205/C/16/3161530 and 31**

**Willow Paddock, Plurenden Lane, Woodchurch, Ashford, Kent, TN26 3JN**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made respectively by Mr Jonathan Sadler and Mrs Jacqueline Sadler against an enforcement notice issued by Ashford Borough Council.
- The enforcement notice was issued on 19 September 2016.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from agricultural and equestrian to a use for the stationing of 3 static caravans and one touring caravan, all in residential use; and the carrying out of facilitating operational development comprising the laying of areas of hardsurfacing and the erection of fencing.
- The requirements of the notice are: (i) Cease permanently the residential use of the land; (ii) Cease permanently the use of the land for the stationing of caravans in residential use; (iii) Remove permanently from the land the three static caravans and one touring caravan; (iv) Remove permanently from the land all domestic material and paraphernalia brought onto the land in association with the residential use of the caravans; (v) Remove permanently from the land all electrical cabling and drainage pipework (whether above or below ground level) serving the caravans; (vi) Excavate and remove permanently from the land the areas of hardsurfacing; (vii) Remove permanently from the land the fencing; (viii) Following compliance with steps 5(v) to 5(vii), restore the surface of the land to its condition immediately prior to the installation of any underground cabling or drainage pipework, the laying of the hardsurfacing and the erection of the fencing; (ix) Remove permanently from the land all materials, waste and debris resulting from compliance with steps 5(i) to 5(viii).
- The period for compliance with the requirements as amended by Inspector Paul Dignan by his decision of 29 June 2017 is one year.
- The appeals are proceeding on the grounds set out in section 174(2)(c) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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**Summary of Decision: The appeals fail and the notice is upheld as set out in the Formal Decision.**

### Background

1. An appeal reference APP/E2205/C/16/3161459 against this enforcement notice by a Mr Joseph Delaney was considered at a Hearing in May and a decision issued in June 2017. An appeal on ground (a) failed but an appeal on ground (g) extended the period for compliance to one year. The area covered by the notice was reduced to the land occupied by the residential caravan site and its

access to the highway. The present Appellants Mr and Mrs Sadler<sup>1</sup> are the occupiers and owners of a field situated to the west of the caravan site land subject of the notice. I shall refer to the land in their occupation as the field, and the land covered by the enforcement notice as the caravan site.

2. The Appellants are not in occupation of any part of the caravan site. Their Land Registry title to the field, however, includes a "sliver" of land within the caravan site. They believe that notwithstanding registered title, they have no legal interest in the sliver, and explain that when they bought the field its physical boundary with the caravan site land was in its present position. They explain that the difference between the boundary and occupations now current and the Land Registry title is due to two previous owners having in 2002 agreed to exchange land and access rights so as to bring about the present situation, but who did not register this change.
3. The Appellants have sought to get the registered titles and title plans to align with current possession of field and caravan site, and entered into discussions with representatives of the caravan site owners which were said to have reached an advanced stage in early April 2017. There has been, however, no indication that the Land Registry title was thereafter altered.

### **The grounds of appeal**

4. Though no **appeal on ground (b)** was formally made it has been stated for the Appellants that they do not admit that the caravans *encroach upon the Sliver at all* or that the sliver of land forms an integral part of the unauthorised development. I shall therefore proceed on the basis that ground (b) must be considered.
5. At the site inspection I noted that the eastern boundary of the sliver coincided with a western end wall of a barn, reflecting a letter of 28<sup>th</sup> November 2004 stating in part .... *as he gained a strip of land behind his barn....* A static caravan is plainly visible to the west of this end wall and thus within the sliver, and is shown on a previous photograph of the site. Additionally Plan B of the enforcement notice shows parts of three static caravans and one touring caravan within the sliver. There is no indication in the previous appeal decision of any dispute as to the location of the caravans, or suggestion that the breach of control did not take place in any part of the site except for those areas which the Inspector excluded in the amended plan which he substituted for the original Plan A. It follows and I have concluded that the breach of control has and is taking place on sliver land, and that ground (b) fails.
6. An **appeal on ground (c)** seeks to establish that there has not been a breach of planning control. The Appellants do not dispute that there has been a breach of planning control as alleged on the caravan site land including the sliver. They assert rather that the matters enforced against *did not constitute a breach of planning control by our clients* (emphasis added). Adding this qualification takes the appeal outside the terms of this ground of appeal as set out in S174(2)(c) of the Act, which does not address the responsibility for a breach of control but only whether permission was indeed required and not granted. That there has been a breach of control is manifest on the facts including the previous appeal decision. The appeal on ground (c) fails.

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<sup>1</sup> The two appeals made by the Sadlers are not distinguished from each other in the representations, and accordingly I deal with them together in this decision.

7. An **appeal on ground (f)** seeks to establish that the steps required to comply with the requirements of an enforcement notice are excessive and lesser steps would overcome the objections. The Appellants' case focuses upon their inability to carry out any of the required works on the sliver because they neither occupy nor have a legal interest in the sliver, or other land within the caravan site. This does not address the issue of whether the steps required are in themselves excessive, and significantly in this regard, no lesser steps are suggested. The appeal on ground (f) fails.
8. An **appeal on ground (g)** seeks to establish that the time given to comply with the notice is too short. The Appellants' refer to their lack of possession or legal interest, and go on to envisage that the only remotely possible means available to them for compliance would involve court proceedings. They consider that determination at a final hearing would be unlikely for several months if not over a year. In this regard, the previous appeal decision has now extended the period for compliance with the notice to a year. The case for the Appellants, however, goes on to state that the legal and commercial merits of court action would not be sufficient to warrant it. It follows that the Appellants though putting forward ground (g) are not in fact arguing for more time in which to comply with the Notice, as they evidently do not envisage pursuing the legal course of action for which they claim to need more time. I conclude that a case has not been made under ground (g), and that this appeal fails.

### **The position of the Appellants**

9. The Appellants consider that the notice should not have been served on them and they should not be made to comply with any part of the Notice requirements because they have no way of doing so. They support the Council's enforcement action, but resist its application to themselves. Their concern is that if the requirements of the Notice are not complied with by the occupiers of the caravan site, they will be held liable for that failure in respect of the "sliver" land. As failure to comply with a notice can lead to a criminal conviction with serious personal consequences to Mr Sadler's livelihood, they seek to have their names deleted from those served with the notice, or to receive an assurance under S172A(1)(b) of the Act as to prosecution.
10. As a necessary pre-requisite to deleting their names or requiring such an assurance, however, it would be necessary for these appeal decisions to conclude as a matter of fact and law that the Land Registry title is not accurate in respect to the sliver, and that the Appellants did not have any rights to it. The planning appeal process does not, however, have jurisdiction to determine rights to land. That jurisdiction lies with the civil courts. As indicated by my conclusions on the grounds of appeal above, these grounds do not concern themselves with ownership/title, but rather with specified enforcement notice matters.
11. For completeness, I have noted that if the Appellants had no legal rights to the sliver land then under Section 174(1) of the Act they would have had no right to appeal, rendering their appeals invalid and thus non-determinable. For the avoidance of doubt, my decision to determine the appeals reflects the Appellants' own description of themselves as owners of the land on the appeal form, the Land Registry title, and subsequent correspondence with their solicitors, but does not constitute a formal determination of this matter.

12. **As a result of the foregoing decisions** the Notice will be upheld in the form in which it was left by the appeal decision dated 29 June 2017. In the absence of an appeal on ground (a) seeking planning permission, the planning merits of the caravan site use are not before me for decision, and accordingly I do not comment thereon or on the Parish Council's support for enforcement action against the caravan site.
13. Representations have been made by interested persons who support the Council's enforcement action while evidently appreciating the Appellants' situation as being a difficult one. As stated above, the Appellants' are concerned at future prosecution for failure to comply with the Notice. They would, however, have a defence in court against prosecution under S179 (3) of the Act, subject to them succeeding in their argument that they have no interest in the sliver land. Their position is thus not without potential remedy, even if the discussions referred to at paragraph 3 above are not brought to a successful conclusion. In the meantime it is not known that the site occupiers will fail to comply with the Notice, or indeed if in that circumstance the Council would choose to prosecute the Appellants before taking all reasonable steps to secure a remedy by action against the occupiers of the wider caravan site. I have considered all the other matters raised in the representations, but do not find that they alter or are necessary to my decisions on these appeals.

**Formal Decisions Appeal References APP/E2205/C/16/3161530 and 31**

14. The appeals fail and the Enforcement Notice is upheld.

*VF Ammoun*

Inspector