

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL 3

APPEAL BY JAMES BALL AGAINST AN ENFORCEMENT NOTICE ISSUED BY SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL ON 18 JULY 2024, ALLEGING 'WITHOUT PLANNING PERMISSION, THE MATERIAL CHANGE IN USE OF THE LAND FOR THE STATIONING OF CARAVANS FOR RESIDENTIAL OCCUPATION.'

PINS REF: APP/W0530/C/24/3349303

GPS REFERENCE: 21_1161C

LPA APPEAL REFERENCE: EN/00309/22A

LAND AT CHEAR FEN BOAT CLUB, TWENTYPENCE ROAD, COTTENHAM,
CAMBRIDGESHIRE, CB6 8PX

STATEMENT OF CASE ON BEHALF OF THE APPELLANT

1. This Statement of Case relates only to Appeal 3 and is submitted in addition to the Statement of Case submitted on the 22nd November 2022 in relation to Appeals 1 and 2.
2. In the Proof of Evidence and at the Inquiry the following submissions will be made on behalf of the appellant.
3. The site will be described.
4. The planning history of the site will be considered.
5. The Development Plan and relevant Supplementary Planning Documents will be referred to and discussed.
6. The National Planning Policy Framework, Planning Policy and Traveller Sites, and National Planning Policy Guidance will be referred to and discussed.

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Preliminary issue Section. 57 (4) Town and Country Planning Act 1990

7. It is important to make clear s 57 (4) Town and Country Planning Act applies. Even if the breach was found to have taken place, the appellant is entitled to revert to the previous lawful use, this will need to be established as a preliminary matter as the conclusion can affect Grounds B, D and F.
8. The lawful fallback, its extent, and the area it covers are matters to be determined at the appeal.

Ground B

9. Firstly, the plan attached to the Enforcement Notice includes an area of land which is not part of the planning unit. Pasture land is included which runs around the functional plain of the river and is not used for the use of the alleged breach of planning control. This area needs to be removed from the Enforcement Notice.
10. Secondly, the Enforcement Notice alleges a change of use. A mere change of use is not a breach of planning control, it has to be a material change of use. It needs to be considered whether there has been a change of use, and, if so, whether that change of use constitutes a material change of use.

11. Reference will be made to the S195 appeal and the Lawful Development Certificate reference S/1346/16/LD dated the 11th October 2016 which confirms the lawfulness of the existing use of land for the siting of a residential mobile home.
12. Reference will also be made to Section 57(4) of the Town and Country Planning Act applies. The appellant is entitled to revert to the previous lawful use which would be one or more caravans used for residential purposes, either as a single use, or as a component of a mixed use on the site.

Ground C

13. A lawful use certificate (reference S/1346/16/LD) for a mobile home applies to part of the site. Planning permission is therefore not required for this part of the site, to use the stationing of caravan(s) for residential occupation.

Ground D

14. Section 57(4) of the Town and Country Planning Act applies. Even if the breach was found to have taken place, the appellant is entitled to revert to the previous lawful use which would be either one or more caravans used for residential purposes, either as a single use, or as a component of a mixed use on the site. Photographic and witness evidence will be provided to substantiate the previous use of the site and to establish that it was lawful through the passage of time.
15. Requirement (v) states: '*Permanently remove all hardstandings facilitating the material change of use of the Land and restore the ground levels to its previous condition.*' The access with the highway and the access track running northwards into the site are clearly lawful through the passage of time. Photographic and witness evidence will be provided to substantiate this.
16. Requirement (vi) states '*Permanently remove all earth bunds facilitating the material change of use of the Land and restore the ground levels to its previous condition*'. The bunds in

question are clearly lawful through the passage of time. Photographic and witness evidence will be provided to substantiate this.

Ground F

17. Without prejudice to the aforementioned grounds, it will be shown that the requirements of the Enforcement Notice are excessive.
18. Requirements (i) requires the cessation of the land for the stationing of caravans for residential occupation. A LDC was granted on 11th October 2016 for one mobile home (reference S/1346/16/LD). Either this is lawful fallback; or two caravans for residential purposes are (if the s.195 appeal is upheld); or perhaps another lawful mixed use including one or more caravans used for residential purposes is the lawful use. In any event a lawful use for the stationing of caravans for residential use exists on part of the land and therefore requirement (i) is excessive and unenforceable as it seeks to prevent a lawful use on the site.
19. Requirements (v) and (vi) require the restoration of ground levels to its previous condition, but it is far from clear what the Council believe this is, or indeed and perhaps more pertinently, what they accept it lawfully is. Given the uncertainty, this requirement should be deemed excessive.
20. Requirement (v) requires the removal of '*all hardstandings facilitating the material change of use of the Land.*' The access with the highway and the access track running northwards into the site are clearly lawful through the passage of time. In case the Council believes it can rely on **Murfitt v Secretary of State for the Environment** [1980] 40 P. & C.R. 254, reliance will be placed on *Secretary of State for Levelling Up, Housing and Communities v Ian Nivison Caldwell and Timberstore Limited*, [2024] EWCA Civ 467.
21. Requirement (vi) requires the removal of '*all earth bunds facilitating the material change of use of the Land.*' These bunds, which are operational development, are lawful through the passage of time, being erected by previous occupiers of the land, to facilitate the previous

use. In case the Council believes it can rely on ***Murfitt v Secretary of State for the Environment*** [1980] 40 P. & C.R. 254, reliance will be placed on *Secretary of State for Levelling Up, Housing and Communities v Ian Nivison Caldwell and Timberstore Limited*, [2024] EWCA Civ 467.

Ground G

22. The time for compliance is 3 months.
23. It will be demonstrated that a compliance period of at least 2 years is required to enable the occupiers living on the site to find alternative accommodation.
24. This will be demonstrated with reference to the scale of need for additional pitches in the district, the lack of a five-year supply of gypsy and traveller pitches, the lack of suitable, affordable, available and acceptable alternative sites and the LPA's ongoing failure of policy.

Witnesses

25. In relation to all 3 appeals, the appellant is likely to call the following witnesses:

- Unless otherwise withdrawn, the appellant may call professional witnesses relating to the following matters:
 - Planning
 - Ecology
 - Highways
 - Contaminated land
 - Minerals safeguarding area
 - Flooding
 - Noise
 - Dust emissions
- nine non-professional witnesses (site occupants).

Documents

26. Documents that may be referred to include:

- a. PPG
- b. NPPF
- c. The LDC Application (22/01574/CL2PD) and all supporting evidence submitted 29th March 2022
- d. The officer's report or comments for the LDC application.
- e. The LDC (22/01574/CL2PD) refusal notice, dated 5th September 2022.
- f. The Planning Application (22/01703/FUL) and all supporting evidence submitted 7th April 2022
- g. The officer's report for the planning application.
- h. The application (22/01703/FUL) refusal notice, dated 5th September 2022.
- i. The s.195 appeal form and s.78 appeal forms dated 6th October 2022.
- j. Enforcement Notice EN/00309/22A and expediency report.
- k. S174 Appeal Forms submitted 1st August 2024.
- l. The withdrawn Enforcement Notice and Plan (S/1346/16/LD) dated 21st June 2021.
- m. The officer's report for the enforcement notice (S/1346/16/LD).
- n. The withdrawn Enforcement Notice and Plan (22/01703/FUL) dated 9th September 2022.

- o. The officer's report for the enforcement notice (22/01703/FUL).
- p. The two s.174 appeal forms submitted in relation to the withdrawn enforcement notices dated 23rd July 2021 and 6th October 2022
- q. Any relevant correspondence between the LPA and the appellant's agent.
- r. Evidence pertaining to the history and use of the land.
- s. Witness statements and written evidence from third parties if appropriate.
- t. Aerial photography.
- u. Relevant case law.
- v. Any other documents that may need to be referred to in response to the LPA's evidence.

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16th September 2024