

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL 1

**BY MR SHAUN GORMAN AGAINST AN ENFORCEMENT NOTICE ISSUED BY
HEREFORDSHIRE DISTRICT COUNCIL ALLEGEING WITHOUT PLANNING
PERMISSION UNAUTHORISED MATERIAL CHANGE OF USE OF LAND TO A
CARAVAN SITE.**

**LPA REF: EN/2024/003646/ZZ
PINS REF: APP/W1850/C/24/3350934
GPS REF: 24_1314**

APPEAL 2

**BY MR SHAUN GORMAN AGAINST AN ENFORCEMENT NOTICE ISSUED BY
HEREFORDSHIRE DISTRICT COUNCIL ALLEGING WITHOUT PLANNING
PERMISSION UNAUTHORISED MATERIAL CHANGE OF USE TO A CARAVAN
SITE**

**LPA REF: EN/2024/003682/ZZ
PINS REF: APP/W1850/C/24/3350935
GPS REF: 24_1314**

**LAND AT MADLEY CARAVAN PARK, STONEY STREET, MADLEY,
HEREFORD HR2 9NQ**

STATEMENT OF CASE

**BY GREEN PLANNING STUDIO LIMITED
ON BEHALF OF THE APPELLANT**

The Appeals

1. Appeal 1 is submitted by Green Planning Studio ("**GPS**") on behalf of the Appellant, Mr Shaun Gorman ("**the Appellant**"), against an Enforcement Notice ("**Notice 1**") issued by Herefordshire District Council ("**the Council**") on 1st August 2024, which alleged:

"Without planning permission unauthorised material change of use of land to a caravan site."

2. The appeal was submitted on the 29th August 2024 on grounds (a), (b), (c), (e), (f) and (g).
3. Appeal 2 is submitted by Green Planning Studio ("**GPS**") on behalf of the Appellant, Mr Shaun Gorman ("**the Appellant**"), against an Enforcement Notice ("**Notice 2**") issued by Herefordshire District Council ("**the Council**") on 1st August 2024, which alleged:

"Without planning permission unauthorised material change of use to a caravan site"

4. The appeal was submitted on the 29th August 2024 on grounds (a), (b), (c), (e), (f) and (g).
5. Grounds (a), (b) and (c) are the same for both Appeal 1 and 2, with grounds (e), (f) and (g) differing.

Preliminary Issues

6. Notice 1 and 2 are signed by Simon Withers as a Development Manager. The expediency report for the issue of Notice 1 and 2 is signed by Mark Tansley as Development Manager and Kelly Gibbons as Development Management Service Manager.
7. On review of the Council's constitution and scheme of delegation to officer's it is not clear whether Simon Withers as Development Manager had authority to sign and issue Notice 1 and 2.
8. The Council are requested to evidence their scheme of delegation in order to demonstrate that Notice 1 and 2 are not nullities.

Ground (e)

Appeal 1

9. The Council confirmed in an email to GPS on the 6th August 2024 that:

“EN/2024/003646/ZZ – These were issued via 1st class post on 1.8.24 to both Shaun Gorman and [REDACTED] at their registered address.

EN/2024/003682/ZZ – These were hand-delivered to all 20 caravans at the site on 1.8.24.”

10. It is unclear why the Council would take the approach they have in issuing two notices.
11. Notice 1 covers the same area as the Notice 2, and therefore should have been served on all those with an interest in the land, including the occupiers of the site.
12. It is not for the appellant to make others with an interest in the land aware of the notices and their requirements, but the Council's duty to effect proper service as per s172(2) and (3), as set out to the Council in an email of 30th September 2024 from GPS.
13. On the 1st October 2024 the Council wrote to the Appellant and the site occupants, enclosing the Notice that had not been served on them prior to the deadline for making an appeal, and stating:

“You will note that the attached is identical to the Enforcement Notice served on you on 1st August 2024 apart from the section headed ‘WHAT YOU ARE REQUIRED TO DO’ which differs slightly in order to ensure that the notices impose appropriate and achievable requirements/obligations upon the various parties based on their particular interest(s) in the site.”

14. This letter to the residents and site owners is clearly incorrect in stating that the notices are identical. The two enforcement notices served by the council are different, they have different references, the breach is worded differently, and the requirements are different.
15. The provision of the notices to those with an interest in the land does not meet the requirements of service as set out under s172 (2) and (3) TCPA 1990.
16. Notice 1 has not been served on all those with an interest in the land, as such the Council are invited to withdraw the Notice at the earliest opportunity.

Appeal 2

17. Notice 2 covers the same area as Notice 1, and therefore should have been served on all those with an interest in the land, including Shaun Gorman and [REDACTED].
18. Notice 2 has not been served on all those with an interest in the land, as such the Council are invited to withdraw the Notice at the earliest opportunity.

Ground (b)

Appeal 1 and 2

19. Notice 1 alleges:

“Without planning permission unauthorised material change of use of land to a caravan site.”

20. It will be shown that the breach alleged has not taken place as a matter of fact on the basis that there has been no material change of use.
21. Planning permission at the site was granted pursuant to reference 93/1349 for *“Emergency stopping place for [REDACTED] with residents warden’s pitch and space for up to 20 caravans”* on 17th March 1994 (**“the 1994 Permission”**).

22. It will be demonstrated that the current use of the site has not resulted in a material change of use from that permitted.

23. At the time of submission of Appeal 1, the LPA had refused to disclose the expediency report of the issue of the notices. This was received by GPS with the LPA questionnaire on the 2nd October 2024.

24. The report states:

*“The report seeks authority to issue an enforcement notice in respect of unauthorised **material change of use of land from industrial use** to a site for 20 caravans for residential purposes without the benefit of planning permission.*
[GPS emphasis].

25. The existing lawful use of the site is not an industrial use. There were two planning permissions in relation to industrial uses as follows:

- P140928/F – ‘Proposed polythene film recycling and production facility, with associated parking and access. This was approved on the 16th March 2015. There were a number of pre-commencement conditions attached to that permission and there is no record of those conditions having been submitted and/or discharged.
- P193632/F – ‘Change of use and associated operational development concerning the removal and clearance of the existing site, and the construction of a small unit industrial estate comprising eight units with four building types ranging from 934sqft (84m²) to 3734sqft (336m²) GEA to allow for flexible occupation for B1, B2 or B8 uses’. This was approved on the 17th October 2019. The applicant for that permission was Mr Shaun Gorman, the appellant in these appeals.

- P212265 – This application was for the discharge of conditions attached to permission P193632/F. On the 7th October 2022 Conditions 3, 4, 5, 6, 8, 9, 11, 13, 14, 16, 17, 18, 19, 22 and 24 were discharged.
26. The expediency report bullet points the planning history, but there is no assessment to determine the existing lawful use of the land.
27. Planning permission P193632/F was not implemented and has expired. The LPA clearly state this within the expediency report and Notice 1 and 2. This is a matter of agreement between the parties.
28. The lawful use of the land therefore flows from the 1994 Permission. A material change of use from an industrial use to a caravan site has not occurred as a matter of fact.
29. The Inspector will be invited to quash Notice 1 and 2.

Ground (c)

Appeal 1 and 2

30. The use of the land as a caravan site does not constitute a breach of planning control as a result of the 1994 Permission.
31. The council's position in relation to the alleged breach of planning control and the 1994 Permission had not been made clear at the time of submission of the appeal, as the Council had refused to disclose the report.
32. The Council initially alleged that the 1994 Permission had 'expired', however following correspondence with GPS and the response to the Planning Contravention Notice served on the 25th April 2024, they agreed that that was not the case, and the permission remained extant but was a 'personal permission' for the benefit of the council. This relates to Condition 2 of the permission which states:

'This permission enures for the benefit of Hereford and Worcester County Council only'.

33. Given the appellant's position that there had been no material change of use, on the 15th July 2024 GPS continued to seek to engage with the Council, and sought clarification from them in terms of their position in relation to the alleged breach of planning control.
34. No response was received and subsequently Notice 1 and 2 were issued on the 1st August 2024.
35. It is clearly the Council's case that the lawful use of the site is industrial use which has led them, incorrectly, to conclude that a material change of use has occurred.
36. The effect of Condition 2 of the 1994 Permission will be explored, however as a result of the 1994 Permission, there has not been a breach of planning control.
37. The Inspector will be invited to quash Notice 1 and 2.

Ground (a)

38. Without prejudice to the remaining grounds, the Appellant contends, that pursuant to Ground a) planning permission should be granted.
39. In the proof of evidence, the Development Plan and relevant Supplementary Planning Documents ("SPDs") will be referred to and discussed.
40. The National Planning Policy Framework ("the NPPF"), Planning Policy for Traveller Sites ("the PPTS") and National Planning Policy Guidance ("the PPG") will be referred to and discussed.
41. The site is occupied by those who meet the definition of [REDACTED] and travellers.

42. Notice 1 and 2 refer to a series of policies and makes vague assertions in relation to the development.

43. Within Notice 1 and 2 the following harms appear to be alleged:

- Location outside of a settlement boundary.
- Impact of noise from the nearby industrial estate on the future occupiers.
- Potential conflict with commercial vehicles entering and leaving the adjoining estate.
- Lack of details of foul drainage scheme.
- Impact on character and appearance of the area

44. Within the grounds of appeal submitted with the appeal forms for both Appeal 1 and 2, the Council were requested to confirm their position with respect of each harm possibly alleged as a matter of priority to prevent the appellant from incurring unnecessary and/or wasted costs.

45. GPS made further requests by email on the following dates:

- 18th September
- 24th September
- 27th September
- 30th September
- 9th October
- 23rd October

46. On the 23rd October, the Council responded in relation to highways stating:

“Highway safety harm is not a matter specifically raised in the enforcement notices; the Council is currently considering the grounds of appeal and relevant documents and will set out its case in full within its Statement of Case”.

47. Following this vague response from the Council, the appellant remains unclear of the actual harms being alleged by the Council.
48. A subsequent email was sent from GPS to the Council on the 23rd October, seeking a clearer response.
49. On the 25th October, the Council set out that following consultation on the appeal, the highways authority raises no objection to the proposal. The Council should have been clear on the harms that they were raising at the time of issue of the notice, not seeking consultation after issue.

Location outside of a settlement boundary.

50. As a matter of principle [REDACTED] sites are acceptable within the countryside, as per Policy C of the Planning Policy for Traveller Sites, provided they do not dominate the nearest settled community.
51. It will be demonstrated that the proposed development will not dominate the nearest settled community and that the development is compliant with both National and Local policy for this form of development.
52. Notice 1 and 2 refer to the site not being taken forward as part of the Traveller DPD as set out at paragraph 4.12 of the DPD, but fails to quote the next paragraph which states:

“Nevertheless there may be potential for land to be found in the vicinity of Stoney Street as part of the review of the Core Strategy. It is therefore identified as a possible broad location for growth in the medium term (2023-2028) in accordance with the PPTS

although subject to ensuring that any site can comply with the provisions of Policy TS1.

The Council will seek to take this forward as part of the review process.”

Impact of noise from the nearby industrial estate on the future occupiers

53. The appellant has commissioned a Sound Survey to be carried out to address this reason for issuing the notice.

Lack of details of foul drainage scheme

54. This is a matter that can be addressed by conditions, as such the Council are requested to withdraw this as a reason to refuse planning permission.

55. The appellant is in the process of instructing a drainage expert to address this.

Impact on character and appearance of the area

56. Despite Notice 1 and 2 stating that the impact on character and appearance of the area can be addressed by condition, it has been raised as a reason for issuing the notice.

57. It will be shown that the site has the benefit of significant landscaping around the boundaries of the site, is in keeping with the character of the area and has limited impact on the appearance of the surrounding area.

Material Considerations in favour

58. Any harm attributed to the development can be outweighed by the general material considerations that would apply to any [REDACTED] family. Those material considerations are:

- i. Need (national, regional and local);
- ii. lack of available, suitable, acceptable, affordable alternative sites;
- iii. Lack of a five-year land supply;

- iv. Failure of policy;
- v. Previously developed land/the 1994 permission (fallback position); and if necessary;
- vi. Personal circumstances of the site occupants (personal need, health and education).

Need

59. Taking into consideration the latest available estimates of need for sites in Herefordshire District Council [REDACTED], Traveller and Travelling Showpeople Accommodation Assessment (GTAA) published in 2022, Green Planning Studio are of the opinion that the GTAA underestimates the level of need in the district and that there is an unmet need for pitches within the district.
60. This adds significant weight in favour of the appeal.

Lack of Suitable, Acceptable, Affordable Alternative Sites

61. Alternative sites must be available, affordable, acceptable and suitable (Angela Smith v Doncaster MBC). It appears from all the available information that there are no alternative available sites for the appellant to move to and there seems little likelihood that there will be in the immediately foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Lack of a five-year land supply

62. The LPA are unable to demonstrate a five-year land supply of deliverable land for [REDACTED] and traveller sites which the government required them to do by 27th March 2013. The lack of a five-year land supply is a matter that should attract considerable weight in favour

of a grant of planning permission, either on a temporary or a permanent basis. The lack of a five-year land supply should attract considerable weight in this appeal.

Failure of Policy

63. As a result of the GTAA underestimating the level of need in the district, the LPA are working toward too low a need figure and will inevitably fail to meet the actual level of need in the district. The ongoing failure of policy carries significant weight in favour of the appeal.

Previously developed land/the 1994 permission (fallback)

64. The site has the benefit of planning permission reference 93/1349 for “*Emergency stopping place for [REDACTED] with residents warden’s pitch and space for up to 20 caravans*” and constitutes previously developed land, which is a material consideration of significant weight.

Personal Circumstances

65. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary personal circumstances can be added into the pot to outweigh any harm.
66. These will be set down and appropriate weight indicated.
67. The general material considerations and personal circumstances outweigh any identified harm so that a permanent consent can be granted subject to a personal condition.

Temporary Consent

68. If the Inspector concludes that the material considerations do not outweigh the harm identified to justify a permanent consent then clearly a temporary consent falls to be

considered consistent with the NPPG. It is common sense as well as case law **McCarthy v SSCLG & South Cambridgeshire DC** [2006] that a temporary consent means the harm is reduced.

69. The appropriate time frame for a temporary consent will be considered in the proof of evidence.

Human Rights and Best Interests of the Child

70. The Human Rights Act 1998 Article 8 rights of the site occupants and best interests of the child are clearly engaged and will be advanced. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in respect of a decision by the LPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004 s.11(1)).

71. The expediency report states at paragraph 10.8:

"Information relating to such matters was sought through the Planning Contravention Notices, but the information sought about occupiers of the caravans was not submitted."

72. This is a misleading statement. The PCN requests at question 6 the names and dates of birth of the occupiers of the caravans and question 11 states:

'Please identify names of any of the occupiers of the caravan who claim [REDACTED] /traveller status'

73. The Council made no attempt to obtain information relating to the personal circumstances of the site occupants, and subsequently failed to carry out the necessary human rights assessment. This is a significant failing on the part of the Council.

Ground (f)

74. The requirements of Notice 1 and 2 differ, as such their ground (f) appeals are set out separately below.

Appeal 1

75. Requirement (1) requires the cessation of residential occupation of caravans, this is excessive as planning permission exists (and is accepted by the LPA to exist) for the residential occupation of caravans.
76. Requirement (2) requires the cessation of removal of all caravans, this is excessive as planning permission exists (and is accepted by the LPA to exist) for caravans.
77. Requirement (2) also requires the land to be 'made good'. This is too vague and no ordinary person can understand from this what they are required to do, and goes beyond that necessary to remedy the breach of planning control and is therefore excessive.

Appeal 2

78. The EN only has one requirement which is to:

“Permanently cease the residential occupation of the caravan on the Land.”

79. It is unclear which caravan on the land the Council require to cease being used residentially. The requirement is excessive as planning permission exists (and is accepted by the LPA to exist) for the residential occupation of caravans.

Ground (g)

Appeal 1

80. The time for compliance to cease the residential use is 28 days, and the removal of the caravans and other domestic paraphernalia from the land within 42 days.
81. This is an insufficient and unreasonable compliance period. At least 2 years is required taking into account the lack of a supply of [REDACTED] and traveller pitches, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

Appeal 2

82. The time for compliance to cease the residential use is 28 days. This is an insufficient and unreasonable compliance period. At least 2 years is required taking into account the lack of a supply of [REDACTED] and traveller pitches, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

Witnesses

83. The Appellant anticipates calling four professional witnesses:

- Planning
- Noise
- Drainage/flood risk

84. The Appellant anticipates calling 21 lay witnesses including the site occupiers and owners.

Documents

85. Documents that may be referred to include:

- PPTS 2023
- NPPF 2023 (or any subsequent version)
- The Draft NPPF 2024
- “Building the Homes we need” Ministerial Statement dated 30 July 2024
- Relevant extracts of the Development Plan
- Herefordshire District Council [REDACTED] and Traveller Accommodation Assessment 2022.
- Enforcement notice 1 – EN/2024/003646/ZZ
- Enforcement notice 2 – EN/2024/003682/ZZ
- The expediency report for the Notice 1 and 2
- Appeal Form reference APP/W1850/C/24/3350934 – Appeal 1
- Appeal Form reference APP/W1850/C/24/3350935 – Appeal 2
- Any relevant correspondence between GPS and the Council
- Evidence pertaining to the history and use of the Land
- Site photographs

- Any documents needing to be referred to in response to the Council's evidence
- Witness statements of the lay witnesses.
- Written evidence from third parties if appropriate.

Green Planning Studio Limited

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Unit D Lunesdale

Upton Magna Business Park

Shrewsbury

SY4 4TT

appeals@gpsltd.co.uk