

**SUPPLEMENTARY INQUIRY STATEMENT OF CASE**  
**OF THE COUNCIL OF THE BOROUGH OF BROXBOURNE**  
**(THE LOCAL PLANNING AUTHORITY)**

**Appeals by** Mr Billy Joe Saunders

**Against** Enforcement Notice ENF/23/0033 issued by the LPA on 5<sup>th</sup> July 2023 in relation to the following alleged breach of planning control: Without planning permission, the change of use of the land to residential by stationing caravans and mobile homes along with associated operational development

**And** the refusal to grant planning permission (application reference 07/23/0119/F) for a retrospective change of use of land to residential, for members of the gypsy traveller community for 7no. static caravans, 6no. touring caravans, parking for 12 cars, hardstanding and associated development

**Relating to** Land at Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11 8LS

**PLANNING INSPECTORATE REFERENCES:**

APP/W1905/C/23/3334117

APP/W1905/W/23/3327012

**LOCAL PLANNING AUTHORITY REFERENCES:**

ENF/23/0033

07/23/0119/F

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## **1. INTRODUCTION**

- 1.1. This Supplementary Statement of Case follows the case management conference on this matter on 29<sup>th</sup> January 2024.
- 1.2. At that meeting, the Appellant's professional witness, Matthew Green, made a number of submissions in respect of the Council's case and sought clarification.
- 1.3. The Council is of the view that their Statement of Case makes sufficiently clear the crux of its case on Appeal A and Appeal B. That Statement of Case is still relied upon. However, this document has been prepared to supplement that Statement of Case in an effort to assist the Appellant ahead of the preparation of proofs of evidence.

## 2. ALLEGED NULLITY OF THE ENFORCEMENT NOTICE ('EN')

2.1. The Appellant's Statement of Case did not separately set out any preliminary issue in respect of nullity but did address this in the context of their ground c) case<sup>1</sup> asserting:

- i) The notice requires the removal of all buildings and structures from the Land.
- ii) The structures and buildings have not been identified on the plan attached to the notice. A clear failure to comply with section 173(1) of the Act.
- iii) Section 173(2) of the Act states that '*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*'. As the notice fails to identify the structures, buildings, with reference to a plan, the notice is considered to be a nullity.

2.2. This was expanded upon orally by Mr Green at the CMC in which he stated:

- i) It does not tell the ordinary man in the street what he is required to do with sufficient clarity;
- ii) There is a failure to identify the operational development i.e. the buildings;
- iii) The EN would require all of the buildings to be removed but it is only those relating to residential use that would need to be removed.

2.3. The Council disagrees. In particular:

- i) At paragraph 3, the EN specifies the matters alleged to constitute a breach of planning control.
- ii) It is clear that the operational development with which the Council is concerned is that which is "*associated*" with the alleged change of use.
- iii) It is appreciated that the Appellant does not agree with the Council's case that the change of use is singular not mixed; however, that does not mean that the EN is insufficiently clear as to the Council's alleged use.

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<sup>1</sup> Paragraphs 45-47

- iv) At paragraph 5, the EN is clear that, amongst other things, the Appellant is required to “*permanently remove all buildings and structures from the Land except the one that is diagonally hatched black on the attached plan*”.
- v) There is then a plan attached which clearly identifies that building.
- vi) It is clear that all other buildings and structures within the red line are to be removed.

### 3. AMENDMENTS TO THE EN

3.1. The Appellant has not explicitly raised any suggestion that the EN be amended in their Statement of Case.

3.2. The Inspector raised the following queries in his post-CMC Note:

- i) should the notice allege a 'material' change of use?
- ii) is the period of 4 years stated in Paragraph 4 of the Notice correct for a (material) change of use?
- iii) the requirements at paragraph 5(i) to 5(iv) include the word 'permanently.' Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, is the word 'permanently' unnecessary?
- iv) the requirement at paragraph 5(iv) is to remove all the tarmac from the Land from the Land, including the area shown shaded with a black pattern on the plan attached to the notice. The area shown shaded with a black pattern appears to be wider and of a different shape than the area of 'tarmac' visible in the photographs attached as Appendix 1 of the Council's Statement of Case. In addition to correcting it by deleting the repeated wording of 'From the Land', should the requirement be varied to refer to 'all the tarmac within the Land.....', or something along those lines?
- v) Is 'tarmac' the correct description?
- vi) could the notice be corrected and/or varied in these respects without causing injustice?

3.3. In an effort to assist the Appellant, the Council's position is as follows:

- i) The EN is titled 'ENFORCEMENT NOTICE MATERIAL CHANGE OF USE'. It is the Council's position that it is therefore sufficiently clear that when at section 3 there is reference to "*the change of use*" rather than "*the material change of use*" it is clear that it is a material change that is alleged. The Council would not take issue with the addition of the word 'material'.
- ii) It is correct that the period of 4 years stated at section 4 of the EN relates to the operational development element of the EN and that the correct time

period in respect of the material change of use is 10 years. The Council agrees that this should be clarified in the EN.

- iii) Section 181(1) of the 1990 Act is acknowledged. The word 'permanently' was included in the EN an effort to make what was expected by the Council clear on its face to the ordinary man on the street. The Council would not take issue with the deletion of that word.
- iv) The aerial photographs show that the area of land shown shaded with a black pattern on the plan attached to the EN is intended to show the location of the tarmac in addition to the area where the caravans are stationed. The Council would not take issue with the deletion of the repeated wording of 'From the Land' nor with the requirement being varied to refer to 'all the tarmac within the Land...', or something along those lines, as suggested.
- v) Tarmac is the correct description having been deliberately used to distinguish the hard surfacing which pre-existed the Appellant's development of the site and is lawful. The very hard surface that is the subject of the Appellant's ground (c) appeal is not being enforced against because it is not tarmac. The Appellant can remove the tarmac but retain the original hard surface.
- vi) It is the Council's position that the aforementioned revisions, to the extent required, can be made without causing any injustice to the Appellant.

#### **4. GROUND B**

4.1. The Appellant's position in their Statement of Case is extremely brief and simply asserts that the alleged breach is a mixed use but that the area enforced against is in a mixed use comprising the stationing of caravans for residential purposes and the keeping of horses.

4.2. At the CMC of this matter, Mr Green criticised the Council's Statement of Case asserting that the current use of the land is "*clearly a mixed use*", suggesting that the Council had not read the most recent statement and had cut and pasted from a different EN appeal, given that there is mention of a cattery. He criticised the EN for not having mentioned horses at all. It was suggested that the Appellant would waste time in addressing the Council's case on this ground and that costs would be sought unless the Council's position is clarified.

4.3. The Council disagrees that its Statement of Case is insufficiently clear; it is plain that the Council regards the use as singular, namely a residential caravan site. That is also clear from the EN. The Appellant may disagree with the Council but that does not mean that the Council's case is insufficiently clear to respond.

4.4. For the avoidance of any doubt:

- i) The Council does not consider the keeping of horses to be a separate use of the land comprising, together with the residential element, a mixed use. It appears to the Council to be incidental to the residential occupation of the site, and is why the keeping of horses was not specifically and separately referenced.
- ii) The Council mentioned the "*cattery use*" in response to ground b) as a shorthand reference to the temporary planning permission in respect of which the full reference of 07/14/0674/F is provided. That was for temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre for a period of 3 years. It the last know lawful use of the land, it being the Council's understanding that the planning permission relating to the conversion of an existing barn and extension of barn to form a cattery (reference 07/17/0350/F) was never implemented.



- iii) It is plainly relevant to consider the last known lawful use of the land in response to a ground b) claim which requires one to consider whether or not the matters alleged in the notice constitute a breach of planning control.
- iv) It is noted that the application for planning permission which was refused and now forms part of this conjoined appeal (reference 07/23/0119/F) does not appear to mention anything about the keeping of horses on the land.

## 5. GROUND C

5.1. The Appellant's Statement of Case places reliance on section 57(4) of the Act in asserting that there is a fallback position comprising the mixed use of the land for the stationing of a mobile home for residential purposes, horse livery and a cattery. Mr Green criticised the Council at the CMC for not having explicitly addressed this section, nor the hardstanding, and suggested that the Council should reflect on its position.

5.2. It should already be clear from the Council's Statement of Case in dealing with ground c), bearing in mind that this follows on from its comments on ground b) and the last known lawful use of the land, that the Council does not agree with the Appellant's position. The Statement of Case is sufficiently clear. In any event, to assist:

- i) Ground c) requires consideration of whether or not the breach of planning control alleged in the notice has taken place. Section 57(4) of the Act states that: *"where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out"*.
- ii) The Council is not enforcing against hardstanding which was already in existence prior to the Appellant's development of the site. That is why the EN deliberately references tarmac.
- iii) The last known lawful use of the site is understood to be as stated at paragraph 4.4 above.
- iv) That was for temporary planning permission for a period of 3 years. It was not only time limited, but restricted to a person solely or mainly employed in the Owner's related cattery business and their spouse/partner for so long as they remained employed, by virtue of the s.106 agreement referenced in the Council's statement of case. The use which was permitted, ceased.
- v) The Appellant is not only in occupation outside of the time period set out in that planning permission, and is not a person described in the s.106

agreement, but the development of the land to which the EN relates is a different use to what which the temporary planning permission related and is not of the same character but is materially different.

- vi) The temporary planning permission expired in 2017 so there is no argument, in the alternative, that it is a lawful use by virtue of immunity from enforcement action.

5.3. Mr Green asserted at the CMC that the Appellant will rely on relevant case law. The Council awaits clarification as to the fullness of the Appellant's arguments which will no doubt be provided through proofs in the same way as will the Council's.

## 6. GROUND D

6.1. The Appellant's Statement of Case included a ground d) claim however Mr. Green helpfully clarified at the CMC that:

- i) There is not a true ground d) case in the sense that the existing use is lawful;
- ii) There has been a material change of use;
- iii) The primary reason for asserting a ground d) case is that evidence under oath is required to make out the s57(4) case and if the Appellant had not ticked ground d), someone at PINs would have put the matter down as a hearing.
- iv) There is a point in relation to the hardstanding on site which would be a ground d) or ground c) point as some of it relates to the original site.

6.2. Though Mr Green criticised the Council's Statement of Case on ground d) as not assisting the Inspector, the Council was understandably focused on a true ground d) case and whether or not "*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*".

6.3. It is not entirely clear why the Appellant could not have requested an inquiry asserting the need for evidence on oath with reference to the guidance. The Council would not have disputed the same, and does not now.

6.4. In any event, it seems to the Council that there is no ground d) case to be advanced and the Appellant should on reflection be in a position to withdraw the same.

- i) As set out at 3.3 v) above, the EN does not attack the hardstanding which was in situ prior to the Appellant's development of the site as it deliberately references tarmac.
- ii) Mr Green has now confirmed that there is no suggestion that the existing use is lawful or other than a material change.

6.5. The Council would appreciate an update as soon as possible.

## **7. GROUND E**

7.1. The Council stands by its Statement of Case which is sufficiently clear and will assert that the steps which were taken were reasonable to ensure service to the relevant parties.

7.2. Mr Green indicated at the CMC that the Appellant would consider whether or not they continue with their ground e) case. The Council would appreciate an update as soon as possible if the Appellant's case is going to change.

## **8. GROUND F**

8.1. At the CMC, Mr Green complained that the Council does not understand mixed uses, that horses are not attacked by the EN and therefore queried if it was a mistake to include removal of the stables, and that the EN catches things which the Council is not interested in (presumably relating to the residential use whereas the Appellant's case is that the site is in a mixed use).

8.2. The Council's Statement of Case is sufficiently clear. Much of the disagreement between the parties relates to a difference of opinion as to the nature of the use of the site. The Council's case, whilst plainly disagreed with by the Appellant, is clear. The site is considered to be in a residential use and the keeping of horses is incidental to that, not distinct, hence the requirement for removal of the new stable building which was erected in conjunction with that use. The previous hardstanding in situ prior to the Appellant's development of the land is not caught by the notice, only the subsequent tarmac.

8.3. At the CMC, it was queried whether the EN sought to remedy the breach of planning control or any injury to amenity or both. For clarification, the purpose of the EN is to both remedy the breach and the resultant injury to amenity.

## **9. GROUND G**

9.1. The Council's Statement of Case is sufficiently clear on this ground; the parties simply disagree. To be clear, it is not considered that the two-year period sought by the Appellant is justified and/or proportionate whether or not it is considered to be, in effect, a temporary permission.

## **GROUND A/APPEAL B**

9.2. The Council confirmed at the CMC that no issue is being taken in respect of contaminated land, flooding or the pylons on site. Otherwise, it is not understood that the Appellant seeks any further clarification of the Council's case which should be sufficiently clear from its Statement of Case.

9.3. It should be noted that since the Council's Statement of Case in September 2023 in respect of the s.78 Appeal, the Council adopted a 'Wharf Road SPD' in November 2023 which will be referenced and is available at <https://www.broxbourne.gov.uk/localplan>. A copy is attached.

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