

**WRITTEN STATEMENT  
OF  
SOUTH STAFFORDSHIRE DISTRICT COUNCIL**

**INSPECTORATE REFERENCE:  
APP/C3430/C/22/3303424**

**SECTION 174 TOWN & COUNTRY PLANNING ACT 1990**

**APPEAL BY:  
Mr. Billy Rogers**

**SITE AT:  
Land Southwest of Saredon Road  
Hospital Lane  
Cheslyn Hay  
Staffordshire**

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## **1. INTRODUCTION**

- 1.1 This statement is prepared in respect of an appeal brought against the decision by South Staffordshire District Council in the following matters:

Section 174 Town and Country Planning Act 1990 in the service of an Enforcement Notice in respect of Land Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire.

Appeal Reference: APP/C3430/C/22/3303424.

## **2. SECTION 174 APPEAL AGAINST ENFORCEMENT NOTICE**

- 2.1 The alleged breach of planning control is:

- i. Without planning permission, the material change of use of the land to a Sui Generis residential Gypsy site, and the associated unauthorised operational development which facilitates that use.

## **3. SITE DESCRIPTION AND REASONS FOR ISSUING THE NOTICE**

- 3.1 The appeal site is located within the West Midlands Green Belt, approximately 1 km west-northwest of Cheslyn Hay. The site is approximately 1.3 hectares in area.

- 3.2 The appeal site is accessed via Hospital Lane, a single-track road leading off B4156 Wolverhampton Road. The site is trapezoidal in shape and is surrounded on three sides by open fields, the eastern edge being bounded by a public right of way.

- 3.3 Prior to the development taking place, the south-eastern quarter of the land contained the derelict remains of abandoned stables, along with detritus left over from that use. Between 2003 and 2015, there were areas of hard standing, but these seem to have been removed, or were otherwise reclaimed by nature by April 2016. Appendix 1 contains aerial photography dating between 2003 and 2021, which shows the location of the stables, their deterioration, and the returning of the land to nature.

- 3.4 The reasons for issuing the Notice were:

- i. It appears to the Council that the above breach of planning control has occurred within the last ten years.
- ii. The Development is inappropriate in the Green Belt, having a detrimental impact on the amenity and openness of the area, and is contrary to policies GB1, EQ4, EQ7, EQ8, EQ9, EQ11, EQ12, H6, EV11 and EV12 of the Core Strategy.
- iii. The Development is contrary to Core Policy 2 of the adopted Core Strategy: Protecting and Enhancing the Natural and Historic Environment.
- iv. The Development has an adverse effect on the character, appearance and amenity of the rural area, contrary to Policies EQ4 and EQ11 of the Adopted Core Strategy.
- v. The council does not consider that very special circumstances have been put forward to justify a departure from the normal policy of restricting development in this Green Belt Area, contrary to National Planning Policy Framework, Strategic Objectives 1 & 2 and Policy GB1 (Green Belt) of the adopted Core Strategy.

- vi. The Council does not consider that planning permission should be given for the Development because planning conditions could not overcome the objections to it.
- 3.5 Views across and beyond the site from the public right of way, although previously restricted by vegetation of varying thickness, have now been blocked entirely by the erection of the residential-style close-boarded fence.
- 3.6 The loss of agricultural land to a residential use would also amount to encroachment in the countryside, which would conflict with one of the objectives of the Green Belt and is contrary to Policy GB1 of the South Staffordshire Core Strategy (CS) adopted in December 2012. Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 3.7 Paragraph 16 of the PPTS comments that:
- “Subject to the best interests of the child, personal circumstances, and unmet need are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”*
- 3.8 Policy EQ4 of the South Staffordshire Core Strategy (CS) adopted in December 2012, states that the intrinsic rural character and local distinctiveness of the South Staffordshire landscape should be maintained and, where possible, enhanced, and that the design and location of new development should take account of the characteristics and sensitivity of the landscape and its surroundings, and not have a detrimental effect on the immediate environment and on any important medium and long distance views.
- 3.9 Contrary to these policies, the erection of a residential-style close-boarded fence and the laying of new hard standing, along with the stationing of caravans, has had an adverse effect on the openness of the Green Belt and adds an inappropriate element of urbanisation; its incongruity with the rural surroundings is visually jarring and is detrimental to the enjoyment of the public right of way as a means of access to open countryside.

#### **4. RELEVANT PLANNING POLICY**

##### **4.1 Adopted Core Strategy 2012**

###### **Strategic Objectives:**

Strategic Objective 1: To protect and maintain the Green Belt and Open Countryside in order to sustain the distinctive character of South Staffordshire.

Strategic Objective 3: To protect and improve South Staffordshire's environmental assets.

###### **Core Policies:**

Core Policy 1: The Spatial Strategy for South Staffordshire

Core Policy 2: Protecting and Enhancing the Natural and Historic Environment

Core Policy 6: Housing Delivery

Core Policy 11: Sustainable Transport

**Development Policies:**

GB1: Development in the Green Belt

EQ1: Protecting, Enhancing and Expanding Natural Assets

EQ4: Protecting and Enhancing the Character and Appearance of the Landscape

EQ11: Wider Design Conditions

EQ12: Landscaping

H6: Gypsies, Travellers and Travelling Showpeople

**4.2 Adopted Site Allocations Document**

SAD 2018 Gypsy and Traveller Pitch Provision.

**4.3 Joint Strategic and Site Allocations Local Plan Review** (including Gypsy & Traveller provision assessment and future allocations). Issues & Options consultation undertaken between 8th October 2018 and 30th November 2018.

4.31 The needs/issues of the Gypsy and Traveller community will be consulted on at Preferred Options stage, now scheduled for Summer 2021 as a result of unavoidable practicable consultation slippage resulting from Covid 19 restrictions. The Preferred Options stage will include the consideration of new sites for gypsy and traveller pitches. The revised Local Development Scheme programme (June 2020) anticipates Publication of the Preferred Plan for consultation in Summer 2022, Submission to the SoS in Winter 2022, Examination in Spring 2023, and Adoption in Winter 2023.

**4.4 Other Relevant Policy, Guidance & Evidence Base Considerations**

Planning Policy for Traveller Sites

National Planning Policy Framework

Designing Gypsy and Traveller Sites - A Good Practice Guide Communities and Local Government (Historic Context)

Gypsy and Traveller Accommodation Assessments (G.T.A.A.'s 2008, 2014, 2017 & 2021).

BS 5837 (2012) -Trees in relation to design

Forestry Commission & Natural England - 'Ancient woodland and veteran trees: protecting them from development' (2014).

## 5. PLANNING HISTORY

- 5.1 Relevant History – there is no relevant planning history for the site.
- 5.2 As far as the council is aware, the permitted use of the land subject of the Enforcement Notice Appeal is agricultural.

## 6. GROUND OF APPEAL

- i. **Ground (a)** That planning permission should be granted for what is alleged in the notice.
- ii. **Ground (f)** The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
- iii. **Ground (g)** The time given to comply with the notice is too short.

## 7. LA RESPONSE TO GROUNDS OF APPEAL UNDER GROUND A

- 7.1 The case for the Local Authority is straight forward. The development subject to the appeal is unauthorised and the development is inherently harmful to the Green Belt and rural landscape. Our determination is that the level of harm clearly outweighs any factors in favour of the development in the planning balance.

### 7.2 **1. Harm to the Green Belt.**

- 7.2.1 The appeal proposals constitute inappropriate development in the Green Belt and substantial weight must be attributed to this harm. The development, whether considered on a permanent or temporary basis, causes substantial, demonstrable harm to the Green Belt by reason of its inappropriateness.

- 7.2.2 Planning Policy for Traveller Sites (31<sup>st</sup> August 2015) sets out the Government's planning policy for traveller sites, to be read in conjunction with the National Planning Policy Framework. Core Strategy Policy H6 (7) is consistent with this.

- 7.2.3 Policy E: Traveller sites in Green Belt at para. 16 re-affirms the Government commitment to the protection of the Green Belt stating that:

*"Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances".*

- 7.2.4 The south-eastern quarter of the land contains the derelict remains of abandoned stables, along with detritus left over from that use. Between 2003 and 2015, there were areas of hard standing, but these seem to have been removed, or were otherwise reclaimed by nature by April 2016. Appendix 1 contains aerial photography dating between 2003 and 2021, which shows the location of the stables, their deterioration, and the returning of the land to nature. The unauthorised development, comprising of hard standing, up to 9 caravans and a residential-style close-boarded fence, represents a significant intensification of development on the site.

- 7.2.5 Views across and beyond the site from the public right of way, although previously restricted by vegetation of varying thickness, have now been blocked entirely by the erection of the residential-

style close-boarded fence. Internal landscaping schemes would serve only to improve the amenity of the interior of the site, whereas the external view would remain as that of the residential-style close-boarded fence.

7.2.6 The fundamental aim of Green Belt policy is to keep land permanently open; the essential characteristics of Green Belts are their openness and their permanence (para. 133 NPPF). As established by the Court of Appeal in **Turner v SSCLG & East Dorset Council** (2016), the openness of the Green Belt can have both visual and spatial dimensions.

7.2.7 As **Turner** sets out, the impact on ‘openness’ is not simply a volumetric analysis but can be a multifaceted question that involves looking at both the spatial and visual impact of a proposal on the Green Belt (see [14] of **Turner**). The visual dimension of openness was encapsulated by the words of Lord Justice Sales (at [15] of **Turner**):

*“Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl”*

7.2.8 The harm caused through loss of openness has been exacerbated by the unauthorised intensification and spread of development within the site, making this a significant negative factor in the planning balance.

7.2.9 Additional Green Belt harm is caused by encroachment into Green Belt open countryside. To assist in safeguarding the countryside from encroachment is one of the 5 cornerstone purposes of designating land as Green Belt (para. 134 NPPF).

### 7.3 **2. Any Other Harm.**

7.3.1 Core Strategy Policy EQ4: ‘Protecting and Enhancing the Character and Appearance of the Landscape’, recognises the intrinsic character and value of the South Staffordshire landscape and seeks to maintain and wherever possible enhance this character, including the protection of valued trees.

7.3.2 This policy states, inter alia, that:

*“Throughout the District, the design and location of new development should take account of the characteristics and sensitivity of the landscape and its surroundings, and not have a detrimental effect on the immediate environment and on any important medium and long-distance views”*

and that:

*“The siting, scale, and design of new development will need to take full account of the nature and distinctive qualities of the local landscape”.*

7.3.3 Furthermore, Core Strategy Policy EQ11: ‘Wider Design Considerations’, at sub para. C. Form e) states that:

*“Proposals should respect local character and distinctiveness including that of the surrounding development and landscape, in accordance with Policy EQ4, by enhancing the positive attributes whilst mitigating the negative aspects”.*



7.3.4 Additionally, Core strategy Policy EQ12: 'Landscaping' adds that the landscaping of new development should:

*"c) protect and enhance key landscape features".*

7.3.5 These adopted Local Plan landscape policies are consistent with the sustainable development objectives identified at para. 8 c), and within Chapter 15 of the NPPF, which aim to protect and enhance the natural environment and valued landscape character of the area.

7.3.6 Written Ministerial Statement – HLWS404 'Green Belt Protection and Intentional Unauthorised Development' (Appendix 2) sets out changes to national planning policy, to make intentional unauthorised development a material consideration in planning decision-making, and also to provide stronger protection for Green Belts. It is concerned with harm that is caused where the development of land has been undertaken in advance of obtaining planning permission that can involve Local Planning Authorities having to take Enforcement Action in the acknowledged public interest of protecting the Green Belt.

7.3.7 The continued unauthorised residential use of the site without the prior submission of a planning application to obtain planning permission shows disregard for the planning system that undermines public confidence, particularly in respect of the long-standing and acknowledged need to protect the Green Belt.

7.3.8 The development does not meet with the qualifying criteria of Policy H6 (8) of the adopted South Staffordshire Core Strategy due to its unacceptable negative impact on the openness of the Green Belt and on the landscape setting in general.

7.3.9 C.S Policy H6 sets out a series of criteria against which planning applications and the future allocation of sites through the Development Plan process for new/extensions to existing gypsy sites should be assessed. The appeal proposal is contrary to criterion 8a) of C.S. Policy H6.

Qualifying criteria 8a) of Policy H6 states that:

*"Proposals shall be sited and landscaped to ensure that any impact on the character and landscape of the locality is minimised, including impacts on biodiversity and nature conservation. In areas of nationally, sub-nationally or locally recognised designations planning permission will only be granted where the objectives of designation would not be compromised by the development – examples will include:*

- a) The Green Belt - where demonstrably harmful impact on the 'openness' of the Green Belt will be resisted".

7.3.10 The residential style of the boundary treatment to the appeal development is visually conspicuous in the landscape and forms part of public domain views from Saredon Road and from the public right of way as a whole. The development causes significant harm to the landscape character and appearance of the area, whilst offering no mitigation to its impact and no enhancements of any kind.

7.3.11 The quantum of development consisting of an extensive area of hardstanding dotted with caravans would have a significant negative impact on the openness of the Green Belt contrary to NPPF Green Belt Policy and Policy GB1 of the adopted Core Strategy. The combined quantum of development proposed, considered in conjunction with the boundary treatment, would result in a significant reduction in openness.

## 7.4 3. Other Material Considerations

7.4.1 Other relevant matters for local planning authorities when considering planning applications for traveller sites are set out in paragraph 24 of PPTS as comprising:

- a. the existing level of local provision and need for sites
- b. the availability (or lack) of alternative accommodation for the applicants
- c. other personal circumstances of the applicant
- d. the locally specific criteria used to guide the allocation of sites in plans or, which form the policy where there is no identified need for pitches/plots, used to assess applications that may come forward on unallocated sites
- e. determining applications for sites from any travellers and not just those with local connections

7.4.2 Paragraph 24 then continues, with the following caveat:

*“However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”*

## 7.5 Provision and Need for Sites

7.5.1 The Local Development Plan position is that:

The 2012 adopted Core Strategy contains Policy, *H6: Gypsies, Travellers and Travelling Showpeople* sets out criteria for the determination of applications for gypsy and traveller sites and pitch requirements up to 2028. The 2018 Site Allocations Document (SAD) delivers the residual pitch requirements from Policy H6, with the allocations to meet these requirements set out in Policy SAD4 and is based on the 2008 GTAA evidence of need. The SSC Policy Note, February 2021 update (Appendix 3) gives the level of permanent pitch provision in relation to evidenced needs under the 2008, 2014 and 2017 needs assessments.

7.5.2 The SAD allocates pitches to ensure that the pitch requirements identified in the Core Strategy were met. New provision for gypsies and travellers has therefore come through the Plan Led system. Additional provision will come through the Local Plan Review to enable sites to be located in the most suitable locations and where relative Green Belt and landscape and other environmental impacts have been strategically assessed, and where the need is the greatest. New provision for Gypsy and Traveller pitches should come through this plan-making process, considered in a sustainable, strategic manner, to minimise the impact of sites (inter alia) on the Green Belt and landscape of South Staffordshire, which is such an important characteristic of the District.

7.5.3 A further updated needs assessment, following changes to Government advice to Local Authorities in undertaking needs assessments, will be used in the on-going review of the Local Plan. This process will include Duty to Co-operate discussions with neighbouring Authorities as to how the identified needs can be collectively best met to meet the aims of sustainable development and NPPF objectives, including the importance attached to the protection of Green Belts.

7.5.4 The SAD assists in meeting needs in the short term and the new Local Plan/Duty to Cooperate agreements will focus on meeting strategic needs in the medium to long term.

- 7.5.5 The needs/issues of the Gypsy and Traveller community was consulted on recently at Preferred Options stage of the emerging Local Plan. This consultation took place from 1st November 2021 to 13th December 2021 under the provisions of the revised 2020 Local Development Scheme programme, anticipating final Adoption in Winter 2023, to include the strategic allocation of sites to meet identified needs.
- 7.5.6 The Preferred Options consultation looked at how best to meet the needs of our existing communities identified in the emerging GTAA and asked if there were alternative approaches that the Council needed to consider. Representations to the plan are currently being considered by the Council to inform the Publication Plan consultation earmarked for Summer 2022. It is anticipated that the Local Plan will be submitted to the Secretary of State for Examination at the end of 2022, when an inspector will be appointed to test the soundness of Local Plan proposals as well as the robustness of the new evidence base (including GTAA).
- 7.5.7 There is therefore an expectation that sites will come forward through the submission of planning applications in 2024. It is anticipated that the Local Plan Review DPD will be adopted in 2023, allowing a further period of 12 months for the preparation, submission and determination of planning applications to deliver on the identified revised need for pitches. This process will provide for the planned location of Gypsy and Traveller sites/pitches based on the support of adopted policy as the preferred method of delivery advocated by the N.P.P.F. and Planning Policy for Traveller Sites (P.P.T.S.) and supported by adopted Core Strategy Policy H6.
- 7.5.8 Substantial progress has been made towards the delivery of Gypsy and Traveller Sites in accordance with Development Plan policy in South Staffordshire, with 8 permanent pitches being granted planning permission in the Green Belt since the adoption of the Site Allocations Document in 2018. This demonstrates the Local Authority's pro-active and positive approach to the delivery of gypsy and traveller pitches. Application of the preferred Plan Led approach is of great importance within an area that is predominantly Green Belt.
- 7.5.9 In such circumstances it is not considered that 'failure of the development plan process' should be material to a grant of planning permission on either a permanent or a temporary basis for inappropriate development within the Green Belt which causes significant harm-by-definition, reduction of openness, and increased encroachment. There is clear, tangible progress towards the adoption of a Site Allocations Policy for the strategic delivery of Gypsy and Traveller sites in South Staffordshire.
- 7.5.10 Planning Policy for Traveller Sites (31<sup>st</sup> August 2015) sets out the Government's planning policy for traveller sites, to be read in conjunction with the National Planning Policy Framework.

Core Strategy Policy H6 (7) is consistent with this aim.

Policy E: Traveller sites in Green Belt at para. 16 re-affirms the Government commitment to the protection of the Green Belt stating that:

*"Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances".*

- 7.5.11 Para. 27 states that:

*“If a local planning authority cannot demonstrate an up-to-date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as (inter alia) Green Belt”.*

- 7.5.12 South Staffordshire Council acknowledges that it cannot currently demonstrate a 5-year supply of Gypsy and Traveller pitches in relation to identified need. However, the current relevant PPTS advice is that identified Green Belt harm is not reduced by a lack of 5-year supply.
- 7.5.13 The LA is actively, positively and progressively working towards the delivery of sites through Local Plan Review Site Allocations to meet identified need. This will include the strategic consideration of Gypsy and Traveller site/pitch provision related to identified needs across the District, including relative assessment of sites in terms of Green Belt and landscape impacts. Areas in which this Site has a significant detrimental impact. This strategic approach is especially important within a District that is 80% Green Belt designated, with scant brownfield site opportunities.
- 7.5.14 An existing shortfall is acknowledged, all existing sites in South Staffordshire are privately owned, and it is also acknowledged that there may be no available alternative sites. However, the P.P.T.S. states that pitch provision should be plan led. The LA will meet its objectively assessed pitch requirements through the Local Plan Review which will include the strategic allocation of Gypsy and Traveller pitches/sites, following consultations with neighbouring Authorities.

## 7.6 Personal Circumstances

- 7.6.1 The appellants rights are acknowledged under the Human Rights Act 1998 and Equality Act 2010, as are the best interests of the appellants children (UN Convention on the Rights of the Child). In this case however no information is provided in respect of the specific educational or health requirements of the children.
- 7.6.2 As set in **Stevens v Secretary of State for Communities and Local Government** [2013] EWHC 792 (Admin); while the interest of the child should be a primary consideration it should not be determinative of the planning issue and nor should it necessarily carry greater weight than any other consideration.
- 7.6.3 In addition, when applying the concept of proportionality to human rights in respect of development proposals that would be demonstrably harmful to the interests of protecting the Green Belt, the LA concur with the balancing of issues and conclusions of the Inspector in a dismissed appeal relating to a similar Green Belt case at Streets Lane, Great Wyrley (para. 28, appeal decision APP/C3430/W/18/3201530, dated 22 March 2019 – Appendix 4).

*“However, these are qualified rights and interference may be justified where in the public interest. The concept of proportionality is crucial. These interferences would be in accordance with the law and in pursuit of a well-established and legitimate aim, that is, the protection of the Green Belt. The harm that would be caused by the development in terms of the Green Belt would be substantial. In the context of this case it outweighs the human rights of the families and the best interests of the children. Despite the need for pitches, the lack of a five-year supply, the lack of an affordable, available and suitable alternative site and the other matters weighing in the appellant’s favour, I have concluded that the granting of a temporary or*

*permanent planning permission would not be appropriate. I am satisfied that the legitimate aim of the protection of the Green Belt cannot be achieved by any means which are less interfering with the appellant's and the families rights. They are proportionate and necessary in the circumstances".*

7.6.4 The same material issues and principles apply to the current appeal consideration.

#### **7.7 Very Special Circumstances**

It is the Local Authorities case that none of the issues in favour of the development put forward, whether individually or when combined, override the strong established and re-affirmed (August 2015 revised PPTS) national and local planning policy presumption against inappropriate development within the Green Belt.

### **8. LA RESPONSE TO GROUNDS OF APPEAL UNDER GROUND F**

8.1 Aerial photography does not support the appellants assertion that hard standing has been present for more than 20 years – as of c2016, the hard standing appears to have either been removed, or otherwise returned to nature (as evidenced in Appendix 1).

8.2 It is considered that any hard standing now laid is a new act of development requiring planning permission, therefore the requirement to reinstate the Land to agricultural land by reseeding or returfing the land where the unauthorised hardstanding is located with a mixture of wild-flower mix or a 60% to 40% ratio mix of wild-flower and grass seed is not considered to go beyond what is necessary to remedy the breach.

### **9. LA RESPONSE TO GROUNDS OF APPEAL UNDER GROUND G**

9.1 The Council accepts that finding an alternative permanent site may be problematic and is willing to vary the Time for Compliance period for steps 1-3 of the enforcement notice (appendix 5) to 6 months. The Council do not consider that it is necessary to vary the timescale for the remaining steps, as the actions required can be completed whilst the caravans and vehicles remain on site.

### **10. CONCLUSIONS**

10.1 The personal accommodation needs and personal circumstances of the appellant (including the best interests of children), together with the acknowledged current lack of alternative sites and shortfall of pitches against the 5-year supply based on the G.T.T.A assessment, have been fully considered in the balancing exercise undertaken.

10.2 It is not considered however that any of these issues, individually or when combined, tip the balance in favour of a permanent or temporary permission in the circumstances of this case, with particular regard to the established and acknowledged presumption against inappropriate development within the Green Belt, which attracts significant weight as re-affirmed by the 2015 update to the PPTS.

10.3 The protection of Green Belts is a crucial and fundamental aim of long established local and national planning policy and is therefore a legitimate objective in the public interest, based on both adopted Development Plan and Central Government Policy, with a clear basis in planning legislation. In such circumstances, some interference with Article 8 rights is permissible. The protection of the public interest, in this case the protection of the Green Belt, cannot be achieved by means which are less

interfering than refusal of planning permission. Therefore, limited weight should be given to the current lack of a five year supply of pitches.

- 10.4 The development is inappropriate development by definition within the Green Belt which should be afforded significant weight.
- 10.5 In addition, the quantum and spread of development causes significant harm to the openness of the Green Belt and by encroachment into Green Belt countryside. These harms should each be given significant weight in their own right in the planning balance.
- 10.6 The harm by encroachment of the development within the Green Belt is significant. The development conflicts with one of the objectives of the Green Belt, namely, to assist in safeguarding the countryside from encroachment which should be given significant weight.
- 10.7 The development also impacts negatively on and conflicts with identified national and local planning policy aimed at protecting the character and appearance of the landscape of the area. These harms should also be given significant weight in their own right.
- 10.8 The appeal relates to clearly intentional unauthorised development, given the circumstances described above, and this is an additional negative factor against the proposal that should be given significant weight in the light of the demonstrable harms that have been caused.
- 10.9 The Gypsy or Traveller status of the occupants of the site remains untested as the council has not seen any evidence of the Gypsy Traveller status of the appellant and his dependents.
- 10.10 The LPA decision to take Enforcement Action accords with prevailing relevant national and local Green Belt and Gypsy and Traveller planning policy and guidance, and landscape/countryside policy. It is therefore respectfully requested that the appeal is dismissed.

## **11. SUGGESTED CONDITIONS**

1. The use hereby permitted shall be for a limited period, being 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
2. The site shall not be occupied by any persons other than gypsies and travellers as defined in the National Planning Policy for Traveller Sites.
3. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
4. No commercial activities shall take place on the land, including the external storage of materials.
5. No more than 9 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be static caravans or mobile homes) shall be stationed on the site at any time.
6. Within 1 month of permission being granted, details of site drainage and a landscape scheme shall be submitted to the LPA for agreement in writing and the approved scheme shall be completed and maintained to the satisfaction of the LPA.

7. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependents:

*LIST OF PERMITTED OCCUPIERS*

8. When the Land ceases to be occupied by those named in condition 7 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

# APPENDIX 1



12/2003

Hospital Ln

Hospital Ln

Hospital Ln

Legend





08/2007

Hospital Ln

Hospital Ln

Hospital Ln

Legend

Google Earth

20 m





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04/2016

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# APPENDIX 2



## **APPENDIX 4**

# **WRITTEN MINISTERIAL STATEMENT**

# Green Belt protection and intentional unauthorised development: Written statement - HLWS404

**WS**

**Department for Communities and Local Government**

Made on: 17 December 2015

Made by: **Baroness Williams of Trafford** (Parliamentary Under Secretary of State for Communities and Local Government)

 **HLWS404**



## **Green Belt protection and intentional unauthorised development**

My hon. Friend the Minister of State for Housing and Planning has made the following Written Ministerial Statement.

This Statement confirms changes to national planning policy to make intentional unauthorised development a material consideration, and also to provide stronger protection for the Green Belt, as set out in the manifesto.

The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action.

For these reasons, we introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received since 31 August 2015.

The Government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.

For this reason the Planning Inspectorate will monitor all appeal decisions involving unauthorised development in the Green Belt to enable the Government to assess the implementation of this policy.

In addition we will consider the recovery of a proportion of relevant appeals in the Green Belt for the Secretary of State's decision to enable him to illustrate how he would like his policy to apply in practice. Such appeals will be considered for recovery under the criterion set out in 2008: "There may on occasion be other cases which merit recovery because of the particular circumstances."

After six months we will review the situation to see whether it is delivering our objective of protecting land from intentional unauthorised development.

The National Planning Policy Framework makes clear that most development in the Green Belt is inappropriate and should be approved only in very special circumstances. Consistent with this, this Statement confirms the government's policy that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

This statement has also been made in the House of Commons: [HCWS423](#)

# APPENDIX 3

## **Planning Policy Note: Permanent Residential Gypsy & Traveller Pitches - Need vs Supply (February 2021).**

The note below summarises the number of planning permissions for permanent gypsy pitches granted within South Staffordshire against need calculations from the three most recent gypsy and traveller needs assessments for South Staffordshire.

### **Core Strategy 2012**

The most recent adopted pitch targets for the District were set out in the 2012 Core Strategy DPD. These targets were based upon a Gypsy and Traveller Accommodation Assessment 2008 and are set out in Policy H6 of the Core Strategy. These targets are shown in Appendix A, alongside the number of permanent pitch permissions during that period. This shows that the Council has delivered a surplus of pitches against its targets up to 2020/21, delivering 11 pitches more than was needed as of that year.

### **Subsequent need assessments in 2014 and 2017**

Following the Core Strategy 2012's adoption two further need assessments were prepared. The first of these is the Gypsy and Traveller Accommodation Assessment 2014. These need figures are shown in Appendix B, alongside the number of permanent pitch permissions during that period. This shows that the Council has delivered a surplus of pitches against its targets up to 2020/21, delivering 16 pitches more than was needed as of that year.

A further needs assessment was subsequently carried out with the neighbouring Black Country authorities and was published in 2017. These need figures are shown in Appendix C, alongside the number of permanent pitch permissions during that period. As of 2020/21, the Council has a shortfall of pitches against the 2017 needs assessment. However, neither the 2014 or 2017 needs assessments have been examined at examination and both remain untested.

### **Further work to be undertaken to inform the current Local Plan Review**

The Council is currently preparing a Local Plan Review to cover the period 2018 – 2037. This will be submitted for examination at the end of 2022, as set out in the latest Local Development Scheme<sup>1</sup>. The Council has commissioned consultants to review and update the gypsy and traveller pitch needs for the District to inform this Local Plan Review, reflecting the increasingly dated nature of the previous 2017 needs assessment, and taking account of revised Government advice issued in respect of the preparation of gypsy and traveller needs assessments in 2018.

If there is an unmet need on non-Green Belt sites once this work is concluded, the Council will engage with other local authorities through the Duty to Co-operate prior to releasing further Green Belt land, as required by paragraph 137(c) of the NPPF. This will be necessary to ensure that any future Green Belt release to meet pitch needs will only be done where genuinely required and it would be inappropriate to rely on Green Belt to meet pitch needs prior to this process being undertaken.

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<sup>1</sup> Available here: <https://www.sstaffs.gov.uk/planning/local-development-scheme.cfm>

**Appendix A - Gypsy and Traveller Accommodation Assessment 2008: need vs pitch permissions**

South Staffordshire Permanent Residential Gypsy Pitches																
Year	07/ 12	12/ 13	13/ 14	14/ 15	15/ 16	16/ 17	17/ 18	18/19	19/20	20/21	21/22	22/23	24/25	25/26	26/27	27/28
Requirement	32	15			17			15			6					
Cumulative Requirement	32	36	40	44	47	51	54	58	61	64	68	72	76	79	82	85
Permanent Permissions	41	5	4	15	2	0	0	5	0	3						
Cumulative Permissions	41	46	50	65	67	67	67	72	72	75						
Residual Requirement +/-	+5	+6	+6	+18	+16	+13	+14	+11	+11	+11						

**Appendix B - Gypsy and Traveller Accommodation Assessment for South Staffordshire District Council 2014: need vs pitch permissions**

South Staffordshire Permanent Residential Gypsy Pitches																
Year	13/ 14	14/ 15	15/ 16	16/ 17	17/ 18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	
Requirement	11					11					11					
Cumulative Requirement	3	5	7	9	11	14	16	18	20	22	25	27	29	31	33	
Permanent Permissions	5	4	15	2	0	5	0	3								
Cumulative Permissions	5	9	24	26	26	31	31	34								
Residual Requirement +/-	+2	+4	+17	+17	+15	+17	+15	+16								

Link to document:

<https://www.sstaffs.gov.uk/doc/176628/name/SD105%20SSDC%20GTAA%20%20FINAL%20REPORT%2027%20Jan%202014.pdf/>

**Appendix C - Black Country and South Staffordshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment 2016 (published May 2017):**  
need vs pitch permissions.

South Staffordshire Permanent Residential Gypsy Pitches																				
Year	16/ 17	17/ 18	18/ 19	19/ 20	20/ 21	21/ 22	22/ 23	23/ 24	24/ 25	25/ 26	26/ 27	27/ 28	28/ 29	29/ 30	30/ 31	31/ 32	32 /33	33/ 34	34/ 35	35 /36
Requirement	48 (37)				12 (11)				13 (12)				14 (13)							
Cumulative Requirement (8)*	10	20 (16)	30 (23)	39 (30)	48 (37)	51 (40)	54 (42)	56 (44)	58 (46)	60 (48)	63 (51)	66 (54)	69 (56)	71 (58)	73 (60)	76 (63)	79 (66)	82 (69)	85 (71)	87 (73)
Permanent permissions	2	0	5	0	3															
Cumulative permissions	2	0	7	0	10															
Residual	-8 (-6)	-18 (-16)	-23 (-16)	-32 (-27)	-38 (-27)															

*\*Brackets demonstrates psychological aversion figure*

Link to document:

<https://blackcountryplan.dudlev.gov.uk/media/11534/black-country-and-south-staffordshire-gttsaa-final-report-may-2017.pdf>

# APPENDIX 4





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## Appeal Decision

Hearing held on 6 February 2019

Site visit made on 6 February 2019

**by Rachel Walmsley BSc MSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 March 2019**

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**Appeal Ref: APP/C3430/W/18/3201530**  
**122 Streets Lane, Cheslyn Hay WS6 7AW**

- 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 Barry Birch against the decision of South Staffordshire Council.
  - The application Ref 17/00572/COU, dated 20 June 2017, was refused by notice dated 3 November 2017.
  - The development proposed is change of use of land for use as a caravan site for the applicants family.
- 

### Decision

1. The appeal is dismissed.

### Procedural matters

2. A revised version of the National Planning Policy Framework (the Framework)<sup>1</sup> has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework and any comments received in reaching my decision.
3. At the time of my site visit caravans were present on the appeal site, albeit not in the location or to the specification applied for in the planning application. I have therefore decided the appeal on the basis of what I saw on site and the evidence before me.

### Main Issues

4. These are:
  - (i) whether the proposal would be inappropriate development in the Green Belt, taking into account the effect of the proposal on the openness of the Green Belt and the purposes of including land within it; and,
  - (ii) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

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<sup>1</sup> National Planning Policy Framework, Ministry of Housing, Communities and Local Government (July 2018)

considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### ***Inappropriate development and openness***

5. The Framework (paragraph 133) indicates that openness is an essential characteristic of the Green Belt with a fundamental aim of Green Belt policy being to prevent urban sprawl and keep land permanently open. There is a general presumption against inappropriate development in the Green Belt unless very special circumstances exist. Most new development should be regarded as inappropriate, but for certain defined exceptions.
6. The main parties agree that the development would be inappropriate development in the Green Belt. The three caravans proposed would extend the presence of structures in the landscape beyond a line of frontage development and therefore into the countryside. Given the form and scale of the caravans, they would also be a notable feature on an open and development free area of land. The proposal would therefore result in a loss of openness and an encroachment into the countryside.
7. The openness of the Green Belt has a spatial as well as a visual aspect. Visually the development would be largely obscured from views from the highway by an existing property and boundary landscaping which front the appeal site. Boundary landscaping along the other three sides of the site would also help screen the caravans from local views. Nonetheless the landscaping would not obscure or minimise the presence of the development in a way that the openness of the Green Belt could be said to be preserved.
8. My attention is drawn to an appeal<sup>2</sup> which found that the development proposed would have a limited effect on the openness of the Green Belt because of an existing progression of built features into the Green Belt and high conifer hedges. I have found that at the appeal site the landscaping would do little to mitigate the harm to the openness of the Green Belt and there is no development that exists within the Green Belt that sets a precedent for development to progress further into it. As such the appeal decision carries limited weight in favour of the appeal.
9. The proposal would result in a loss of openness of the Green Belt and an encroachment into the countryside which would be contrary to a fundamental aim of Green Belt policy as set out in the Framework.
10. Policy H6 of the Core Strategy<sup>3</sup> grants planning permission in suitable locations for additional pitches for gypsies, travellers and travelling showpeople in accordance with the national Planning Policy for Traveller Sites (PPTS), the Framework and criteria 1-9 listed within the policy. I concur with the main parties that criterion 8 (a) is the most relevant and disputed criterion. Whilst landscaping would help to mitigate the visual impact of the development, I have found that the proposal would have a demonstrably harmful impact on the openness of the Green Belt. As such the development would be contrary to criterion 8 (a) of policy H6.

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<sup>2</sup> APP/C3430/W/17/3187057

<sup>3</sup> South Staffordshire Council, Core Strategy Development Document (Adopted 11 December 2012)

11. As with an appeal before me<sup>4</sup>, the development performs well against most of the criteria within policy H6. Whilst this carries some weight in favour of the proposal, the development would have a demonstrably harmful impact on the openness of the Green Belt. In accordance with the Framework, substantial weight must be given to this harm.

### ***Other considerations***

#### *Need for and supply of sites*

12. The PPTS indicates in Policy B that Councils should be able to demonstrate a five-year supply of deliverable sites to meet the identified need for gypsy and traveller accommodation. The Council accepts that it cannot demonstrate an adequate five-year supply.
13. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) dated 2017 indicates that there is an established need for 48 new pitches in the five-year period 2016-2021. The Site Allocations Document (SAD)<sup>5</sup> allocates 20 new pitches which is substantially short of the number of pitches needed. The Council confirmed that the remaining supply will come through sites that meet policy requirements. With a large percentage of undeveloped land in the district being Green Belt and with no alternative sites available, a supply of sites to meet the need identified is not immediately forthcoming.
14. I find that the Council cannot demonstrate a five-year supply of deliverable sites to meet the identified need for gypsy and traveller accommodation. The PPTS makes it clear that where a proposal is on land designated as Green Belt, the lack of an up-to-date five-year supply of deliverable sites is not a significant material consideration when considering proposals for the grant of temporary planning permission. As the appeal proposal is for a permanent development, it would have a greater impact on the Green Belt than a temporary site, and I consider that the lack of an adequate supply of sites to meet the general need for accommodation carries only moderate weight.

#### *Alternative sites*

15. With no vacant pitches on publicly available sites and private sites being full, I am satisfied that there are no suitable alternative sites available for the appellant and his extended family.
16. The large percentage of the borough designated as Green Belt restricts the potential for a suitable site. Whilst policy H6 of the Core Strategy provides for traveller development, the restrictive approach taken by planning policy to development in the Green Belt means that the matter of alternative sites carries important weight in support of the appeal proposal.

#### *Personal need and circumstances*

17. At the date of the hearing the appellant, Mr Barry Birch and his wife Ceylon and their children Barry Birch (Jnr) and his wife Laney Birch, Brad Birch (age 19), Hazel Birch (age 18) and Cole Birch (age 15) were living in caravans on the appeal site. The family comprise four households; Barry and Ceylon Birch; Barry (Jnr) and Laney Birch; Hazel Birch; and Brad and Cole Birch. If the

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<sup>4</sup> APP/Q4625/C/13/2209742 & APP/Q4625/C/13/2209777

<sup>5</sup> Site Allocations Document (adopted 11 September 2018)

appeal is allowed, Barry and Ceylon Birch would live in the existing bungalow, once works to it are complete, and other family members in the three caravans proposed.

18. I heard that the male members of the family carry out manual work, including gardening and property maintenance, and travel within around fifty miles of the appeal site to seek and carry out this work. The Council does not dispute traveller status and having regard to the definition in Annex 1 of the PPTS, I am satisfied that the occupants of the appeal site are travellers for the purpose of planning policy.
19. The family have moved from site to site for many years, stopping at the side of the road for limited periods of time. They have more recently resided at the appeal site following their decision to live closer to and offer support to their son Brad who was the first to move to the site. The appellant is seeking a settled base so that his immediate and extended family can live together. The appellant owns the appeal site which makes it a logical and convenient place to reside.
20. There are no alternative sites available to the appellant. The Council re-affirmed this position stating that there were no publicly available sites for the appellant and his family to reside. The appellant had not considered what he would do if the appeal was dismissed but strongly held the view that it would put the family in a difficult position of having no-where to reside which, in turn, would exacerbate the health problems members of his family currently suffer.
21. At the time of the hearing three family members were suffering with a shared health problem that requires regular medication. I have no written evidence of the medical condition, nor did I hear that proximity to the doctors surgery in Cheslyn Hay was imperative. Nonetheless I did hear that being registered at a local surgery has enabled those concerned to receive prescribed medication. In addition, two family members visit the doctors on a weekly and monthly basis respectively which has been made possible since living on the appeal site which is within a reasonable travelling distance of a doctor's surgery. Another family member visits Cannock Hospital every six months. The hospital is within about three miles of the appeal site making visits convenient and possible.
22. There are no children within the family who attend school currently but it was suggested that children may do so in the future and the proximity of the site to local schools would facilitate this. With no children requiring education at the time of the hearing, the matter of education carries little favourable weight. Nonetheless access to medical services as described is an important factor in support of the appeal proposal and in light of the above I accord moderate weight to the personal need of the appellant and his extended family for accommodation.

*Whether the harm is clearly outweighed by other considerations*

23. The Framework advises that inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

24. The substantial harm caused by reason of inappropriateness and the significant impact on openness and the harm to Green Belt purposes carries substantial weight against the proposal.
25. In favour of the appeal is the unmet need for sites within the district. This carries moderate weight in favour of the development, as does the failure of the Council to meet that need. The lack of alternative sites for the appellant and his family also provides important weight in favour of the appeal. The proposed development would enable the family to maintain their economic connections with the area and access health services justified by their personal circumstances. This carries moderate weight in favour of the proposal. Also in favour of the appeal is the limited weight to the favourability of the site in the context of policy H6 and the many criteria listed. However, whilst general need and personal need are important factors, in accordance with the PPTS and subject to the best interests of the child, they do not justify permanent harm to the Green Belt. Furthermore, the weight to compliance with criteria in policy H6 is limited and does not clearly outweigh the substantial harm to the Green Belt.
26. Although the application is for a permanent permission I have considered the option of a temporary permission. A temporary permission would give the family an opportunity to pursue a site through the current review of the local plan. However, a temporary permission would not overcome the harm found to the Green Belt as a result of caravans being on the appeal site. In addition and crucially, paragraph 27 of the PPTS advises that if a local planning authority cannot demonstrate an up-to-date supply of deliverable sites, this cannot be a significant material consideration when considering applications for the grant of temporary planning permission where the development proposed is in the Green Belt. A temporary permission, therefore, would not be appropriate.
27. In my considerations I have taken into account the human rights of the appellant and his extended family. Dismissal of the appeal would result in the family continuing to travel with no settled base for their caravans. This would represent an interference with the best interests of the children and with the occupants' homes, their family life and their livelihoods, as detailed within their rights under Article 8 of the European Convention on Human Rights. This adds weight in favour of the appeal.
28. However, these are qualified rights and interference may be justified where in the public interest. I turn to the matter of proportionality. The harm that would be caused by the development to the Green Belt would be substantial. In this case it outweighs the human rights of the families and the best interests of the children. Despite the need for pitches, the lack of a five-year supply, the lack of alternative sites and other matters weighing in the appellant's favour, I have concluded that the granting of a temporary or permanent planning permission would not be appropriate. Therefore, the legitimate aim of the protection of the Green Belt cannot be achieved by any means which are less interfering with the appellant's and family's rights.
29. I therefore conclude that the matters in favour of the proposal do not clearly outweigh the identified harm to the Green Belt and the conflict this creates with the development plan and the Framework. As such these matters do not

amount to the very special circumstances necessary to justify inappropriate development on a permanent or temporary basis.

### **Conclusion**

30. None of the suggested conditions would overcome my objection to the appeal proposal. As such, for the reasons given above and having regard to all other matters raised, I conclude that the appeal is dismissed.

*R Walmsley*

INSPECTOR

### **APPEARANCES**

#### **FOR THE APPELLANT:**

Barry Birch  
Barry Birch (Jnr)  
Brad Birch  
Cole Birch  
Philip Brown                      Phillip Brown Associates

#### **FOR THE LOCAL PLANNING AUTHORITY:**

Paul Turner                      South Staffordshire Council  
Lucy MacDonald              South Staffordshire Council

#### **INTERESTED PERSONS:**

Jak Abrahams	Local Resident
Margaret Baggott	Local Resident
Lynda McBurnik	Local Resident
Janet Ceney	Local Resident
J Fletcher	Local Resident
M Fletcher	Local Resident
L Kilby	Local Resident
S Kilby	Local Resident
Audrey Kingston	Local Resident
Paul Kingston	Local Resident
Cllr Kath Perry	Great Wyrley Parish Council
Cllr Ray Perry	Great Wyrley Parish Council

#### **DOCUMENTS SUBMITTED DURING THE HEARING:**

**Document 1** – Signed and dated copy of the Statement of Common Ground

**Document 2** – Appeal decision ref APP/C3430/W/17/3187057

**Document 3** – Planning Enforcement Notice re16/00541/UNDEV dated 23 November 2017

**Document 4** – Third party objection, Cllrs R.J and Mrs K.M Perry

# APPENDIX 5





# South Staffordshire Council

## PLANNING ENFORCEMENT

The Occupier(s)

Land Lying to The Southwest of  
Saredon Road,  
Hospital Lane,  
Cheslyn Hay,  
Staffordshire

Case Officer: Lee Marbury

Telephone: 01902 696000

Email: [l.marbury@sstaffs.gov.uk](mailto:l.marbury@sstaffs.gov.uk)

Date: 22 June 2022

CASE REFERENCE	22/00222/TRAVH
DESCRIPTION	Without planning permission, the material change of use of the Land to a Sui Generis residential Gypsy and traveller site; the stationing of caravans and parking of associated vehicles on the Land; and unauthorised operational development, comprising of the laying of hardcore and erection of a close-boarded fence with concrete posts and gravel boards, which facilitate the change of use.
LOCATION	Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire

Dear Sir / Madam,

### **IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

#### **TOWN AND COUNTRY PLANNING ACT 1990**

(As amended by the Planning and Compensation Act 1991)

## **SECTION 171A(1) ENFORCEMENT NOTICE**

## **SECTION 183 STOP NOTICE**

I write to inform you that the Council have issued an enforcement notice and a stop notice in respect of the breach of planning control at the above land, and I now serve on you a copy of each Notice in view of your interest in the site.

Copies of the notice are being served on the following:

1. **The Occupier** of Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire.
2. **Billy Peter Rogers** of 132 Hill Street, Essington, Wolverhampton WV11 2BS and Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire.
3. **JULIE Rafferty** of 132 Hill Street, Essington, Wolverhampton WV11 2BS and Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire.

Please note that the stop notice takes effect on 24 June 2022 and there is no right of appeal.

Please also note that, unless an appeal is made to the Secretary of State beforehand, **the Enforcement Notice will take effect on 20 July 2022.** Once the notice has taken effect, you must ensure that the required steps for compliance are taken within the period specified in the Notice otherwise you may be liable for prosecution for failure to comply.

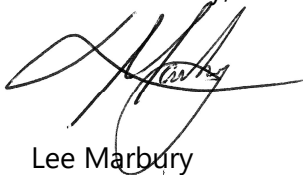
If you wish to appeal against the enforcement notice, please read the attached information sheet which outlines the procedure you need to follow and where you can obtain appeal documentation. You or your agent should complete the appeal forms and send one copy together with a copy of the enforcement notice and any fee required to the Planning Inspectorate at the address shown on the appeal form and to the Council at the above address.

Should you decide to appeal on ground A – that planning permission should be granted for the matters outlined in the notice, then a fee will be payable. The fee for this appeal would be a total of £924 all of which is payable to the Local Planning Authority.

Please note: your appeal must be received by the Planning Inspectorate before the date on which the Notices take effect.

Included with the enforcement notice are the relevant sections of the Town and Country Planning Act 1990 for your reference.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lee Marbury', written over a horizontal line.

Lee Marbury  
Enforcement Officer  
Planning Enforcement Team

- Enc:
- Enforcement notice
  - Stop notice
  - Note of relevant sections of the Town and Country Planning Act 1990 (as amended)
  - Information sheet relating to appeals

# **IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

## **TOWN AND COUNTRY PLANNING ACT 1990**

(As amended by the Planning and Compensation Act 1991)

### **ENFORCEMENT NOTICE**

#### **Material Change of Use**

**ISSUED BY:** South Staffordshire District Council

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the Land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THIS NOTICE RELATES**

Land known as 'Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire', (Land Registry Title number SF261287) ("the Land"), shown edged with a red line on the plan ("the Plan") attached to this notice.

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the material change of use of the Land to a Sui Generis residential Gypsy and traveller site; the stationing of caravans and parking of associated vehicles on the Land; and unauthorised operational development, comprising of the laying of hardcore and erection of a close-boarded fence with concrete posts and gravel boards, which facilitate the change of use ("the Development").

4. **REASONS FOR ISSUING THIS NOTICE**

1. It appears to the Council that the above breach of planning control has occurred within the last ten years.
2. The Development is inappropriate in the Green Belt, having a detrimental impact on the amenity and openness of the area, and is contrary to policies GB1, EQ4, EQ7, EQ8, EQ9, EQ11, EQ12, H6, EV11 and EV12 of the Core Strategy.
3. The Development is contrary to Core Policy 2 of the adopted Core Strategy: Protecting and Enhancing the Natural and Historic Environment.
4. The Development has an adverse effect on the character, appearance and amenity of the rural area, contrary to Policies EQ4 and EQ11 of the Adopted Core Strategy.
5. The council does not consider that very special circumstances have been put forward to justify a departure from the normal policy of restricting development in this Green Belt

Area, contrary to National Planning Policy Framework, Strategic Objectives 1 & 2 and Policy GB1 (Green Belt) of the adopted Core Strategy.

6. The Council does not consider that planning permission should be given for the Development because planning conditions could not overcome the objections to it.

## 5. **WHAT YOU ARE REQUIRED TO DO**

1. Cease the unauthorised residential use of the Land as a gypsy and traveller caravan site.
2. Remove any and all caravans from the Land, whether residential or otherwise, to include any and all accessories and items associated with them.
3. Remove any and all vehicles associated with the unauthorised material change of use of the Land.
4. Remove any and all unauthorised hard surfacing from the Land that has been laid out to facilitate the unauthorised use.
5. Remove any and all close-boarded fencing and concrete fence posts from the Land, constructed to facilitate the unauthorised use.
6. Remove any and all refuse and waste materials, to include any generated by compliance with steps 2-5 above, from the Land and dispose of at a licensed waste transfer site.
7. Reinstate the Land to agricultural land by reseedling or returfing the land where the unauthorised hardstanding is located with a mixture of wild-flower mix or a 60% to 40% ratio mix of wild-flower and grass seed.

## 6. **TIME FOR COMPLIANCE**

Steps 1 – 3: 1 (one) month from the date on which this Notice takes effect.

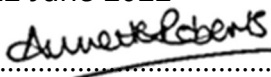
Steps 4 – 6: 3 (three) months from the date on which this Notice takes effect.

Step 7: On the first available planting season.

## 7. **WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect 20 July 2022 unless an appeal is made against it beforehand.

Dated: 22 June 2022

Signed  .....

Annette Roberts

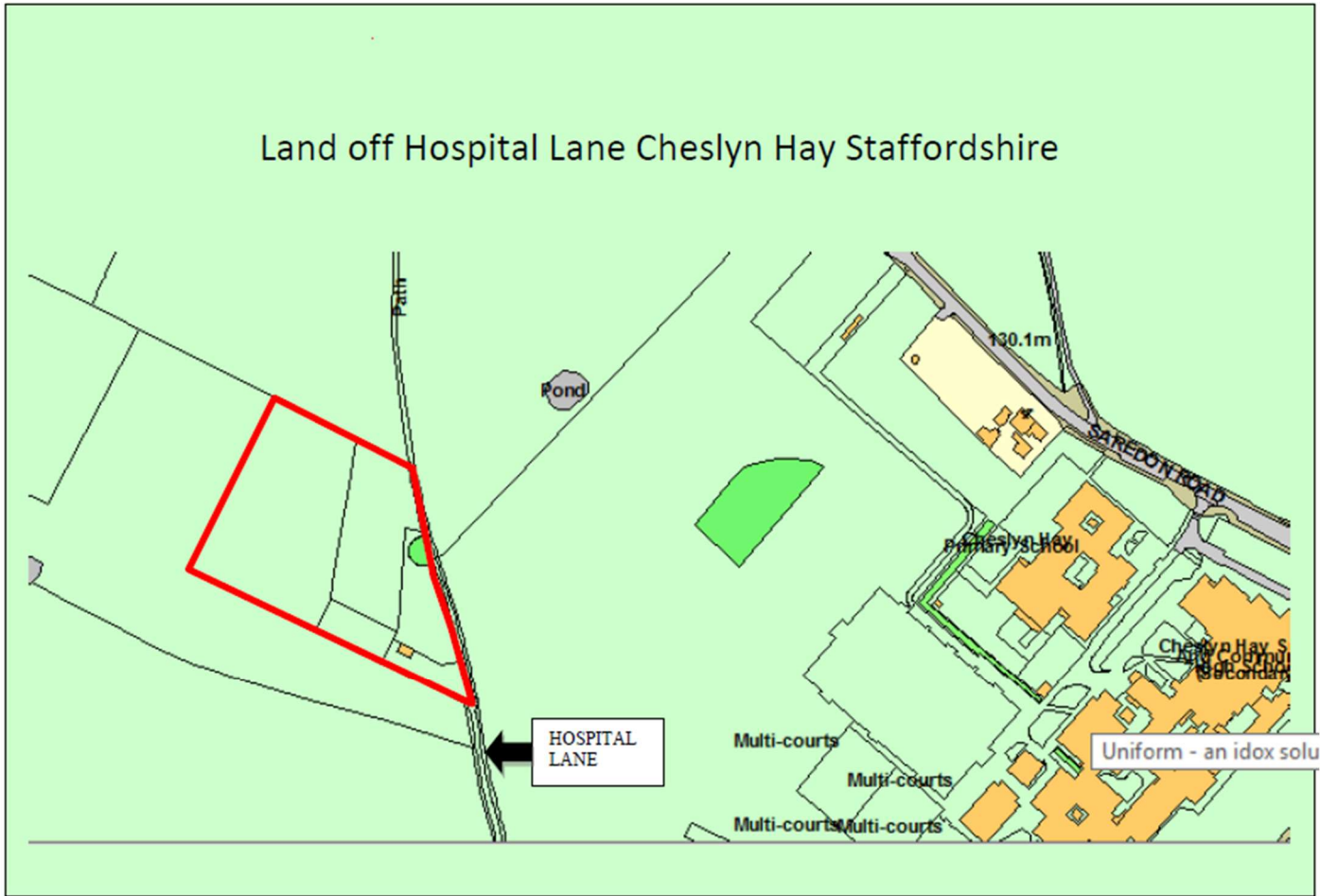
Corporate Director Planning and Business Growth, South Staffordshire District Council, Council Offices,  
Wolverhampton Road, Codsall, South Staffordshire WV8 1PX

Nominated Officer:

Lee Marbury

Enforcement Officer, Planning Enforcement Team, South Staffordshire District Council, Council Offices,  
Wolverhampton Road, Codsall, South Staffordshire WV8 1PX

Land Lying to The Southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire



# **ANNEX**

## **YOUR RIGHT OF APPEAL.**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before the date specified in paragraph 7 of the notice. The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal.

## **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

## **Relevant Extracts from the Town & Country Planning Act 1990**

### **[171A. — Expressions used in connection with enforcement.**

- (1) For the purposes of this Act—
  - (a) Carrying out development without the required planning permission;  
or,
  - (b) Failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
- (2) For the purposes of this Act—
  - (a) The issue of an enforcement notice (defined in section 172); or
  - (b) The service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.] <sup>1</sup>

#### **Notes**

<sup>1</sup> Added by Planning and Compensation Act 1991 c. 34 Pt I s.4(1) (January 2, 1992 except as it relates to breach of condition notices and subject to transitional provision specified in SI 1991/2905; July 27, 1992 otherwise subject to transitional provisions in SI 1992/1630 art.3)

#### **Extent**

Pt VII s. 171A(1)-(3): England, Wales

### **[171B. — Time limits.**

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent—

- (a) The service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) Taking further enforcement action in respect of any breach of planning control, if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.”] <sup>1</sup>

Notes

<sup>1</sup> Added by Planning and Compensation Act 1991 c. 34 Pt I s.4(1) (January 2, 1992 except as it relates to breach of condition notices and subject to transitional provision specified in SI 1991/2905; July 27, 1992 otherwise subject to transitional provisions in SI 1992/1630 art.3)

Extent

Pt VII s. 171B: England, Wales

**[171BA Time limits in cases involving concealment**

- (1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land in England, the authority may apply to a magistrates' court for an order under this subsection (a “planning enforcement order”) in relation to that apparent breach of planning control.
- (2) If a magistrates' court makes a planning enforcement order in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of—
  - (a) The apparent breach, or
  - (b) Any of the matters constituting the apparent breach, at any time in the enforcement year.
- (3) “The enforcement year” for a planning enforcement order is the year that begins at the end of 22 days beginning with the day on which the court's decision to make the order is given, but this is subject to subsection (4).
- (4) If an application under section 111(1) of the Magistrates' Courts Act 1980 (statement of case for opinion of High Court) is made in respect of a planning enforcement order, the enforcement year for the order is the year beginning with the day on which the proceedings arising from that application are finally determined or withdrawn.
- (5) Subsection (2)—
  - (a) Applies whether or not the time limits under section 171B have expired, and
  - (b) Does not prevent the taking of enforcement action after the end of the enforcement year but within those time limits.] <sup>1</sup>

Notes

<sup>1</sup> Added by Localism Act 2011 c. 20 Pt 6 c.5 s.124(1) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

Extent

Pt VII s. 171BA(1)-(5)(b): England, Wales

**[171BB Planning enforcement orders: procedure**

- (1) An application for a planning enforcement order in relation to an apparent breach of planning control may be made within the 6 months beginning with the date on which evidence of the apparent breach of planning control sufficient in the opinion of the local planning authority to justify the application came to the authority's knowledge.
- (2) For the purposes of subsection (1), a certificate—
  - (a) Signed on behalf of the local planning authority, and

- (b) Stating the date on which evidence, sufficient in the authority's opinion to justify the application came to the authority's knowledge, is conclusive evidence of that fact.
- (3) A certificate stating that matter and purporting to be so signed is to be deemed to be so signed unless the contrary is proved.
- (4) Where the local planning authority apply to a magistrates' court for a planning enforcement order in relation to an apparent breach of planning control in respect of any land, the authority must serve a copy of the application—
  - (a) On the owner and on the occupier of the land, and
  - (b) On any other person having an interest in the land that is an interest which, in the opinion of the authority, would be materially affected by the taking of enforcement action in respect of the apparent breach.
- (5) The persons entitled to appear before, and be heard by, the court hearing an application for a planning enforcement order in relation to an apparent breach of planning control in respect of any land include—
  - (a) The applicant,
  - (b) Any person on whom a copy of the application was served under subsection (4), and
  - (c) Any other person having an interest in the land that is an interest which, in the opinion of the court, would be materially affected by the taking of enforcement action in respect of the apparent breach.
- (6) In this section “planning enforcement order” means an order under section 171BA(1).<sup>1</sup>

#### Notes

<sup>1</sup> Added by Localism Act 2011 c. 20 Pt 6 c.5 s.124(1) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

#### Extent

Pt VII s. 171BB(1)-(6): England, Wales

### [171BC Making a planning enforcement order

- (1) A magistrates' court may make a planning enforcement order in relation to an apparent breach of planning control only if—

*Town and Country Planning Act 1990 Page 207*

- (a) The court is satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons, and
- (b) The court considers it just to make the order having regard to all the circumstances.
- (2) A planning enforcement order must—
  - (a) Identify the apparent breach of planning control to which it relates, and
  - (b) State the date on which the court's decision to make the order was given.
- (3) In this section “planning enforcement order” means an order under section 171BA(1).<sup>1</sup>

#### Notes

<sup>1</sup> Added by Localism Act 2011 c. 20 Pt 6 c.5 s.124(1) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

#### Extent

Pt VII s. 171BC(1)-(3): England, Wales

[Planning contravention notices] <sup>1</sup>



**[172. — Issue of enforcement notice.**

- (1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—
  - (a) That there has been a breach of planning control; and
  - (b) That it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served—

*Town and Country Planning Act 1990 Page 213*

- (a) On the owner and on the occupier of the land to which it relates; and
  - (b) On any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place—
  - (a) Not more than twenty-eight days after its date of issue; and
  - (b) Not less than twenty-eight days before the date specified in it as the date on which it is to take effect.] <sup>1</sup>

**Notes**

<sup>1</sup> Substituted by Planning and Compensation Act 1991 c. 34 Pt I s.5(1) (November 25, 1991 for certain purposes specified in SI 1991/2728 art.2; January 2, 1992 otherwise subject to transitional provisions specified in SI 1991/2905)

**Commencement**

Pt VII s. 172: August 24, 1990 (1990 c. 8 Pt XV s. 337(2))

**Extent**

Pt VII s. 172(1)-(8): England, Wales

**[172A Assurance as regards prosecution for person served with notice**

- (1) When, or at any time after, an enforcement notice is served on a person, the local planning authority may give the person a letter—
  - (a) Explaining that, once the enforcement notice had been issued, the authority was required to serve the notice on the person,
  - (b) Giving the person one of the following assurances—
    - i. That, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the enforcement notice, or
    - ii. That, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the matters relating to the enforcement notice that are specified in the letter,
  - (c) Explaining, where the person is given the assurance under paragraph (b)(ii), the respects in which the person is at risk of being prosecuted under section 179 in connection with the enforcement notice, and
  - (d) stating that, if the authority subsequently wishes to withdraw the assurance in full or part, the authority will first give the person a letter specifying a future time for the withdrawal that will allow

the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

- (2) At any time after a person has under subsection (1) been given a letter containing an assurance, the local planning authority may give the person a letter withdrawing the assurance (so far as not previously withdrawn) in full or part from a time specified in the letter.

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- (3) The time specified in a letter given under subsection (2) to a person must be such as will give the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.
- (4) Withdrawal under subsection (2) of an assurance given under subsection (1) does not withdraw the assurance so far as relating to prosecution on account of there being a time before the withdrawal when steps had not been taken or an activity had not ceased.
- (5) An assurance given under subsection (1) (so far as not withdrawn under subsection (2)) is binding on any person with power to prosecute an offence under section 179.]<sup>1</sup>

#### Notes

<sup>1</sup> Added by Localism Act 2011 c. 20 Pt 6 c.5 s.125 (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

#### Extent

Pt VII s. 172A(1)-(5): England, Wales

### [173. — Contents and effect of notice.

- (1) An enforcement notice shall state—
- (a) The matters which appear to the local planning authority to constitute the breach of planning control; and
  - (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—
- (a) Remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) Remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require—
- (a) The alteration or removal of any buildings or works;
  - (b) The carrying out of any building or other operations;
  - (c) Any activity on the land not to be carried on except to the extent specified in the notice;

Or

- (d) The contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

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- (6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.
- (7) A replacement building—
  - (a) Must comply with any requirement imposed by any enactment applicable to the construction of buildings;
  - (b) May differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
  - (c) Must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to sections 175(4) and 289(4A), shall take effect on that date.
- (9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (10) 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.
- (11) Where—
  - (a) An enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
  - (b) All the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (12) Where—
  - (a) An enforcement notice requires the construction of a replacement building; and
  - (b) All the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction.]<sup>1</sup>

#### Notes

<sup>1</sup> Substituted by Planning and Compensation Act 1991 c. 34 Pt I s.5(1) (November 25, 1991 for certain purposes specified in SI 1991/2728 part.2; January 2, 1992 otherwise subject to transitional provisions specified in SI 1991/2905)

## Commencement

Pt VII s. 173: August 24, 1990 (1990 c. 8 Pt XV s. 337(2))

*Town and Country Planning Act 1990 Page 216*

## Extent

Pt VII s. 173(1)-(12)(b): England, Wales

### [173A. — Variation and withdrawal of enforcement notices.

- (1) The local planning authority may—
  - (a) Withdraw an enforcement notice issued by them; or
  - (b) Waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.]<sup>1</sup>

## Notes

<sup>1</sup> Added by Planning and Compensation Act 1991 c. 34 Pt I s.5(1) (November 25, 1991 for certain purposes specified in SI 1991/2728 art.2; January 2, 1992 otherwise subject to transitional provisions specified in SI 1991/2905)

## Extent

Pt VII s. 173A(2)-(4): England, Wales

### 174. — Appeal against enforcement notice.

- (1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
- (2) [An appeal may be brought on any of the following grounds—
  - (a) 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 or, as the case may be, the condition or limitation concerned ought to be discharged;
  - (b) That those matters have not occurred;
  - (c) That those matters (if they occurred) do not constitute a breach of planning control;
  - (d) That, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - (e) That copies of the enforcement notice were not served as required by section 172;

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- (f) That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by

those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

- (g) That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—

- (a) The land to which the enforcement notice relates is in England, and
- (b) the enforcement notice was issued at a time—
  - i. After the making of a related application for planning permission, but
  - ii. Before the end of the period applicable under section 78(2) in the case of that application.

(2B) An application for planning permission for the development of any land is, for the purposes of subsection (2A), related to an enforcement notice if granting planning permission for the development would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control.]<sup>2</sup>

(3) An appeal under this section shall be made [...] <sup>3</sup> —

- (a) By giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
- (b) By sending such notice to him in a property addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date [ ; or ]<sup>3</sup>
- (c) [By sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.]<sup>3</sup><sup>1</sup>

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—

- (a) Specifying the grounds on which he is appealing against the enforcement notice; and
- (b) Giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “relevant occupier” means a person who—

- (a) On the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence [...] <sup>4</sup> ; and
- (b) Continues so to occupy the land when the appeal is brought.

#### Notes

<sup>1</sup> Substituted by Planning and Compensation Act 1991 c. 34 Pt I s.6(1) (January 2, 1992 subject to transitional provisions specified in SI 1991/2905)

<sup>2</sup> Added by Localism Act 2011 c. 20 Pt 6 c.5 s.123(4) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

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<sup>3</sup> S.174(3)(c) inserted in relation to Wales by Town and Country Planning (Electronic Communications) (Wales) (No. 1) Order 2004/3156 art.3 (January 1, 2005)

<sup>4</sup> Words omitted by Planning and Compensation Act 1991 c. 34 Sch.7 para.22 (January 2, 1992)

## Commencement

Pt VII s. 174: August 24, 1990 (1990 c. 8 Pt XV s. 337(2))

## Extent

Pt VII s. 174(1)-(6)(b): England, Wales

**P** Partially In Force

### 175. — Appeals: supplementary provisions.

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—
  - (a) Require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (b) Specify the matters to be included in such a statement;
  - (c) Require the authority or the appellant to give such notice of such an appeal as may be prescribed;
  - (d) Require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.
- (3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

[(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.]<sup>1</sup>

- (4) Where an appeal is brought under section 174 the enforcement notice shall [subject to any order under section 289(4A)]<sup>2</sup> be of no effect pending the final determination or the withdrawal of the appeal.
- (5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

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(7) [...] <sup>3</sup>

## Notes

**1** Added by Planning Act 2008 c. 29 Sch.10 para.5 (April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise)

**2** Words added by Planning and Compensation Act 1991 c. 34 Pt I s.6(2) (January 2, 1992 subject to transitional provisions specified in SI 1991/2905)

**3** Repealed by Planning (Consequential Provisions) Act 1990 c. 11 Sch.4 para.3 (January 2, 1992: repeal has effect on January 2, 1992 for purposes specified in SI 1991/2698 art.3 subject to transitional provisions specified in SI 1991/2698 art.4 and on April 6, 2009 in relation to England only, for purposes specified in SI 2009/849 art.2(2)-(3) subject to transitional provisions specified in SI 2009/849 art.3; not yet in force otherwise)

## Commencement

#### Extent

Pt VII s. 175(1)-(7): England, Wales

P Partially In Force

### 176. — General provisions relating to determination of appeals.

- (1) [On an appeal under section 174 the Secretary of State may—
  - (a) Correct any defect, error or misdescription in the enforcement notice; or
  - (b) Vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- (2) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.]<sup>1</sup>
- (3) The Secretary of State—
  - (a) May dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and
  - (b) May allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a), (b), or
  - (c) Of section 175(1) within the prescribed period.
- (4) If [section 175(3) would otherwise apply and ] **2** the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [ of this section ] **3** or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).
- (5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

*Town and Country Planning Act 1990 Page 220*

#### Notes

**1** S.176(1)-(2A) substituted for s.176(1)-(2) by Planning and Compensation Act 1991 c. 34 Sch.7 para.23 (January 2, 1992)

**2** Words inserted by Planning Act 2008 c. 29 Sch.10 para.6(a) (April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise)

**3** Words inserted by Planning Act 2008 c. 29 Sch.10 para.6(b) (April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise)

#### Commencement

Pt VII s. 176: August 24, 1990 (1990 c. 8 Pt XV s. 337(2))

#### Extent

Pt VII s. 176(1)-(5): England, Wales

### 177. — Grant or modification of planning permission on appeals against enforcement notices.

- (1) On the determination of an appeal under section 174, the Secretary of State may—

- (a) [Grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;]<sup>1</sup>
- (b) Discharge any condition or limitation subject to which planning permission was granted;
- (c) [Determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 19.]<sup>2</sup>

[(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 191, but as if—

- (a) Any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- (b) References to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: sections 191(5) to (7), 193(4) (so far as it relates to the form of the certificate), (6) and (7) and 194.]<sup>2</sup>

[(1C) If the land to which the enforcement notice relates is in England, subsection (1)(a) applies only if the statement under section 174(4) specifies the ground mentioned in section 174(2)(a).]<sup>3</sup>

- (2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.
- (3) [The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.]<sup>4</sup>

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- (4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.
- (5) [Where an appeal against an enforcement notice is brought under section 174 and—
  - (a) The land to which the enforcement notice relates is in Wales, or
  - (b) That land is in England and the statement under section 174(4) specifies the ground mentioned in section 174(2)(a), the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.]<sup>5</sup>

[(5A) Where—

- (a) The statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- (b) Any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
- (c) The Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid, then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.]<sup>6</sup>



- (6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.
- (7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.
- (8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.

#### **Notes**

**1** Substituted by Planning and Compensation Act 1991 c. 34 Sch.7 para.24(1)(a) (January 2, 1992)

**2** S.77(1)(c), (1A) and (1B) substituted for s.77(1)(c) by Planning and Compensation Act 1991 c. 34 Sch.7 para.24(1)(b) (July 27, 1992 subject to transitional provisions specified in SI 1992/1630 art.3)

**3** Added by Localism Act 2011 c. 20 Pt 6 c.5 s.123(5) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

**4** Substituted by Planning and Compensation Act 1991 c. 34 Sch.7 para.24(2) (January 2, 1992)

**5** Words and s.177(5)(a)-(b) substituted for words by Localism Act 2011 c. 20 Pt 6 c.5 s.123(6) (April 6, 2012 subject to SI 2012/628 arts 9, 12, 13, 16 and 18-20)

**6** Added by Planning and Compensation Act 1991 c. 34 Pt I s.6(3) (January 2, 1992 subject to transitional provisions specified in SI 1991/2905)

#### **Commencement**

Pt VII s. 177: August 24, 1990 (1990 c. 8 Pt XV s. 337(2))

#### **Extent**

Pt VII s. 177(1)-(8): England, Wales



## The Planning Inspectorate

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### THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal ([www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs)); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that we receive your appeal before the effective date on the enforcement notice.**

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.