
Appeal Decisions

Inquiry Held on 30 and 31 January 2024

Site visit made on 30 January 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 23 February 2024

Appeal A Ref: APP/J2210/C/21/3281250

Appeal B Ref: APP/J2210/C/21/3281251

Land at Moate Farm, Stodmarsh Road, Canterbury, Kent CT3 4AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr T Delaney and Appeal B by Mr P Delaney against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice was issued on 22 July 2021
 - The breach of planning control alleged in the notice is: Without planning permission, the change of use of the land for the stationing of 37no. additional static caravans for residential use.
 - The requirements of the notice are:
 1. Permanently cease the use of the Land for the stationing of the unauthorised additional 37no. static caravans for residential use located on the Land.
 2. Remove from the Land the said 37no. static caravans along with the domestic paraphernalia on the land associated with the unauthorised residential use.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) (b) and (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 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/J2210/W/21/3275629

Land at Moate Farm, Stodmarsh Road, Canterbury, Kent CT3 4AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T Delaney against the decision of Canterbury City Council.
 - The application Ref CA/20/01927, dated 1 September 2020, was refused by a notice dated 27 January 2021.
 - The development proposed is siting of additional 37 static caravans for Gypsy/Traveller Accommodation, and provision of storage for touring caravans.
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Decisions

Appeal A and Appeal B

1. The enforcement notice is quashed.

Application for costs

2. At the Inquiry an application for costs was made by Friends of Fordwich & District and Fordwich Town Council against Mr T Delaney. This application is the subject of a separate Decision.

Preliminary Matters

3. On the second day of the Inquiry, I received written confirmation that Appeal C was formally withdrawn.
4. The Inquiry concluded on the second day following my ruling that the enforcement notice would be quashed. Consequently, only the advocates are included in the appearance list, as no witnesses were called.

The Land and planning history (Appeal A & Appeal B)

5. The Land benefits from three planning permissions identified as Areas A, B and C on the enforcement notice plan. Area A has the benefit of planning permission granted on appeal in June 2008 for three Gypsy and traveller pitches comprising a total of 4 static caravans and 4 touring caravans. Area B benefits from planning permission granted by the local planning authority (LPA) in April 2015 for a Gypsy and traveller site to include no more than two static and two touring caravans and a day room. In October 2017 a further eight pitches for Gypsy and travellers were granted planning permission on appeal relating to Area C, and to comprise no more than sixteen caravans of which more than eight should be static caravans.¹
6. It is understood from the Appellants' evidence that Mr T Delaney owns the parcel of land identified as Area B on the notice plan, whilst Mr P Delaney owns part of Area A and part of Area C. Members of the Brown Family own the remainder of the Land.² However, the Council submitted evidence from the Land Registry, dated November 2023, which indicates that the Land ownership held between the Brown family and Mr P and Mr T Delaney is distributed in a different way.³ Nevertheless, there does not appear to be any dispute between the parties that since the planning permissions were granted, the number of pitches/caravans on the Land has increased to some 61 static caravans and 5 touring caravans (site inspection on 12 December 2023 and aerial imagery). In addition, the site layout and who occupies the Land has also changed.

Enforcement Notice

7. The breach of planning control alleged in the notice is: Without planning permission, the change of use of the land for the stationing of 37no. additional static caravans for residential use.
8. Before the Inquiry, having had regard to the evidence before me, I asked the parties to consider whether the wording of the alleged breach was correct. I enquired: what is the relevant planning unit? whether the LPA were alleging intensification? whether there has been a breach of condition(s) on the relevant planning permissions? and, does it matter who occupies the caravans? I also asked, if it was determined that the notice needed to be corrected, whether this could be done without injustice to any party?

¹ Local Planning Authority Refs: Area A, CA//01/00697; Area B, CA//14/01255; Area C, CA//16/00446.

² Appendix 6, Annex A, Appendices to Appellants' Proof of Evidence.

³ LPA Core Documents CD6.4 (4a-4 e).

9. In response to my queries the LPA accepted that the wording of the enforcement notice needed to be amended. They confirmed that they were not alleging a material change of use by reason of intensification, but suggested that what should have been alleged was, '*Development without permission or otherwise than in compliance with conditions XYZ of the following permissions*'. The LPA recognised that it would be necessary to amend the reference in paragraph 1 of the enforcement notice to S171(A)(1)(b) of the Town and Country Planning Act, 1990 as amended (the Act), but contend that as the notice already included reference to the relevant planning permissions, there would be no injustice to any party if the notice were to be corrected to allege breaches of conditions.⁴
10. In response to matters raised by Mr Masters, on behalf of the Appellants, and to comments I had raised in writing and at the Inquiry, the LPA put forward in writing some suggested amendments to the notice to allege breaches of conditions.⁵ It was suggested that the wording of the breach should specify the stationing of 37 additional static caravans for residential use in breach of conditions on each of the three relevant planning permissions relating to the Land. The details of those conditions would be included in the breach. The LPA also suggested that the requirements of the notice would need to be amended to reflect the breach and require the removal from the Land of any caravans above the number specified as authorised in the amended breach. In addition, it was proposed to correct typographical errors contained in paragraph 4 of the original notice.

Reasons and Conclusions

11. The Land is in more than one ownership and is occupied by several families, but these factors do not prevent one enforcement notice covering the Land as a whole.⁶
12. An enforcement notice is a nullity if it is so defective on its face that it is without legal effect. The notice issued in July 2021 states the matters which appear to constitute the breach of planning control and the paragraph of section 171A (1) that apply. It specifies the steps to be taken and the activity that is required to cease, date on which the notice takes effect and the period for compliance. Reasons are given as to why it is considered expedient to issue the notice with reference to the relevant planning policies. The Land to which the notice applies is identified. Therefore, the notice contains all the basic elements required by the legislation.⁷ I do not consider the notice to be a nullity.
13. The classic test to be applied to an enforcement notice is does the notice tell the person on whom it is served fairly what he has done wrong and what he must do to remedy it.⁸ The notice may be corrected to remedy any defect or misdescription provided no injustice would be caused to the appellants or the local planning authority (s176(1)).

⁴ Local Planning Authority response to Inspector's Case Management Conference Note. Response dated, 20 December 2023

⁵ Document 6 at Inquiry

⁶ *Rawlins and Others v Secretary of State for the Environment and Tandridge District Council* [1990] 60 P & C R 413

⁷ Section 173 of the 1990 Act and Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

⁸ *Miller Mead v Minister of Housing and Local Government* [1963] 2 WLR 225

14. The LPA has sought to take action against 'change of use of the land for the stationing of 37no. additional static caravans for residential use'. It is accepted by all the main parties that this description is not accurate, and having regard to the lawful use of the Land as a residential caravan site for Gypsy and Travellers, needs to be corrected. However, despite the suggested amended form of wording, I am not satisfied that the description of the breach has been resolved satisfactorily. This stems from the fact that the alleged breach is derived from three separate breaches of planning control, all including non-compliance with conditions. As a result, the nature and scope of the deemed planning application(s) are not clear. The LPA's analysis on the matter does not take sufficient account of the form of a deemed planning application flowing from a breach consisting of non compliance with a condition. The simplicity the LPA was seeking in respect of issuing one enforcement notice in relation to all of the Land would not be achieved with potentially at least three planning permissions resulting from success on the deemed planning application(s).
15. In addition, the taking of enforcement action is subject to a ten year time limit for non compliance with conditions. However, each separate breach would have occurred at a different time and thus have a separate time limit. Therefore, in my view the suggested correction could not be made without causing injustice because the Appellants may wish to raise new grounds of appeal.
16. Furthermore, in this case, the planning histories of the Land and its occupation are important considerations. Despite the similarity in the land use and the common point of access from Stodmarsh Lane, over the last 10 years the areas identified as A, B and C on the enforcement notice have developed in different ways at different times. The Land is in different ownership and the pitches in separate occupation in a way which no longer corresponds to the pitches identified in the original planning permissions, which may or may not have lapsed. The occupiers of parts of areas A, B and C are also unknown. Moreover, there is no evidence of social interaction between the Brown family and the Delaney families, and there are clear physical boundaries between the land which these families occupy.
17. The Brown family did not appeal the enforcement notice, are not appellants in this appeal and the family took no part in the proceedings. Their decision not to appeal was taken in response to the notice's allegation of a change in the use of the Land for the stationing of 37no. additional static caravans for residential use. I am mindful that there are currently 47 unauthorised static caravans on the Land, and perhaps it was the Brown family's belief that the proceedings would have no material impact on their use of the Land, as the notice did not specify which caravans were unauthorised, nor which were required to be removed. However, the suggested amended wording alleges breaches of conditions which relate to specific planning permissions. Those permissions relate to Land owned and occupied by the Brown family and thus in my view the amendment would cause a loss of natural justice to them. They may wish to appeal that amended allegation, and they would not have the opportunity to do so. Furthermore, any permission(s) granted would relate to land in their ownership, and thus were I to impose any conditions on any permission granted, they would also relate to their land.
18. Having regard to the above, there is clear potential for injustice against the Brown family if I were to proceed and determine the appeal and potentially

discharge and/or add conditions that would directly affect them, including the number of caravans permitted on their land, without having had the opportunity to hear their views on such matters.

19. I have considered whether I could correct the notice. However, for the reasons set out above, given that the Brown family took no part in the proceedings, and the suggested amended wording might have meant that the Appellants wished to bring other grounds of appeal, there is clear opportunity for injustice to arise if I were to take that course of action.
20. As such, it is not open to me to correct the identified errors in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under grounds (a) (b) and (g) as set out in section 174(2) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT MR T DELANEY & MR P DELANEY:

Mr Alan Masters Counsel instructed by Mr Brown

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson Counsel instructed by the Solicitor of the Council:

FOR THE RULE 6 PARTY:

Ms Claire Nevin Counsel instructed by Friends of Fordwich & District and
Fordwich Town Council.

DOCUMENTS submitted at the inquiry

- 1 Letter of notification of the inquiry
- 2 Aerial image of neighbouring site, Romany Acres
- 3 *Reed v Secretary of State for Communities and Local Government & Another* [2014] EWCA Civ 241
- 4 *Hertfordshire County Council v Secretary of State for Communities and Local Government & Metal and Waste Recycling Limited* [2012] EWHC 277 (Admin)

- 5 *R v Secretary of State for the Environment & Tower Hamlets LBC ex part Ahern (London) Ltd* [1989] JPL 757
- 6 Local Planning Authority's suggested amendments to the enforcement notice