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## Appeal Decisions

Hearing held on 7 November 2016

Site visit made on 7 November 2016

**by Nigel Burrows BA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 December 2016**

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### **Appeal Refs: APP/W1525/C/16/3148678 & 3148679**

#### **Land at River Mead, Private Road, Margaretting, Chelmsford, Essex, CM2 8TH**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Brian Rambin & Mrs Rebecca Rambin against an enforcement notice issued by Chelmsford City Council.
- The enforcement notice, ref: 16/00022/ENF, was issued on 16 March 2016.
- The breach of planning control as alleged in the notice is the material change of use, comprising the creation within the Land of a separate planning unit for the siting and use of a caravan for residential purposes.
- The requirements of the notice are:-
  - i Cease using the land as a separate planning unit for the siting and use of a caravan for residential purposes
  - ii. Remove the caravan from the land
  - iii Remove all vehicles and trailers from the land
  - iv. Remove all domestic paraphernalia from the land including but not limited to the dog kennel, bins, hot tub, trampoline, play shed, bench, building materials and any other item associated with the unauthorised residential use.
- The period for compliance with the requirements is six months.
- The appeal by Mr Rambin (3148678) is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
- The appeal by Mrs Rambin (3148679) is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

#### **Summary of Decisions: The enforcement notice is quashed**

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##### **Procedural Matters**

1. The appellants occupy a caravan stationed upon land at River Mead, near Margaretting in Essex. The land at River Mead appears to have been divided into two plots. The appellants' caravan is on the smaller plot. The appellants have apparently lived here since May 2011. The caravan was initially rented from the previous owner; however, the appellants purchased it in June 2011. The hearing was told the appellants do not claim gypsy status.
2. The appellants and the Council have drawn my attention to the planning history of the land at River Mead. During 1994 a Certificate of Lawful Use was issued by the Council for *'The use of the land for the siting of one mobile home for the purpose of human habitation in the position shown on the plan accompanying the Application for a Certificate of Lawfulness for an existing use dated 1 June 1994 submitted to the Council .....'*<sup>1</sup>

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<sup>1</sup> The reference of this decision is 94/05492/CLEUD according to the Council

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3. During June 2011 a second Certificate of Lawful Use was issued by the Council for what is described as '*The stationing of a caravan to be used as ancillary residential accommodation in relation to the existing mobile home on site*'.<sup>2</sup>
4. Following the receipt of a complaint in 2014, which apparently alleged there were more than two caravans on the site, the Council discovered the appellants were living in the caravan stationed on the smaller plot. The Council considered the provision of this accommodation went beyond the scope of the Certificates of Lawful Use. According to the Council, during the subsequent discussions to resolve the situation the appellants indicated they intended to leave the site within 12 months. However, an inspection carried out by the Council in February 2016 revealed that the appellants' caravan remained on the land. The Council issued the enforcement notice on 16 March 2016.
5. The breach of planning control is described by the Council as a '*material change of use, comprising the creation within the Land of a separate planning unit for the siting and use of a caravan for residential purposes*.' However, the appellants' stance is that no material change of use has occurred and no development has taken place on the land.
6. There is no dispute that the appellants' plot falls within the area of land subject of the two Certificates of Lawful Use. The appellants contend the lawful use of the whole of this area of River Mead is as a caravan site. The appellants argue the relevant consideration in this case is simply the use of the land, not the number of caravans. Reference is made to the Encyclopaedia of Planning Law and Practice, which states at 2-3187 '*... a caravan site is still a caravan site whether 3 or 300 caravans are sited*'.
7. The appellants say that, in effect, the Council appears to allege the use of the land has changed from a caravan site to a caravan site. In any event, they consider the increase in the number of caravans is not sufficient to amount to a material intensification of the lawful use of the land. Reference is made to case law including the *Hertfordshire CC* case<sup>3</sup>, where it was held that a change in use can only be material by 'bringing about a definable change in the character of the use made of the land'. The appellants argue this has not occurred. They also say the Council has failed to identify what the material change of use is; the mere subdivision of a planning unit does not involve a material change of use in this instance.
8. The two Certificates of Lawful Use issued by the Council are for specific activities. They set a benchmark against which the lawfulness of future changes can be measured. However, as the appellants have implied, it does not automatically follow that a subdivision of the land involves a material change of use pursuant to the principles set out in *Burdle*,<sup>4</sup> - which the Council has cited in support of its approach. There are examples of cases concerning caravan sites where substantial increases in numbers on existing sites were found not to be material; there are also examples to the contrary.
9. However, a subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change of use has indeed occurred; for example, it may form part of a process of intensification. In the case of the land at River Mead, the issue turns on whether the increase in the numbers of caravans brings about a material change in the character of the use. Furthermore, if intensification is to be alleged, then this should be made clear in the allegation in the enforcement notice.<sup>5</sup> When determining whether the character of the use has changed it is necessary (on the facts) to consider what is happening on the land and the impacts off the land. If such factors are to be relied on, then they should also be identified in the notice as contributing to the material change of use (*Hertfordshire CC*).
10. However, in this case there is no reference to intensification in the Council's notice. At the hearing I canvassed the views of the parties on whether it could be corrected to address

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<sup>2</sup> Ref: 11/00605/CLEUD

<sup>3</sup> *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473

<sup>4</sup> *Burdle and Williams v SSE and New Forest RDC* [1972] 1 WLR 1207

<sup>5</sup> *Kensington and Chelsea RBC v Mia Carla Ltd* [1981] JPL 50

intensification without causing any injustice. The appellants' representative was firmly of the view that it could not. I share this view. Such a correction would be beyond the scope of my powers under section 176 of the Act, not least because it would involve a different breach of planning control which would require the parties to address different arguments.

11. On the evidence before me, I conclude the notice is defective and it is not capable of correction without causing injustice to the parties. It will therefore be quashed. Consequently, grounds (a), (c), and (g) of the appeals do not fall to be considered.
12. Notwithstanding my decision(s), the appellants should be aware that it is open to the Council to consider whether the 'second bite' provision of section 171B(4)(b) of the Act applies, which might enable a further enforcement notice to be issued. In any event, it is likely that the Council will need to have regard to the manner in which the whole of the land at River Mead is used and whether this accords with the Certificates of Lawful Use.
13. I have taken into account all the other matters raised, however, I find they do not outweigh the main considerations that have led to my decisions on the appeals.

**Formal Decisions:**

**Appeal Refs: APP/W1525/C/16/3148678 & 3148679**

14. The enforcement notice is quashed.

*Nigel Burrows*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANTS:

|              |               |
|--------------|---------------|
| Mr P Kratz   | Birketts LLP  |
| Mr B Rambin  | The appellant |
| Mrs R Rambin | The appellant |

FOR THE LOCAL PLANNING AUTHORITY:

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|---------------|-------------------------|
| Mr J Stubbs   | Chelmsford City Council |
| Ms C Fenghour | As above                |