



Appeal Decision

Site visit made on 24 January 2017

by **Mr K L Williams BA, MA, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 March 2017

Appeal: APP/V2255/C/16/3142907

Land on the South-East Side of Faversham Road, Ospringe, Faversham, Kent, ME13 0SP

- 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 Mrs A Gibbs against an enforcement notice issued by Swale Borough Council.
 - The Council's reference is ENF/GEN.
 - The notice was issued on 24 December 2015.
 - The breach of planning control as alleged is the material change of use of the land to land used as a caravan site for the stationing of caravans/mobile homes, and the laying of hard surfacing materials to facilitate the use.
 - The requirements of the notice are to:
 - i. Cease the use of the land as a caravan site for the stationing of any mobile homes or caravans.
 - ii. Remove any caravans/mobile homes from the site.
 - iii. Remove the hard-surfacing materials referred to in sub-paragraph (ii) above from the land.
 - The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds only to a limited extent. The enforcement notice is corrected, varied to extend the period for compliance to 12 months and upheld.

Background

1. The appeal site is in the countryside, adjacent to Faversham Road and Elverland Lane. It is within the Kent Downs Area of Outstanding Natural Beauty (AONB). The site is a steeply sloping orchard within a dry valley. There is a gated access close to the junction of Faversham Road and Elverland Lane. There are two pitches, both sited near the bottom of the slope.

The Enforcement Notice

2. The allegation should convey the use for which caravans are stationed. In this case it is apparent from the evidence submitted that the caravans are stationed for residential purposes. The main parties have approached the appeal on that basis. The notice can be corrected to address this matter without injustice to the main parties as set out in the Formal Decision.
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The Appeal on Ground (g)

3. The main issue is whether the 6 month period for compliance with the requirements is unreasonably short. The appellant seeks an extension of that period to 3 years.

The Main Points of the Appellant's Case

4. The site is occupied by an extended gypsy family. One pitch is occupied by Mr A Gibbs and Mrs A Gibbs. The other is occupied by their daughter Ms Lifton, her son John Lifton, aged 8 and her daughter Bridgeann, aged 1. Their gypsy status is not disputed. There are sustainability benefits from the family staying on the site, including access to medical facilities and education. Personal medical and educational circumstances need to be taken into account. One site resident has several medical conditions. Another has particularly complex health problems. Correspondence and assessments are submitted which explain the seriousness of that condition. Letters from the head teacher of a local primary school explain that it is John Lifton's third primary school and confirm the good progress he is making. They refer to the benefits to him of a settled home and to the disruption and harm to his education which would result from having to leave his home.
5. There is no alternative site available to the family and the Council has not offered alternative accommodation. There is a shortage of sites in the district and more widely and there is no 5-year supply of sites. The deliverability of some of the sites the Council relies on is questionable. The Council's approach in its emerging local plan is unlikely to succeed in delivering new sites. Finding sites is particularly difficult for gypsies and travellers. If this family is compelled to leave they would face considerable difficulty in getting a suitable site unless given further time. They could not find another site before buying the appeal site. They expended all their resources in doing so and need further time to recover financially. An extended period would allow them respite while also allowing continued access to education and health facilities. It would also allow the Council time to properly assess unmet need and make additional provision, while others could also be positively involved. There are no pressing safety or other issues to justify a compliance period of only 6 months.
6. The human rights of the family members are engaged and must be considered. The best interests of the children must be a primary consideration. The children benefit from a settle site and their best interests would be harmed if the family had to resort to a roadside existence
7. The site complies with many aspects of local and national policies other than in respect of its location in an AONB. There is a mature landscape edge to the site and there are trees within it, so that visual impact is reduced. The actual harm to the AONB is limited. The site is not remote from local services and facilities. There are other caravan sites in the area and some unauthorised sites have been tolerated. A similar range of issues has resulted in successful appeals elsewhere in the district, for example at Bredgar, Sittingbourne (APP/V2255/A/14/2222135), where a 3 year temporary permission was granted. A high court injunction concerning land near Sittingbourne was also suspended having regard to the best interests of the children on that site.

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Assessment

8. In an appeal limited to ground (g) it is not for me to decide whether or not planning permission should be granted. Nevertheless, some matters of planning merit may be relevant. A range of matters weigh in favour of extending the compliance period. There are personal medical circumstances. They apply in particular to one site resident who has a serious and complex medical condition. The submitted medical and other assessment documents strongly suggest that this condition will be exacerbated by the disruption caused when the family is required to leave the site.
9. The requirement to leave the site is an infringement of the human rights of each member of the extended family under Article 8 of the European Convention on Human Rights. It deals with the right to respect for family life and the home. The extent of that infringement would be reduced to some degree by an extension of the compliance period. In addition, the best interests of children must be a primary consideration in my decision. There are 2 children living on this site. One of them attends a local school. His education has been disrupted previously and he is said to be doing well now. A settled site affords the children the best opportunity of a stable family life, safe play and access to education, health and other services. A roadside existence would not preclude all access to education. Nevertheless, it is likely that if prolonged it would lead to serious disruption to education. A longer period for compliance would serve the children's best interests by extending the period when a settled site would remain available to them.
10. In addition to access to health and education facilities, an extended period would facilitate some of the sustainability benefits to which paragraph 13 of Planning Policy for Traveller Sites, 2015 (PPTS) refers. It would, for example, facilitate a traditional traveller lifestyle, reduce the need for long distance travel and reduce the risk of environmental damage caused by unauthorised encampments.
11. The need for sites for travellers and the provision of sites forms a backdrop to my decision. Contrary to the appellant's position the Council contends that there is a small surplus of pitches. The 2013 Gypsy and Traveller Accommodation Assessment (GTAA) requirement was for 85 pitches to 2031. Having regard to implemented permissions at March 2015 the outstanding need at that date was for 49 pitches. The Council contends that it now has a 5-year supply of sites. At March 2015 there remained some unimplemented permissions and 6 further permanent sites have been approved since then. A re-evaluation of need, having regard to the revised definition of travellers in Planning Policy for Traveller Sites, 2015 (PPTS), has resulted in a reduced pitch requirement to 2031. The Council is carrying this forward in the emerging Swale Local Plan. The Council contends that its approach was endorsed by an Inspector's interim findings on the local plan, dated March 2016. The Inspector considered that the provision of the remaining pitch requirement through windfall permissions provided a well-reasoned and pragmatic solution.
12. The balance of evidence in this appeal is that the Council is making considerable progress towards making provision for its assessed need for additional pitches. On the other hand, the Council has not suggested any specific alternative site which is likely to be available to the members of this extended family if they are required to leave the appeal site on the expiry of a

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6 month compliance period. It is consistent with caselaw that any alternative site should be suitable, affordable, acceptable and available. The lack of substantive evidence of an alternative site meeting these requirements weighs in favour of an extended period for compliance.

13. If the period for compliance is extended, any harm caused by the development would be prolonged. The site is in an AONB, a highly valued landscape which local and national policies protect. Paragraph 115 of the National Planning Policy Framework (the Framework) provides that great weight should be given to conserving the landscape and scenic beauty of an AONB. Notwithstanding the mature boundary hedgerow and other caravan sites nearby, the development is harmful to the landscape character of this part of the AONB, which is predominantly undeveloped. The site is prominently located and the development is visually intrusive, particularly at times when trees and hedgerows lack foliage. The development fails to conserve the AONB landscape and its scenic beauty. The site is in an isolated position. It is in open countryside and is away from existing settlements. A very prolonged compliance period would not be consistent with the very strict control of new traveller sites to which PPTS paragraph 25 refers. The site's isolated position is unlikely to facilitate integration with the local community.
14. There is also harm to highway safety and the highway authority objects to the development on that basis. Visibility for drivers emerging from the gated entrance is very limited. The access emerges almost directly onto the junction of Faversham Road and Elverland Lane. Drivers turning left into Elverland Lane would not see vehicles emerging from the site. There is also poor visibility for drivers emerging from Elverland Lane onto Faversham Road. The Council's evidence is that this road carries fast moving traffic to and from many rural communities and from the A2 and A20/M20 at Maidstone. The small scale of the development must also be taken into account. It would not generate large numbers of vehicle movements.
15. The suspension of an injunction concerning land near Sittingbourne turned on matters pertinent to the best interests of the children. As I have set out, they are also a primary consideration in my decision. The Bredgar appeal decision was against a refusal of planning permission so that the Inspector was not concerned with whether a period for compliance with an enforcement notice was unreasonable short, as in this appeal. That decision was issued in December 2014 so that it pre-dated the issue of PPTS in August 2015. It introduced a number of changes to national policies for traveller sites. In addition, the circumstances in the Bredgar appeal do not exactly reflect those in this appeal, for example with regard to personal circumstances.
16. Government policy is that if there was intentional unauthorised development that should be a material consideration in appeal decisions. That policy applies in this case. The site was occupied in December 2015, soon after the appellant acquired it. The development was unauthorised and it is not disputed that it was intentional. I appreciate that the intentional nature of the unauthorised occupation of the site is a matter of concern to a number of local residents. On the other hand, this policy was introduced because of concern about the harm caused by such development. I have addressed that harm above. In that context, while it is a material consideration, I give little additional weight to the intentionality of the development.

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The Overall Balance

17. Having regard in particular to personal medical circumstances and the best interests of the children for a settled home, the matters weighing in favour of extending the compliance period as the appellant suggests are worthy of considerable weight. However, they must be weighed against prolonging the harm which I set out above, including the harm to the AONB. The inadequacy of the site access and the effect of its use on highway safety are also significant concerns. Use of this access over a very prolonged period would not be in the best interests of the children, those of the other site residents or those of the wider community. When balancing all relevant matters I find that the 3 year period sought by the appellant would be excessive. It would be akin to a planning permission for a lengthy period which was unconditioned other than in respect of its temporary nature. On the other hand, a more limited extension of the compliance period would give more time for discussion with the Council and others about alternatives. It would go some way to increasing the chances of this extended family finding a suitable alternative site. It would also help towards minimising the likely disruptive effects of leaving the site, including the effects on existing medical conditions, on access to education and health facilities and on the family's traveller way of life.
18. In all the circumstances I conclude that the 6 month period for compliance is unreasonably short and should be extended to 12 months. I shall vary the enforcement notice accordingly. I am satisfied that the legitimate aim of protecting the environment and safety cannot be achieved by means which are less interfering with human rights than this decision. It is proportionate and necessary in the circumstances and will not result in a violation of rights under Article 8. In reaching this decision I have also taken into account the requirements of Equality Act, 2010, including those concerning equality of opportunity and eliminating discrimination.

Overall Conclusion

19. Having regard to the above and to all other matters the enforcement notice should be corrected, varied and upheld.

Formal Decision

20. I direct that the notice be corrected as follows:
- i) At paragraph 3 by the insertion of the words "for residential purposes" after the words "caravans/mobile homes".
 - ii) By the replacement of the words at paragraph 5(i) with the words "Cease the use of land as a caravan site for the stationing of caravans/mobile homes for residential purposes.
21. I further direct that the notice be varied at paragraph 6 by the replacement of the words "6 months" with the words "12 months". I allow the appeal to that limited extent. I uphold the enforcement notice as corrected and varied.

K Williams

INSPECTOR
