



Appeal Decisions

Hearing held on 14 November 2023

Site visit made on 14 November 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5TH FEBRUARY 2024

Appeals A and B Ref: APP/R4408/C/22/3290150 & 3290151 WORSBROUGH EQUESTRIAN, WORSBROUGH RD, WORSBROUGH BARNSELY, STH YORKS, S70 5LN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr C Smith and Appeal B is made by Mrs A Smith (nee Miss A Doran) against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The notice, numbered 2020/ENQ/00202, was issued on 8 December 2021 ("Notice 1").
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land to the mixed use of residential occupation of a caravan and use of the Land for the storage of horse boxes and trailers.
- The requirements of the notice are to: Cease the unauthorised use of the Land for the storage of horse boxes and trailers and remove the horse box and trailers from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (e), (f) of the Town and Country Planning Act 1990 as amended.

Appeal C Ref: APP/R4408/C/3295176 Land off Worsbrough Road, Worsbrough, Barnsley, S70 5LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr C Smith against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice, reference 2022/ENQ/WW1, was issued on 11 March 2022 ("Notice 2").
- The breach of planning control as alleged in the notice is:
"Contravention of condition 9 of the planning permission granted by inspector Roy Merrett under appeal reference 2020/0044 (appeal reference APP/R4408/W/20/3251211) decided on 23 June 2021 for "the material change of use on the land to provide single pitch gypsy site for stationing of caravans for residential occupation with associated development (new access, hard standing, utility building, entrance wall and gates) – part retrospective at Land North Side of Worsbrough Road, Worsbrough Village, Barnsley S70 5LN" (the "Planning Permission") by failing to:
(a) Cease the permitted use
(b) Remove all associated caravans and materials
(c) Demolish all associated operation development
Within two months of the failure to meet the requirements to submit for the details specified within condition 9 i) for the written approval of the local planning authority in accordance with the timescale set out on the condition."
- Condition 9 provides: *"The use hereby permitted shall cease and all associated caravans and materials shall be removed from the site and all associated operational development including gates, walls, fences, hardstanding and the vehicular access shall*

*be demolished and removed from the site within **two months** of the date of failure to meet any one of the requirements set out in i) to iv) below:*

- i) Within **two months** of the date of this decision details of the external materials for the utility building; the appearance of and external materials for the mobile home; boundary treatments; external lighting arrangements; soft landscaping works including details of the species positions and planted heights of proposed trees and hedgerows to be retained; surface water drainage and ecological mitigation and enhancement measures shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for their implementation.*
- ii) If within **ten months** of the date of this decision the local planning authority refuse to approve all the details or fail to give a decision within the prescribed period in respect of all of the details, a valid appeal shall have been made to the Secretary of State.*
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State;*
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained for the lifetime of the development.*

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until the legal challenge has been finally determined."

- The reason for granting the condition in paragraph 55 of the appeal decision is: "A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the appearance of the utility building and mobile home, external lighting, boundary treatment, soft landscaping works, surface water drainage and ecological enhancement measures is required in order to ensure the site is serviced with adequate infrastructure and to help safeguard the character and appearance of the area and biodiversity interests."
 - The requirement of the notice is to comply with condition 9 by (a) Ceasing the permitted use (b) Removing all associated caravans and materials and (c) Demolish (sic) the utility building and all other associated operational development.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by; the insertion of the words "the stationing of a caravan for the purposes of" after the words "the mixed use of" and deletion of the words "of a caravan" after the words "residential occupation" in paragraph 3; the substitution of Plan 1 annexed to this decision for the plan attached to the enforcement notice as Appendix 1; and the deletion of "Appendix 2:Photographs showing the Unauthorised Development".
2. Subject to the corrections the appeals are allowed and the enforcement notice is quashed.

Appeal C

3. It is directed that the enforcement notice is corrected by the substitution of Plan 2 annexed to this decision for the plan attached to the enforcement notice.
4. Subject to the correction the appeal is allowed and the enforcement notice is quashed.

Applications for costs

5. The appellants made an application for costs against the Council which is the subject of a separate decision.

Preliminary Matters

6. The allegation in Notice 1 should refer to the use of the land for the stationing of a caravan for the purposes of residential occupation. I am satisfied that this correction can be made without causing injustice to the parties because it simply properly reflects the alleged use of the land as intended by the Council and understood by both parties.
7. Notice 1 did not include copies of *Appendix 2: Photographs showing the Unauthorised Development* when it was served. The parties and I agreed at the hearing that the reference to Appendix 2 could be removed from Notice 1 without causing injustice and it should therefore be corrected in this way.

Planning History

8. Prior to the issuing of the notices, the planning event on the site most relevant in these appeals was the granting of Application Ref 2020/0044 in Appeal APP/R4408/W/3251211 on 23 June 2021 ('the 2021 Permission'). The 2021 Permission was granted on a personal basis for a temporary period of three years for the material change of use in land to provide a single pitch gypsy site for stationing of caravans for residential occupation with associated development (new access, hardstanding, utility building, entrance wall and gates) – part retrospective. The 2021 Permission was for the front part of the land shown edged red on the corrected Plan 2 annexed to this decision only and does not include the part of the site where the stables are located and which is used for the keeping of horses.

Appeals A, B and C - Ground (e)

9. An appeal on this ground is that copies of the notice were not served as required by section 172 of the 1990 Act. The specific issue in these appeals is that the plans attached to Notices 1 and 2 shows a larger area of land than was owned and used by the appellants on the dates that they were issued. Whilst the appellants have subsequently acquired that piece of land this was not the case when the notices were issued and the owners of that part of the site at that time were not served with copies of the notices as required by the 1990 Act. The inclusion of the larger area of land not within the control of the appellants on the issue date would also have implications for the alleged material change of use as the elements of the mixed use may have been different.
10. However, both parties agree that the plans to Notices 1 and 2 can be corrected to show the smaller area of land which was owned by the appellants at the date of issue, and this is shown edged red and blue on the site location plan

which was submitted by the appellants as part of the application for the 2021 Permission. Both notices should be corrected to insert amended plans which do not include the land which the appellants did not own at that time (annexed to this decision as Plans 1 and 2), and I am satisfied that this can be done without causing any injustice.

Appeals A and B - Ground (b)

11. An appeal on ground (b) is on the basis that the matters stated to be a breach of planning control in the notice have not occurred. Notice 1 alleges the material change of use of the Land to the mixed use of residential occupation of a caravan and use of the Land for the storage of horse boxes and trailers. The appellants do not dispute that there has been a residential use or that some horse boxes and trailers were stored on the land prior to the issue of the notice. However, they say that the description of the development does not include all the elements of the mixed use that is in fact taking place on the Land.
12. The stables have been on the Land since 2020, prior to the date of both notices, and consist of two loose boxes, a tack room and a separate shed used for the storage of items related to the horses. As the appellant trades at the horse fairs, the number of horses kept on the site varies and there can be up to 7 horses on the site at one time.
13. The parties both argue that the planning unit at the time of the issuing of Notice 1 was larger than the land covered by the 2021 Permission and included the land to the rear shown edged blue on Plan 2 annexed to this decision.
14. However, on considering the written evidence and representations made during the hearing, and taking into account my observations from the site visit, I find that the overall unit of occupation comprises two physically separate areas which are occupied for different and unrelated purposes. The area at the front which is covered by the 2021 Permission has a primary residential use whereas the larger area shown blue on the corrected plan had the mixed use for the storage of horseboxes and trailers, stables and the keeping of horses. The two distinct primary uses (the residential at the front and mixed use at the rear) do not overlap in terms of where they take place on the site overall, and the subdivision of it with fences and gates ensures that each use is contained within its own area. Each different primary use is therefore to be considered as a separate planning unit in accordance with caselaw¹.
15. The description of the breach of planning control in the enforcement notice is therefore incorrect since there are two planning units with different uses. I have considered reducing the area enforced against to just the non-residential land, but I could only do so if there was no injustice to the parties. However, I have concluded that it is not possible to do since the correct description of the mixed use would include the keeping of horses, for which there are no relevant requirements. While the Council may not have objected to the keeping of horses, compliance with the notice if corrected in that way would see unrestricted planning permission for equestrian use granted by section 173(11) without normal planning procedures having been followed. In my view this would cause injustice to the Council.

¹ Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207

16. The matters alleged in Notice 1 have not occurred and the appeal on ground (b) therefore succeeds. Since the notice cannot be corrected without injustice, it must be quashed.

Appeal C - Ground (c) and hidden Ground (b)

17. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. Notice 2 relates to the alleged breach of Condition 9 on the 2021 Permission which states:

*"The use hereby permitted shall cease and all associated caravans and materials shall be removed from the site and all associated operational development including gates, walls, fences, hardstanding and the vehicular access shall be demolished and removed from the site within **two months** of the date of failure to meet any one of the requirements set out in i) to iv) below:*

- i) Within **two months** of the date of this decision details of the external materials for the utility building; the appearance of and external materials for the mobile home; boundary treatments; external lighting arrangements; soft landscaping works including details of the species positions and planted heights of proposed trees and hedgerows to be retained; surface water drainage and ecological mitigation and enhancement measures shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for their implementation.*
- ii) If within **ten months** of the date of this decision the local planning authority refuse to approve all the details or fail to give a decision within the prescribed period in respect of all of the details, a valid appeal shall have been made to the Secretary of State.*
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State;*
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained for the lifetime of the development.*

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until the legal challenge has been finally determined.

18. Condition 9 (i) requires that details regarding matters other than just the utility building should be submitted, but the reasons given for the issue of Notice 2 by the Council only deal with the utility building.
19. The Appeal Decision granting the 2021 Permission was dated 23 June 2021 and the Council lodged a legal challenge to it in the High Court on 31 July 2021, some 5 weeks later. The final paragraph of Condition 9 provides that the operation of the time limits set out within it are suspended until any such legal challenge has been finally determined. The Council accept that the appellants' agent did not receive notification that the challenge had been dismissed until 10 December 2021 and that she subsequently made the discharge of condition

application in relation to the external materials of the utility building on 15 December 2021. Taken together, the periods before and after the legal challenge of which the appellants were aware (notwithstanding that the legal challenge had in fact been dismissed some time earlier but the appellants had not been informed by the Council or the Court) totals around 6 weeks. I am therefore satisfied that the submission was made within the two month time limit provided in Condition 9.

20. Notice 2 was issued on 11 March 2022. At that date the appellants were not in breach of Condition 9 as they had submitted the details in accordance with 9(i) for the reasons as set out above, and ten months had not yet passed to require that an appeal be made under 9(ii). Therefore, this means that there is a hidden ground (b) appeal in relation to Notice 2 because the matters stated to be a breach of planning control have not occurred as a matter of fact. At the date that the notice was issued, there had not been a breach of Condition 9.
21. The appeal in relation to Notice 2 therefore succeeds on ground (b) and the notice is quashed. Grounds (a) and the deemed planning application, and grounds (f) and (g) do not therefore fall to be considered. The plan attached to Notice 2 needs to be corrected to show the front part edged red because the enforcement notice can only concern the land which is the subject of the relevant permission i.e. the 2021 Permission.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R4408/C/22/3290150	MR C SMITH
Appeal B	APP/R4408/C/22/3295176	MR C SMITH
Appeal C	APP/R4408/C/22/3290151	MS A DORAN

APPEARANCES

FOR THE APPELLANT:

Alison Heine Agent

Christian Smith Appellant

Alice Smith Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Bob Power Solicitor

Paul Doherty Group Leader

Chris Byrne Planning Enforcement Officer

James Hyde Spatial Planning Project Manager

Emma Coveney Senior Planning Officer

Garry Hildersley Head of Service

INTERESTED PARTIES:

Cllr Ray Bowser

Cllr John Clarmie

Audrey Brownridge

DOCUMENTS

Emails between A Heine and B Power re: challenge under section 288 of TCPA dated 3 August 2021

PLANS

Plan 1 Location Plan dated 12/01/2020

Plan 2 Proposed Site Location Plan Rev A 25.02.20

PHOTOGRAPHS

Appendix B Photos (sent by email following hearing)



The Planning Inspectorate

**These are the plans referred to in my decision dated: 5TH FEBRUARY 2024
by Zoë Franks Solicitor**

**Appeal Refs. APP/R4408/C/22/3295176, APP/R4408/C/22/3290150 &
3290151**

Plan 1

Streetwise



SITE LOCATION PLAN
AREA 2 HA
SCALE 1:1250 on A4
CENTRE COORDINATES: 435121, 402866



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12/01/2020 16:20

Plan 2

Streetwise



SITE LOCATION PLAN
AREA 2 HA
SCALE 1:1250 on A4
CENTRE COORDINATES: 435121, 402866



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12/01/2020 16:20

Material change in use of land to provide single pitch Gypsy site for stationing of caravans for residential occupation with associated development (new access, hard standing, utility building, entrance wall and gates)-part retrospective
Land at: land on north side of Worsbrough Road, Worsbrough, Barnsley, South Yorks S70 5LN
Applicant: Mr and Mrs C Smith
Plan1 Location Plan
Scale 1:1250 A4

0 10 20 30 40 m