
Appeal Decisions

Hearing Held on 15 March 2022

Site visit made on 15 March 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Appeal Refs: APP/E3715/C/20/3251933, 3251934, 3251935, 3251936 & 3251937

Land at Top Road, Barnacle, Rugby CV7 9LE

- 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 Miley Smith, Ms Ann Connors, Mr Charlie Callendine, Mr George Morrison and Mr Darren Smith against an enforcement notice issued by Rugby Borough Council.
 - The enforcement notice, numbered 2020/01, was issued on 6 April 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use from a paddock to a mixed used (*sic*) as a paddock and the siting of static caravan/mobile home and portaloo.
 - The requirements of the notice are:
 - i) Cease the unauthorised use of the land
 - ii) Remove from the land the static caravan (the definition of caravan is as defined by the Caravan Sites and Control of Development Act 1960 as amended by Section 13 of the Caravan Sites Act 1968) - not associated with the agricultural use of the land
 - iii) Remove from the land the portaloo
 - iv) Resinstate (*sic*) the land with uncontaminated topsoil of a depth of 15cm, reseed with native grass and restore the land to use as a paddock.
 - The period for compliance with the requirements are:
Twenty eight days in relation to requirements i), ii) and iii), and three months in relation to requirement iv)
 - The appeals are proceeding on the grounds set out in section 174(2) (b), (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Refs: APP/E3715/C/20/3255440, 3255441, 3255442, 3255443 & 3255444

Land at Top Road, Barnacle, Rugby CV7 9LE

- 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 Miley Smith, Mrs Ann Connors, Mr Charlie Callendine, Mr George Morrison and Mr Darren Smith against an enforcement notice issued by Rugby Borough Council.
 - The enforcement notice, numbered 2020/02, was issued on 6 April 2020.
 - The breach of planning control as alleged in the notice is:
 - i) Erection of fencing, gates and other structures
 - ii) Removal of hedgerow to form an access
 - The requirements of the notice are:
 - i) Remove the fence, gates and other structures from the land
 - ii) Remove from the land any materials as a result of complying with i) above
 - iii) Submit details of species of hedgerow (*sic*) be used to reinstate the hedgerow for
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- approval by the Council
 - iv) Reinstate the land with uncontaminated topsoil of a depth of 15cm, reseed with native grass and restore the land to use as a paddock
 - v) Replant the hedgerow, as approved by the Council, within the first planting season following approval of details
 - vi) If within 5 years from the date of planting, any hedgerow is removed, uprooted, destroyed or dies, or in the opinion of the Council seriously damaged or defected, another hedgerow of the same species and size as originally planted shall be planted at the same place
 - The period for compliance with the requirements is:
Twenty eight days in relation to requirements i), ii) and iii), and three months in relation to requirements iv), v) and vi)
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of the Decisions:

Appeal Refs: APP/E3715/C/20/3251933, 3251934, 3251935, 3251936 & 3251937: the appeals are dismissed and the enforcement notice is upheld with corrections and variations

Appeal Refs: APP/E3715/C/20/3255440, 3255441, 3255442, 3255443 & 3255444: no further action is taken

Preliminary and procedural matters

1. The appeal site is located in open countryside to north of the settlement of Barnacle, and is within the Green Belt. It adjoins a long-established Gypsy and Traveller site known as Top Park. A number of temporary planning permissions have been granted in relation to that site in the past, but Top Park does not benefit from any permanent planning permissions. Although this occupation of the Top Park site is tolerated by the Council¹, the appeal site itself is subject to an Injunction made on 6 June 2008 which, amongst other things, requires that the defendants (which includes persons unknown) shall not cause or permit any caravans or mobile homes to be stationed on the land.
2. It transpired at the Hearing that some of the current occupiers of the site are not the original appellants in this case. There is, however, no dispute that the original appellants and the current occupiers of the site all meet the definition of gypsies and travellers set out in Annex 1 of the Planning Policy for Traveller Sites (PPTS).
3. Having been made aware that the stationing of static caravans/mobile homes on the appeal site for residential use required planning permission, on 4 March 2020 the original appellants in this case made a series of planning applications for that use of the land. The applications were invalid upon receipt and were not validated until 6 May 2020. In the interim, the Council issued the two enforcement notices subject to these appeals on 6 April 2020. The planning applications have not yet been determined, and the period in which an appeal against the non-determination of those applications has now lapsed. The Council indicates that these applications will be determined following my Decision on these appeals, and at the same time as an outstanding application for permanent planning permission across the whole of the Top Park site.

¹ To adopt the Council's term.

4. Section 174(2A) of the Town and Country Planning Act 1990 (the 1990 Act) precludes an appeal being made on ground (a)² where the enforcement notice was issued at a time after the making of a related application for planning permission but before the end of the period applicable under section 78(2) of the 1990 Act in the case of that application: in other words, where the notice was issued during the eight or 13 week period during which the Council should determine the applications. Given the time at which the above applications were made, it was not open to the appellants to make an appeal on ground (a).
5. A significant number of representations have been received in response to the notification of these appeals. The majority object to the development that has taken place on grounds that relate to the planning merits of the use. Those comments would properly fall to be considered under an appeal on ground (a). However, because there is no ground (a) before me, I am able to take those comments into account only insofar as they represent an indication of public interest in securing compliance with the notice in relation to ground (g)³. Some of the representations, including that from Shilton and Barnacle Parish Council, do make comments directly addressed at the appeals on ground (g) and I will take those into account in relation to that ground of appeal.
6. Prior to the Hearing, in a letter dated 3 March 2022 from a solicitor acting on behalf of the appellants, it was claimed that both notices were nullities. If that contention proved to be correct, there would be no notice(s) and no appeal(s) to consider. I therefore heard submissions on that point before any discussion on the grounds of appeal and, following an adjournment to consider how to proceed, I made a ruling that notice No. 2020/02 was indeed a nullity. I found that notice No 2020/01 was not a nullity but that it was necessary to go on to consider whether the notice was invalid (and, if so, whether it could be corrected). My reasoning in these respects is set out below.
7. As indicated on the Appeal Form, the grounds of appeal in relations to appeal refs: 3251933-7 included ground (e): namely, that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. The appellants' case on this ground of appeal was only briefly stated on the Appeal Form, and was not expanded upon in the written evidence.
8. In the event, the process through which notice No. 2020/01 was served was explained in detail by the Council as part of the discussion as to whether that notice was a nullity. From that explanation, I am satisfied that the notice was correctly served as required by section 172 of the 1990 Act. In answer to my question at the Hearing, the appellants' agent confirmed that in the light of Council's explanation the appeals on ground (e) were not pursued.
9. As initially made, the appellants' appeal on ground (b) was that the breach of planning control alleged in the notice had not, as a matter of fact, been committed by an individual known as Mr George Morrison on land in his ownership. However, because of matters that arose during the course of the Hearing, the appellants' agent also accepted that the appeal on ground (b) as initially made also fell away.

² Namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

³ Namely that the period for compliance specified in the notice falls short of what should reasonably be allowed

10. Later in the Hearing, the appellants' agent raised for the first time a point relating to the breach of planning control alleged in notice No. 2020/01 that, in my view, constituted an appeal on ground (b). The Council indicated that it was in a position to respond to that point without an adjournment being necessary. The appeal on ground (b) below relates to this new point.
11. I have taken the spelling of the appellant's names in the header above directly from the Appeal Form. I have taken the spelling of the names of who gave evidence from that given to me at the Hearing, subsequently verified from reference to the attendance list. I note that in one case (Mr Calladine) this differs from the spelling on the Appeal Form but I am satisfied that this is the same individual.
12. As part of a review of the evidence, the Council realised that the plans accompanying the notices were incorrect. Amended plans were submitted in relation to both notices. Given that the amended plans show a reduction in the area covered by the notices, I am satisfied that the notices can be amended in this respect without causing injustice.

Nullity

13. Nullity and validity are not matters that fall within the scope of any of the grounds of appeal available in section 174 of the 1990 Act. They therefore have to be set out as separate matters.

Notice No. 2020/01 – material change of use

14. The appellants' grounds for claiming that notice No. 2020/01 is a nullity are that the notice fails to comply with section 173(10) of the 1990 Act. That section requires that an enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.
15. The appellants also contend that the notice fails to comply with the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (Regulations). These Regulations require that every copy of an enforcement notice shall be accompanied by an explanatory note which shall include a copy of sections 171A, 171B and 172 to 177 of the Planning Act, or a summary of those sections. The Regulations require that the explanatory note includes, amongst other things, information that there is a right of appeal to the Secretary of State against the enforcement notice and the grounds on which an appeal may be brought under section 174 of the 1990 Act.
16. In the letter on behalf of the appellants dated 3 March 2022, it is claimed the notice fails to comply with section 173(10) of the 1990 Act and the Regulations for a number of reasons, including that a copy of the relevant sections of the 1990 Act are not enclosed with the notice; that the notice fails to give proper notice of the right of appeal; and that the details provided for the Planning Inspectorate are out of date. In addition, the letter also points out that the information setting out the right of appeal set out in an Explanatory Note attached to the notice refers to appeals against Listed Building or Conservation Area enforcement appeals, neither of which applies in this case.

17. The requirements within section 173(10) of the 1990 Act must be read together with the requirements set out in the Regulations. In that context, I am mindful that the Regulations provide for a *summary* of the relevant sections of the 1990 Act to be included with the notice: there is no requirement in the Regulations for those sections to be included in full (emphasis added).
18. In relation notice No 2020/01, the information required by the Regulations notice is largely provided in the form of a letter attached to the notice, also dated 6 April 2020. Further information is provided in a section at the foot of the notice itself headed 'YOUR RIGHT OF APPEAL'. Between them, these meet all the requirements of section 173(10) of the 1990 Act and the Regulations.
19. The Council acknowledges that the weblink to the Planning Inspectorate website provided in the notice is out of date, but points out that entering that weblink redirects to the gov.uk guidance on enforcement appeals. The only document available to view in that location explains how and when an appeal must be made. Moreover, as the Council points out, it is evident that the appellants were able make their appeals on time and on the correct appeal form, from which they chose their grounds of appeal. It follows that the notice and accompanying documents did provide sufficient information to enable them to do that.
20. It is unfortunate that the information sheet attached to the notice refers to appeals against Listed Building or Conservation Area enforcement appeals. Nevertheless, it is clear that in practice this has not prejudiced the appellants in any way.
21. For these reasons, I am satisfied that the notice complies with the requirements within section 173(10) of the 1990 Act as well as the Regulations, and as such is not a nullity. The Council has itself suggested some amendments to the notice as originally issued. I also have some concerns. I will therefore go on to consider the validity of this notice below.

Notice No. 2020/02 – operational development

22. The appellants raised identical arguments in terms of nullity in relation to this notice. For the same reasons as set out above, I am satisfied that the notice is not a nullity in those respects. However, in addition the letter dated 3 March 2022 raises a different point in relation to the requirements of Notice No 2020/02. In my view, that point does have substance.
23. The requirements of the notice include (iii) to submit details of species of hedgerow to be used to reinstate the hedgerow *for approval by the Council*; (iv) replant the hedgerow, *as approved by the Council*, within the first planting season following approval of details and (v) if within 5 years from the date of planting, any hedgerow is removed, uprooted, destroyed or dies, or *in the opinion of the Council* seriously damaged or defected, another hedgerow of the same species and size as originally planted shall be planted at the same place (emphasis added). All these requirements involve approval of details by the Council or, in relation to requirement (v), a subjective judgment on the part of the Council as to what might constitute 'seriously damaged or defected'.
24. On first receipt of the notice, it would not have been possible for the appellants to know what details might be approved by the Council, and therefore what

they must do to comply with the notice. Furthermore, there is no mechanism through which the appellants could challenge any failure on the part of the Council to agree the details submitted, or should the appellants consider the subjective judgments made by the Council in these respects to be unreasonable or impossible to achieve.

25. Section 173(3) of the 1990 Act states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease. Although not specifically stated there, it is implicit within section 173(3) (and subsequently held by the Courts) that the notice must tell the person on whom it is served fairly what (s)he has done wrong and what (s)he must do to remedy it. Given that failure to remedy the breach of planning control is a criminal offence, the latter assumes particular importance.
26. It was held in *Kaur v SSE & Greenwich LBC*⁴ that a requirement to re-model a roof in accordance with a scheme to be agreed with the local planning authority made the notice uncertain and rendered it null because it did not specify with sufficient particularity what was required. The same approach was followed in *Payne v NAW & Caerphilly CBC*⁵, in which it was held that a notice containing a requirement for a restoration scheme to be submitted to the local planning authority for approval failed to comply. The Inspector in *Payne* found that the notice did not comply with section 173(3) of the 1990 Act because just one of the requirements was uncertain on its face. The court was unable to say that the Inspector had erred in law in reaching that conclusion. The error made by the Inspector was to then go on to vary the terms of the notice which, because the notice was a nullity, he had no power to do.
27. In support of their position, the appellants refer to an appeal decision in relation to a site in Gloucester where the enforcement notice was found to be nullity (APP/G1630/C/15/3133109). In that case, one of the requirements of the notice was to reinstate the land to its condition before the breach of planning control took place in accordance with details to be submitted to and approved by the local planning authority. The Inspector cited the judgments in both *Kaur* and *Payne* in reaching the conclusion that the notice was a nullity.
28. As discussed at the Hearing, the modern approach to the question of nullity is to be found in the judgment of *Oates v SoCLG and Canterbury*⁶, which drew extensively upon the preceding case law on the subject. A number of principles emerge from this judgment, including that the test in *Miller-Mead*⁷ is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. The judgment in *Oates* also indicates that a degree of uncertainty does not necessarily render a notice non-compliant with statute and that the notice should be read as a whole. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.
29. Having regard to the judgments in both *Kaur* and *Payne*, as well as the Inspector's reasoning in the above-mentioned appeal decision, it seems to me that Notice No.2020/02 suffers from the same defect identified in those cases

⁴ *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; [1990] JPL 814

⁵ *Payne v NAW & Caerphilly CBC* [2006] EWHC 597 (Admin)

⁶ *Oates v SoCLG and Canterbury* [2017] EWHC 2716.

⁷ *Miller-Mead v MHL* [1963] 2 WLR 225

insofar as requirements (iii), (iv) and (v) are dependent upon outcomes from the local planning authority over which the appellants have no control and could not anticipate. In my view, this goes beyond the realms of a degree of uncertainty contemplated in *Oates*.

30. Furthermore, the steps of the notice require respectively the planting of a hedgerow within the first planting season (Step iv) and the planting of a new hedgerow within five years should any hedgerow be removed, uprooted, destroyed or dies (step v). Because of the nature of the steps and the uncertainty of the dates by which they must be taken (for example, the first planting season), there is the possibility that the recipient of the notice would not be able to comply with those steps within the three months specified in the notice. Given that not complying the notice would be a criminal offence, not being technically able to comply with those steps would place the recipient(s) of the notice in an unacceptable position.
31. I consider that, on 'opening the envelope' on first receipt of the notice, the appellants would not have known with reasonable certainty what they must do to comply with the notice. I therefore conclude that, when read as a whole, the notice does not comply with statute (specifically section 173 of the 1990 Act), or with the Regulations. Consequently, I find that Notice No.2020/02 is a nullity.
32. The Council has suggested ways in which the notice could be varied to overcome these defects, albeit some of the suggested amendments perpetuate or repeat the same error. The salient point, however, is that having found the notice to be a nullity, any attempt on my part to vary the notice would be wrong in law for the reasons set out in *Payne*. It is therefore not open to me to vary the notice as suggested by the Council.
33. In these circumstances, the appeals on the grounds set out in section 174(2) (f) and (g) of the 1990 Act do not fall to be considered.

Notice 2020/01: validity

34. The address of the land to which the alleged breach of planning control relates is stated in the notice as being 'Top Road, Barnacle, Rugby CV7 9LE'. At the Hearing, it was pointed out that the postcode stated in the notice is incorrect: it should be CV7 9FS. I used that postcode for my site visit, and it took me directly to the appeal site. The postcode stated in the notice took me to the centre of Barnacle. It is evident that the appellants had understood the land to which the notice related from the general address and the plan attached to the notice. I am therefore satisfied that I can correct the notice to state the correct postcode without causing injustice.
35. The breach of planning control as alleged in the notice is, without planning permission, the material change of use from a paddock to a mixed used (*sic*) as a paddock and the siting of static caravan/mobile home and portaloo. A number of points arise from that allegation.
36. The allegation is for the siting of (a) static caravan/mobile home. The allegation is expressed in the singular, although the Council subsequently sought to amend this to static caravans/mobile homes in the plural. The notice was served on several individuals, resulting in several appeals being submitted

against the notice. The appellants had evidently understood that the notice related to static caravans/mobile homes in the plural, and made no objection to the Council's suggested amendment. I am therefore satisfied that the notice can be corrected and varied throughout in this respect without causing injustice.

37. The allegation as originally refers to the 'siting' of (a) static caravan/mobile home. In my view, the term 'stationing' more accurately reflects the material change of use that the notice seeks to attack. I am again satisfied that I can correct the notice to refer to the stationing of the static caravans/mobile homes without causing injustice.
38. Caravans are not necessarily or always stationed for the purposes of human habitation or residential use. For that reason, it is usual that a notice alleging the stationing of caravans specifies the use to which the caravans are put. It is settled case law that a notice which simply alleges the 'stationing' of caravans can be corrected to specify the use of those caravans provided that no injustice would be caused by so doing.
39. However, when I raised with the Council the prospect of amending Notice 2020/01 to refer to a residential use of the static caravans/mobile homes, the Council confirmed that the allegation in the notice was deliberate. It was explained that, on the date that notice was issued, it appeared to the Council that the static caravans/mobiles homes had been stationed on the land but not yet occupied. Part of that understanding stemmed from the planning application forms submitted by the now appellants on 4 March 2020. In response to Question 3 on the application form, which asks whether the change of use has already started, the 'No' box has been ticked. Hence, the specific wording of the allegation.
40. I initially had reservations about the Council's explanation. The current occupiers of those static caravans/mobile homes, which included one of the original appellants, had moved across onto the appeal site from the directly adjoining Top Park site. It therefore seemed to me logical that the static caravans/mobiles homes would have been pulled across and then immediately re-occupied. Furthermore, whilst it was indicated on the application form that the use had not started on the date the application was made, elsewhere in response to another part of Question 3 reference is made to 'living on the site' and is worded in the present tense.
41. It was, nevertheless, accepted by the appellants' agent that the allegation in the notice was accurate. No appeal on ground (b) had been made in that respect, and the appellants' agent did not seek to challenge the allegation (in this respect) at the Hearing. I therefore accept the Council's explanation, and consider no correction of the notice is necessary in this respect.
42. The breach of planning control alleged in the notice includes the siting of portalooos as a component of the mixed use. It was agreed at the Hearing that the siting of portalooos is not a primary use of the land, and as such should not form part of the mixed use alleged. It was further agreed that the siting of the portalooos was either an ancillary use or operational development associated

- with the mixed use⁸. I will therefore delete the reference to the portaloo from the allegation.
43. There is a requirement at paragraph (iii) in the notice to remove the portaloo. It appeared from my observations at the site visit that most of the portaloo had been replaced by permanent utility blocks/dayrooms, but I see no need to vary the notice in this respect.
44. Requirement (v) of the notice, as suggested by the Council to be amended, is to reinstate the land with uncontaminated topsoil of a depth of 15cm, reseed with native grass and restore the land to use as a paddock. There is, however, no attendant allegation in the notice that the land had been lowered by that amount. Although not raised by the appellants, it occurs to me that lowering ground level by 15cm across the whole site could, if that had occurred, have amounted to an engineering operation and potentially constituted development under section 55 of the 1990 Act. Alternatively, if the land had not been lowered, raising ground level by 15cm across the whole site could potentially also amount to an engineering operation.
45. In the event, the Council accepted at the Hearing that the requirement was excessive as drafted, and that simply re-seeding with native grass and restoring the land to use as a paddock would be sufficient. The appellant raised no objection to varying the notice in that respect. I will vary the notice accordingly.
46. At the Hearing, there was discussion as to whether the requirements of the notice should be varied to include the removal of the fencing, gates and 'other structures', as well as the hardstanding. The former had been requirements in Notice No 2020/02 as originally issued: the latter was one of the amendments subsequently suggested by the Council. Varying notice No 2020/01 to include those additional requirements would make the notice more onerous.
47. It is settled case law that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate that material change of use, the notice may require that the works are removed in order that the site is restored to its previous condition and the breach of planning control is thereby remedied⁹. I shall refer to this as the *Murfitt* principle.
48. As I understand it, the fencing/gates were erected to subdivide the land into individual pitches once the static caravans/mobile homes had been stationed upon it. In that sense, they facilitated the use alleged in the notice. It follows that the *Murfitt* principle can require the removal of that fencing/gates.
49. The situation in relation to the 'other structures' is less clear cut. These 'other structures' are included in both the allegation and requirements on Notice 2020/02. Therefore, given that both notices were issued on the same date, it is reasonable to conclude that some 'other structures' were in situ when Notice No 2020/01 was issued.
50. However, those 'other structures' are not specified in the notice. The erection of dayrooms, outbuildings and in one case stables was clearly an organic

⁸ Once that mixed use commenced.

⁹ *Murfitt v SSE* [1980] JPL598; *Somak Travel v SSE* [1987] JPL 630; *Bowring v SSCLG* [2015] WL 1651330 and *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] 1654 (Admin), [2016] EWCA Civ 874

process which is likely to have continued after Notice No 2020/01 was issued. I therefore cannot be certain which of the 'other structures' were present on the date on which the notice was issued, and/or which if those 'other structures' can properly be said to have facilitated the material change of use alleged in the notice. I am therefore not persuaded that the *Murfitt* principle can be properly applied to all of those 'other structures'. For that reason, I cannot vary the notice to include the removal of these 'other structures' without causing injustice.

51. Unlike the fencing/gates and other structures, the hardstanding formed no part of Notice No 2020/02 as originally issued. It was one of the amendments subsequently suggested by the Council. I found in relation to the appellants appeal on ground (b) that the breach of planning control was correct to allege a mixed use comprising of paddocks and the stationing of static caravans/mobile homes (see below). There is no evidence to suggest that the hardstanding was required to be laid first before the static caravans/mobile homes were stationed on the land. I am therefore not persuaded that the hardstanding facilitated the breach of planning control alleged in the notice, albeit it was clear from my site visit that the majority of the land is now covered by hardstanding. It follows that the *Murfitt* principle cannot require the removal of that hardstanding.
52. Overarching all the above is that the notice requires the land to be re-seeded with native grass and the land restored to use as a paddock. The removal of the hardstanding (by scraping the surface), the fencing/gates and the other structures will all be pre-requisites to re-seeding with grass in order to reinstate the paddock. This will achieve the purpose of the notice, and there is consequently no need to vary the notice to specifically require the removal of the hardstanding, fencing/gates and other structures.
53. The Council also suggests amending the notice by inserting a new requirement (iv), specifically to remove from the land any materials as a result of complying with requirements (i), (ii) and (iii). The appellants raised no objection to this, and I am satisfied that I can vary the notice in this respect without causing injustice.

Notice 2020/01: The appeals on ground (b)

54. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice have not occurred.
55. The appellants' case on this ground of appeal is that the mixed use did not occur, insofar as the paddock was covered by hardstanding when the static caravans/mobile homes were stationed on the land. The appellants consider that the paddock did not form a component of the mixed use, and that the breach of planning control is more properly described as a material change of use from a paddock to the stationing of static caravans/mobile homes.
56. I noted during my site visit that practically all of the pitches on the land were covered in hardstanding, primarily in the form of chippings. There was just one pitch that featured a stable (there was a horse in the stable at the time of my visit), adjacent to which was a small patch of grass. I had kept the Hearing

open for discussion at the site visit, and it was explained to me that the static caravans/mobile homes were moved onto the land, then hardstanding laid, and the static caravans/mobile homes moved onto the hardstanding. I gained the impression that was a single contiguous operation, completed within a day or two.

57. Nonetheless, the Council maintained that paddock(s) was part and parcel of the mixed use alleged in the notice. Photographs appended to the Council's Appeal Statement, taken on 19 March 2020, show the front part of the site being partly waterlogged and with small areas of grass in place. At least one touring caravan and a portaloo are also visible some of the photographs, and both the eastern and western boundaries of the pitch shown in the photograph are fenced. Comparison with an earlier aerial photograph, unfortunately itself undated but part of imagery dating to 2020, shows that part of the site on which the touring caravan is stationed was previously a grassed paddock. It is apparent from the aerial photograph that the eastern boundary is defined by a hedgerow at that time, and that the western boundary is unenclosed.
58. I also note that the laying of hardstanding formed no part of the requirements to comply with Notice No 2020/01 as originally drafted, and did not form any part of the breach of planning control alleged or requirements to comply with Notice No 2020/02.
59. This evidence tends to support the Council's position that paddock(s) formed part of the mixed use taking place on the date on which the notice was issued. The evidence does not show that the static caravans/mobile homes were stationed on the site, albeit at least one touring caravan was, but clearly as of 19 March 2020 the site had been enclosed by fencing and had not been laid to hardstanding (at least to the extent at the time of my site visit).
60. I am also mindful that notice may not have been issued until sometime after the breach was detected. It is therefore entirely possible that, in the meantime, the appellant may made further changes on site, including the laying of hardstanding and the stationing of static caravans/mobile homes. Section 174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. On the basis of the evidence produced on behalf of the appellants, including that I heard at the site visit, I am not persuaded on the balance of probability that the breach of planning control had not occurred as alleged on the date on which Notice No 2020/01 was issued.
61. Accordingly, the appeals on ground (b) fail.

Notice 2020/01: The appeals on ground (g)

62. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period of compliance stated in the notice, as I intend to vary it, is twenty-eight days in relation to requirements i), ii), iii) and iv), and three months in relation to requirement v). My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interests of those occupying the site.

63. The appellants' case on this ground, as set out in the Appeal Form, related solely to one aspect of requirement v), as I intend to vary it, namely to reseed with native grass. The appellants maintain that the grass seed can only be successfully sown in spring (March/April) and autumn (September/October). Given the date of the Hearing, the latter would be the first suitable opportunity, resulting in a total period of compliance of some six months.
64. I accept that the newly sown grass seed would be vulnerable to the effects of the sun if sown during the summer months, such that it would be reasonable to extend the period of compliance in that respect to the autumn months.
65. I do not, however, accept that the appellants request to extend the period of compliance beyond that to cater for the subsequent establishment of the paddock prior to grazing by animals. I have no reason to doubt the appellants' evidence that the premature introduction of grazing animals into the paddock would irrevocably damage the newly sown grass. In that regard, the appellants suggested that in order for the grass to become properly established, the paddock would need to remain fallow until at least March 2024 until animals could be allowed to graze on it. That may well be the case, but the requirement in the notice is to reinstate the paddock and that would be achieved by sowing the grass seed in the autumn. The subsequent use and management of the paddock is an entirely different matter. I am therefore satisfied that extending the period of compliance to 31 October 2022 would be adequate to comply with the requirement v) in practical terms.
66. This then leaves the period of compliance in relation to requirements i), ii), iii) and iv), stated in the notice as twenty-eight days. Although this formed no part of the appellants' initial case on this ground of appeal, I cannot ignore the fact that the static caravans/mobile homes stationed on the land are now occupied for residential purposes. The matter is complicated somewhat by the fact only one of the current occupiers that attended the Hearing is an appellant in this case. Nevertheless, I am mindful that compliance with the enforcement notice would result in all those occupiers losing their homes in the sense, that is, of their homes on this site rather than the loss of their static caravans or mobile homes.
67. I therefore have a duty to consider whether the requirements of the enforcement notice and the period with which those requirements with are compatible with appellants' rights under the European Convention of Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, the appellants' rights under Article 8 (right for respect for private and family life, home and correspondence) would be interfered with, although on the evidence before me I am not convinced that this would also apply to the appellants' rights under Article 1 of the First Protocol (right to respect to property). In any event, both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
68. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended. As such, there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellants.

69. The protection of the Green Belt is a national planning policy, and one to which the Government attaches great importance. The protection of the Green Belt is clearly a matter of public interest and is a legitimate policy aim. The harm to the Green Belt arising from the breach of planning control is contrary to that public interest. In accordance with the National Planning Policy Framework, that is a consideration to which I attach substantial weight. To this must be added the harm to the character and appearance of the area stated in the notice.
70. At a local level, the public interest in securing the expeditious remedy to all the harms identified in the reasons for issuing the notice is firmly expressed in the representations that have been received in response to the notification of these appeals. I am mindful that the stationing of the static caravans/mobile homes is in breach of the Injunction made in June 2008. The Council is not in a position to enforce that Injunction whilst this appeal is outstanding. The Council's failure to enforce the Injunction to date is a recurring theme in the representations received in connection with this appeal. Extending the period of compliance would prolong the period in which the Council could potentially enforce that injunction. That would also be contrary to the public interest in the views expressed in the representations received.
71. In considering the appellants' rights under the HRA, the issue at hand is whether the interference with those rights is justified. In that context, I have had regard to personal circumstances of the current occupiers of the site. The personal circumstances of those occupiers who attended the Hearing are set out briefly below, in the order in which their evidence was heard.

Mr Calladine

72. Mr Calladine is one of the those who appealed against the notice. He and his wife have five children, all of whom attend a local school. All of these children are doing well at that school, and have made friends with children there from both the travelling and settled communities. One of his close relatives is under the care of a local doctor, but otherwise his family have no significant health issues. Mr Calladine's family have connections to the local area.

Mr Buckland

73. Mr Buckland and his wife have three children, all of whom also attend a local school. These children are all doing well at that school, and have made friends there with children from both the travelling and settled communities. He has carer responsibilities for a close relative who lives nearby, but otherwise his family have no significant health issues.

Mr Rutland

74. Mr Rutland lives on the appeal site with his wife and, as of the date of the Hearing, were expecting their first child. Mr Rutland has carer responsibilities for a close relative who lives nearby, and has connections within the local settled community.

Mr Connors

75. Mr Connors and his wife have three children, all of whom attend a local school. All three children are doing well at that school, and have made friends there

with children from both the travelling and settled communities. I was not advised that there are any significant health issues within the family.

Mr Levi Lee

76. Mr Levi Lee and his wife have three children and, as of the date of the Hearing, are expecting their fourth child. Two of those children attend a local school and are doing well there, and have made friends with children from both the travelling and settled communities. The other child has special needs, and on six days each week attends a specialist school in the area. Mr Lee himself suffers from an injury that requires regular treatment from a specialist at a hospital in the local area. Mr Lee also has carer responsibilities for a close relative who lives on the appeal site.

Mr John Lee

77. Mr John Lee is of pensionable age and is registered disabled. He suffers from a number of medical conditions, which collectively require regular treatment at a local hospital. He also requires occasional support from a close relative who also lives on the appeal site.
78. In considering these personal circumstances, I take the Council's point that the weight that I can attach to them in all but one case (that of Mr Calladine) is lessened by the fact that they were not the original appellants or, for that matter, the applicants for the planning permissions submitted in March 2020. The corollary is that the current occupiers were aware of the enforcement notice when they took up occupation. It also transpires that some of the appellants/occupiers were at least aware of the Injunction made in June 2008 albeit it was explained to me that they had been advised (erroneously in my view) that it did not apply to them.
79. I am also mindful that, having accepted the appellants' appeal on this ground as originally made, the worst-case scenario for the appellants is that the notice will now be upheld with a total compliance period of around six months to allow the grass to be sown the autumn months. The issue then becomes whether that six months is proportionate, allowing for a period of time to be deducted for the static caravans/mobile homes to be removed so that the land can be prepared for the reseeded with native grass.
80. In my view it would. As explained to me at the Hearing, the decision to move across from the Top Park site was in response to the Coronavirus pandemic in an attempt to achieve greater social distancing. I am not entirely convinced that the timeline fits with that explanation, given that the planning application had been submitted very early in March and that the associated restrictions largely took effect sometime after that.
81. Nevertheless, the principle remains the same: given that the occupiers moved across from the Top Park where they had been long-term residents, then there is no obvious reason why they could not resume living on that site. In that scenario, it would be a relatively simple matter to relocate the static caravans/mobile homes with no significant disruption to the appellants' personal circumstances in terms of schooling, access to health care and family support. I see no reason why that relocation could not be achieved within six months or

so. Moreover, this would obviate any requirement for the occupiers to live on the roadside.

82. Extending the period of compliance would also provide an opportunity for the Council to determine the outstanding planning applications. I was advised that the Council's Planning Committee meets on monthly cycle. A period of six months would provide ample opportunity for the applications to be determined within that cycle. In the event that the planning applications in relation to the appeal site itself were approved by the Council, that permission would supersede the requirements of the notice and the appellants would not have to relocate¹⁰. In the event that the planning applications were refused by the Council early in that Committee cycle, there would be sufficient time to relocate the static caravans/mobile homes to the main Top Park site, prepare the land for reseeded and then to sow the grass in autumn months.
83. In balancing the harm to public interest against the rights of appellants under the HRA, I consider that extending the period of compliance until 31 October 2022 would be a proportionate response to the breach of planning control that has occurred. I am satisfied that doing so would not violate the appellants' rights under the HRA.
84. I have also had due regard to my responsibilities under the Public Sector Equality Duty. In particular, I have considered whether the appellants would have the opportunity to carry on their way of life as Gypsies and Travellers and of advancing equality of the opportunity for their children to have an education. In doing so, I am again mindful that moving back onto the Top Park site would not result in any change to the ability of the appellants/occupiers to carry on their way of life as now. It would enable them to access the same education and health care facilities in the local area that are currently used, including specialists for those who have special needs. In the interim, there is nothing to prevent the appellants/occupiers from continuing their way of life as Gypsies and Travellers from the appeal site and for their children to continue their education at the same schools.

Conclusion on the appeals on ground (g)

85. The harm to the Green Belt resulting from the stationing of static caravans/mobile homes is a consideration to which I attach substantial weight. The harm to the character and appearance of the area is a matter to which I attach significant weight. There is a clear public interest to be served by rectifying that harm expeditiously, and the Planning Practice Guidance confirms that the impact on those who are affected by a breach of planning control must be taken into account.
86. Against that harm to the public interest, I have taken the personal circumstances of the appellants/occupiers into account. I have also taken account of the appellants/occupiers' rights under the HRA. The best interests of the children residing on the site has been a primary consideration throughout, and is a material consideration to which I have attached as much weight as any other.

¹⁰ Subject to the terms on which those applications were granted, particularly in relation to personal permissions.

87. In weighing the balance between public and private interests, I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance with that notice beyond that necessary to facilitate the sowing the grass seed in the autumn. I am, therefore, not persuaded that there is any need to extend the period for compliance stated in the notice beyond the end of October this year. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred.

88. Accordingly, the appeals on ground (g) succeed to that extent.

Notice 2020/01: Conclusion

89. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decisions

Appeal Refs: APP/E3715/C/20/3251933, 3251934, 3251935, 3251936 & 3251937

90. It is directed that the notice is corrected by:

- In paragraph 2 of the notice, delete the postcode 'CV7 9LE' and substitute there 'CV7 9FS'
- In paragraph 3 of the notice, delete all the words after 'without planning permission', and substitute there the words 'the material change of use from a paddock to a mixed use as a paddock and the stationing of static caravans/mobile homes'
- In paragraph 4(ii) of the notice, delete the words 'a static caravan' wherever they occur in that paragraph, and replace with the words 'static caravans/mobile homes'
- Deleting the plan attached to the notice and substituting the plan attached below.

91. It is directed that the notice is varied by:

- In paragraph 5(i) of the notice, after the words 'Cease the unauthorised use of the land' add the words 'for the stationing of static caravans/mobile homes'
- In paragraph 5(ii) of the notice, replace the words 'the static caravan' with the words 'static caravans/mobile homes', and delete the words 'not associated with the agricultural use of the land'
- In paragraph 5(iii) of the notice, replace the word 'portaloo' with the word 'portaloo's'
- Insert a new paragraph 5(iv), to read 'Remove from the land any materials as a result of complying with 5(i), 5(ii) and 5(iii) above'

- Re-number paragraph 5(iv) in the notice as originally drafted as paragraph 5(v). In that paragraph, delete the words 'Resinstate the land with uncontaminated topsoil of a depth of 15cm'.
- In paragraph 5 of the notice, delete in their entirety the sentences 'Time for compliance **28 days** after this notice takes effect' and 'Time for compliance **Three months** after this notice takes effect'
- In paragraph 5 of the notice, insert 'Requirements (i), (ii), (iii), (iv) and (v) inclusive shall be complied with no later than **31 October 2022**'

92. Subject to the corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal Refs: APP/E3715/C/20/3255440, 3255441, 3255442, 3255443 & 3255444

93. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Paul Freer
INSPECTOR

APPEARANCES

For the Appellants

Mr Charlie Calladine	Appellant and occupier of the site
Mr Stephen Clarke MRAC FRICS FAAV	Sansom Clarke
Mr Alec Statham	
Mr A Buckland	Occupier of the site
Mr M Connors	Occupier of the site
Mr John Lee	Occupier of the site
Mr Levi Lee	Occupier of the site
Mr W Rutland	Occupier of the site

For the Local Planning Authority

Mr Christian Hawley	Of Counsel
Ms Sarah Chapman	Solicitor, Rugby Borough Council
Ms Chris Davies	Planning Officer, Rugby Borough Council
Councillor Anthony Gillias	(observing)

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Copy of Injunction made in relation to the appeal site, dated 6 June 2008.
- 2/ Copies of letters notifying local residents of the appeal and of the arrangements for the Hearing.
- 3/ Application form for one of the five planning applications relating to the appeal site, dated 25 February 2020.



Plan

This is the plan referred to in my decision dated: 23 May 2022

By Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Top Road, Barnacle, Rugby CV7 9FS

Reference: APP/ E3715/C/20/3251933, 3251934, 3251935, 3251936 & 3251937

Scale: Not to scale

