



Appeal Decisions

Hearing held on 8 and 9 October 2024

Site visit made on 9 October 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Land at Plots 3-10 The Stables, Gypsy Lane, Little Billington, Leighton Buzzard LU7 9BP

Appeal Ref: APP/P0240/C/19/3221152

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Darren Owen against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 19 December 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the use of the Land as a residential caravan site without complying with conditions attached to planning permission SB/TP/08/1130 dated 9 January 2009.
- The development to which the permission relates is: Variation of condition 2 (in relation to named occupiers) and 4 (in relation to number of pitches) of planning permission SB/TP/06/0802.
- The conditions in question are nos. 1 and 2.
Condition 1 states: The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Darren Owen and Barbara Owen, Jim Connors and Josephine Connors, Billy Connors and Bridey Connors, James Connors and Kathleen Connors, Luke Delaney and Elizabeth Delaney, Peter James Delaney and Philomena Delaney, John Doran and Jane Doran, Danny Doran and Mary Doran.
Condition 2 states: There shall be no more than eight pitches on the site and on each of the eight pitches hereby approved no more than two caravans shall be stationed at any time, of which only one shall be a residential mobile home.
- The notice alleges that the conditions have not been complied with in that caravans on the Land are occupied by persons who do not meet the definition of Gypsies and Travellers as defined in annexe 1 of the Planning Policy for Traveller Sites 2012 and there are more than two caravans on the land shown edged red on the attached plan.
- The requirements of the notice are:
 1. You must comply with condition 1 by ceasing the occupation of the Land by persons who do not meet the definition of Gypsies and Travellers as defined in annexe 1 of the Planning Policy for Traveller Sites 2012, which stated: 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.'
 2. You must comply with condition 2 by ceasing the use of the Land for the residential use or storage of caravans in excess of eight mobile homes and eight touring caravans.
 3. The following caravans shall be removed from the following plots within the Land and as edged in red and identified on the named plot:
Plot 3 all caravans in excess of two.
Plot 4 all caravans in excess of two.
Plot 5 all caravans in excess of two.
Plot 6 all caravans in excess of two.

Plot 7 all caravans in excess of two and including no more than one static.

Plot 8 all caravans in excess of two and including no more than one static.

Plot 9 all caravans in excess of two and including no more than one static.

Plot 10 all caravans in excess of two and including no more than one static.

- The period for compliance with the requirements is six months.
- The appeal was made on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (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.

Appeal Refs: APP/P0240/C/19/3221153, APP/P0240/C/19/3221154, APP/P0240/C/19/3221155, APP/P0240/C/19/3221156, APP/P0240/C/19/3221157, APP/P0240/C/19/3221158

- The additional appellants who made appeals against the enforcement notice are listed at Appendix 1. These appeals were made on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the Act. Since the prescribed fees were not paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of Decisions: The enforcement notice is quashed.

Preliminary Matters

1. The Council issued three enforcement notices on 19 December 2018 in relation to Plots 3 to 10 The Stables, Plots 1 and 2 The Stables and Land at Greenacres. The three sites are located close together and the alleged breaches of planning control were similar in terms of non-compliance with conditions controlling occupation and the number and type of caravans. The Council reported 146 caravans on the three sites in March 2019, whereas the authorised total is 46 caravans. The number had reduced to 97 caravans by May 2024. A total of 17 appeals were made against the three notices. All appeals were linked in order that they could be determined together.
2. The appeals were held in abeyance pending the determination of a planning application by made by Central Bedfordshire Council in May 2020 (ref CB/20/01719/REG3) for "Continued use of the land for the stationing of 77 caravans (67 statics and 10 tourers) for Gypsies and Travellers, retention of two buildings for unrestricted C3 (residential) use together with the addition of a landscape buffer and associated development including drainage works, access road and fencing" (the Regulation 3 application). The application covered all three appeal sites and an additional strip of land owned by the Council approximately 12 metres in width running along the northern and eastern boundaries of the sites. The proposal would result in an increase of 31 caravans across the site (46 to 77). The number of plots would increase by two, both on the Greenacres site.
3. In October 2021 the Council resolved to grant planning permission for the development proposed in the Regulation 3 application, subject to a satisfactory conclusion on three matters. In January 2023 confirmation was received the application would not be recovered for determination by the Secretary of State (having been referred on 25 July 2022). Completion of a section 106 agreement and the receipt of a positive consultation response from National Grid (National Gas Transmissions) remained outstanding. After a further year

or so these two issues were not resolved and the appeals were taken out of abeyance.

4. At the beginning of 2024 the appeals were programmed to be heard at an inquiry in October 2024. A case management conference was held on 22 March 2024 to discuss appeal management, arrangements and programme for the inquiry and expectations on all participants. In July the procedure for determining the appeals was changed to a hearing, which was held on 8 and 9 October 2024. Time was allowed after the oral proceedings for the section 106 agreements to be finalised.
5. Three signed section 106 agreements, dated 22 October 2024, were submitted within the agreed timescale. The deeds include obligations regarding surface and foul water drainage and contributions towards the mitigation strategy for Chilterns Beechwoods Special Area of Conservation (the SAC). The hearing was closed in writing on 11 November 2024. Nevertheless, following the issue of an appeal decision on 11 November concerning a Traveller site in the District, the main parties were given the opportunity to comment in view of the Inspector's conclusions on the need for sites.
6. The background and issues are common to all appeals, which will be reflected in the reasoning. However, there are matters specific to each enforcement notice and use of each appeal site and a separate decision letter relates to the appeals against each notice for clarity.

The Appeals

7. The appeals were made on all grounds. The updated grounds of appeal submitted on 22 March 2024 confirmed the ground (e) appeals were withdrawn. Subsequently the appellants confirmed grounds (b), (c) and (d) were not being pursued. That being so, the appellants accept the alleged failure to comply with conditions 1 and 2 occurred as a matter of fact, and the non-compliance amounts to a breach of planning control that is not immune from enforcement action. On that understanding Appeal ref APP/P0240/C/19/3221152 has proceeded on grounds (a), (f) and (g) and the other 6 appeals have proceeded on grounds (f) and (g) only.
8. The Council did not substantiate or pursue their concerns over the standing of the appellants and the validity of the appeals at the hearing and I will not consider this matter further.

Planning history

The 2007 permission ref SB/TP/06/0802

9. In July 2007 planning permission was granted for "Use of land as gypsy caravan site for the stationing of seven mobile homes", subject to seven conditions. Those most relevant to the current appeals were:
 - Condition 1 restricted occupation of the site to Gypsies and Travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - Condition 2 restricted occupation to named persons.

- Condition 4 required no more than seven pitches on the site. No more than two caravans were to be stationed on each of the seven pitches, only one of which should be a residential mobile home.

The 2009 permission ref SB/TP/08/1130

10. In 2008 an application was made to increase the number of pitches to eight, and to add a family to the named occupants in condition 2. Permission was granted for "Variation of conditions 2 (in relation to named occupiers) and 4 (in relation to number of pitches) of planning permission SB/TP/06/0802" subject to three conditions.
 - Condition 1 set out the named occupiers.
 - Condition 2 stated there shall be no more than eight pitches on the site and on each of the eight pitches there should be no more than two caravans, of which only one should be a residential mobile home.
 - Condition 3 required submission and approval of amendments to the site development scheme.
11. This permission pre-dated the *Finney* judgement¹, which established the principle that there was no power to introduce a condition which created a conflict or was inconsistent with the operative wording of the original permission. The Council and the appellants agreed that the judgement did not affect the validity of the 2009 planning permission.

Enforcement Notice

Matters appearing to constitute the breach of planning control

12. The enforcement notice states in section 1 there appears to have been a breach of planning control under section 171A(1)(b) of the 1990 Act, a provision which concerns the failure to comply with any condition or limitation subject to which planning permission has been granted. Section 3 of the notice explains the alleged breach of planning control in more detail. The notice is directed at the use of the land as a residential caravan site without complying with conditions 1 and 2 of the 2009 permission.
13. The notice states Condition 1 restricts the use of the Land to named occupants and their dependants, known at the time to be Gypsies and Travellers as defined in section 24(8) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act). It appears to the Council caravans on the Land are occupied by persons who do not meet the definition in annexe 1 of the Planning Policy for Traveller Sites 2012.
14. The description of the wording of condition 1 does not reflect the wording of the actual condition attached to the permission, which solely names the people who are authorised to occupy the site. There is no condition attached to the 2009 permission restricting occupation to Gypsies and Travellers, whether as defined by the 1960 Act or the ODPM Circular 01/2006. As the planning history has shown occupation of the land by Gypsies and Travellers was required by Condition 1 of the 2007 permission. The reason for condition 1, stated in the

¹ *Finney v Welsh Ministers* [2019] EWCA Civ 1868

2009 decision notice, refers only to the retention of planning control in a Green Belt location where the very special circumstances case was accepted. There is no mention of gypsy status. No reliance can be placed on the named occupiers being 'known at the time' to be Gypsies and Travellers to enforce against non-compliance with condition 1. The alleged breach is not consistent with the wording of condition 1.

15. The notice states Condition 2 restricts the use of the Land, which should be divided into no more than eight pitches. No more than two caravans should be stationed on any pitch, of which no more than one is to be a residential mobile home. It is alleged more than two caravans are on the land, with reference to the plans of each plot attached to the notice. The alleged breach is consistent with the wording of condition 2.

Requirements of the notice

16. The notice should specify the steps to be taken or the activities that must cease to remedy the breach by making the development comply with the terms (including conditions) of the 2009 permission (section 177(3) and (4) of the Act).
17. The first requirement is directed at achieving compliance with condition 1 "by ceasing the occupation of the Land by persons who do not meet the definition of Gypsies and Travellers as defined in annexe 1 of the Planning Policy for Traveller Sites 2012." This requirement reflects the Council's interpretation of condition 1, not the wording of the condition in the 2009 permission.
18. Requirements two and three are directed at ensuring compliance with condition 2. Step 2 applies to the use of all the land "You must comply with condition 2 by ceasing the use of the Land for the residential use or storage of caravans in excess of eight mobile homes and eight touring caravans". Use of the land for the storage of caravans is not part of the breach and the Council accepted storage should be replaced by 'stationed'.
19. Step 3 is plot specific and requires the removal of caravans from the site. On each of plots 3, 4, 5 and 6 all caravans in excess of 2 should be removed. On each of plots 7, 8, 9 and 10 the required removal is all caravans in excess of 2 and including no more than one static. One way of reading the requirement is that it would allow a total of 16 caravans, including 12 statics, because there is no restriction on the number of statics on plots 3, 4, 5 and 6. The wording raises uncertainty over how a total of eight mobile homes and eight touring caravans would be achieved across the site on the basis of the allocation of caravans per plot. There is no explanation on why one static is not stipulated for plots 3, 4, 5 and 6.

Possible corrections and/ or variations to the enforcement notice

20. On appeal an Inspector may correct any defect, error or misdescription in the enforcement notice or vary the terms of the enforcement notice, if satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority (section 176(1) of the 1990 Act). The Council did not request any corrections or amendments to the enforcement notice.

21. My conclusion is that it is not appropriate to cite or rely on condition 1 of the 2009 permission to enforce against the occupation of the site by persons who are not Gypsies and Travellers. There is no obvious alternative condition to substitute and even if there was, the corrections required would result in substantial changes to the notice. Injustice would be caused to the appellant and the Council. For this reason alone the notice is invalid.
22. The requirements related to condition 2 are inconsistent and raise uncertainty. To delete plot specific allocations of caravans would address the main point on inconsistency. However, this correction would leave the owners/occupiers of plots 3, 4, 5 and 6 worse off and injustice would be caused. The position is not directly comparable to that in notice related to Greenacres, where the discrepancy is minor and the deletion of certain of the plot specific requirements would not leave a resident or owner worse off.

Conclusion

23. For the reasons given above, the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

DECISIONS

24. The enforcement notice is quashed.

Diane Lewis

INSPECTOR

APPENDIX 1

List of those who appealed against the enforcement notice related to Plots 3-10 The Stables.

Appeal Reference	Appellant
APP/P0240/C/19/3221152	Mr Darren Owen
APP/P0240/C/19/3221153	Mr John Connors
APP/P0240/C/19/3221154	Ms Josie Connors
APP/P0240/C/19/3221155	Mr James Connors
APP/P0240/C/19/3221156	Mr Billy Connors
APP/P0240/C/19/3221157	Ms Mary Doran
APP/P0240/C/19/3221158	Mr James Mongan

APPENDIX 2

APPEARANCES

FOR THE APPELLANTS:

Joseph G Jones, BFSGC Planning

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson, barrister

Phillip Hughes, Principal of PHD Chartered Town Planners

Steve Jarman, Opinion Research Services Ltd

David Hale, Gypsy and Traveller Planning Manager, Central Bedfordshire Council

FOR NATIONAL GAS TRANSMISSIONS PLC:

Darren Thomas, National Gas

Naomi Bull, Eversheds Sutherland (International) LLP

FOR HEALTH AND SAFETY EXECUTIVE:

Stuart Reston, HM Principal Specialist Inspector of Health and Safety

Kate Wagner, HSE Land Use Planning Advisor

INTERESTED PARTIES:

Mark Boyce, resident of Greenacres

DOCUMENTS submitted at the hearing:

Submitted by the appellants:

Letter from Manderstam International Group dated 7 October 2024

Site Plans and application site areas

Plan of caravans on the appeal sites 7 October 2024

Plan of plots and residents Greenacres

Submitted by the Council:

Ownership information October 2024

Corrected plans for Plots 1 and 2 The Stables and Greenacres

List of pitch approvals since GTAA base date

Lists of proposed planning conditions

Note on Standing.