

Report to Area Plans East Sub-Committee

Date of meeting: 18 September 2013

Subject: Birch Field, Epping Lane, Stapleford Tawney –
Unauthorised use as travellers' caravan site in contravention of an
existing Enforcement Notice and an existing Injunction



**Epping Forest
District Council**

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Recommendation

1. That the Director of Corporate Support Services be authorised to commence criminal and/or civil proceedings to secure compliance with the enforcement notice as varied by the Secretary of State in his decision letter dated 13 May 2004 ("the Enforcement Notice").
2. That the Director of Corporate Support Services be authorised to commence committal proceedings in the High Court to secure compliance with the terms of an Injunction Order granted by the Court on 16 February 2006 requiring compliance with the Enforcement Notice ("the Injunction").

Report Detail

1. This report concerns a recent breach of planning control at a site known as Birch Field, Epping Lane, Stapleford Tawney ("the Site"), involving the unauthorised use of the land as a travellers' caravan site, contrary to the requirements of the Enforcement Notice and in breach of the terms of the Injunction. This report seeks to address any material changes in planning circumstances since the High Court granted the Injunction requiring compliance with the Enforcement Notice. This includes changes in national planning policy, the circumstances of the current breach of planning control, the actions taken by officers, the personal circumstances of the current occupiers and the proposals for taking enforcement action. The Sub-committee is asked to confirm the recommended action.

Chronology

2. The lawful use of the land is for agriculture and, prior to the carrying out of works in 2002 to facilitate its unauthorised use as a caravan site, it was used for grazing animals. In 2002, material comprising bricks, concrete, brick rubble and topsoil, chert pebbles, sand and wood was imported to the site and eventually laid to a depth of 0.2m to 1.5m in thickness, in contravention of the provisions of an Interim Injunction granted by the High Court on 6 September 2002 to facilitate its use as a travellers' caravan site. The unauthorised use of the land as a travellers' caravan site intensified to eventually form some 24 pitches and a bund between 2 and 3m high built on a 10 wide base was erected adjacent to the M25 along most of the northern site boundary. The following enforcement history is relevant:

29.4.03

An Enforcement Notice was issued requiring the cessation of the use of the land as, inter alia, a travellers' caravan site, the removal of, inter alia, all associated works and the restoration of the land to its former condition.

13.05.04

An appeal against the Notice was dismissed but the requirements of the Notice and the period for compliance were varied.

The requirements as varied are:

- “(1) Cease the unauthorised use of the land for a private travellers' caravan site and for the storage and distribution of furniture;*
- (2) Cease the unauthorised use of the existing stable building on the Land as a washroom;*
- (3) Remove all caravans, mobile homes and portable structures associated with the unauthorised use of the Land as a private travellers' caravan site and for the storage and distribution of furniture from the Land;*
- (4) Remove all those works comprising the associated operational development from the land (roadways, hardstandings, various means of enclosure around and to subdivide the Land, a marquee and all other buildings and structures ancillary and incidental to the use of the land);*
- (5) Remove all materials arising as a result of compliance with (1), (2), (3) and (4) from the Land;*
- (6) Restore the Land to its condition immediately prior to the Unauthorised Development taking place.”*

The time for compliance as varied is:

In respect of requirements (1), (2) and (3), 12 months after the notice took effect; and

In respect of requirements (4), (5) and (6), 15 months after the notice took effect.

The Enforcement Notice took effect on 13 May 2004; therefore, the relevant compliance dates are 13 May 2005 and 13 August 2005, respectively.

29.06.05

The Council resolved to commence criminal and/or civil proceedings to secure compliance with the Enforcement Notice as varied. It also gave authority to commence Injunctive Proceedings in the High Court. A copy of the related report to Committee is attached.

03.08.05

A planning application was received proposing the use of the land as a caravan site for travellers providing 16 pitches, application ref EPF/1313/05.

21.09.05

Application EPF/1313/05 was refused permission on the basis of harm to the Green Belt, the interests of highway safety, flood risk, potential contamination

of the water environment, poor sustainability, exposure to noise and failure to comply with associated planning policy.

03.11.05

An appeal against the refusal of application EPF/1313/05 was submitted and follows the Inquiries Procedure.

16.02.06

The High Court granted an application for an injunction requiring compliance with the Enforcement Notice. In anticipation of the Injunction being granted the site was vacated by the travellers occupying it in January 2006.

20.12.06

The Secretary of State dismissed the appeal against the refusal of application EPF/1313/05 following consideration of a report by the Inspector appointed to conduct a local public inquiry into the appeal, in which the Inspector recommended that the appeal be dismissed.

The Secretary of State found the proposal harmful to the Green Belt, the interests of highway safety and that it would result in poor living conditions for the occupants of the site that could not be remedied without works that would of themselves be harmful. The Secretary of State found no justification for granting temporary planning permission for the proposed use and also found that the interference with the appellants' Article 8 Right to respect for their home, private and family life, arising from the refusal of permission, was necessary and proportionate when balanced against the harm the proposed use would cause.

24.08.13

Travellers moved on to the site and at the time of writing this report there are 10 caravans on the land. Officers found 16 adults and 19 children on the land, occupying caravans. Planning Enforcement Officers have identified that the adults currently occupying the site are named in the Injunction.

28.08.13

Male occupiers of the site attended the Council's offices and made appointments with the Council's Housing Department on 29 and 30 August to apply for housing assistance by the Council. None of the travellers attended the scheduled appointments.

Planning Enforcement Officers attended the site and hand delivered questionnaires to the occupants requesting details of their personal circumstances. At the time of writing this report they have not been completed and returned.

05.09.13

The Travellers' legal representative submitted a schedule of occupiers identifying 73 people in 12 family groups. The numbers of people identified is significantly more than appeared likely at the time of an inspection of the site by Enforcement Officers the previous day and appears to be an indication of current occupants and anticipated occupants.

Current planning policy position:

3. The Council's development plan continues to deliver pitches to meet justified local need in the District. Whilst personal need may constitute a factor relevant to demonstrating that very special circumstances exist to justify inappropriate development in the Green Belt, no evidence of an overriding and immediate general need to provide additional pitches in the District has been demonstrated. This is consistent with the DCLG Ministerial Statement (July 2013) which states (so far as is relevant):-

"The Secretary of State wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development in the Green Belt."

4. Local authorities are required under section 225(1) of the Housing Act 2004 to make provision for Gypsies and Travellers 'resorting' to their district. Section 225(2) requires that the local authority prepares a strategy to meet the needs identified and to take this strategy into account when exercising its functions. The most up-to-date and publicly tested figures regarding the need for Gypsy and Traveller pitches (both local and national need) within the District are the Single Issue Review (SIR) of the, now repealed, East of England Plan (July 2009) and the November 2009 Essex GTAA.
5. A recent appeal decision in St. Albans (March 2013) recognised that the RSS target *"provides the only figure that has been scrutinised through the independent examination process"*. The East of England Plan SIR set a minimum target of 34 pitches to be provided within the Epping Forest District in the period 2006 to 2011 and the Essex GTAA identified a need for 32.4 pitches in the period 2008-2013.
6. Whilst the Council cannot demonstrate a 'five-year land supply' for additional pitches within the District, as required by the National Planning Policy Framework (NPPF), the Council has been actively approving suitable sites to meet growing needs. Between January 2008 and mid-June 2013, permission has been granted for 47 permanent pitches. The SIR and GTAA targets have therefore been exceeded.
7. An up-to-date Local Plan is under preparation with a proposed adoption date of 2016. The Essex GTAA is also being updated - Opinion Research Services (ORS) has been commissioned to carry out the study, which will also address the needs of the Travelling Showpeople (TS) community. In order to satisfy the duty to co-operate under section 33A of the Planning and Compulsory Act 2004 (as amended), the study area includes authorities in Cambridgeshire, Greater London, Hertfordshire, Kent and Suffolk which adjoin the County boundary. Representatives of those authorities will be interviewed by pre-arranged phone calls, and face-to-face interviews with the travelling communities have been held through the months of June and July 2013. ORS will present their draft findings to a meeting of the commissioning bodies (Essex Planning Officers' Association and Essex Housing Officers' Group), and to a special meeting of Councillors and planning and housing officers from across the county. Both meetings are likely to be held shortly.

The draft findings may then need to be revised depending on the outcome of these presentations. The final outcomes of the study will be used by the Essex authorities in making provision for the GRT and TS communities in their Local Plans. At this time it is therefore not considered that the lack of a demonstrable five-year land supply for Gypsy and Traveller pitches is sufficient to outweigh the harm to the openness of the Green Belt from inappropriate development.

Degree of change in site conditions since 2006:

8. The use of the site as a gypsy caravan site remains inappropriate development in the Green Belt. There is no change in the access arrangements to the site and its relation to the highway at Epping Lane therefore the assessment of highway safety matters is not likely to change, however, that would be a matter for the highway authority to decide. The M25 motorway abutting the site has been widened since the planning merits of the use of the site was considered by the Secretary of State in 2006 such that the carriageway is now nearer the site boundary. It is therefore likely the site is exposed to at least the same noise level as it was in 2006 when such exposure was found to result in poor living conditions. It remains the case that any mitigation of noise levels would be likely to, of itself, cause harm to the Green Belt. There has also been no clarification of whether material imported by the Travellers in 2002 is contaminated and, if so, what if any remediation would be required to achieve a safe living environment. Such contamination could also have arisen from diesel or oil spillages that took place when the site was last occupied.

Personal circumstances

9. The submitted schedule of occupiers names each of the occupiers and gives their age. Three named persons are identified as being pregnant and 46 children are identified, although two are stated to be over 18 years old. The accuracy of the schedule has not otherwise been verified, however, it is not likely all the people named in the schedule were occupying the site at the time of writing this report.
10. Officers have sought detailed information about the personal circumstances of the occupants of the site by handing out questionnaires on site. At the time of writing this report they have not been completed and returned. Planning Enforcement Officers have been advised by the occupants there are two children under a year old, twelve aged 1 to 11, six aged 12 to 15 and 1 older child (under 18). Only one person was identified as pregnant.
11. At the time of writing this report the numbers of people on the site and the balance between adults and children is changing daily. It seems likely the situation will eventually be as described in the schedule submitted. Despite efforts to gain information about the present occupants' personal circumstances is limited. However, since the occupants are moving to the site from elsewhere it is not likely that their personal circumstances are such that their requirements could only be met on this site. That situation accords with the findings of the Secretary of State in dismissing the appeal against the refusal of application EPF/1313/05. Indeed, the fact that appointments made with Housing Officers at the Council have not been kept indicates the occupants perceive a degree of choice about where their requirements can be met.

Human Rights Issues

13. The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into UK law and is a relevant consideration. Before making a decision to pursue further enforcement action, it is necessary for Members to be mindful of the impact it would have on the occupants, including the children, of the site. It must be recognised that the further enforcement action will be an interference with the Human Rights of the families currently occupying the site, including their right to respect for their way of life as members of the travelling community and the legal protections afforded to them as members of that group. There is a clear obligation upon the Council to ensure that the any decision it makes accords with the obligations under Article 8 of the ECHR.
14. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child (UNCRC), and in this case specifically Article 3. As the Article 8 Rights of the families occupying the site are clearly engaged, any decision to take enforcement action must be proportionate. In the assessment of proportionality there is an explicit requirement to treat the needs of the children as a primary consideration (UNCRC, Article 3) and to safeguard and promote the welfare and wellbeing of the children (Children's Act 2004, section 11(1)). It may well be the case that the legitimate aims that justify taking further enforcement action is a proportion interference with the families' Rights protected by the Conventions, however, the Council must be have specific regard to the impact that seeking an injunction will have on the children concerned.
15. This will require the Council to investigate their current circumstances and the extent to which their health and education needs are being met. The best interests of the children concerned, i.e., their wellbeing, must be one of the Council's primary considerations and must include a preliminary assessment of children's best interests so that the impact of the proposed action can be assessed against those interests. Making children homeless will never be in their best interests. In the absence of any detailed information, a preliminary assessment is the needs of the children can be met equally well on this site as any other.
16. As described above, officers have taken steps to ascertain the personal circumstances of the occupants of the site, including the children on the site, to ascertain the need for them to occupy this particular site and to ascertain whether taking further steps to secure compliance with the Notice would be a proportionate interference in their Article 8 Rights. The necessity for such interference has already been established in the Secretary of State's decision to dismiss the appeal against the Enforcement Notice following the public inquiry held in January and February 2004. It was also found proportionate to withhold consent for a less intense use of the site when the Secretary of State dismissed the appeal against the refusal of application ref. EPF/1313/05. Most importantly, the High Court considered that it was proportionate to enforce the terms of the Notice by granting the Injunction to bring the unauthorised use to an end.
17. To date, despite the efforts of officers, limited information has been obtained to fully establish the educational, health and welfare needs of the occupants of the site. Since they have very recently moved onto the site from elsewhere

it is reasonable to find that it is very unlikely they could only be met at the site. Officers continue to take active steps to ascertain this information, which to a very large extent, requires the co-operation of the occupants of the site. The Sub-committee will be provided with an update of any further information at the meeting.

18. Accordingly, it is concluded that since the objections to the development are numerous and serious, interference with Article 8 rights by securing the cessation of the use remains necessary to safeguard the public interest and would not be a disproportionate measure or unjustified interference in this particular case.
19. It is important to remember that the High Court is also bound by the same legal duties to give effect to the Conventions. Before taking any decision to enforce the terms of the Injunction to secure the Defendants' compliance with the order, the High Court must also consider whether such action is necessary and proportionate in all the circumstances of the case.

Direct action

20. In the event that the owners and/or occupiers of the land do not voluntarily comply in full with the requirements of the Enforcement Notice, pursuant to section 178 of the Town and Country Planning Act 1990, the Council may enter the land and take the steps required by the notice in default of the owner or occupier. The Council is then entitled to recover its costs of so doing from the owner. These powers were used previously to clear the land subsequent to the former occupiers leaving the land voluntarily in part compliance with the terms of the Injunction.
21. For the avoidance of doubt, Officers do not intend or seek authority to take direct action to remove the current occupiers from the land; Officers are delegated with the requisite authority to take direct action to execute such works that may be necessary to ensure full compliance with the requirements of the Enforcement Notice in the event that the current occupiers leave the land in compliance with the terms of the Injunction, or such other Order that the High Court may make.

Planning Assessment and Conclusion

22. Although the planning policy context has changed, it is a fact that this Council has delivered planning permissions for sites in excess of the number identified as necessary in the Single Issue Review (SIR) of the, now repealed, East of England Plan (July 2009) and the November 2009 Essex GTAA. Moreover, planning policy maintains the position that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development and consequently should not be permitted unless very special circumstances are demonstrated.
23. There has been no material change in site conditions and, insofar as there have been any changes to the conditions, they are likely to have deteriorated such that the site is even less appropriate for the unauthorised use than it was in 2006. Having regard to the present planning policy position and other material considerations, it is concluded that no very special circumstances in favour of permitting the present use to continue on any basis exist. The

resumption of the use of the land as a travellers' caravan site together, with the retention of the works facilitating it is therefore unacceptable and planning permission for the development would not be given. In the circumstances the consequent interference with the Article 8 Rights of the current occupants of the site, including the children on the site, in order to secure compliance with the requirements of the enforcement notice as varied is considered to be necessary and proportionate.

24. The current occupiers of the site are named on the Injunction and are aware of its terms. They have confirmed to officers that they recognise that their occupation of the site is breach of the terms of the Injunction. Consequently, the breach of the Injunction is particularly flagrant and amounts to a contempt of court, which shows contempt for the authority of the High Court and its orders. Such wilful and flagrant breaches of the terms of the Injunction should be brought to the attention of the High Court save where there is a good reason for not doing so. Officers do not consider that any such reason exists in the present case.
25. Having regard to the following, it is considered that the most effective course of action to secure compliance with the Enforcement Notice would be to commence committal proceedings in the High Court and the Sub-committee is asked to confirm and authorise this intended action.