



Appeal Decision

Unaccompanied site visit made on 30 July 2019

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/R3325/C/18/3216687

**Land at Sunnyhill Park Campsite, Riding Gate, Wincanton, Somerset
BA9 8NG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr William Hookins against an enforcement notice issued by South Somerset District Council.
- The enforcement notice was issued on 16 October 2018.
- The breach of planning control as alleged in the notice is "Without planning permission, the change of use of the land from use as a campsite for no more than 5 touring and 5 static caravans, occupancy of which is limited to no more than 4 successive weeks in one year. To an unauthorised use for permanent residential occupation C3 under the Town and Country Planning (Use Classes) Order 1987 as amended."
- The requirements of the notice are to
 1. Cease the unauthorised permanent residential occupation of the land
 2. Remove from the land any structures or caravans, materials, vehicles, infrastructure and other residential paraphernalia associated with the unauthorised permanent residential occupation taking place on the land.
- The period for compliance with both requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(d),(e),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Procedural matters

1. An application for costs was made by Mr Hookins against South Somerset District Council. That application is the subject of a separate Decision Letter of even date.

The appeal on ground (e)

2. The ground of appeal is that copies of the notice were not served as required by s.172 of the 1990 Act. S.172(2) requires that a copy of the notice be served on the owner and the occupier of the land to which it relates, and any other person having an interest in the land. The Appellant's case is that while copies of the notice were duly served on the Appellant and his wife (who are the registered owners of the land) and their daughter (who has taken over the running of the appeal site), the Council did not properly serve copies on the residential occupiers of the caravans.
3. The Council states that it was not fully aware of who was occupying the site at the time the notice was served, or which caravans were involved in the alleged

breach of planning control, and that it had no way of ascertaining information on all occupants of the appeal site due to the transient nature of their occupation. On that basis, the Council contends that it was sufficient to affix copies of the notice to the gatepost at the entrance to the appeal site, and to the sign for the appeal site adjacent to the property known as "Sundown".

4. It is relevant to note that prior to issuing the enforcement notice the Council had received, and refused, two applications from the Appellant for a Certificate that the use of some of the caravans on the appeal site for permanent residential occupation was lawful.¹ The Council determined that the evidence provided with each application was insufficient to demonstrate that this unauthorised use had become lawful, but irrespective of the sufficiency of the evidence for that purpose, its provision clearly indicated to the Council that a number of caravans on the appeal site were being occupied for permanent residential use. The Council issued the enforcement notice within 2 weeks of refusing the second application, and it should have been apparent at that time that not all of the occupation of the appeal site was of a transient nature.
5. As the Appellant points out, the Council's statement that it had no way of ascertaining information about occupants is incorrect. Where it appears to a local planning authority that there may have been a breach of planning control in respect of any land it has the power, under s.171C of the 1990 Act, to serve a "Planning Contravention Notice" (PCN) on the owner of that land. A PCN can require the person on whom it is served to provide information concerning the use of the land; when that use began; and the name and postal address of any person known to be using or to have used the land for that purpose. Additionally, s.330 of the 1990 Act enables local planning authorities to require, for the purposes of serving an enforcement notice, information including the name and postal address of any occupiers of the land. In both cases, a failure to respond to the request, or the knowing provision of false or misleading information, is an offence.
6. It was open to the Council, then, to require from the owners of the land details as to which of the caravans were being occupied as permanent residences, and the names and addresses of their occupiers. The Council did not do so, and has not provided any reasons for its decision not to do so. Given that the notice has very serious implications for any permanent residential occupiers of caravans on the appeal site – on taking effect, it would render them homeless – I consider that the Council could and should have taken steps to ascertain the names and addresses of any such occupiers before serving the notice.
7. S.329 of the 1990 Act sets out the methods by which an enforcement notice may be served. S.329(2)(b) provides that the notice can be taken to be duly served on any person as an occupier of premises if it is addressed to "the occupier" of the premises, *is marked in such a manner as may be prescribed* [my emphasis] for securing that it is plainly identifiable as a communication of importance, and is affixed conspicuously to some object on the premises. The manner in which the notice should be marked is prescribed by Article 13 of the Town and Country Planning General Regulations 1992 as *...by inscribing clearly*

¹ Application ref 17/00173/COL, refused by notice dated 26 May 2017, was for the existing use of land for the stationing of 5 caravans for permanent residential occupation and 5 caravans for holiday purposes: Application ref 18/00931, refused by notice dated 4 October 2018, was for the use of 3 caravans as permanent residential occupation.

and legibly upon the notice or document, and upon the envelope containing it, the words "Important – This Communication affects your Property".

8. The Council has provided photographs of the two copies of the notice that it affixed to posts at the entrance to the appeal site and on the approach. These show that both were displayed in A4 plastic document wallets, such that only the Council's covering letter is visible. The covering letter, which is addressed to "The Owner(s)/Occupier(s), Sunnyhill Park Campsite, Riding Gate, Wincanton, Somerset" and refers to the enforcement notice being enclosed, is marked "Served by Hand".
9. In my judgment, this approach did not do enough to alert those occupying caravans as permanent residences to the seriousness of the situation. The prescribed words "Important – This Communication affects your Property" were not visible either on the displayed document or its covering, such that the requirements of ss. 172 and 329 of the 1990 Act were not met. I am concerned that addressing the covering letter to "The Owner(s)/Occupier(s)", rather than specifically to "The Occupiers of caravans on this site" (the owners having already been separately served with copies of the notice), may have lead the occupiers to assume that it concerned a matter for the owners to deal with, without realising that it had direct implications for them personally.
10. It is material to note that s.176(5) of the 1990 Act states: *where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.*
11. Here, nobody other than the Appellant has appealed against the enforcement notice, and there is nothing to suggest that any occupiers of the appeal site are aware of its existence. It might be thought that the owners of the land would alert them to its content and implications, but as the Council fairly accepts, it is not the owners' responsibility to do so. It is entirely possible that had the notice been properly served on those occupying caravans as permanent residences, one or more of the occupiers may have wished to lodge their own appeals and produce their own evidence. Given that such occupiers stand to lose their homes if the notice is upheld, I am not convinced that in the circumstances of this particular case they can reasonably be regarded as having suffered no substantial prejudice.
12. The Council has drawn my attention to two appeal decisions in which the appointed Inspector determined, in considering the appeal on ground (e), that fixing the notice to the entrance of the premises was sufficient to effect service on the occupiers of those premises. However, the circumstances of those two appeals differ materially from those of the appeal that is currently before me.
13. In the appeal concerning land at Horton decided in 2004², the Council had firstly made an unsuccessful attempt to requisition information from the owners of the site, and had then unsuccessfully attempted to hand out individual copies of the notice to the occupiers of the caravans on the site, before resorting to fixing a copy of the notice to the site's main gate. The Inspector

² Ref APP/T0355/C/03/1118930 & APP/T0355/C/03/1118932

held that enough had been done to effect service such that no substantial prejudice was caused. For the reasons set out above I do not consider that the Council in this current appeal made sufficient attempt to ascertain the names and addresses of the residential occupiers of the site in order to effect proper service on them, and having then resorted to fixing copies of the notice to posts at and near the site, did not make it sufficiently clear to the occupiers that this was a document which affected their homes.

14. In the appeal concerning buildings in Bournemouth decided in 2016³, the site at issue was a former hotel in use as a house in multiple occupation. The Council had served the occupiers by attaching a copy of the notice to the railings at the main entrance to the property, with a copy of the covering letter addressed to "The Occupier(s)" fixed to the inside glazing panel of the porch by the main entrance. The Inspector held that the transient nature of occupation of some of the units and a likely frequent turnover of the named occupants made this a reasonable and appropriate manner of service. He found that prominently displaying the notice and the covering letter in a place where the occupants would be passing on a daily basis was sufficient to satisfy the requirements of s.329.
15. In this current appeal, however, not all of the occupation of the site is transient in nature; there may well be a frequent turnover of touring caravans, but there are also (on the evidence of the Appellant) individuals who have occupied caravans as their permanent residence for a number of years. The notice was not prominently displayed at the entrance to the premises, only the covering letter. Moreover, that letter was not addressed "The Occupier(s)" but to "The Owner(s)/Occupier(s)" which, as discussed above, may have given those occupying caravans on a permanent basis false reassurance that it related to matters which would be dealt with by the owners and need not concern them.
16. Taking all of this into account, I find that the Council failed to serve copies of the notice as required on those occupying caravans on the appeal site as permanent residences, and there is insufficient evidence to conclude that none of those occupiers would have suffered substantial prejudice as a consequence. I therefore conclude that the appeal on ground (e) should succeed.

Conclusion

17. For the reasons set out above I conclude that the appeal should succeed on ground (e). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under grounds (a),(b),(d),(f) and (g) of section 174(2) of the 1990 Act, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, do not need to be considered.

Formal Decision

18. The appeal is allowed, and the enforcement notice is quashed.

Jessica Graham

INSPECTOR

³ Ref APP/G1250/C/16/3143366 & APP/G1250/W/16/3143740