



Appeal Decision

Hearing held and unaccompanied site visit made on 30 July 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Ref: APP/F2415/C/18/3209136

Grove View, Mere Lane, Bitteswell, Lutterworth, LE17 4LH

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Mr. M. Cash ("the Appellant") against an Enforcement Notice issued by Harborough District Council ("the Council").
- The Enforcement Notice was issued on 26 July 2018.
- The breach of planning control alleged in the Enforcement Notice is failure to comply with Conditions Nos. 1 & 3 of a planning permission Ref 10/00644/FUL granted on 14 July 2010.
- The development to which the permission relates is the change of use of the Land to a transit pitch to allow the siting of 4 No. residential caravans by extended traveller family including the erection of a toilet block. The Conditions in question are Nos. 1 & 3.
Condition 1 states: *"There shall be no more than 4 caravans stationed on the transitory site at any one time."*
Condition 3 states: *"The transit site shall not be used by any persons other than gypsies and travelers as defined in paragraph 15 of ODPM Circular 01/2006."*
- The Enforcement Notice alleges that the Conditions have not been complied with in that:
 - a) In relation to Condition 1 more than 4 caravans have been stationed on the site at any one time.
 - b) In relation to Condition 3 the transit site has been used by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- The requirements of the Enforcement Notice are:
 - (a) Reduce the number of caravans on the land to no more than 4 caravans as required by Condition 1 of 10/00644/FUL.
 - (b) Cease the occupation of the Land by persons who do not meet the definition of gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites 2015 (which supersedes paragraph 15 of ODPM Circular 01/2006) as required by Condition 3 of 10/00644/FUL.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the 1990 Act 1990.

Summary of Decision: The Enforcement Notice is corrected and varied; the appeal on Ground (a) against Condition 1 succeeds; the Enforcement Notice is quashed so far as it relates to Condition 1; the appeal on Ground (g) against Condition 3 succeeds and the period for compliance is extended to 12-months.

Procedural Matters

1. In my Appeal Decision I will refer to:

- a) The land to which the Enforcement Notice relates as "the Appeal Site".

- b) The planning permission referred to in bullet point 4 above as "the 2010 Planning Permission".
 - c) Condition 1 referred to in bullet point 5 above as "Condition 1".
 - d) Condition 3 referred to in bullet point 5 above as "Condition 3"
 - e) Withdrawn Circular 01/2006 entitled "Planning for Gypsy and Traveller Caravan Sites" as "the Circular".
2. The occupants of the caravans on the Appeal Site refer to the Appeal Site by the name specified in the heading above.
3. It was agreed at the Hearing that the Enforcement Notice should be corrected and varied in the following ways:
- a) That the reference to "section 171A(1)(a)" in line 3 of Part 1 was incorrect and the correct statutory provision is "Section 171A(1)(b)".
 - b) That the correct postal address for the Appeal Site is that specified in the heading above and therefore Part 2 should be corrected.
 - c) That the word "travellers" had been misspelt in line 15 of Part 3 and should be corrected.
- The Appellant and the Council agreed that these corrections/variations could be done without injustice to either party.
4. In addition, requirement (b) of Part 5 of the Enforcement Notice refers to the definition of gypsies and travellers in Annex 1 of Planning Policy for Traveller Sites 2015 ("PPTS"). There are clear differences between the definition of gypsies and travellers in PPTS and paragraph 15 of the Circular. In my judgment the requirement at paragraph (b) of Part 5 of the Enforcement Notice should not refer to the PPTS definition and I intend to correct this part of the Enforcement Notice. I do not consider that this causes any injustice to the parties.
5. It was agreed on behalf of the Appellant that:
- a) The Ground (a) appeal did not challenge Condition 3. However, Condition 3 is not currently being complied with. Accordingly, the Appellant seeks to extend the period for compliance with Condition 3 to twelve months through the Ground (g) appeal.
 - b) A variation of Condition 1 was sought that would allow eight caravans to be stationed on the Appeal Site.

Relevant Background Matters

- 6. The 2010 Planning Permission permitted, amongst other things, the erection of a toilet block subject to the Council's approval as to its position within the Appeal Site and other design details. No toilet block has been erected within the Appeal Site.
- 7. There are 11 Mobile Homes ("the Mobile Homes") sited within the Appeal Site.
- 8. As at the date of the Hearing eight of the Mobile Homes were occupied.
- 9. The Mobile Homes:

- a) Are owned by the Appellant.
 - b) Have either two or three bedrooms.
 - c) Have been rented out to their current occupiers as permanent residential accommodation.
10. The majority of the occupiers of the Mobile Homes do not claim to be either gypsies or travellers and none of the occupiers claim to be using the Appeal Site as a transit site. The current occupiers of the Mobile Homes are using them as permanent residential accommodation.
11. Condition 6 of the 2010 Planning Permission explains that the caravans to be stationed on the Appeal Site need to be capable of being lawfully moved on the public highway without division into separate parts thus reinforcing the use of the Appeal Site as a transit site for gypsies and travellers.

Ground (a) and the deemed planning application – that in respect of the breach of planning control which may be constituted by the matters stated in the Enforcement Notice the condition concerned ought to be discharged

Policy

12. The Development Plan for the area includes Policies H6, GD2, GD4, GD8 & IN2 of the Harborough Local Plan 2011 to 2031 ("the Local Plan").
13. I have also been referred to and have read:
- a) Paragraphs 58 & 103 of the National Planning Policy Framework.
 - b) Paragraphs 4, 7(c), 9, 10(a), 13, 14 & 22 to 28 of PPTS.
 - c) Parts ID: 17b-005-20140306; ID: 17b-018-20140306; & ID: 21b-028-20150901 of the National Planning Practice Guidance.
14. All parties were aware that the Good Practice Guide entitled "Designing Gypsy and Traveller Sites" ("the GPG") dated 2008 and published by the Department of Communities and Local Government has been withdrawn. I was referred to Paragraph 7.12; Chapter 8 & Annex B of the GPG. The Appellant acknowledged there was no indication that the Government intend to lower the standards referred to in the CPG for gypsy and traveller sites. I consider that the GPG provides useful information that assists decision makers when dealing with issues covered by it.

Main Issue

15. I consider the main issue in this case is whether the Appeal Site when used as a transit site could accommodate more than four caravans as permitted by Condition 1.

Reasons

16. The Local Plan explains that development for extensions to existing lawful transit sites for gypsies and travellers will be permitted where the specified criteria are met. The only criterion that the Council were concerned about was that the proposed extension of the Appeal Site (in terms of the number of caravans that could be stationed on it) had to conform with the current good practice design guidelines.

17. The Appellant submitted an indicative Layout Plan (Plan Ref ENMC-1) ("the Layout Plan") which showed how the Appeal Site could be divided into eight pitches. Each pitch could accommodate a touring caravan, two car parking spaces, and an amenity area. Each pitch would be served by an internal access road.
18. My understanding is that transit sites are permanent sites used to provide only temporary accommodation for their residents. In general terms the lengths of stay on transit pitches varies but are usually set at between 28 days and three months. The practice on private transit sites tends to be more relaxed in respect of the amount of time people are permitted to stay. The 2010 Planning Permission did not restrict the length of stay at the Appeal Site.
19. The requirement for facilities on transit sites reflect the fact that they are not intended for use as a permanent base for the persons occupying them.
20. I understand that the majority of gypsies and travellers prefer private amenities on each pitch including a toilet, wash basin and shower with a hot and cold water supply.
21. I am concerned that the Layout Plan does not indicate amenity buildings on any of the eight pitches. Further, it is not clear to me that there would be sufficient space to provide those facilities within the pitches. When the 2010 Planning Permission was granted the Appeal Site was going to benefit from a toilet block as explained above. The details of what facilities were to be within the toilet block were to be submitted to the Council. The Appellant advised me that many touring caravans provide amenity facilities within the caravans themselves. However, I cannot be sure that this would provide satisfactory living conditions for all the occupiers using the transit pitches on the Appeal Site.
22. However, the Council confirmed that if one of the pitches was set aside for the provision of a communal toilet block then the Appeal Site could accommodate seven touring caravans with associated parking and some limited amenity space. I agree with that assessment.
23. I have no doubt on the evidence that has been presented that there is a need in the area for transit site provision. I was advised that many of the existing pitches for gypsies and travellers on land surrounding the Appeal Site were overcrowded and some of that overcrowding occurred when visitors arrived. The Council agreed that the temporary use of the transit pitches on the Appeal Site by visitors would satisfy their use as transit pitches and was preferable to overcrowding or unlawful temporary encampments which can be unsafe especially for young children.
24. I have had regard to the Council's concerns that there would be no resident warden living at the Appeal Site when it is used as a transit site. In the circumstances relating to this case I do not share that concern because:
 - a) No resident warden was felt to be necessary when the 2010 Planning Permission was granted.
 - b) The Appellant currently fulfils the role of a resident warden and he lives on the site immediately adjacent to the Appeal Site.

- c) The Appellant explained that he would delegate any warden duties to others living nearby or on the Appeal Site whilst he was working away from the Appeal Site.
- d) The transit site is likely to be used in part by gypsies and travellers visiting friends and relatives living on pitches in the area surrounding the Appeal Site. Therefore, I consider that the use of the transit pitches would not require the same degree of management as other transit sites.

Overall Conclusions – Ground (a) Appeal

25. I therefore conclude that the Appeal Site could accommodate seven touring caravans and the design of the toilet block (if one is to be provided) can be discussed with the Council through Condition 4 of the 2010 Planning Permission. I consider the extension of the number of transit pitches at the Appeal Site would be in accordance with the Local Plan.

26. Accordingly, I will:

- a) Discharge Condition 1 of the 2010 Planning Permission.
- b) Impose a new Condition 1 which allows 7 caravans to be stationed on the Appeal Site.
- c) Grant planning permission, on the application deemed to have been made, for the change of use and operations previously permitted without complying with Condition 1 enforced against, but to substitute a new Condition as indicated in paragraph (b) above.
- d) Quash the Enforcement Notice so far as it relates to Condition 1.
- e) The appeal on Ground (g) against Condition 1 does not therefore need to be considered.

Reasons - Ground (g) - that the period specified in the Enforcement Notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

27. As regards Condition 3 I have explained that:

- a) The Appellant accepts that the Condition should remain.
- b) Not all of the current occupiers of the Mobile Homes are gypsies or travellers as defined by the Circular.

28. The Appellant is of the view that 12-months is the appropriate compliance period so that the current occupiers can find alternative permanent residential accommodation.

29. The Council confirmed at the Hearing that they would be willing to agree an increase in the compliance period to six months.

30. I have had regard to the personal circumstances of the current occupiers of the Mobile Homes as set out in the Appellant's Statement of Case and through the representations made by several of the occupiers who attended the Hearing.

31. The Council informed me that when copies of the Enforcement Notice were served on the occupiers of the Mobile Homes the occupiers were advised to

contact the Council's Housing Services Officers so that progress could be made on finding alternative residential accommodation for them. I understand that two of the occupiers of the Mobile Homes at the time the Enforcement Notice was served have been rehoused. However, it was also clear from the representations made at the Hearing that a level of confusion has arisen, and it is fair to say that there is a high degree of scepticism by the occupiers of the Mobile Homes that the Council can positively assist them with their housing needs.

32. I am aware of:

- a) The Public Sector Equality Duty and the protected characteristics that some of the occupiers of the Mobile Homes have. I am particularly concerned about mental health issues which would be made worse for some of the occupiers of the Mobile Homes if they were made homeless through these enforcement proceedings.
- b) The human rights of the occupiers of the Mobile Homes, Article 8 of the Convention Rights explains that everyone has the right to respect for, amongst other things, their home. The enforcement action would interfere with that right.
- c) My primary concern which is for the best interests of the children of some of the occupiers of the Mobile Homes as set out in Article 3 of the United Nations Convention on the Rights of the Child. One of the occupiers could not attend the Hearing because she is heavily pregnant, had to attend a hospital appointment and was due to give birth imminently. Some of the occupiers also have children attending the local school.

33. The Appellant accepted that a 12-month compliance period would be a proportionate response to the enforcement action. I consider that this period would allow the current occupiers of the Mobile Homes to find alternative residential accommodation. Further, the extension of the compliance period would be in the best interests of the children living at the Appeal Site as it would allow their parents to find residential accommodation which may allow that current school attendance to continue or to find alternative appropriate schools.

Overall Conclusion – Ground (g)

34. A reasonable period for compliance with Condition 3 would be 12-months, and I am varying the Enforcement Notice accordingly, prior to upholding the Enforcement Notice so far as it relates to Condition 3. The appeal under Ground (g) succeeds to that extent.

Formal Decision

35. It is directed that the Enforcement Notice be corrected and varied by:

- a) The deletion of "171A(1)(a)" and the substitution of "171A(1)(b)" in line 3 of Part 1.
- b) The deletion of the words, "Land lying to the west of Mere Lane, Bitteswell" and the substitution of the words, "Grove View, Mere Lane, Bitteswell, Lutterworth," in Part 2.

- c) The deletion of the word "travelers" and the substitution of the word "travellers" in line 15 of Part 3.
- d) The deletion of the words "Annex 1 of Planning Policy for Traveller Sites 2015 (which supersedes" in paragraph (b) of Part 5.

The appeal is allowed, and the Enforcement Notice is quashed insofar as it relates to Condition 1.

In accordance with Section 177(1)(b) and Section 177(4) of the 1990 Act, Condition 1 attached to the planning permission dated 14 July 2010, Ref 10/00644/FUL, granted by the Harborough District Council is discharged and the following new Condition 1 is substituted. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the change of use of the land to a transit pitch to allow the siting of 4 residential caravans by an extended traveller family including the erection of a toilet block but subject to the other conditions attached to that permission and to the following new condition:

1. There shall be no more than seven caravans stationed on the transit site at any one time.

Reason: To ensure that there is sufficient space within the site to provide for the stationing of the caravans and the facilities necessary for the occupiers of the caravans on the transit site.

The appeal is allowed on Ground (g) in respect of Condition 3 and it is directed that the Enforcement Notice be varied by the deletion of three months and the substitution of 12 months as the period for compliance.

Subject to all the corrections and variations set out above the Enforcement Notice is upheld.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Eleanor Overton MRTPI	ReSolve Planning
Michael Cash	Appellant

FOR HARBOROUGH DISTRICT COUNCIL

Christine Zacharia BTP, MRTPI	Planning Enforcement Team Leader
Hayley Cawthorne	Planning Officer

INTERESTED PERSONS

Dawn Moor & Giovanna Carrino	Caravan 9
John Bagster	Caravan 3
Julie Turton	Caravan 5
Lisa Jordan	Caravan 6
Rikki Freeman & Carl O'Brien	Caravan 1

DOCUMENTS

Document 1	E-mail from Housing Advisor to Christine Zacharia dated 26 July 2019.
Document 2	Exchange of E-Mails between Laura Ward (Caravan 4) and Christine Zacharia on 29 January 2019.