



Appeal Decisions

Hearing held on 6 March 2024

Site visits made on 6 and 7 March 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal A Ref: APP/P0240/C/22/3303801

1 Magpie Farm, Hill Lane, Upper Caldecote, Biggleswade SG18 9DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Mohamed Shanteer of Cheval Equity against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 29 June 2022.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref CB/19/01369/FULL granted on 17 October 2019.
- The development to which the permission relates is described as "Permission is sought for additional capacity from 7 caravans, to permission for 4 pitches and 12 caravans."
- The conditions in question are Nos 3, 4, 5 and 7 which state that:
 3. Within 3 months of this decision notice, full details of the proposed means of foul drainage disposal, including time scale for delivery, shall have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed in accordance with the agreed time scale or in accordance with an alternative time scale agreed with the Local Planning Authority prior to first occupation.
 4. This permission does not authorise use of the land as a caravan site and occupation of any caravan by any persons other than Gypsies and Travellers, as defined in Annex 1 of the 'Planning policy for traveller sites', August 2015.
 5. No more than 12 caravans of which no more than 4 shall be static caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time. No more than four pitches shall be defined on the site and the caravans shall be sited within the four pitches and in the positions hereby approved as indicated on the submitted plan CBC.002 Rev C unless otherwise agreed in writing by the Local Planning Authority.
 7. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers CBC.001 and CBC.002 Rev C.
- The notice alleges that the conditions have not been complied with in that:
 1. Stationing of additional caravans in breach of conditions 5 and 7 of planning permission CB/19/01369/FULL dated 17/10/2019;
 2. Breach of condition 4 of planning application CB/19/01369 (occupation by non gypsy and traveller occupants);
 3. Noncompliance with CB/20/00284/DOC (Discharge of Condition 3 to Planning Permission CB/19/01369/Full) Drainage; and
 4. The development has not been carried out in complete accordance with the approved plans CB/19/01369/FULL which constitutes a breach of condition 7.
- The requirements of the notice are to:
 1. Cease the occupation of the Land by individuals who are not able to meet the definition of a gypsy and traveller as defined in Annex 1 of the 'Planning policy for traveller sites', August 2015 as required by condition 4 of CB/19/01369/FULL;

2. Install the approved foul water system as per the approved plans CB/19/01369/FULL and CB/20/00284/DOC
 3. Ensure the development is carried out except in complete accordance with the details shown on the approved plans, numbers CBC.001 and CBC.002 Rev C.
- The period for compliance with the requirements is: 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/P0240/C/22/3304047

2 Magpie Farm, Hill Lane, Upper Caldecote, Biggleswade SG18 9DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Nathan Buckland against an enforcement notice issued by Central Bedfordshire Council.
 - The notice was issued on 29 June 2022.
 - The breach of planning control as alleged in the notice is: Operational development on the Land without planning permission by the laying of hardstanding, erection of fencing over 2m high and installation of sewerage treatment works.
 - The requirements of the notice are to:
 1. Remove from the land the hardstanding, fencing over 2m in height and sewage treatment works (to include associated pipework, manholes, cesspits) electrical installations and any day rooms and any other buildings erected on the land;
 2. Remove from the land all building materials and debris arising from compliance with requirement (1) above and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
 - The period for compliance with the requirements is: 6 calendar months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/P0240/C/22/3304522

2 Magpie Farm, Hill Lane, Upper Caldecote, Biggleswade SG18 9EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Nathan Buckland against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 29 June 2022.
- The breach of planning control as alleged in the notice is described as "On 23rd April 2007 planning permission was granted for the change of use of the Land for the siting of 2 caravans under the reference number MB/05/01495/FULL subject to conditions. One of those conditions (Condition 2 of the planning permission) was that only 2 caravans should be sited on the Land. It appears to the Council that the condition has not been complied with because more than 2 caravans have been sited on the land."
- The development to which the permission relates is: Planning permission for siting two new caravans.
- The condition in question is No 2 which states that: No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
- The notice alleges that the condition has not been complied with in that: more than 2 caravans have been sited on the land.

The requirements of the notice are to: Remove the additional Static and Touring caravans on the Land at 2 Magpie Farm to reduce the number of caravans and pitches to that approved in MB/04/01495/FULL (2 caravans).
- The period for compliance with the requirement is: 6 calendar months
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on

ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal A Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word “except” in section (5)(3). Subject to this correction, the appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, conditions Nos 3 and 7 attached to the planning permission dated 17 October 2019, ref CB/19/01369/FULL are discharged and the following new condition No 3 is substituted:
 - 3) The use hereby permitted shall cease and all caravans, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision, schemes for:
 - full details of the proposed means of foul drainage disposal; and
 - for the layout of the site;shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted schemes shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetables. Upon implementation of the approved schemes specified in this condition, that scheme shall thereafter be maintained, retained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for additional capacity from 7 caravans, to permission for 4 pitches and 12 caravans without complying with conditions 3 and 7 but subject to the other conditions attached to that permission ref CB/19/01369/FULL and the new condition No 3 set out above.

Appeals B and C

3. The appeals are not valid and I can take no further action.

Preliminary Matters

4. There are 3 appeals, 2 appellants with respect to 2 sites. The sites are adjoining one another and utilise the same access from the highway network.

Given that the sites are closely related to one-another with substantial cross-overs in matters raised, the hearing related to both appeals.

5. I carried out an accompanied site visit on the day of the hearing. I carried out a further unaccompanied visit the following morning, viewing solely from public land and rights of way.

Mr Shanteer's Right to appeal – Appeal A

6. This appeal relates to the site which was referred to in the hearing as “Magpie 1” which is within the site outlined on the plan attached to the enforcement notice. Section 174(1) states that “a person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice”. The person’s interest in the land must exist at the time the appeal is made.
7. It was clarified at the hearing that Mr Shanteer is appealing personally and not through Cheval Equity Ltd. It was also clarified that although an agreement had been reached with 4 people to buy each part of this site, the person who had agreed to buy 1 of the plots, pulled out of that sale on 21 June 2022. That was then not sold until later in December 2022. The appeal was entered on 25 July 2022 when Mr Shanteer still had ownership of 1 of the plots and therefore had the right to appeal against the notice. The appeal can therefore continue to determination.

Mr Buckland's right to appeal - Appeals B and C

8. Appeals B and C relate to what became referred to in the hearing as “Magpie 2”. The appeal form as originally submitted for Appeal B, states that “the land has changed hands recently and this is not yet recognised with the land registry, thus Mr Buckland is still the legal owner.” A written representation made in relation to Appeal C gave background information stating that the land had been sold “some time ago” and not only that, but the person who they sold it to had in turn sold it on to 4 further people.
9. The issue of ownership and whether Mr Buckland had the right of appeal against these enforcement notices was raised by the Planning Inspectorate administrative team before the hearing. The response from their agent indicated that the deeds have not yet been updated although ambiguously stated that “when the enforcement notice was given, Mr Buckland was still the legal owner and the deeds have not yet been updated, nor will do for at least 6 months according to the Land Registry.”
10. At the hearing, I asked for conformation about whether the Council disputed Mr Buckland’s right of appeal and they do. I sought clarification from the appellant’s representatives. A ‘gentleman’s agreement’ had been entered into prior to the notices being issued but their name remains on the Land Registry documents. My understanding is that although there are legal obligations to register land ownership via the Land Registry which then serves as strong evidence of legal ownership, it is not definitive. As indicated at the hearing, there can be delays in updating the process. A delay in those administrative processes for whatever reason does not mean that the land had not been sold.
11. Taking all of this into account, it seems clear that although the Land Registry records have not been updated, Mr Buckland had no other remaining interest in the land. As such, I conclude that Mr Buckland did not have the right of appeal

and therefore there is no appeal to consider with respect to Appeals B and C. I am unable to take any further action in relation to those cases.

Appeal A – the notice

12. At the beginning of the hearing, I raised issues with how the notice had been worded in various respects.
13. I pointed out to the Council that the reasons for issuing the notice did not provide much in the way of any specific indication of what harm had been caused by the breaches of conditions. The second reason refers to “impact on the local environment” and the third refers to the failure to implement the required sewage provision “fails to meet the appropriate required standards”. These are not very detailed explanations of why the Council considered it expedient to take enforcement action.
14. Section 173 of the Act specifies the necessary contents of an enforcement notice and in addition, regulation 4 of the enforcement notice regulations¹ states what additional matters have to be specified. This includes the reasons why the Local Planning Authority consider it expedient to issue the notice and all policies and proposals in the development plan which are relevant to the decision to issue the notice. A number of development plan policies are referred to which gives some indication of the subject areas that need to be addressed. The appellant confirmed that they have understood the Council’s concerns. That is much clearer when having a knowledge of the planning history such as the planning permissions in the background to which the enforced conditions relate and the reasons for theme being imposed. It has been held however that a notice itself has to tell the recipient what they have done wrong. A recipient of a notice may not know anything about the planning background. Notwithstanding the deficiencies, I consider that there is just enough to enable the reader to understand why the Council considered it expedient to issue the notice.
15. The last requirement of the notice at (5)(3) includes an erroneous word “except”. I have powers under the provision of s176(1)(a) to correct any defect error or misdescription in an enforcement notice where it would not cause injustice to the appellant or the local planning authority. The appellant did not object to the deletion of this word which would not cause injustice to them and so I will make that change.

Appeal A – grounds of appeal

16. At the start of the hearing I sought clarification of the grounds upon which the appellant is relying. I explained the grounds that appears to have been pleaded and what those were in some detail. It was agreed that the appeal should proceed on grounds (a), (c), (f) and (g). I deal with these in logical rather than alphabetical order in my decision.

Appeal A on ground (c)

17. Under ground (c) the onus is on the appellant to demonstrate that what is alleged on the notice does not constitute a breach of planning control.

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

18. Planning permission was given for “additional capacity from 7 caravans to permission for 4 pitches and 12 caravans” on 17 October 2019 (Ref CB/19/01369/FULL). As set out in the header, the conditions on that planning permission are those being enforced. At the hearing, the appellant confirmed that those conditions had been breached. From the submissions that is clear.

19. Consequently, the appeal on ground (c) fails.

Appeal A on ground (a)

Background

20. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of planning control. The breaches of planning control are breaches of planning conditions therefore I need to consider whether planning permission should be granted without complying with those conditions or with alternative conditions.

21. The wording of the conditions is set out within the header above. It is useful for the purposes of considering the planning merits to set out the reasons for the conditions that have been breached.

22. The breach of condition 3 relates to non-compliance with details that had been approved pursuant to that condition. The condition was imposed for the following reason: “In the interests of pollution control and in order to secure satisfactory standard of development.”

23. Condition 4 attempts to limit the occupation of the site to person who fulfils the definition of Gypsies and Travellers and the reason is “this consent is granted on the basis of it meeting a need for Gypsy and Traveller Accommodation (Planning Policy for Traveller Sites August 2015).”

24. Condition 5 limits the numbers of caravans and the types of caravans. It was imposed for the following reason: “to control the scale of the use and in the interests of the visual amenity of the surrounding area (section 12 NPPF).”

25. Condition 7 requires compliance with approved plans: “to identify the approved plan/s and to avoid doubt.”

Main issues

26. At the hearing I sought views from the parties on main issues in the case which I had also suggested in a pre-hearing note along with the draft agenda. However, as the hearing progressed, the appellants confirmed that they are not requesting occupancy by people who do not comply with the definition of Gypsies and Travellers and nor is there a dispute with respects to the numbers of caravans. This site has, since the issuing of the notice, reverted to the numbers allowed for in the planning permission. As such therefore, the effect upon the character and appearance of the area and the need for Gypsy and Traveller sites are no longer main issues and conditions 4 and 5 are not being disputed.

27. The only remaining main issue is the effect of non-compliance with condition 3 of CB/19/01369/FULL on foul drainage in the area and whether it is reasonable and necessary.

Reasons

28. The appeal site is separated into 4 plots. When I carried out the accompanied site visit I was shown the inspection covers that I was told serve tanks. There is no specific evidence about the types of tanks that have been installed or whether they exist in each of the plots. There were no visible inspection covers in 3 of the plots although I was told that there are at least 2 tanks to serve the 4 units. There appears to be no dispute that the tanks have to be emptied. Therefore, they seem to be sealed tanks or if they are septic-tanks, they do not currently discharge to any drainage field and are not performing as one would normally expect.
29. Following the approval of planning application Ref CB/19/01369/FULL on 17 October, details were submitted in order to satisfy condition 3 and those were approved on 28 March 2020 (Ref CB/20/00284/DOC). Those details proposed a pumping unit in order to discharge to mains drainage. The Council is of the view that the previously agreed system should still be installed. They referred to it being the preference of the Environment Agency (EA) to secure such connection although there has not been any consultation with the EA or evidence to the hearing from them.
30. There is however no technical evidence about what has been installed and my description above was to some degree speculation aired at the hearing. Policy CC6 of the Central Bedfordshire Local Plan, 2015-2035 adopted July 2021 (LP), says that development will only be granted where it can be demonstrated, amongst other things, that sewage treatment facilities of adequate design and capacity are available. Although I have no evidence that what has been installed has caused any pollution concerns, the appellants have not demonstrated that what has been installed is of adequate design and capacity for the 4 pitches.
31. LP Policy CC6 does allow for non-mains drainage proposals where there would be no detrimental impact upon the environment and subject to the adequacy of the design and capacity. The reasoning for the policy does refer to the preferred approach of connecting to the nearest public sewerage system. It goes on to say that other private systems should only be considered where the developer can clearly demonstrate that disposal to the public foul sewer is not feasible taking account costs and/or feasibility.
32. The appellant's justification for not implementing the details previously agreed largely comes down to costs. Although £100,000 was mentioned, that is not evidenced by quotations for the work and equipment previously specified. I was also referred to a previous planning application for 7 caravans on the site which had no requirement for public sewage connection, although that permission has not been implemented.
33. In these circumstances, there is no assurance that the system in place is adequate particularly without further investigation having taken place to demonstrate precisely what has been installed. It was clarified that the system needs emptying which must require careful management. A system that doesn't rely upon such management would be clearly preferable to avoid pollution events as required by the strategy of the LP. That preferably should be via a connection to a public mains sewer. However, the LP does provide for the implementation of other systems subject to the correct information being provided.

34. Within the scope of the papers submitted in this case and the discussions at the hearing, I cannot conclude that the current system is similarly adequate to that previously approved. However, I cannot rule out that an alternative system could adequately deal with sewage from the site whether that is an alternative pumping system to enable connection to the public sewer or an adequately specified private system along with sufficient evidence to achieve what LP Policy CC6 requires.
35. In relation to the main issue, non-compliance with condition 3 of CB/19/01369/FULL has a potentially harmful impact upon foul drainage in the area and a condition relating to that is reasonable and necessary because continued non-compliance would not adhere to LP Policy CC6. However, an alternative system may also be satisfactory and may also comply with LP Policy CC6. A condition is therefore reasonable and necessary to secure suitable foul drainage.

Other matters

36. I have been referred to the Written Ministerial Statement regarding "Green Belt Protection and Intentional Unauthorised Development" dated 31 August 2015. Whilst aimed primarily at the Green Belt areas which the appeal site is not within, I accept that the policy refers to intentional unauthorised development more broadly. The breaches outlined on the notice were not accidental and must have been intentional. However, since the notice was issued, the appellant appears to have secured some co-operation with the Council albeit there are ongoing disputes through this appeal. I give limited adverse weight to the intentional nature of the breaches of planning control.
37. There were more residents on this site when the notice was issued but compliance with the agreed numbers of caravans means that there are no implications for Article 8 of the Human Rights Act 1998 and Article 3(1) of the United Nations Convention on the Rights of the Child. Those people remaining on the site are not at risk of losing their homes.

Conditions

38. I am allowing the appeal and granting another planning permission. In doing so, it is not for me to completely review the other conditions that were imposed on the original planning permission which could in effect widen the scope of the notice. The previous planning permission will remain but it is necessary to apply any new conditions on both the old permission by discharging the challenged condition and upon the new permission.
39. The format of conditions requiring the submission of details will, as discussed at the hearing, require details being submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of those matters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
40. The layout and areas of hardsurfacing have changed from the previous layout as agreed. The appellant has provided an alternative plan which shows similar amount of development but I will require a further layout plan to be agreed.

That is because the requirement for the submission of foul drainage details may affect where the caravans and day-rooms are positioned within each part of the site and it is necessary that this is controlled to ensure no greater impact is caused upon the character and appearance of the surrounding area. I will therefore discharge the previous condition requiring compliance with the originally approved plans numbered CBC.001 and CBC.002 Rev C.

41. The Council suggests that the site should be subject to a scheme requiring biodiversity net gain (BNG). Although the recently introduced regulations and guidance do not apply to successful enforcement appeals or deemed planning applications, LP Policy EE2 does require BNG. However, the amount of development on the site is not changing. It has not been clearly demonstrated that the differences that I am being asked to consider in this case compared with the previous planning permission, have fundamentally resulted in changes justifying a need for BNG. I do not consider that a further planning condition is necessary to address this issue.

Conclusion

42. For the reasons given above, I conclude that Appeal A should succeed on ground (a) and the enforcement notice should be quashed. I shall discharge conditions 3 and 7 which are subject to the notice, and grant planning permission on the application deemed to have been made for the change of use previously permitted without complying with those 2 conditions that have been enforced against but subject to a new condition as described above. The appeal on grounds (f) and (g) do not fall to be considered.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Karen Wright

Vicky Wood

Claudia Jane Tresige

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes

Helen Heanes

Dave Hayle

Mr Jarman

DOCUMENTS

- (i) Council Summary of ORS Need Figures and Implications of Planning Policy for Traveller Sites 2015
- (ii) Central Bedfordshire Local Plan, July 2021 – Policies EE2 and EE3