



Appeal Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2020

Appeal Ref: APP/V1505/C/18/3212159

Land at Alton Lodge, North Road, Crays Hill, Billericay CM11 2XD

- 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 appeal is made by Ms Charlotte Eastwood against an enforcement notice issued by Basildon District Council.
 - The enforcement notice was issued on 22 August 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of the land for the stationing of caravans, together with the unauthorised residential use of the land and the deposit of hardcore and other materials on the land.
 - The requirements of the notice are:
 - (i) Stop using the land for the deposit of hardcore and other materials.
 - (ii) Stop using the land for residential purposes by removing from the land all caravans and motor vehicles, together with residential paraphernalia and other domestic chattel's.
 - The period for compliance with the requirements is 7 days in respect of requirement (i) and one month in respect of requirement (ii).
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied

Background and procedural matters

1. The Council received reports of caravans being stationed on the appeal site over the weekend of 18/19 August 2018. The enforcement notice subject to this appeal was issued a few days later, on 22 August 2018, and was one of two enforcement notices issued on that day relating to this site. At the same time, the Council issued a Stop Notice requiring that the stationing of the caravans and the unauthorised residential use of the land should cease. The Council subsequently sought and obtained an injunction from the High Court preventing further caravans from being stationed on the land. The latter has not been contravened but the caravans initially moved onto the site remain stationed on the land in contravention of the Stop Notice.
2. Subsequent to the stationing of the caravans on the land, the site has been subdivided into individual plots by the erection of internal fencing. A number of outbuildings and other structures have been erected, including timber pergolas, raised patios, steps and children's play equipment.

3. The second enforcement notice issued by the Council alleged, without planning permission, the unauthorised formation of areas of hardstanding. There is an attendant requirement to remove the hardstanding and return the land to its former condition. An appeal was lodged against that notice (APP/V1505/C/18/3212160) and was linked to this appeal. However, the appellant has withdrawn that appeal and I take no further action on it.
4. The Council does not dispute that the appellant, Ms Charlotte Eastwood, and other occupiers of the site have Traveller status as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS). Notwithstanding some concerns about the extent to which the occupiers of the appeal site actually travel for work at present and intend to do so in the future, I concur with the Council in that respect.
5. The appeal site is within the Metropolitan Green Belt. The reasons for issuing the enforcement notice cite only policy in the development plan, that being Policy BAS GB1 of the Basildon District Local Plan Saved Policies, September 2007 (Saved Policies). That policy states that the boundaries of the Green Belt are drawn up with reference to the foreseen long-term expansion of built upon areas in the District, but is silent as to what types of development might be considered inappropriate within the defined Green Belt. I therefore consider that Policy BAS GB1 of the Saved Policies is not directly applicable to the breach of planning control alleged in the notice.
6. It follows that there is no development plan policy relating to development within the Green Belt with which the breach of planning control alleged in the notice is said to conflict. In these circumstances, I will consider the development against Green Belt policy as set out in the National Planning Policy Framework (Framework) and in the PPTS.
7. The Council is in the process of adopting a new Local Plan to replace the Saved Policies, covering the period between 2014 and 2034. Having reached Regulation 19 stage, the examination of that plan has now been suspended pending the investigation of an issue arising through that process, albeit not specifically relating to the provision of Gypsy and Traveller sites.
8. Policy H24 of the emerging Local Plan indicates that applications to regularise existing Gypsy and Traveller sites will be exceptionally permitted where the site was occupied for this purpose for at least three months as of 18 October 2018. It was explained to me that the origin of the qualifying date is derived solely from the date on which the policy was published and for no other reason. The caravans were brought onto the appeal site over the weekend of 18/19 August 2018, such that the use subject to the notice would not qualify for consideration under this aspect of the emerging policy in any event.
9. The emerging policy then goes on to set out a range of criteria against which proposals for new Gypsy and Traveller sites will be considered, including sites in rural areas. The appellant considers that this aspect of the emerging Local Plan should be afforded moderate weight. However, I was advised at the Hearing that this policy has been subject to "push-back" from the public. I therefore cannot discount the possibility that the policy may be changed prior to the Local Plan being adopted. For that reason, I attach only limited weight to Policy H24 of the emerging Local Plan as a material consideration at this time, and/or the direction of travel indicated by that policy.

The Enforcement Notice

10. The breach of planning control alleged in the notice includes the unauthorised change of use of the land for the stationing of caravans, together with the unauthorised residential use of the land. Whilst it is clear that the appellant has understood the meaning of the notice, to my mind the phrase 'residential use of the land' connotes something different from the stationing of caravans for residential occupation. I shall therefore correct the breach of planning control alleged to address that and to directly relate the residential use to the siting of the caravans. I shall also vary requirement (ii) of the notice to more closely follow the breach of planning control alleged in the notice as I propose to correct it.
11. Also, the notice alleges the 'change of use' of the land which, in itself, is not development requiring planning permission for the purposes of section 55(1) of the 1990 Act. I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act.
12. Requirement (i) of the notice requires use of the land for the deposit of hardcore and other materials to cease. There is no further requirement to remove the hardcore and other material already deposited on the land. However, I understand that the Council are content that the second enforcement notice issued, and which has now taken effect, will secure that objective.
13. Requirement (ii) of the notice requires, amongst other things, that residential paraphernalia and other domestic chattels are removed from the site. As indicated above, a number of outbuildings and other structures have been erected since the caravans were moved onto the site. All of these structures are integral to and solely for the purpose of facilitating the use of the land as a caravan site for residential occupation. I am therefore satisfied that the notice can properly require the removal of these structures.
14. However, whilst not so vague as to make the notice defective, as drafted it is not entirely clear that Requirement (ii) encompasses these structures. On my reading, the term 'residential paraphernalia' in requirement (ii) can be taken to include these structures and that the appellant understands this to be the case. The appellant accepts that the notice can be varied to require the removal of the fencing without causing injustice. In my view, the same applies to the outbuildings and other structures have been erected. I shall therefore vary requirement (ii) of the notice to refer specifically to these structures.
15. The appellant raised no objection these amendments to the notice at the Hearing. I am satisfied that the notice can be corrected and/or varied in all these respects without causing injustice.

The appeal on Ground (a) and the deemed planning application

16. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice as I intend to correct it, planning permission ought to be granted.

Main Issues

17. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the PPTS
- the effect on the openness of the Green Belt, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the PPTS

18. Policy E of the PPTS¹ is emphatic in confirming that Traveller sites are inappropriate development in the Green Belt. There is no dispute that the site is within the Green Belt, and the appellant accepts that the breach of planning control alleged in the notice constitutes inappropriate development in the Green Belt.
19. I conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of paragraph 16 of the PPTS. Paragraph 143 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on the openness of the Green Belt

20. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. Both are relevant in this case. The appellant considers that the appeal site does not contribute to the openness of the Green Belt. I do not agree. Although the site had been enclosed by a 1.8 metre high close-boarded fence, the flat nature of the site nevertheless facilitates views across it that contribute to the openness of the area in a significant way.
21. I am also mindful that in dismissing appeals against enforcement notices relating to previous unauthorised development on this site, the Inspector found that the development did not preserve the openness of the Green Belt in this location (APP/V1505/C/16/3164894 & 31664897). The obvious corollary of that conclusion is that the Inspector must also have considered that this site contributes to the openness of the Green Belt in this area.
22. At the time of my visit, the site was divided into four separate plots by the erection of timber fencing of approximately 1.2 metres in height. An area of hard surface ran practically the full depth of the site, effectively dividing the site in half. Two of the plots were located on the eastern half of the site and two on the western half.
23. There were two mobile homes stationed on the land. The first mobile home was stationed on the eastern half of the site, on the plot adjacent to the site entrance. This mobile home had a timber pergola attached and two outbuildings associated with it. The second mobile home was stationed on the

¹ Paragraph 16

plot immediately to the south of the first. This mobile home had steps leading up to the main door, and one outbuilding associated with it. There was also an area of hardstanding and a touring caravan on that plot.

24. The remaining two plots were located on the western half of the site, but neither was occupied by a mobile home. One of these plots contained an outbuilding, a children's slide and a timber pergola on top of a raised patio. The other plot was open grass.
25. By reason of their height and solid form, the stationing of the mobile homes harms the spatial aspect of the openness of the Green Belt in this location. That harm is exacerbated by the plethora of outbuildings, fencing, hard surface and other structures integral to that use.
26. In terms of the visual aspect of openness, the solid form and reflective external surfaces of the mobile homes produce a conspicuous visual mass that perceptibly harms the openness of the Green Belt. Again, the plethora of outbuildings and other structures integral to the use alleged in the notice contribute to the visual activity on the appeal site and as such harm the openness of the Green Belt in visual terms.

Other considerations

27. Policy E of the PPTS indicates that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. I was presented with evidence about the personal circumstances of the occupiers of the site and unmet need for Gypsy and Traveller pitches in the District, both in the written submissions and at the Hearing. It is convenient to consider the latter in the first instance.
28. The evidence in relation to unmet need for Gypsy and Traveller pitches in the District is set out in the Council's Gypsy and Traveller Accommodation Assessment (GTAA) 2018. This indicates that a total of 32 pitches are required between 2016 and 2021, with an average of between 4 and 6 pitches per year for the following 5-year periods up to 2034. The GTAA identifies a potential supply of between 10 and 20 pitches, all deliverable after 2021 and all within the urban area. This amounts to a potential shortfall in the region of between 12 and 22 pitches for the period between 2016 and 2021, plus an additional 18 pitches between 2021 and 2034.
29. The Council responds by pointing out that the emerging Local Plan allocates some 15 new pitches, with at least an additional 29 pitches anticipated from the regularisation of existing unauthorised sites. The Council therefore maintains that the five-year supply of pitches identified in the GTAA can be met. However, for the reasons stated in paragraph 9 above, at this time I attach only limited weight to the Council's intended reliance on the regularisation of existing unauthorised sites to meet the need identified in the GTAA.
30. The corollary is that there is a shortfall of pitches against the need identified in the GTAA. This is a material consideration to which I attach significant weight.
31. The appellant fairly admits that she was fully aware of the need to secure planning permission to station the mobile homes on the appeal site but proceeded to occupy the site in any event. The appellants' actions in that

regard are compounded by the decision to erect various outbuildings and other structures on the land after the enforcement notices and the Stop Notice were issued. This is therefore a case of intentional unauthorised development. As the Council point out, in the letter from the Chief Planner dated 31 August 2015² it is indicated that the government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt. The breach of planning control in this case is an example of that harm. That is a material consideration to which I attach great weight.

32. In addition, in this case I am mindful that the personal circumstances of the appellant and other adult occupants of the site must be considered in the context that they are occupying the site in contravention of the Stop Notice issued by the Council some two or three days after the site was first occupied. The Stop Notice issued by the Council makes it abundantly clear that if any person contravenes it, they shall be guilty of an offence. It is clear to me that the occupiers understood that. By remaining on the land, the appellant and the other adult occupiers of the site have blatantly ignored that warning.
33. Consequently, whilst the appellant suggests that the time that has passed since the enforcement notices and Stop Notice were issued has enabled the family group to integrate themselves with the local community, throughout all of that time they have been committing an offence. I have been presented with no circumstances of such significance that would justify the occupiers remaining on the land in contravention of the Stop Notice. Having regard to any associations that may have been established by the adult occupiers of the site during that period would condone that offence. In the particular circumstances of this case, that would not be appropriate.
34. It is not a valid response to say the High Court injunction allowed the occupiers to remain on the land. The purpose of the injunction was to prevent an escalation of the breach of planning control by preventing further caravans to be brought onto the land. On my understanding, it was granted in order that the occupiers of the site could remain on the land until such time as this appeal is determined. The injunction is time-limited based upon the outcome of further events³. The injunction therefore does not allow for permanent occupation of the appeal site by the occupiers named within it. Neither does it provide any foundation for establishing links to the local community in the interim. The Stop Notice relates to the breach of planning control that had already occurred, and in which the occupiers of the site are knowingly in breach of. They are, therefore, separate entities but must be read in conjunction.
35. Having regard to the above, and in the particular circumstances of this case, I attach no weight to the personal circumstances of the adults occupying the appeal site. The corollary is that nothing in those circumstances warrants a departure from the guidance in Policy E of the PPTS. However, in accordance with paragraph 16 of the PPTS, I must consider the personal circumstances insofar as they relate to the best interests of any children residing at the site. The latter is a matter to which I now turn.
36. Ms Eastwood and her partner have four children, two of whom are home-schooled at present. Their eldest daughter is attending a Beauty Therapy

² Subsequently confirmed in the Written Ministerial Statement dated 17 December 2015

³ Until trial or further order.

Course, which was anticipated to finish in April of this year. Upon completion of that course, I understand that she has full-time work lined up. I can fully understand the desire to be close to her place of employment but do not consider it imperative that she remains on the appeal site to sustain that employment. Moreover, obtaining a full-time position in the local area reinforces my concerns about the extent to which the occupiers of the site intend to travel in the future.

37. I am advised that their son has a sight impairment. He currently attends a local primary school and will remain there until July 2022. He is doing well at the school and is making friends there, including from the settled community. However, his sight impairment reduces his opportunities to take part in school activities and to play. If this child remains in local education, it is likely that he will do so until 2028. It would be in the best of the interest of this child to remain at the appeal site in order that he can continue to attend his current school. That is a primary consideration and no other consideration can be inherently more important.
38. I also heard evidence about the two children of Mr William Eastwood and his partner Ms Toni Eastwood⁴. Both of these children have medical conditions. Although listed on the injunction as being permitted to remain on the site, the injunction also means that they are unable to move their caravan onto the land. As a result, I understand that their two children do not stay on the site for prolonged periods of time. For that reason, I attach only limited weight to the best interest of these children.

Green Belt balancing exercise and conclusion on the ground (a) appeal

39. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. In addition, and in accordance with the Written Ministerial Statement dated 17 December 2015, I attach great weight to the intentional unauthorised development in the Green Belt constituted by this breach of planning control.
40. Against this, I attach substantial weight to the best interests of Ms Eastwood's son to remain on the site but only limited weight to the interests of the other children that from time to time may be present on the site. I attach significant weight to the unmet need for Traveller pitches in the area. I attach limited weight to Policy H24 of the emerging Local Plan or the direction of travel indicated by that policy. For the reasons stated above, I attach no weight to the personal circumstances of the adult occupiers of the site. I am satisfied that the harm could not be overcome or mitigated by the imposition of conditions.
41. In weighing the balance, I conclude that the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, whether taken individually or cumulatively, such that the very special circumstances necessary to justify the development do not exist. In reaching that conclusion, I am mindful that Policy E of the PPTS states that personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm as to establish very special circumstances. I have taken into account the best interests of the children that

⁴ I am advised that Mr and Mrs Eastwood are also expecting a third child.

reside upon the site, but see no reason to justify a departure from that guidance in this case.

42. My conclusions up until this point have been concerned with a permanent planning permission, as sought by the appellant. I have also considered whether a temporary and/or personal permission might be appropriate. I am advised that the adoption of the new Local Plan is not likely until next year in any event but, with objections having been made to some of the proposed policies within it, I cannot discount the possibility that it may take longer before the plan is fully adopted. Moreover, the extent of any delay is an unknown quantity at this time, such that it is not possible to predict with any degree of certainty exactly when the new Local Plan may be fully adopted.
43. Consequently, to my mind the only circumstances in this case that might potentially justify a temporary permission relate to providing a period of stability in home life for the family and particularly the education needs of Ms Eastwood's son. I can understand why continuing at his present school would be in that child's best interests. In that context, I recognise that he is due to finish at that school in July 2022, some two years hence. There is, I accept, some logic to a temporary permission of a duration that would encompass finishing at his current school and transitioning to his new school.
44. There are, however, arguments that weigh against that course of action. Firstly, at this time it is not known for certain where the child's next school will be when he leaves his current school in July 2022: indeed, as I understand it, there is the possibility that he may require a specialist school and not continue in mainstream education. My difficulty in this respect is that I have no specialist medical evidence before me to indicate whether he might be able to continue in mainstream education or will need to attend a specialist school. In the latter eventuality, I have no information as to where that school might be. There can be no guarantee that the child's next school, wherever that may be, will be conveniently located in relation to the appeal site.
45. Secondly, for the previous 18 months or so, the child has been travelling to his current school from the appeal site only because his parents occupied the land through an act of intentional unauthorised development. Whilst clearly no fault of the child himself, I am nonetheless mindful of the government's concern about the harm caused by intentional unauthorised development in the Green Belt.
46. I am also mindful that the Framework places substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I accept that granting a temporary permission would reduce the period of time for which the mobile homes and associated structures would remain on the site, and that this would reduce the harm. In other circumstances, this might have pointed towards a temporary planning permission. However, as set out above, the stationing of the mobile homes and the erection of a plethora of associated structures harm the openness of the Green Belt in this location. That harm is significant even over a relatively short period of time.
47. For these reasons, I consider that the benefit to the child to be gained from a temporary planning permission does not outweigh the harm to the Green Belt, including to its openness. I have also considered whether a permission personal to the appellant would be appropriate in this case. The Planning Practice Guidance indicates that it will rarely be appropriate that a planning

permission does not run with the land. I find no justification in the appellant's own circumstances to depart from the principle set out in the Planning Practice Guidance.

48. I am fully aware that the dismissal of this appeal would result in the appellant and the other occupiers of the site losing their homes. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
49. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the occupiers of the site. The issuing of the enforcement notice was in the interest of preserving the environment and therefore in the wider public interest. I am also mindful that the breach of planning control in this case constitutes intentional unauthorised development within the Green Belt in relation to which, as set out in the Written Ministerial Statement dated 17 December 2015, the government is particularly concerned about the harm caused. Having moved onto the site knowing that planning permission was required, the occupiers have then remained on the site in knowing contravention of a Stop Notice, and in so doing have committed an offence.
50. I am satisfied that the planning policy objective that underpins the enforcement notice could not be achieved by a less intrusive action. Consequently, balancing those considerations with the interference of the occupier's rights under the HRA, I conclude that the interference is proportionate and justified in this case. I am also satisfied that no violation of human rights of the appellant and her family would result from dismissing this appeal.
51. The occupiers of the site are Romany Gypsies and therefore have the protected characteristics of race under the section 149(7) of the Equality Act 2010. I have had due regard to my responsibilities under the Public Sector Equality Duty, and have considered the particular characteristics and needs of the occupiers of the site in reaching my decision.
52. I conclude that the planning permission, whether permanent or temporary, ought not be granted. Accordingly, the appeal on ground (a) should fail.

The appeal on ground (g)

53. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. In this case, consideration of this ground is solely concerned with requirement (ii): in summary, to cease using the land for the stationing of caravans for residential occupation. The period for compliance with requirement (ii) specified in the notice is one month.
54. I concur with the appellant that the period of one month specified in the notice is unreasonable. Upon reflection, the Council reached a similar conclusion and now suggests a compliance period of one year.

55. The primary reason for extending the period for compliance to one year would be to enable the appellant and the other occupiers to find an alternative site and thereby avoid a roadside existence. In my view, a period of one year would be a reasonable period within which to find an alternative site and to comply with the requirements of the notice, including removing the caravans from the land together with the outbuildings and other residential paraphernalia. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred, and can be achieved in combination with complying with requirement (i) and the second enforcement notice.
56. I shall therefore vary the notice to specify a compliance period of one year for requirement (ii). The appeal on this ground succeeds to that extent.

Conclusion

57. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

58. It is directed that the enforcement notice be corrected by:
- deleting the breach of control alleged in paragraph 3 of the notice in its entirety, and replacing it with: *'Without planning permission, the material change of use of the land to a caravan site involving the stationing of caravans for residential occupation, together with the deposit of hardcore and other materials on the land.'*
59. It is directed that the enforcement notice be varied by:
- deleting requirement (ii) at paragraph 5 of the notice as drafted, as substituting there: *'Cease the use of the land as a caravan site involving the stationing of caravans for residential occupation and remove from the land all caravans and motor vehicles together with residential paraphernalia and other domestic chattels, including outbuildings, pergolas, raised patios, steps, fencing and children's play equipment.'*
 - also in requirement (ii) at paragraph 5 of the notice, deleting the period of compliance of '1 month' and substitute there '12 months'
60. Subject to that correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR

APPEARANCES

For the appellant:

Ms Charlotte Eastwood	Appellant
Mr Austin Eastwood	
Mr William Eastwood	
Ms Toni Eastwood	
Ms Sharon Euesden	
Mr Simon McKay	SJM Planning

For the Local Planning Authority:

Mr Martin Firmstone MA (Hons)	Planning Services
Ms Nina Johnson-Marshall	Planning Services
Ms Adeola Awolola	Planning Services

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Copy of letter from Chief Planner dated 31 August 2015
- 2/ Copy of Written Parliamentary Question asked on 19 October 2018 and copy of the response confirming that the Written Ministerial Statement dated 17 December 2015 is still a potential material consideration in planning cases.
- 3/ Copy of the High Court Injunction dated 13 September 2018 preventing further caravans from being stationed on the appeal site.
- 4/ Copy of Policy H24 of the Basildon Borough Revised Publication Local Plan 2014-2034, with supporting text.
- 5/ Copy of the Land Registry title plan for the appeal site.