
Appeal Decisions

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2022

Appeal Refs: APP/T2215/C/20/3259489; 3259490; 3259491; 3259492; 3259495; 3259496; 3259497; 3259498; 3259499; and 3259500

Land situated at Drudgeon Farm, School Lane, Bean, Kent DA2 8AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr S Jones; Mrs C Jones; Mr J Burdon; Mrs S Burdon; Mr W Lodge; Mrs N Lodge; Mr J Hayes; Mrs C Hayes; Mr D Scarrott; and Mrs Z Scarrott against an enforcement notice issued by Dartford Borough Council.
- The enforcement notice, numbered 19/00191/ENF, was issued on 13 August 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land from agriculture to use of the land as a Travelling Showpeople site for the stationing of caravans/mobile homes for the purposes of human habitation by Travelling Showpeople and family and storage of items connected with the Travelling Showpeople's commercial enterprise.
- The requirements of the notice are:
 - (i) Cease the use of the land as a Travelling Showpeople site for the stationing of caravans/mobile homes for the purposes of human habitation by Travelling Showpeople and family and storage of items connected with the Travelling Showpeople's commercial enterprise
 - (ii) Cease the use of the land for the stationing of the caravans/mobile homes for the purposes of human habitation.
 - (iii) Remove all caravans/mobile homes from the land
 - (iv) Remove from the land all items that relate to the Travelling Showpeople's commercial enterprise
 - (v) Remove from the land all hardstandings and trackways and other materials used to form areas of hardstanding and trackways and take those materials to a suitably licensed waste management facility.
 - (vi) Remove from the land all vehicles, plant, equipment; trailers, structures, machinery, domestic paraphernalia, lighting systems and other items associated with the unauthorised residential occupation of the land.
 - (vii) Remove from the land other items including wooden fencing and debris that do not relate to the use of the land for agriculture.
 - (viii) Restore the land to its previous condition and reseed.
- The periods for compliance with the requirements are:

Steps (i) to (vii) inclusive: 15 months

Step (viii): 18 months
- The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld with a variation as set out in the Formal Decision below

Procedural matters

1. All of the appeals subject to this Decision have been made against the same enforcement notice issued by Dartford Borough Council (the Council) on 13 August 2020 under reference 19/00191/ENF. All of the appeals have been made solely on ground (g) as set out in out in section 174(2) of the 1990 Act, namely that the period for compliance specified in the notice falls short of what should reasonably be allowed.
2. The corollary of appealing on ground (g) only is that the appellants have appealed for the sole reason of securing more time to comply with the requirements of the notice but in the expectation that the enforcement notice will be upheld. The implication is that, in this case, the appellants have known since the appeals were lodged in September 2020 that they would have to leave the site in due course and find somewhere else to live. In these circumstances, I may take account of the time that has elapsed since the appeals were lodged in deciding what period for compliance is reasonable.
3. The appellants each elected that their respective appeals should be determined under the Written Representations procedure. Furthermore, the appellants resisted the Council's request that these appeals should be determined by a Public Inquiry. In doing so, they chose not to avail themselves of the opportunity to provide detailed information about their personal circumstances at a Hearing or Inquiry. It is therefore reasonable to conclude that the appellants are content for me to rely upon the details provided in their written Appeal Statements for that information.
4. I have considered whether the Written Representation procedure is the most appropriate in these cases or whether, given the issues involved, the appellant's personal circumstances should be explored at a Hearing or an Inquiry. However, I am satisfied that the information provided is sufficient to undertake the full proportionality assessment required under the Human Rights Act 1998 (HRA), and for me to discharge my duties under the Public Sector Equality Duty. Accordingly, I am satisfied that the Written Representation procedure is appropriate.

The Enforcement Notice

5. The requirements at paragraph 5 of the notice include (vii) Remove from the land other items including wooden fencing and debris *that do not relate to the use of the land for agriculture* (emphasis added). An enforcement notice shall specify the steps required to be taken or activities required to cease in order to remedy the breach of planning control that has occurred, or remedy any injury to amenity resulting from that breach of planning control, as the case may be. In relation to (vii), there may be other items on the land that do not relate to its use for agriculture but which form no part of the breach of planning control alleged. The notice cannot require the removal of any such items. In the interests of clarity, I shall vary the notice to make that distinction. I am satisfied that no injustice would be caused by so doing.

The appeals on ground (g)

6. The period for compliance specified in the notice is 15 months in relation to steps (i) to (vii) inclusive as set out in paragraph 5 of the notice, and 18 months in relation to step (viii). The appellants seek a period of compliance of 36 months. During that period the site would not be controlled by any planning conditions and a period of that duration would be more appropriate as a temporary planning permission. However, because the appeal has been made only on ground (g), that is not an option open to me to consider.
7. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interests of those occupying the site. In so doing, I must assume that the use of the land subject to the enforcement notice for the stationing of caravans/mobile homes and the storage of items connected with the Travelling Showpeople's commercial enterprise does cause the harm alleged in the reasons for issuing the notice.
8. Paragraph 137 of the National Planning Policy Framework (Framework) indicates that the Government attaches great importance to Green Belts. The enforcement notice was issued for a total of three substantive reasons, one of which is that the breach of planning control amounts to inappropriate development in the Green Belt. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt. Paragraph 148 of the Framework indicates that substantial weight should be given to any harm to the Green Belt. In accordance with the Framework, I attach substantial weight to the harm caused to the Green Belt in this case. This then translates to substantial harm to the public interest that this represents.
9. Further evidence of the harm caused by the breach of planning control subject the enforcement notice is clearly expressed in the representations from local residents and the Bean Residents Association. A total of eighteen representations have been received in response to notification of these appeals. These representations universally support the issuing of the enforcement notice. A number of the representations expressly state that the period of compliance is considered to be adequate. One of the responders goes further, and suggests that the period of compliance should be shortened from that stated in the notice. However, the appeal on ground (g) is specifically that period for compliance specified in the notice *falls short* of what should reasonably be allowed (emphasis added). It is therefore not open to me to reduce the period of compliance.
10. I acknowledge that one of the responders does consider that the period of compliance should be extended, but only for a further period of two months to allow for the possibility of poor ground conditions. Overall, however, the representations received are indicative of a public interest in achieving expeditious compliance with the notice.
11. The case for extending the period of compliance is the same for all of the appellants, differing only in personal details. The appellants' case is essentially in two parts: (i) the non-availability of plots for Travelling Showpeople to which they could relocate, and (ii) their personal circumstances. It is convenient to consider the availability of sites in the first instance.

Availability of plots for travelling showpeople

12. The appellants do not own any other land or property that they can move to. The appellants maintain that there are currently no plots for Travelling Showpeople available, with no certainty that any such plots will become available within the 15 months period of compliance specified in the notice. In that context, the appellants contend that lawfully established plots for Travelling Showpeople rarely become available for rent or sale because they are kept within families for future generations, and that there is a renowned shortage of new plots in the area.
13. There is no requirement in planning policy or through case law for an appellant to prove that no other sites are available. Nevertheless, the appellant's assertion in the above respect is not supported with any evidence. There is no evidence to show that the appellants have made any efforts to find an alternative site. There is no evidence to show that the appellants have searched for alternative sites in the local area but without success or that, having located a suitable site, found that it was not available. Furthermore, there is no evidence to show that the appellants have widened their search for alternative sites beyond the local area: for example, that the appellants have searched for sites in Essex, where I understand the appellants were previously based before occupying the appeal site. Consequently, there is nothing to show that the appellants' assertion that no alternative sites are available is well-founded and I cannot discount the possibility that alternative sites may be available.
14. I recognise that restrictions imposed by the Coronavirus pandemic may have been a factor in preventing the appellants seeking an alternative site. However, the restrictions imposed by the Coronavirus pandemic have now been lifted and there is no reason why this should now prevent the appellants from actively seeking alternative accommodation. The appellants have provided no evidence to suggest that the period of 15 months specified in the notice would not be sufficient to find an alternative site.
15. The Dartford Gypsy and Traveller Accommodation Assessment undertaken in 2019 identified a need for 1 additional permanent plot for Travelling Showpeople in the next 5 years. The Council considers that this need could be met within the boundaries of an existing established site, given that there is no limit on the number of plots that can be accommodated within this site and that the site is of a significant size adequate to accommodate this need. The appellants have not disputed this position. Neither have the appellants commented on whether the established site identified by the Council is suitable for them or is available to them. Again, I cannot discount the possibility that this would be an option open to the appellants but is an option that they do not appear to have explored.
16. In support of its position, the Council refers to the judgment in the Court of Appeal in *Eastwood & Anr v Royal Borough of Windsor & Maidenhead* [2016] EWCA Civ 437. That judgment relates to use of powers under section 178 of the 1990 Act to clear land located in the Green Belt of caravans occupied by Romany Gypsies stationed there in breach of an enforcement notice. The enforcement notice in that case had been upheld on appeal, with the Inspector varying the notice to increase the period of compliance to 18 months pursuant to an appeal on ground (g). In varying the notice, the Inspector found that a

period of 18 months would be more reasonable as this would enable alternative accommodation and site provision arrangements to be progressed. The Council seeks to draw parallels between the findings in that judgment and the facts in this case.

17. Although there are some similarities, including the location of the site in the Green Belt, the facts in *Eastwood* are materially different to those in this case. In particular, the Inspector's findings in that case were to a large extent predicated on emerging Development Plan Documents which were anticipated to result in the identification of alternative sites. The Inspector's decision to extend the period of compliance to 18 months was therefore based, in part at least, on his finding that this process was "reaching fruition" and that sufficient time should be allowed to encompass that. The situation in relation to the current appeal is very different in that regard and, for that reason, I do not find the judgment in *Eastwood* to be directly relevant.

Personal Circumstances

18. The personal circumstances of appellants are different in each case. It is therefore convenient to set out these circumstances for each of the appellants separately in the first instance before concluding in the round, although I note here that all of the appellants expressly state that they have an aversion to bricks & mortar accommodation.

Mr & Mrs Jones (Appeal refs: 3259489 and 3259490)

19. I am advised that Mr & Mrs Jones' youngest child attends a nearby primary school. I have not been advised that this child has any particular learning needs that require attendance at that particular school. There is reference in Mr & Mrs Jones' Appeal Statement to their 'older' child's further education, but I have been provided with no details as to the age of that child or where they attend school. I have not been advised of any particular health issues suffered by these children or the adults in this family.

Mr & Mrs Burdon (Appeal Refs: 3259490 and 3259491)

20. I am advised that Mr & Mrs Burdon have two young children. It may be inferred from a reference in Mr & Mrs Burdon's Appeal Statement to "finding alternative school places" that these two children both attend school, but I have not been provided with any details about the ages of these children or where they attend school. I have not been advised that these children have any particular learning needs. Neither have I been advised of any particular health issues suffered by these children or the adults in this family.

Mr & Mrs Lodge (Appeal refs: 3259495 and 3259496)

21. Two of Mr & Mrs Lodge's children attend a nearby primary school. I have not been advised that these children have any particular learning needs that require attendance at that particular school. Their eldest child attends a secondary school, but I have been provided with no details as where that school is. I have not been advised of any particular health issues suffered by these children or the adults in this family.

Mr & Mrs Hayes (Appeal refs: 3259497 and 3259498)

22. Mr & Mrs Hayes do not indicate in their Appeal Statement that they have any children. I have not been advised of any particular health issues suffered by Mr & Mrs Hayes.

Mr & Mrs Scarrott (Appeal refs: 3259499 and 3259500)

23. Two of Mr & Mrs Scarrott's children attend a nearby primary school. I have not been advised that these children have any particular learning needs that require attendance at that particular school. Their eldest child attends a secondary school, but I have been provided with no details as to where that school is. I have not been advised of any particular health issues suffered by these children or the adults in this family.

Conclusion on personal circumstances

24. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration and this matter is very much in the forefront of my mind. I do not underestimate the importance of stability in a child's life, particularly in relation to their education.
25. I am, however, mindful that not all of the children identified above are noted as attending a nearby school. Only children of primary school age are noted as attending a nearby school, and this does not include all of the 'younger' children referred to above. No details are provided as to where the 'older' children attend school. Consequently, I cannot discount the possibility that those children do not attend a school in the local area.
26. Moreover, and this applies to all the children identified above, the appellants have accepted that they must leave the site at some point. Irrespective of whether that occurs at the end of the period of compliance stated in the notice, or at the end of the 36 months sought by the appellants, there is the possibility that the education of these children will be disrupted if a suitable alternative site is not forthcoming that period. This would apply in particular to those children of primary school age. Extending the period for compliance would reduce the possibility of that occurring and at the very least would postpone it, but would not be guaranteed to eliminate that disruption to the children's education.
27. The appellants consider that, should the period of compliance not be extended, there is the distinct likelihood that they will be without a home and have to live on the roadside to comply with the notice. The appellants explain that this prospect is causing them and their children considerable worry and distress which is affecting their health and welfare. Whilst I have taken this into account, from the lack of information provided by the appellants in relation to their healthcare needs, there appears to be no imperative for them to remain on the appeal site in order to benefit from the provision of health or social care.

Human Rights and the Public Sector Equality Duty

28. I have a duty to consider whether the requirements of the enforcement notice are compatible with appellants' rights under the European Convention of Human Rights (ECHR), as incorporated into domestic law by the HRA. In

particular, I am mindful that compliance with the enforcement notice would result in the appellants losing their homes in the sense, that is, of their homes on this site rather than the loss of their caravans. The appellant's rights under Article 8 (right for respect for private and family life, home and correspondence) would be interfered with, although on the evidence before me I am not convinced that this would also apply to the appellants rights under Article 1 of the First Protocol (right to respect to property). In any event, both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.

29. 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. As such, 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 appellants.
30. The protection of the Green Belt is a National planning policy, and one to which the Government attaches great importance. The protection of the Green Belt is clearly a matter of public interest and is a legitimate policy aim. The harm to the Green Belt arising from the breach of planning control is contrary to that public interest. That is a consideration to which I attach substantial weight. At a local level, the public interest in securing the expeditious remedy to all the harms identified in the reasons for issuing the notice is firmly expressed in the representations that have been received in response to the notification of these appeals.
31. In considering the appellants' rights under the HRA, it is relevant that the appellants made their appeals only on ground (g). The appellants have therefore accepted that they will lose their homes (on this particular site) and in that respect have accepted an interference with their rights under the HRA in the long term. The issue at hand is therefore whether the interference with the appellants' rights in the short term is justified, particularly in relation to whether they would be forced to live on the roadside. In that context, I am also mindful that the appellants are Travelling Showpeople and that the appeal site is not just their home: it is also a base for their business.
32. The worst-case scenario for the appellants is that the notice is upheld as issued: i.e with period of compliance of 15 months to cease the use of the land for the stationing of the caravans/mobile homes for the purposes of human habitation. Even in that scenario, in balancing the harm to public interest against the rights of appellants under the HRA, I consider that the period of compliance is a proportionate response to the breach of planning control that has occurred.
33. I have also had due regard to my responsibilities under the Public Sector Equality Duty. In particular, I have considered whether the appellants would have the opportunity to carry on their way have life as Travelling Showpeople and of advancing equality of the opportunity for their children to have an education. In doing so, I am again mindful that the appellants made their appeal only on ground (g) and have accepted that they must leave the site at some point. It follows that the appellants have accepted that will have to continue their way of life from another site, and that the education of their children might also have to continue at different schools. In the interim, there is nothing to prevent the appellants from continuing their way of life as

Travelling Showpeople from the appeal site and for their children to continue their education at the same schools.

Conclusion on the appeals on ground (g)

34. The harm to the Green Belt resulting from the stationing of caravans/mobile homes and the storage of items connected with the Travelling Showpeople's commercial enterprise is a consideration to which I attach substantial weight. To this must be added the harm resulting from the other reasons for issuing the notice, specifically the harm to the character and appearance of the area and the poor sustainability of the location of the appeal site. There is a clear public interest to be served by rectifying that harm expeditiously, and the Planning Practice Guidance confirms that the impact on those who are affected by a breach of planning control must be taken into account.
35. Against that harm to the public interest, I have taken the potential non-availability of alternative sites and the personal circumstances of the appellants into account. I have also taken account of the appellants rights under the HRA. The best interests of the children residing on the site has been a primary consideration throughout, and is a material consideration to which I have attached as much weight as any other.
36. In weighing the balance between public and private interests, I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance with that notice. I am, therefore, not persuaded that there is any need to extend the period for compliance stated in the notice and am satisfied the period of compliance stated in the notice is a necessary and proportionate response to the breach of planning control that has occurred.
37. Accordingly, the appeals on ground (g) fail.

Conclusion

38. For the reasons given above, I conclude that the period for compliance with the notice does not fall short of what is reasonable. I shall uphold the enforcement notice. I am satisfied that doing so would not violate the appellants rights under the HRA.

Formal Decisions

39. It is directed that the notice is varied by:
- Delete paragraph 5(vii) of the notice in its entirety, and substitute there the words 'Remove from the land other items, including wooden fencing and debris that relate to the use of the land as a Travelling Showpeople site.'
40. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR