



Appeals Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 10 February 2022

Appeal A - Ref: APP/A0665/C/21/3283215

**Caravan 5, Five Farm Oaks, Nantwich Road,
Wimboldsley, Middlewich CW10 0ND**

Plus 10 other Appeals - B to K inclusive - See Schedule below.

- All 11 Appeals are all made under section 174 of the Town and Country Planning Act 1990 (The Act) as amended by the Planning and Compensation Act 1991 (PCA).
- Appeal A is made by Mr B Hannifin against an enforcement notice issued by Cheshire West and Chester Council (the LPA).
- Appeals B to K are made respectively by -:
Mr Anthony Doherty, Mrs Dominique Doherty, Mr Teague McGinley, Mr Willy McGinley, Ms Caroline McGinley, Mr Michael McGinley, Ms Shannon McGinley, Mr John Reynolds, Ms Sophie Reynolds and Ms Nicola Hannifin, against the same enforcement notice, issued by the same Council. See Schedule below relating each of the named appellants to the respective appeal reference number.
- The enforcement notice, 20/00416/EMCOU, was issued on 14 September 2021.
- The breach of planning control as alleged in the notice is as follows:
'The material change of use of the land to a Gypsy and Traveller residential caravan site with associated domestic structures, fencing, walls, entrance pillars, hardstanding and the siting of construction/demolition related waste materials'.
- The requirements of the notice are as follows:
 - 1) Cease the residential use of the land.
 - 2) Remove all caravans, including static caravans and touring caravans, associated domestic structures, fencing, brick walls, entrance pillars and hardstanding from the land.
 - 3) Remove all imported waste materials from the land to a permitted or exempted site by using an accredited licensed waste carrier.
- The period for compliance with the requirements is 12 months.
- All 11 Appeals are proceeding on grounds (e) and (g) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. There was no appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.

Decisions

1. All 11 appeals, A to K inclusive, succeed to a limited degree on ground (g) only. Otherwise, all of the appeals are dismissed and the Enforcement Notice is upheld as varied. See formal decision below.

Procedural matter of clarification

2. Following the Planning Inspectorate Case Officer's letters to the parties, I am satisfied that all of these appeals can be dealt with without a site visit. None of the appeals are made on ground (a) and, therefore, the planning merits of the case do not fall to be considered. The appeals are restricted to whether or not the enforcement notice was correctly served; ground (e) and, whether or not the compliance period is reasonable; ground (g). It is on this basis that I have dealt with all of the appeals and in doing so I am satisfied that no injustice will be caused.

Background information

3. The appeals site is a narrow strip of land in the open countryside, to the south of Nantwich Road in Wimboldsley and approximately 2.3 miles to the south-east of the urban area of Winsford. It is located between the rear of four terraced cottages known as Nos 1-4 Railway Cottages. To the west is the main west coast railway line. Access to the appeal site is from Nantwich Road to the east of the railway bridge.

4. In 2015 the site was the subject of a planning application (Reference 15/00857/COU) for the '*Change of use of land to storage of plant and equipment*'. The application was refused on the grounds that the noise and disturbance, resulting from the use, would have resulted in an unacceptable detrimental impact on the living conditions of the occupants of neighbouring properties.

5. On 28 July 2020, a retrospective planning application (20/02691/FUL) was made for the use of the land for '*5 No pitch Gypsy & Traveller site with associated development including fencing, hardstanding and installation of water treatment package plant – retrospective*'. The LPA indicates that it had received a report that caravans had started to arrive at the site on 28 July 2020. Planning permission for the proposed use was refused on 18 November 2020.

6. The Reasons for Refusal (Rsfr) were as follows:

- 1) *The proposed development would conflict with the HS2 safeguarded route as published, which is a project of national importance. The proposal is therefore contrary to the Safeguarding Directions for development affecting the route and associated works for the High Speed Two rail project - Phase 2b: Crewe to Manchester and West Midlands to Leeds with connections onto the existing network.*
- 2) *The site is unsustainably located away from settlements and all journeys to and from the site would be likely to be made by private vehicle and due to the remote rural location of the site there are inadequate safe walking routes from this site to the facilities to be found within the nearest identified settlement, contrary to Policy SOC 4 of the Cheshire West and Chester Local Plan (Part One), Paragraph 25 of the Planning Policy for Traveller Sites (PPTS: August 2015) and the Government Guidance set out within the National Planning Policy Framework (NPPF).*

- 3) *The proposed development, by virtue of its isolated location, would cause detrimental harm on the character and appearance of the countryside. The application is not supported by evidence to demonstrate need and justify the development of land in the countryside and there are no other material considerations which outweigh the identified harm. The development is therefore in conflict with Policies STRAT 9 and SOC 4 of the Cheshire West and Chester Local Plan (Part One), Paragraph 25 of the Planning Policy for Traveller Sites (PPTS: August 2015) and Government Guidance set out within the National Planning Policy Framework (NPPF).*

7. There was no appeal lodged against this refusal of planning permission and the LPA considered it expedient to issue the enforcement notice, the subject of this appeal. It is indicated that the Council's Enforcement Section had also previously been dealing with the site in connection with the unauthorised depositing of waste materials on the land.

8. A large mound of imported soil/construction and demolition waste, forming a large bund approximately 1.5 to 2m in height and approximately 100m in length, had been identified by the Council in 2018. At the time of the Officer Report it is indicated that some material remained on the land and that it had been located to the south of the site. This is the 'construction- demolition related waste materials' referred to in the notice.

9. The Council states that previous enquiries had revealed that the former landowner had, informally, allowed a construction company to use the site temporarily to store some of their waste material. Although around 45 to 60 tonnes of waste had been removed by the construction company, it would appear that there is still a significant amount of material on the southern part of the site to which the notice relates.

All 11 appeals made on ground (e)

10. All of the appeals under this ground are made on the basis that copies of the enforcement notice (EN) were not served correctly, as required by Section 172 of the Act. In all cases it is contended that a copy of the EN was not served on every relevant owner and/or occupier of the land, or on any person having an interest in the land.

The gist of the case for the Appellants

11. It is indicated that the notice was served on the owner of the land, Mr Brian Hannifin, and other persons (unknown). It is confirmed that, on 2 March 2021, an e-mail was submitted to the Council which clearly named each and every person who was residing on the appeal site, along with their names: their ages and the names of all of their children. It is indicated that all of their special personal circumstances were also outlined. It is stressed that recently the Council has been collecting Council Tax from named persons on the site, none of whom had been served with a copy of the enforcement notice.

12. It is contended that, if the Council had sound knowledge of all of the residents occupying the site, then each resident should have been served with a copy of the Enforcement Notice. It is argued that it is not sufficient for the Council to simply post a copy of the notice in a location at the site. It is stressed that Gypsies, by their very tradition, are nomadic. Thus, whenever one is away from their permanent base, if only one

person had been served, then that one person cannot be held responsible to 'serve' the rest of the other occupiers of the site. It is argued, therefore, that each person, on each plot, should have been served with a copy of the notice; that this clearly did not happen and, therefore, that the notice was not correctly served.

The gist of the case for the Council

13. In response the Council refers to Section 172(3) of the Act which provides that a copy of an enforcement notice must be served on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land (being an interest which, in the opinion of the LPA is materially affected by the notice), not more than 28 days after the date on which the notice is issued and not less than 28 days before the date on which it is to take effect.

14. In this case the notice was issued and served on 14 September 2021 and was clearly served in advance of the 28 day period before the notice came into effect (8 November 2021) in line with Section 172(3). The Council indicates that the notice was served on the following parties/persons:

- *Brian Hannifin of 180 Hill Lane Manchester M9 6RL and of Five Farm Oaks, Nantwich Road, Wimboldsley, Middlewich CW10 0ND*
- *Persons Unknown Caravan 1 Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*
- *Persons Unknown Caravan 2 Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*
- *Persons Unknown Caravan 3 Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*
- *Persons Unknown Caravan 4 Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*
- *Persons Unknown Caravan 5 Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*
- *Persons unknown Five Farm Oaks Nantwich Road Wimboldsley Middlewich CW10 0ND*

15. The Council refers to a Land Registry Entry, which identified the registered proprietor of the land as *Mr Brian Hannifin* of 180 Hill Lane Manchester M9 6RL. It is stated that the notice was served on *Mr Brian Hannifin* by sending it to him by first class post on 14 September 2021 at the above address. It is also confirmed that the notice was also personally served on *Mr Brian Hannifin* on 14 September 2021 by way of two enforcement officers attending Five Farm Oaks, Nantwich Road, Wimboldsley and handing the notice to an adult who identified herself as the landowner's wife.

16. The officers were informed that Mr Hannifin was not present on the site at the time of service. It is then indicated that the notice was also served on '*persons unknown*' for Caravans Nos 1-5 of Five Farm Oaks, by handing them to the same individual who was present on the site and identified herself as the landowner's wife. Finally the Council confirms that the notice was also served on '*persons unknown*' at Five Farm Oaks by

affixing it to a brick pillar at the entrance point to the site, so that it was clearly visible to any other party or person.

17. It is contended by the Council, therefore, that the enforcement notice was correctly served on the owner and on the occupiers of the land to which it relates, and on any other person having an interest in the land; that is the occupants of the 5 caravans. It is stressed that a copy of the notice was clearly displayed at the site entrance to alert any other unknown persons or parties.

18. In response to the appellant's grounds of appeal, the Council confirmed that information was provided on 2 March 2021 listing the named occupants of the site at that time. However, it is indicated that the names on the list differed from the names of the proposed occupants sited in a document submitted as part of planning application reference 20/02691/FUL. The Council did not have absolute clarity of the named occupants on site at the time the Enforcement Notice was served and there is no guarantee that any previously named occupants had not left the site or other occupants arrived.

19. It is indicated, therefore, that the notice was served on '*persons unknown*' for the five caravan plots on the site, as well as on the land owner. It is also indicated that at the time of service not all plots were occupied and two of the plots were vacant. It had been explained to the officers that some occupants had temporarily left the site but would return at some future date. It is argued, therefore that the Council issued the notice in accordance with 172(3) of the Act.

My assessment

20. Having considered the above, I consider that the Council did issue the notice in accordance with S172(3). Despite the notice being issued to '*persons unknown*' in relation to the 5 caravan plots, it is evident that both Mr Hannifin and the other 10 appellants were aware that the notice had been served. Clearly, if two of the occupiers of the caravan plots had not been present at the time of service of the notice, they would not have been aware of it at the time. However, it is obvious from the very fact that they were able to appeal the notice that they later became aware of it having been issued.

21. I consider that the serving of the notice on '*persons unknown*' at each of the unauthorised caravan plots was sufficient to satisfy the requirement of S172(3). The fact that the list of names given to the Council did not match the names on the planning application clearly confused the issue. However, it is clear from that list of names that it matched the names of the appellants in this case. Although the list had included the names of children, these would not necessarily need to be served separately. To serve the head of a household with an interest in the land is sufficient to satisfy S172(3).

22. In any case, the courts have held that there are limits to how far an LPA needs to go to identify occupiers or owners of land and that a land registry address is proper service if a LPA has not been given another address. In this case the owner of the land was served at both his land registry address and at the appeal site. Furthermore, each of the occupiers of the 5 caravan plots was also served a copy. If these had not been passed on to the individuals by the landowner or his wife, then the posted notice on the entrance

pillar, in my view, should have been sufficient to ensure that all persons occupying the site had been served correctly.

23. Even if I am wrong in this conclusion, S176(5) of the Act provides that, in a S174 appeal, the Secretary of State may disregard the fact that an enforcement notice has not been served correctly, if the person or persons have not been substantially prejudiced by the failure to serve the notice properly. In this case the very fact that all 11 persons with the relevant interest in the land have been able to submit these appeals, is evidence that no one could be said to have been prejudiced in any way.

24. In such cases as these, if an appellant claims they were not served as required by s172 but they eventually received a correct copy of the EN and made a valid appeal, it will make little difference as to whether they were or were not properly served. The decision-maker is normally bound to conclude that they were not substantially prejudiced.

25. In conclusion on this ground of appeal, therefore, I find that all 11 appeals must fail.

All 11 Appeals on ground (g)

The gist of the case for the appellants

26. It is stressed that the Council has been made aware of the desperate and extreme personal circumstances of the appellants since 2020 and that the occupants and the agent have continued to try and work with the Council to ensure they have a place to stay whilst the medical circumstances of some of the occupants improve. The Council have an unmet need and have stated this in the refusal report.

27. It is indicated that all of these extreme personal circumstances have been set out at different times and that they are on-going. The Council's contention that a temporary permission had never been requested is false. The occupants and the agent indicate that, after speaking with HS2 and agreeing an undertaking to hand the site over no later than December 2023, they should be allowed to stay on the land until that time.

28. It is stressed that they have to try and regain monies lost during the coronavirus pandemic and also give their bodies the time to heal before they can become fully nomadic again. It is requested, therefore, that the compliance period be extended to December 2023. Although there are a lot of people to rehome on the site, all appellants would agree to this extended timeframe.

The gist of the case for the Council

29. The Council stresses that it has taken account of the personal circumstances of the occupants and statutory requirements and contends that 12 months is a reasonable timeframe to comply with the requirements of the Notice. It is considered that this should allow more than sufficient time to seek and organise relocation for the families and secure removal of the construction waste material to a permitted site.

30. The Council indicates that the removal of all imported construction and demolition related waste material from the Land to a permitted or exempted site by using an accredited licensed waste carrier needed to be included in the requirements of the EN.

It is considered that a timeframe of 12 months is also a reasonable timeframe to secure compliance with this part of the requirements.

31. The Council refers to the appellants' agent's request for a compliance period until 2023 and that it has considered the confidential information pertaining to the occupants of the site. However, in light reasons 2 and 3 of the refusal of planning application 20/02691/FUL it is considered that a lengthy compliance period of at least 2 years further undermines the harm to the character and appearance of the countryside.

32. It is stressed that the Council's Enforcement Policy has been considered in relation to the actions available in this case. It is indicated that the proportionality of the action being requested has been compared against the guideline of the policy and is considered to be appropriate under the circumstances in this case. It is also stated that the action requested is considered as consistent with other similar cases and that the level of enforcement action being requested is the minimum level that is considered to be suitable to obtain compliance within the guidelines of the policy.

My assessment

33. The requirements are in two basic parts. Firstly, to cease the residential use of the land and remove the caravans and all other associated structures and elements and, secondly, to remove the imported waste and construction materials. On the second point, I agree with the Council that to allow the waste materials to remain on the land would further undermine the harm caused by the unauthorised use of the land for the storage of the materials. I also agree that a 12 month compliance period is a reasonable timeframe in relation to this part of the requirements. However, with regard to the requirement to cease the residential use of the land and to remove all of the caravans and associated structures and other elements, I do not agree with the Council that a 12 month period would be *'more than sufficient time to seek and organise relocation for the families'*.

34. The confidential information relating to the specific circumstances and health conditions of the appellant families have not been submitted as part of this appeal. However, it is evident that these were all considered by the Council. It is not clear, however, how much weight was given to these factors and from the Council's submissions it seems that a main concern related to the harm caused by the storage of the waste materials and the fact that further harm would be caused if the compliance period was extended to 2 years.

35. The Council do not appear to have considered whether or not different compliance periods could have been applied to the two different requirements. Having seen all of the submissions and taking into account that the fact that agent has confirmed the negotiations with HS2, I consider that it is justified to allow more than 12 months for the families to cease living on the site and to relocate elsewhere.

36. It seems clear to me that, over the last two years (due to the pandemic) matters relating to travel, work, schooling for children, health and the mere problem of finding a residential site, must have been particularly difficult for the appellant families. I acknowledge that the occupation of the site is unauthorised but, on behalf of the

appellants, it has been confirmed that they are all in agreement about relocation, as long as they are given a reasonable period to do so.

37. However, I consider that a compliance period of 2 years from the date of this decision is unnecessary. In my view, a period of 21 months would suffice. This would result in approximately a 2 year period from the date of the appeals and would end around September 2023. The late summer and before the winter would be a reasonable time to move and there would be a 3 month buffer between then and the date discussed and agreed with HS2.

38. In extending the compliance period to 21 months I do not consider that the aims of safeguarding the site for development of the HS2 route would be compromised. Admittedly it would mean that an unsustainable site within the open countryside would continue to be used for an extra 9 months but, in the overall circumstances, I am satisfied that this would be a reasonable compromise. The notice will be varied accordingly and all 11 appeals succeed to this limited degree on ground (g) only.

Formal Decision

39. All 11 Appeals A to K inclusive succeed to a limited degree on ground (g).

40. I direct that the notice be varied by deleting in full Section 6 TIME FOR COMPLIANCE as drafted and by substituting therefore a new Section 6 TIMES FOR COMPLIANCE as follows:

'6. TIMES FOR COMPLIANCE

- 1. Within 12 calendar months for Requirement No 5(3) as set out in Section 5 of the notice WHAT YOU ARE REQUIRED TO DO.*
- 2. Within 21 calendar months for Requirement Nos 5(1) and 5(2) as set out in Section 5 of the notice WHAT YOU ARE REQUIRED TO DO'.*

41. Otherwise all 11 Appeals A to K inclusive are dismissed and the enforcement notice is upheld as varied.

Anthony J Wharton

Inspector

Schedule of Appeals B to K

Appeal Reference numbers

B	APP/A0665/C/21/3283216
C	APP/A0665/C/21/3283217
D	APP/A0665/C/21/3283218
E	APP/A0665/C/21/3283219
F	APP/A0665/C/21/3283220
G	APP/A0665/C/21/3283221
H	APP/A0665/C/21/3283222
I	APP/A0665/C/21/3283223
J	APP/A0665/C/21/3283224
K	APP/A0665/C/21/3283225

Names of Appellants

Mr Anthony Doherty
Mrs Dominique Doherty
Mr Teague McGinley
Mr Willy McGinley
Ms Caroline McGinley
Mr Michael McGinley
Ms Sharma McGinley
Mr John Reynolds
Ms Sophie Reynolds
Ms Nicola Hannifin

End of Schedule