



Appeal Decision

Hybrid Inquiry Procedure

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/Q3630/C/24/3341998

Land known as Walnut Tree Farm and Little Almnors Caravan Park, Almnors Road, Lyne, Chertsey KT10 0BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Miles Cash against an enforcement notice issued by Runnymede Borough Council.
- The notice was issued on 5 February 2024.
The breach of planning control as alleged in the notice is *“Without planning permission, the material change of use of the Land as a mixed use consisting of a permanent residential caravan park for gypsies-and-travellers and non-gypsies-and-travellers, a Long & Short Term Caravan, Motor Home Camping Park, a traffic management contractor's yard and storage of shipping containers, lorry bodies and caravans. And all the associated development facilitating the material change of use which includes:*
 - i) *The erection of fencing, walls and means of enclosure on the Land;*
 - ii) *The erection of assorted site offices on the Land;*
 - iii) *The creation of hard surfaces*
 - iv) *The erection of brick bases for caravans*
 - v) *The erection of sheds”*
- The requirements of the notice are:
 - (1) Cease the mixed use of the land consisting of a permanent residential caravan park for gypsies-and-travellers and non-gypsies-and-travellers, a Long & Short Term Caravan, Motor Home & Camping Park, a traffic management contractor's yard and storage of shipping containers, lorry bodies and caravans.
 - (2) Remove from the land
 - i) All caravans;
 - ii) All fencing, walls or means of enclosure;
 - iii) All hard surfaces;
 - iv) All lorry bodies;
 - v) All shipping containers;
 - vi) All portable buildings.
 - vii) All brick bases for caravans
 - viii) All sheds
- The period for compliance with the requirements is *“Within twelve (12) months from the date this notice takes effect.”*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) 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.

Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Procedural and Preliminary Matters

2. A case management conference, held on 16 August 2024, was attended by representatives for the appellant and Council. Amongst other things, it was agreed there was merit in hearing the ground (e) appeal as a discrete topic, on the basis

that there would be no point in hearing evidence on all other grounds, or from witnesses of fact, if the ground (e) were to succeed. The Inspector's Post CMC Note confirmed that the ground (e) appeal would be dealt with as a discrete topic, in advance of the main Inquiry.

3. I issued a Pre-inquiry Note to the appellant and Council on 6 November 2024 (the note). Amongst other things, the note requested additional information from the main appeal parties on ground (e), comments on each parties' respective responses, and set a timetable for submissions. It also sought their views on whether the ground (e) appeal could be dealt with based on their written submissions, or whether an oral session was necessary.
4. Written responses and comments on each parties' respective submissions were received in accordance with the timetable. Confirmation that the ground (e) appeal could progress by way of written representations was provided by both parties; although the appellant's confirmation was caveated that a hearing session would be necessary if I were to find the ground (e) appeal should not succeed.
5. S319A of the Town and Country Planning Act 1990 as amended (the 1990 Act) makes provision for hybrid events, which allow determination to be considered by one or more types of procedure as appropriate. In this case the main appeal parties would not be prejudiced by the ground (e) being dealt with by way of the Written Representations procedure, with other grounds being dealt with at the scheduled Inquiry as necessary.
6. I have not visited the appeal site as a site visit would not assist me in the determination of the ground (e) appeal. A site visit will take place as part of the scheduled Inquiry as necessary.
7. The Council undertook a survey of the land on 13 July 2023. The Council used aerial images of the land as a basis for cataloguing the caravans and mobile homes occupying the site on that date. Despite the survey identifying that some caravans and mobile homes displayed plot numbers, the Council has divided the land into areas to which it has allocated an alphabetical identifier and applied its own plot numbering system. The Council's alphabetical and plot numbering system was used for the purposes of serving the notice on occupiers of the caravans and mobile homes. However, the occupiers of the appeal site were not advised of the Council's alphabetical and plot numbering system and would not therefore recognise it as applying to their property.
8. In its ground (e) submissions, the Council provided several versions of an amended plan that it proposed one of which could be substituted for the plan attached to the notice. Each version of the plan identifies a different area of land outlined in red. The Council suggest that depending on my findings in respect of who, if anyone, it failed to serve a copy of the notice on, I should substitute the relevant version of the amended plan. I will come back to this suggestion later.

The Ground (e) Appeal

9. An appeal on this ground relates to whether the notice was served as required by s172 of the Town and Country Planning Act 1990 as amended (the 1990 Act). S172(2) of the 1990 Act requires a copy of the notice to be served on the owner, occupier and any person having an interest in the land. S336 of the 1990 Act defines an owner as a person, other than a mortgagee not in possession, who

whether in his own right or as a trustee for any other person is entitled to receive the rack rent of the land or whether the land is not let at rack rent would be so entitled if it were to be let. A person may be an occupier because of a lease, a license or oral permission. An interest in the land connotes a legal or equitable interest, such as a mortgage or the benefit of a covenant.

10. The method of service of the notice is set out in s329 of the 1990 Act. S329(1) includes provision for service by hand, leaving it at the usual or last known abode of that person or sending it in a prepaid registered letter. S329(2) includes the provision of service on a person as having an interest in the premises, which includes measures to be taken if the name of that person is not known. S329(3) provides for where *“(a) the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land, and (b) it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied”*, it will be taken to have been served if it is addressed to *“the owners and any occupiers”* of that part of the land (describing it) and is affixed conspicuously to some object on the land. Further guidance on the service of notices by local authorities can be found in s233 of the Local Government Act 172.
11. The outcome of a ground (e) appeal is a straightforward ‘yes it was’ or ‘no it was not’. If the answer is ‘yes it was’, then the ground (e) appeal will fail. If the answer is ‘no it was not’ then it is necessary to consider whether that person has been substantially prejudiced by the failure to serve.

Owners of the premises

12. The Council has provided land registry details of land ownership throughout and surrounding the land edged red in the plan attached to the notice. From this it can be discerned that the owners of the land are Miles Cash, Edward Cash, Garish Lion Limited and Surrey County Council.
13. The Council’s Certificate of Service, pertaining to service of the notice via *“signed for post”*, confirms that Edward Cash was served.
14. Paragraph 13 of the Council’s comments on ground (e) states Miles Cash was served a copy by means of hand delivery on 5 February 2024. However, no plot number or other means of identifying where he was served at *“Walnut Tree Farm and Almnors Farm House”* is provided. Given Miles Cash is the appellant, even if he was not served correctly, he has not been substantially prejudiced as he has brought the appeal.
15. The land owned by Surrey County Council lies adjacent to the carriageway on Lyne Crossing Road and includes the verge crossing section of the access track. There is no substantiated evidence that the notice was served on Surrey County Council. The notice requires all hard surfaces to be removed from the land edged red. Surrey County Council could be held responsible for the removal of the verge crossing if the notice is upheld, and the notice is not complied with. In such circumstance, I fail to see how the failure to serve would not prejudice Surrey County Council.
16. The Council accept that the caravan identified as B19 (Plot 19, Area B) is partially located on land in the ownership of Garish Lion Limited. There is no substantiated evidence that the notice was served on Garish Lion Limited. Given that the

requirements of the notice require the removal of all caravans, Garish Lion Limited could be held responsible for the removal of the caravan identified as B19 if the notice is upheld, and the notice is not complied with. In this circumstance, I fail to see how the failure to serve a copy of the notice on Garish Lion Limited is *de minimis*. I therefore find that Garish Lion Limited have been substantially prejudiced by the failure to serve a copy of the Notice on them.

17. The Council request that, if I find that Surrey County Council and/or Garish Lion Limited have been substantially prejudiced, I substitute an alternative plan for the plan attached to the notice to rectify the failure to serve. S176(5) does not provide for changes to be made to the notice to remedy incorrect service. It also seems inherently wrong that s176(1)(b) could be used to rectify a failure to comply with s172(2)(a). In my judgement, I could not substitute the plan attached to the notice to rectify the failure to serve the notice on Surrey County Council and Garish Lion Limited.
18. For these reasons, I find that the notice has not been served on all the owners of the land in accordance with s172(2)(a) and the landowners not served would be substantially prejudiced by the failure to serve them.
19. It should be noted that the alternative plans provided by the Council also exclude all the land upon which B19 (Plot 19, Area B) is situated. The occupier of B19 (Plot 19/Area B) would not therefore be affected by the notice and it is unclear whether this was the Council's intention.

Occupiers of the premises

20. There are several distinct areas within the red lined area identified on the plan attached to the notice. These include business premises, two self-contained dwellings, an area used for open storage, and land used for the siting of caravans/mobile homes for residential purposes.
21. The Council's Certificate of Service, pertaining to service of the notice via "*signed for post*", confirms Blue Arrow Traffic Management Limited was served.
22. In respect of the two residential units, the Council acknowledge that the flat in the building located in the traffic management contractor's yard is "*its own self-contained residential unit*" and that there is another residential building that "*was and remains its own self-contained residential unit*". The Council may consider these dwellings to fall outside the scope of the notice, however they clearly fall within the land affected by the notice, and they were not served as required by s172(2)(a).
23. Furthermore, while there is no requirement for the two residential units' occupation to cease or for them to be removed from the land, if the notice is upheld and complied with, the removal of all hard surfaces would mean the vehicular access serving the two residential units would be affected. It is not clear if the occupiers of the two residential units have a formal right of access or some other agreement with the owners of the vehicular access. If they do, they have an interest in part of the land that the notice attacks, namely the hard surface of the access track, they should therefore have been served as required by s172(2)(a).
24. The Council request that if I find the occupiers of the two residential units should have been served, as I have, that I should vary the wording of the land affected as

set out in section 2 of the notice, to clarify that the two self-contained residential units are excluded from the notice. However, as set out above, s176(5) does not provide for changes to be made to the notice to remedy incorrect service. Nor do I consider that s176(1)(b) can be used to rectify a failure to correctly serve a notice in accordance with s172(2)(a).

25. The land being used for storage is owned by the appellant. Items stored on the land are owned by the appellant, Edward Cash or persons paying to store their chattels on the land according to the appellant. Someone paying to store their chattels on the land may not have a lease or license, however they clearly have permission to do so. I do not doubt that identifying who is storing chattels on the land would be difficult, especially as the Council has shown changes in the type and number of chattels being stored. A copy of the notice could have been addressed to *“the owners and any occupiers”* of that part of the land (describing it) and affixed conspicuously to some object on the land. However, given the fluidity attributed to the chattels being stored at any one time, I find it less than likely that persons paying for storage on the land would be substantially prejudiced by not being served with a copy of the notice.
26. Turning now to the caravans/mobile homes. I find the Council’s approach to identifying potential occupiers of the caravans/mobile homes using aerial images and comparing this with their site survey undertaken on 13 July 2023 to be a reasonable and logical approach. Their findings regarding actual plot numbering and named occupation of caravans/mobile homes have not been used in relation to service of the notice. While this does not necessarily demonstrate incorrect service of the notice, as addressing the notice to *“the occupier”* would comply with s329 of the 1990 Act, occupiers are however unlikely to recognise the first line of the address as it utilises the Council’s alphabetical and plot numbering system, which has not been explained to those being served.
27. The Council has provided a Certificate of Service, with notes and photographs, of *“how the notices were served on respective occupiers”* (the hand delivery Certificate). While the certificate begins by stating *“I, Tom Coleman Fry (Assistant Development Manager) on 5 February 2024, between 10:30 and 13:00, served a copy of a Planning Enforcement Notice and accompanying letters in relation to Land...on the following persons:”* it goes on to state *“Whilst serving the Planning Enforcement Notice and accompanying letters, I was joined by the following members of staff from Runnymede Borough Council.”* The names and positions held at the Council of seven Council employees are then listed and each person has signed the certificate.

The hand delivery Certificate includes a list of persons and addresses, some of which have been stricken through. After Mr Coleman Fry’s signature, there are what I have taken to be the ‘Service Notes’. These include:

- a series of tables relating to Areas A to E, which specify some but not all plot numbers (as allocated by the Council) in each area and direct the reader to a numbered photo or state that *“No served on occupier”*. The corresponding photos show paper documentation in plastic wallets fastened to caravans, mobile homes, gates, fences, a building or weighted down adjacent to caravans or mobile homes.

- a list of caravans/mobile homes (12 in total) upon whom three of the named Council employees served the notice by hand delivery.
 - a list providing a commentary on the service carried out by Mr Coleman Fry and one other Council employee. This list identifies pitches (48 in total) where caravans/mobile homes were no longer in situ, where the notice was left “*next to caravan*” and where the notice was handed to occupiers.
 - a final list identifies where caravans could not be served as either the caravan was not in situ or entry was not possible. Six of the caravans on the final list (7 in total) are also referenced in Mr Coleman Fry and the other Council employee’s service notes.
28. The addresses of service provided on each set of correspondence use the Council’s alphabetical and plot numbering system, for example Plot 1, Area A. For those persons that were handed the copy intended for them, I am satisfied there is no uncertainty of service. However, for any others, particular those that live in caravans or mobile homes that clearly display their plot number, it is possible that the occupiers may not have considered the documents to be addressed to them as the alphabetical and plot numbering would not be known to them.
29. The list of addresses set out in the hand delivery Certificate suggests that, excluding those stricken through, 135 plots and 2 toilet blocks (Area E) were served by hand. However, there is no service note for 41 of those 135 plots. Furthermore, the survey undertaken on 13 July 2023 identified that Area C accommodated an additional 7 caravans/mobile homes that are not mentioned in the hand delivery Certificate list or service notes. There is therefore no way for me to know whether these 7 caravans/mobile homes were still in situ, were unoccupied or had been removed from the site at the time of service of the notice.
30. Given the nature of the caravan use, it would not be unreasonable for occupiers of the land to be away travelling. The service notes identify where some caravans/mobile homes have been removed and/or refer to empty plots. This implies that the Council knew parts of the land were unoccupied. Copies of the notice should therefore have been served in accordance with s329(3) of the 1990 Act.
31. The Council confirm, at paragraph 15 of their comments on ground (e) document, that copies of the notice were not erected in or around the premises. In the absence of such service, there is no mechanism by which occupiers that were not served by hand delivery, had a copy left at their property or were away travelling could be considered to have been correctly served.
32. Given the imprecision and ambiguity arising from the hand delivery Certificate and the failure to erect copies of the notice at conspicuous points on the premises, and the identified plots that were not served set out above, I am not satisfied that all the occupiers of the caravans/mobile homes on the land were served a copy of the notice.
33. Occupiers of the caravans and mobile homes that were not served have been deprived of the opportunity of appealing the notice. If the notice is upheld and complied with, those occupiers not correctly served may become homeless.

34. For these reasons, I find therefore that the notice has not been served on all occupiers of the land in accordance with s172(2)(a) and the occupiers not served have been substantially prejudiced by the failure to be served.

Other persons who may have a reason to be served

35. The appellant has provided details to show that there may be several persons having an interest in the land, which would amount to an interest that is materially affected by the notice. The Council do not however agree as, amongst other reasons, they did not intend the notice to require the removal of either access track. As already established, if the notice is upheld it requires the removal of *'all hard surfaces'*. The access tracks are hard surfaces and there is no logical reason why, on its face, the notice would not be taken to require the removal of the access tracks.
36. The Council's expediency report identifies that the access road serves several yards located within Lowfields. The appellant provided details to the Council of eight companies that occupied the yards within Lowfields in response to the planning contravention notice (2 October 2023). The occupiers of Lowfields were therefore known to the Council at the time the notice was served. There is no substantiated evidence that the notice was served on the occupiers of Lowfields. The removal of the hard surfaced access track would, in my judgement, materially affect businesses located within Lowfields as their means of vehicular access would, in all probability, be compromised.
37. Rainbow Nursery and Pre School are shown to use a parcel of land which can only be accessed through the land edged red and via the access track from Almnors Road. This land appears to fall within title SY566815, which has a legal right of access over land within the appeal site. Rainbow Nursery and Pre-school may not have been shown to have title to the land forming SY566815, however as they use part of that land and its means of access is via the covenanted land, I find they have an interest in the land identified in the notice. There is no substantiated evidence that the notice was served on Rainbow Nursery and Pre-school. If the notice is upheld the requirement to remove the hard surfaced access track would, in my judgement, materially affect the operation of their business as their means of vehicular access would, in all probability, be compromised.
38. Land Registry Title SY545091 relates to The Cottage, which has not been shown to have a legal right of access to the publicly maintained highway. The only means of access for this residential property is over land most likely in Edward Cash's ownership. There is no substantiated evidence that the notice was served on the occupiers of The Cottage. If the notice is upheld the requirement to remove the hard surfaced access track would, in my judgement, materially affect occupiers of The Cottage as their means of access would, in all probability, be compromised by compliance with the notice.
39. The electrical substation identified in Land Registry Title SY356689 also has no identified means of access to the publicly maintained highway. As with The Cottage, the only means of access for the electricity substation is over land most likely in Edward Cash's ownership. There is no substantiated evidence that the notice was served on South Eastern Power Network PLC who is responsible for the electricity substation. If the notice is upheld the requirement to remove the hard surfaced access track would, in my judgement, materially affect South Eastern

Power Networks PLC as their means of access would, in all probability, be compromised by compliance with the notice.

40. Moreover, it would not be unreasonable to assume, at the very least, that the businesses on Lowfields, Rainbow Nursery and Pre School, the occupiers of The Cottage or South Eastern Power Networks PLC benefit from oral permission to use the access tracks such that they have an interest in part of the land that the notice attacks i.e. the hard surfaces which include the access tracks. In this circumstance, even if these parties do not have a legal or equitably interest in the land, they would still qualify to be served as occupiers of the land.
41. For these reasons, I find it more likely than not that the notice has not been served on all persons with an interest in the land in accordance with s172(2)(b) and those persons not served have been substantially prejudiced by the failure to be served.

Conclusion on ground (e)

42. I am not satisfied that everything that could have been done to serve the notice on every owner and/or occupier of and/or a person having an interest in the land was done by the Council. I have identified that owners, occupiers and persons having an interest in the land have been substantially prejudiced. I therefore find that the notice was not properly served.
43. I have considered whether it would be appropriate to afford someone who would otherwise be substantially prejudiced the opportunity to prepare a case against the notice. However, due to the number I have identified that have not been served who are substantially prejudiced, the Council's claims that the two residential units and access tracks are not affected by the notice, in conjunction with the various corrections put forward by the Council to the wording of the land affected by the notice and the substitution of the plan attached to the notice with one of five options, I consider this course of action would not be appropriate.

Overall Conclusion

44. For the reasons given above, I conclude that the appeal should succeed on ground (e). The enforcement notice will be quashed.
45. In these circumstances, the appeals on grounds (a), (b), (c), (d), (f) and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Madge

INSPECTOR