

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/W1850/C/24/3350934

A. APPELLANT DETAILS

Name

Address

Preferred contact method

Email ☒ Post ☐

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes ☐ No ☒

B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes ☒ No ☐

Name

Company/Group Name

Address

Phone number

Fax number

Email

Your reference

Preferred contact method

Email ☒ Post ☐

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

Herefordshire Council

LPA reference number (if applicable)

EN/2024/003646/ZZ

Date of issue of enforcement notice

01/08/2024

Effective date of enforcement notice

02/09/2024

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?

Yes

☐ No



Does the appeal relate to an existing property?

Yes

☒ No



Address

Madley Caravan Park
Stoney Street
Madley
Hereford
HR2 9NQ

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?

Yes

☐ No



What is your/the appellant's interest in the land/building?

Owner



Tenant



Mortgagee



None of the above



E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?

Yes

☐ No



(a) That planning permission should be granted for what is alleged in the notice.



The facts are set out in

☒ the box below

Without prejudice to the remaining grounds, the Appellant contends, that pursuant to Ground a) planning permission should be granted. The site is occupied by those who meets the definition of gypsies and travellers.

The Enforcement Notice refers to a series of policies and makes vague assertions in relation to the development. The Council are 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.

Within the Enforcement Notice the following harms appear to be alleged:

1. Sites location outside of a settlement boundary.

As a matter of principle gypsy 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. 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.

The EN refers 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."

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

The appellant will commission a Sound Survey to be carried out to address this reason for issuing the notice.

3. Potential conflict with commercial vehicles entering and leaving the adjoining estate.

The appellant will commission a Highways Report to be prepared to address this reason for issuing the notice.

4. Lack of details of foul drainage scheme.

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. In the event that the Council continue to pursue this as an issue, then the appellant will instruct a drainage expert to address this.

5. Impact on character and appearance of the area (the EN does state that this can be addressed with appropriate conditions however).

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:

The Appellant asserts that any harm attributed to the development can be outweighed by the general material considerations that would apply to any gypsy family. Those material considerations are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply, failure of policy, previously developed land/the 1994 permission (fallback position), and if necessary, the personal circumstances of the site occupants (personal need, health and education).

Need

Taking into consideration the latest available estimates of need for sites in Herefordshire District Council Gypsy, 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. This adds significant weight in favour of the appeal.

Lack of Suitable, Acceptable, Affordable Alternative Sites

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

The LPA are unable to demonstrate a five-year land supply of deliverable land for gypsy 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

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)

The site has the benefit of planning permission reference 93/1349 for "Emergency stopping place for gypsies 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

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. These will be set down and appropriate weight indicated. 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

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

Human Rights and Best Interests of the Child

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)).

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.



The facts are set out in

the box below

Enforcement notice 1 (EN/2024/003646/ZZ) dated 1st August 2024 alleges:

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

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.

Planning permission at the Site was granted pursuant to reference 93/1349 for "Emergency stopping place for gypsies with residents warden's pitch and space for up to 20 caravans" on 17th March 1994 ("the 1994 Permission"). It will be demonstrated that the current use of the site has not resulted in a material change of use from that permitted.

It is currently unclear how the LPA consider that a material change of use has taken place, and to date they have refused to disclose their expediency reports and respond to a letter of 15th July 2024 from Green Planning Studio seeking further clarification on their position and the alleged breach of planning control.

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").



The facts are set out in

the box below

The use of the land as a caravan site does not constitute a breach of planning control as a result of the 1994 Permission.

As set out under Ground (b), the council's position in respect of the 1994 Permission and the current use has not yet been made clear. The Council initially alleged that the 1994 Permission had 'expired', however following correspondence with GPS Ltd, 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 of the permission which states:

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

The effect of this condition on the Permission and the use of the current use of the site will be explored.

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.



(e) The notice was not properly served on everyone with an interest in the land.



The facts are set out in

☒ the box below

The Council have confirmed in an email to GPS Ltd 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."
The two enforcement notices served by the council are different, they have different references and the breach is worded differently. It is unclear why the Council would take such an approach.
Notice ref EN/2024/003646/ZZ (Enforcement Notice 1) covers the same area as the second notice (referenced above), and therefore should have been served on all those with an interest in the land, including the occupiers of the site. It is clear that this Notice 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.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. ☒

The facts are set out in

☒ the box below

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.
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.
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.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why. ☒

The facts are set out in

☒ the box below

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.
This is an insufficient and unreasonable compliance period. At least 2 years is required taking into account the lack of a supply of gypsy 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.

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☐

2. Hearing ☐

3. Inquiry ☒

You must give detailed reasons below or in a separate document why you think an inquiry is necessary. The reasons are set out in

☒ the box below

There will be complex planning law arguments as well as a lot of technical evidence covering 3 different

areas. These will need to be discussed in person and the Inspector may want to question experts under oath. There are also potentially up to 20 witnesses who will also need to be questioned under oath.

(a) How long do you estimate the inquiry will last?

7 day(s)

(b) How many witnesses do you intend to call?

21

(c) Is there any further information relevant to the inquiry which you need to tell us about?

Yes

☒ No

☐

If so, please explain the relevant information below

As the LPA served 2 enforcement notices on the same day that are practically identical, these will both be appealed and will need to be linked due to their similarities. The LPA reference for the second EN is EN/2024/003682/ZZ.

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice?

Yes

☐ No

☒

2. Are there any planning reasons why a fee should not be paid for this appeal?

Yes

☐ No

☒

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided?

Yes

☒ No

☐

Please give details, including our reference number(s), if known.

As stated previously, this appeal will be linked to a second enforcement notice appeal with the LPA reference EN/2024/003682/ZZ.

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☒ [see 'Appeal Documents' section](#)

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Mr. Matthew Green

Date

29/08/2024 11:04:37

Name

Mr. Matthew Green

On behalf of

Mr Shaun Gorman

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

K. NOW SEND**Send a copy to the LPA**

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 01. The Enforcement Notice.
File name: scott.low_31-07-2024_11-20-56.pdf

Completed by MR. MATTHEW GREEN

Date 29/08/2024 11:04:37