



Appeal Decisions

Hearing Held on 12 & 13 October 2021

Site visit made on 13 October 2021

by R J Perrins MA

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

Decision date: 14 April 2022

Appeal Refs: APP/W3570/C/3238589/590/591

Woodlands, Brockford Road, Wetheringsett cum Brockford, Suffolk

- 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 by Ms B Caley, Mr G Smith & Ms G Smith against an enforcement notice issued by Mid Suffolk District Council.
 - The enforcement notice was issued on 6 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of agricultural land for the stationing of caravans for residential occupation; laying of hardstanding; erection of buildings and formation of new vehicular access off Brockford Road.
 - The requirements of the notice are:
 1. Cease the use of the land for the stationing of caravans; remove the caravans and associated materials and domestic paraphernalia from the land edged red on the attached plan.
 2. Remove the hardstanding resultant material from the land edged red on the attached plan.
 3. Remove all buildings, containers and all resultant debris from the land edged red on the attached plan.
 4. Remove all lighting and associated material from the land edged red on the attached plan.
 5. Permanently 'stop up' the vehicular access on the land edged red on the attached plan by removing the fence, gates and lights from the land and planting a native hedgerow comprising a mixture of hawthorn, hazel, blackthorn and field maple in a double staggered row at a minimum distance of 60mm between the rows; and a maximum of 450mm between the plants; and protected with a spiral guard; supported with a bamboo cane; and planted through a mulch mat.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. As the prescribed fees for ground (a) have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed and do not fall to be considered.
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Decisions

1. The appeals succeed in part on ground (g). It is directed that the enforcement notice be varied and corrected by; the addition of the words "for residential use" after the words "stationing of caravans" in requirement 1 of the notice; by the substitution of 18 months as the period for compliance; and by the substitution of the plan annexed to this decision for the plan attached to the

enforcement notice. Subject to these variation and corrections the appeals succeed in part, and the enforcement notice is upheld.

Preliminary & Procedural Matters

2. Woodlands is one of a several Gypsy and Traveller sites along this section of Brockford Road near the village of Mendlesham. The Council have served eight enforcement notices which have resulted in numerous appeals¹ concerning eight adjoining plots where occupants and owners are either related or are well known to one another and, save for one appellant, have employed and retained the same planning agent. With agreement of the parties, all the appeals were heard at the same time with generic issues being dealt with together.
3. I visited all of the sites on the second day with the parties. Access was not available to Woodlands but for the purposes of considering the appeals on grounds (f) and (g) I was able to view the site satisfactorily from adjacent plots and the road. Separate appeal decisions will be issued for each site. Nevertheless, these preliminary matters apply to all the appeals save for where I have set out any particular issues relating to individual plots.
4. Initially appeals were being advanced on all grounds of appeal for all of the sites (save for where particular circumstances are highlighted in the respective decisions). However, it was agreed at the Hearings that the appeals on grounds (b), (c), (d) and (e) were generally founded on the growing of grass. That matter had arisen largely because of previous, and now withdrawn, enforcement notices that were served on the same plots and referred to the growing of grass.
5. Although, save for two of the notices, the reference to growing of grass has been removed. The parties agreed, in respect of Two Oaks and the plot known as One Acre Stables, where reference to removal of grass in the requirements subsists, that if I were to amend the notices to delete the reference to growing of grass no prejudice would occur. I saw no reason to disagree with that view and informed the Hearings that I would proceed on that basis. In that light all of the appeals on grounds (b), (c), (d) and (e) were withdrawn.
6. With regards to this site an appeal on ground (a) was initially being pursued by another occupier of the site. Initially represented, as set out above, by the same agent. However, prior to the Hearings that occupier instructed the Planning Inspectorate that they no longer wished to be represented by the agent and their appeals were not heard. Subsequent to the Hearings, that appeal, on all grounds was withdrawn.
7. In light of the change in circumstances Ms B Caley sought to demonstrate that there was joint ownership of the land and previous planning applications had been paid for jointly. Therefore, an appeal on ground (a) could be pursued in her name. However, it is clear from correspondence from the Planning Inspectorate that Ms Caley's appeal on ground (a) had lapsed. Whilst I have some sympathy with the Ms Caley, the other appellants, and the situation they now find themselves in, there is no mechanism to resurrect a lapsed appeal on ground (a). I am therefore unable to consider the ground (a) appeal or any planning merit arguments.

¹APP/W3520/C/19/3238574/575/576/577/578/579/580/581/582/589/590/591/593/594/595/596/597/ 598/600 & 601

8. Given the time that has passed since the enforcement notices were served, it was agreed that the plans attached to the notices were generally inaccurate. Given the lack of mapping data available for the plots, erection of fences and movements of boundaries between plots over time, the lack of accuracy cannot be criticised. It is nevertheless incumbent upon me to ensure the notices are right. The parties agreed that new plans were required, and the Council submitted an agreed new plan for each plot. I am satisfied that correcting the notices by replacing the plans would also not lead to any prejudice. In the interest of accuracy, I shall also add reference to the residential use of the caravans in requirement 1 of the notice, to reflect the use alleged.
9. The appellant has expressed concerns regarding the Council's Scheme of Delegation and the service of the previous notice. However, as set out in my first pre-hearing note, the appeals before me are in respect of the September 2019 notices, not those withdrawn. Moreover, and in any event, the judgment in *Britannia Assets (UK) Ltd v SSCLG* [2011] EWHC 1980 (Admin) sets out that the proper course to challenge the issue of an enforcement notice is by judicial review. It is not a matter for my deliberations.
10. There is no dispute that the intended occupiers would currently fall within the definition of gypsies and travellers² as set out in the glossary to Planning Policy for Traveller Sites (PPTS), such that this is a relevant material consideration in the determination of the appeals. I have determined the appeals on this basis.

The appeals on ground (f)

11. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the restoration of the land to its condition before the breach took place. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices.
12. In my view the requirements are entirely appropriate to achieve the objective of restoring the land to its condition before the breach took place. I note the appellants have put forward a scheme to divide the land in two and install a new hedge and access but such matters cannot be considered without a ground (a) appeal. Furthermore, no alternative lesser steps have been put forward that could be taken to achieve the objective of restoring the land to its condition before the breach took place.
13. This ground of appeal must therefore fail.

The appeals on ground (g)

The considerations for an appeal on ground (g)

14. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellants seek a five-year temporary consent under this ground rather than the three months stated in the notice to comply with all of the requirements.

² Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

15. Where an appeal is made on ground (g) alone, no case can be brought that temporary planning permission ought to be granted for the development. That is because the planning merits cannot be considered nor any arguments concerning available land or gypsy and traveller site provision.
16. In simple terms I must consider the practicalities of whether three months is sufficient to comply with the requirements of the notice. However, there is nothing before me to suggest that such a time period, to achieve those practical matters, is not unreasonable. Nevertheless, I also have a duty to consider any personal circumstances that may prevent the appellants from facilitating that within the prescribed period.
17. Turning to those matters, my attention has been drawn to issues with ownership and occupation of the site. I understand that the appellants are not currently living on site and have had to move for personal reasons which I have no reason to doubt and were undisputed. I am also informed that the site they are currently living on is overcrowded, Ms Caley is still registered at the local health centre and when they return, if the situation allows, there would, including grandchildren, be four school-aged children. These matters were also undisputed.
18. Case law³ establishes that the best interests of the children are a primary consideration, and a settled base rather than a predominantly road-side existence is clearly in the best interests of the children. Whilst I have no detail, children need to have a stable base and settled upbringing. In particular, I consider that educational needs of the children are important along with access to medical facilities for the individual circumstances of the family.
19. Furthermore, the public sector equality duty (PSED) contained in the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the site occupiers are Gypsy and Travellers, they have a protected characteristic for the purposes of the PSED. It seems to me that, even though the appellants are currently not living on site three months would not give them ample opportunity to comply with the notice which would do little to foster good relations with the settled community.
20. Also, it seems to me that it would be proportionate to give the appellants time to resolve the personal issues in terms of site ownership and access to it, to enable them to comply with the notice and seek alternative accommodation. Given the time that has lapsed since the appeals were made, a period of 18 months would seem reasonable in that regard. Such a period would be in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation.
21. Given these circumstances, I find that 18 months would be more reasonable and consistent with the requirements of the notice, and I shall vary the notice to this effect.
22. The appeals on ground (g) succeed to that extent.

RJ Perrins Inspector

³ Including *AZ v SSCLG & South Gloucestershire DC* [2012] EWHC 3660 (Admin)

APPEARANCES

FOR THE APPELLANT:	
Stuart H Carruthers	Agent

FOR THE LOCAL PLANNING AUTHORITY:	
John Pateman Gee	Area Planning Manager
Simon Bailey	Enforcement Officer
Steven Bell	Solicitor

INTERESTED PERSONS:	
Liam Robson	Planning Advisor - Environment Agency
Sarah Palmer	Flood Risk Management Advisor - Environment Agency
Ali Moseley	Flood & Coastal Risk EO - Environment Agency
Andrew Stringer	District Councillor
Michael Exley	Parish Councillor

DOCUMENTS

- 1 Index Bundle to Statement of Stuart H Carruthers
- 2 Highways Consultation Letter dated 1 July 2019 ref:DC/19/02973
- 3 Refusal of Certificate of lawful Use or Development Ref: DC/21/03571
- 4 PDU4 Waveney Report Hydraulic Modelling Report July 2021
- 5 PDU4 River Waveney & Tributaries Hydrology Report August 2021
- 6 Drawing showing Draft Waveney 2021 Model Outlines for Brockford Road
- 7 A3 Drawing showing 'river to confluence' and 'river to headwater'
- 8 Email from Liam Robson to Stuart Carruthers dated 31 August 2021 regarding draft flood outlines plus attachments
- 9 Schedule of Draft conditions
- 10 Revised enforcement notice site plan



Plan

This is the plan referred to in my decision dated: 14 April 2022

by **R J Perrins MA**

Land at: Woodlands, Brockford Road, Wetheringsett cum Brockford, Suffolk

References: APP/W3570/C/3238589/590/591

Scale: Not to Scale

