The Planning Inspectorate

Appeal Decision

Site visit made on 29 October 2018

by Katie Peerless Dip Arch RIBA

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

Decision date: 5 December 2018

Appeal Ref: APP/B5480/C/18/3196202
Land to the east of Lake View Caravan Park, Cummings Hall Lane, Noak Hill, Romford RM3 7LE

- 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 Mr Alfie Best, Best Holdings (UK) Ltd against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/92/18 - 3196, was issued on 8 January 2018
- The breach of planning control as alleged in the notice is (i) either: a. the material change of use of the land which lies outside the licensed area and lawful extent of the caravan park, to a caravan park involving the creation of residential pitches and placement of mobile homes on the land, or alternatively; b. If (which is not admitted) the Caravan Park and the land be one planning unit the material change of use of the planning unit comprising the caravan Park and the Land through intensification of the mobile home use by the creation of additional residential pitches outside the licensed area of the caravan park and the placement of mobile homes on the land. (ii) Without the benefit of planning permission operational development on the land comprising the laying of concrete bases, construction of roads and paths, construction of plinths, ramps and steps, excavation of land and associated provision of services including water, electricity and drainage and alterations to existing ground levels.
- The requirements of the notice are:1. Remove all hard standings including concrete bases laid for stationing of mobile homes, paths and roads; 2. Remove all ramps, steps and plinths; 3. Remove all services, including drainage, water supply and electricity; 4. Remove all mobile homes including those identified on Plan A and Plan B attached to the enforcement notice, as 2a Long Meadow, 6a Long Meadow, 12a Long Meadow, 12b Long Meadow, 14a Long Meadow, 1 Kempster Way, 2 Kempster Way and 3 Kempster Way and cease all residential uses of the Land; 5. Remove all building materials, rubble etc. from the Land in connection with complying steps 1, 2, 3 and 4 above; and 6. Restore the Land, marked edged black on the plan attached to the enforcement notice, to its condition before the breach occurred.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by the substitution of 12 months in paragraph 5 as the time for compliance with requirement 4 and the substitution of 15 months as the time for compliance with requirements 1-3, 5 & 6. Subject to this variation the appeal is dismissed and 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.

Main Issues

2. I consider the main issues in this case are:

   On ground (c): whether the development enforced against is authorised through falling within the planning unit that contains the established caravan park and, if it is, whether the addition of the development enforced against would bring about a material change of use and, if it would;

   On ground (d): whether the development enforced against is immune from enforcement action through the passage of time and, if it is not;

   On ground (a): whether the development represents inappropriate development within the Green Belt and, if so, whether there are any material considerations that outweigh the harm caused by such development, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances.

   If these ground fail then

   On ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control and

   On ground (g): whether the time for compliance is sufficient.

Site and surroundings

3. The appeal site is a parcel of land within the Green Belt and lies immediately adjacent to an established caravan park which contains 'park home' type units for permanent residential occupation and a car park. The caravan park is approached via Cummings Hall Lane, a track leading from Noak Hill Road and there is a public footpath (part of the London Loop) running from Cummings Hall Lane close to the corner of the appeal site, along its eastern boundary .

4. The appeal site is enclosed within the boundary fence that surrounds the wider caravan park and is in the same ownership. The appellants state that this has been the case since at least 2002.

5. 20 Concrete bases have been laid on the land and the construction of an access road has begun. This was halted when the Council served a stop notice to prevent further work. At the time of my site visit there were 8 bases with park homes stationed on them, 5 of which were apparently occupied.

Reasons

Ground (c)

(i) The Planning Unit

6. The appellants maintain that the appeal site is part of the same planning unit as the caravan park and in the same use, whereas the Council submits that the lawful use of the caravan park is limited to the area that benefits from a site license and that the appeal site has not been used for any purposes ancillary to the caravan park.

7. It is the case that there is no specific planning permission for the use of the land as a residential caravan park and it appears never to have had a site license for this use. As I understand it, a site license cannot be issued unless the land has obtained planning permission for the use and, even if this is not the case and there was a license covering the land, this would not negate the need to obtain planning permission for it to be used in this way. There have been applications for permission to incorporate the land into the caravan park in the past but none have been successful.

8. A 'planning unit' is not defined in statute but is a convenient tool when considering whether there has been a material change of use of land. The case of *Burdle & Williams v SSE & New Forest RDC [1972] 1 WLR 1207* established that the identification of the planning unit will be a matter of fact and degree but it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

9. Here, the 2 areas of the land in the appellants' ownership are not divided by a hard boundary such as a fence but historic aerial photographs show that there was a clear demarcation line between the appeal site and the rest of the park until at least 2016. Prior to then, the land was undeveloped and largely covered by grass and trees. Its character was similar to the undeveloped countryside and agricultural land to the east and north and, although separated from these areas by the boundary fence, it did not have the appearance of being part of the established caravan site. It had not been used for the siting of caravans, although the appellants note that neither has it been used for agriculture. However, I consider that as a matter of fact and degree, prior to the development enforced against, the land was physically and functionally separate from the land that has the site license.

10. The appellants submit that the land is fenced in accordance with the site license but the fence does not follow the outline on the license plan and it seems that, in the past, the need for an additional planning permission to utilise previously unoccupied areas of the land ownership has not been disputed, as applications to do so were made and refused.

11. I have noted the appellants' claim that the findings of a Residential Property Tribunal in 2011, which was considering proposed increases in pitch fees, appeared to consider that the land was part of the caravan park. However, this Tribunal has no status in planning terms and all it notes is that the land had been used by residents in the past. It may well be that the owners might have allowed the residents access to the land for amenity purposes, but this does not, in my view, establish a lawful use of the land as an area on which additional caravans could be sited without the need for a further planning permission.

12. I therefore conclude that, whilst all the land was in the same ownership, for the reasons given above, it does not form part of the planning unit that benefits from planning permission for the siting of residential caravans.

(ii) Intensification

13. Even if it were the case that the appeal site was included within the planning unit of the caravan site, the Council submits that the addition of up to 20 additional caravans on the bases already constructed would result in a material change of use of the whole site through intensification. Such as change of use would occur if the nature of the use changed the nature and character of the use of the land and therefore resulted in planning consequences.

14. If the land were to be considered to be within the caravan park planning unit, it would have the ancillary function of providing an amenity area beyond the residential units. There are 2 other areas lying outside the current site license that also fulfil this function and they serve to provide an undeveloped buffer between the areas containing the closely spaced caravans and the countryside beyond.

15. The siting of 8 residential caravans has already severely compromised this function and the openness of this area of Green Belt. I consider these impacts have already changed the character of the land use and have resulted in planning consequences, such that a material change has taken place that requires a grant of planning permission to authorise it. Although not yet stationed on the land, if a further 12 caravans were to be placed on the available bases, this would result in considerable additional harm.

(iii) Operational development

16. The appellants submit that, if the appeal site were to be granted a site license, the operational development enforced against, in the form of the provision of the hardstandings would be permitted development. This may be so, but at the date of determining this this appeal, no such license had been granted, even though an appeal against the non-determination of an application for a license for the appeal site has been submitted.

17. The appellants say that the bases for numbers 6A Long Meadow (previously referred to as no. 6) and 1 – 4 Kempster Way were created under permitted development rights and this has been accepted by the Council in previous correspondence. However, having studied this correspondence, it appears that the Council Planning Officer involved was not fully aware of the license boundary and was in fact only agreeing that any hardstandings included within that boundary would be permitted development. Those enforced against are not within the boundary and are consequently unauthorised.

18. Therefore, I conclude that the development enforced against, whether falling within or outside the planning unit containing the licensed caravan park, does not benefit from planning permission and the appeal on ground (c) consequently fails.

Ground (d)

19. The appellants claim that the appeal site has been in use as a caravan site since 1960. This submission is based on the fact that the site has been part of the parcel of land that has been in the same ownership for more than 10 years. They submit that the whole of the land ownership has been used as a caravan site for all of that time, so now has the benefit of an established use.

20. However, I have found under the appeal on ground (c) that, despite the ownership of the land, planning permission would nevertheless be required to authorise the stationing of caravans on the appeal site. The caravans there at present would consequently only be immune from enforcement action if they had been there for 10 years prior to the issue of the enforcement notice. There is no evidence to show that this has been the case and the appeal on ground (d) fails.

Ground (a)

21. The Council considers that the change of use and the associated operational development in the form of hardstanding and access driveways are inappropriate development in the Green Belt. The National Planning Policy Framework (the Framework) makes clear that most development in the Green Belt is inappropriate and by definition, harmful and that substantial weight should be attached to harm, such that planning permission for it should only be approved if there are very special circumstances.

22. Material changes of use are not inappropriate provided they preserve openness and do not conflict with the purposes of including land within the Green Belt. I have already concluded that the development, whether the site is considered to be within or outside the existing planning unit, would represent a material change of use.

23. In this case, the stationing of 8 caravans (and potentially 12 more if planning permission is granted for use a caravan site) would have an impact on the openness of the Green Belt. This would be caused not only by the permanent siting of the caravans and the associated residential paraphernalia, but also by the new road and hardstandings. As I have found that that the development is a separate planning unit, it would also represent an encroachment into the countryside.

24. The appeal site is very visible from the nearby public footpath and the change from undeveloped open land to a formally laid out residential park with vehicular access and the stationing of substantial caravans is readily apparent and would, in my view, have an adverse impact on the character of the wider surroundings.

25. The appellants suggest, however, that the development should not be categorised as *'inappropriate'* as it falls within the exception given in paragraph 145 (g) of the Framework. This allows for *'limited infilling'* of previously developed land but this would therefore only apply if the site was contained within the caravan park planning unit, which, as I have explained in preceding paragraphs, I do not consider to be the case.

26. In any event, I consider that the site could not be defined as *'previously developed'* as this category excludes the use for temporary buildings such as park homes. In addition, paragraph 145(g) also requires any infilling to not have a greater impact on the openness of the Green Belt than the existing development. I have already concluded that the development has an impact on openness and it seems to me that the extent of land brought into the caravan park and the number of residential units that it would accommodate would take the development outside the category of *'limited infilling'*. For all the above reasons, I find that the development is inappropriate in Green Belt terms.

27. In favour of the development, the appellants point to the benefits of providing additional homes and cite paragraph 11 of the Framework which establishes a presumption in favour of sustainable development. However, this is qualified by the requirement to apply other policies in the Framework that protect areas of particular importance and one such area is land designated as Green Belt, as included in footnote 6.

28. Consequently, I consider that the development does not comply with the Green Belt policies in the Framework or policy DC45 of the London Borough of Havering Local Development Framework. There are no benefits that amount to the very special circumstances that would be needed to outweigh the harm caused by this development in terms of inappropriate development and to the character of the surroundings.

29. I recognise that if planning permission were to be refused, the outcome would be that a number of residents on the appeal site would be in danger of losing their homes. This would represent a serious interference with their right to respect for private and family life and the home (Article 8 of the European Convention on Human Rights).

30. However, I consider that those rights are qualified and that my role in relation to this appeal is to ensure that any interference with those rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. I take the view that, in this case, the harm to the Green Belt is such that dismissal of the appeal is a necessary and proportionate response.

Ground (f)

31. The appeal on ground (f) is made in relation to the concrete bases on which the caravans are, and would be, located. The appellants say that if a site license is granted for the appeal site, they would be permitted development and could therefore remain. However, the licensing regime is different from planning control and, in any event, as noted above, a site license would not be granted in the absence of planning permission.

Ground (g)

32. The appellants ask for 18 months to cease the residential use and 22 months to remove the operational development, as it is considered that it might take this period of time to evict some of the owners of the mobile homes. The Council note that it has already allowed a longer period than would normally be granted, to allow for the residents to relocate.

33. I consider that, in these circumstances, where the residents have had a considerable period of uncertainty, a period of a year to comply with the notice and remove the caravans would be proportionate and give sufficient time for the residents to relocate, with a further 3 months for the subsequent removal of the road and caravan bases. The appeal on ground (g) succeeds to this extent.

Conclusions

34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Katie Peerless

Inspector