

Report to Area Plans Sub-Committee 'C'



**Epping Forest
District Council**

Date of meeting: 29 June 2005.

Subject: Use as Travellers' Caravan Site - Birch Field, Epping Lane, Stapleford Tawney.

Officer contact for further information: Barry Land (01992 – 56 4110).

Democratic Services Officer: Gary Woodhall (01992 – 56 4470).

Recommendation:

(1) That, as varied by the Secretary of State in his decision letter dated 13 May 2004, the Head of Legal, Administration and Estates be authorised to commence criminal and/or civil proceedings to secure compliance with the enforcement notice; and

(2) That the Head of Legal and Administrative Services be authorised to commence Injunctive Proceedings in the High Court.

Background

1. This report seeks to address the fact that some of the current occupiers of this site were not present when the interests and rights of the occupiers were considered in 2003/04. The report explains the current situation, the actions taken by officers, the circumstances of the current occupiers and the next stage in the process. The Sub-Committee is asked to confirm the intended action.
2. The history of this matter is as follows:
 - (a) 29 April 2003 - 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;
 - (b) 13 May 2004 - An appeal against the notice was dismissed but the requirements of the notice and the period for compliance were varied as follows:
 - “(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.”

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

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

(iii) The notice took effect on 13 May 2004 therefore the relevant compliance dates are 13 May 2005 and 13 August 2005.

3. The matters given specific consideration by the Secretary of State when considering the appeal included:

- *The gypsy status of the appellants* - It was found that the appellants should be afforded gypsy status;
- *Highway safety* - It was concluded that the increase in traffic along Epping Lane would be materially harmful to road safety in the area;
- *Flood risk and pollution* - The site is in a 100-year flood plain. In the light of national guidance advising such development should not be given permission unless the particular location is essential for the use it was decided that the use of the land as a residential caravan site should not be permitted;
- *Living conditions on the site* - It was found that the site would not provide satisfactory living conditions for its occupants due to noise and air pollution and possible land contamination;
- *Sustainability* - Since the site is in a remote rural landscape and is not actually accessible to local services, shops or schools by any other form of transport than the car it was concluded the use was in conflict with adopted planning policy and national planning guidance;
- *Impact on the Green Belt* - It was found that the use is clearly harmful to the Green Belt; and
- *The existence of very special circumstances* - Having regard to the need for Gypsy site provision, whether alternative sites existed and the health and educational needs of the appellants, it was decided that these matters did not either in themselves or cumulatively amount to very special circumstances sufficient to overcome the harm caused to the Green Belt:

(i) It was found that there was no need for the appellants to be in this particular location and the site was just a site near a big city that had become available. There was no evidence that the occupiers of the site had looked for an alternative site; and

(ii) In respect of health needs, even taking into account that one of the residents went to hospital twice a week for chemotherapy, it was found that there was no medical need that required any occupier of the site to live at this particular site rather than any other. Similarly in respect of the educational needs of the occupants of the site, despite acknowledging that moving school is normally highly

disruptive to most children, there was no evidence to demonstrate the educational needs of children at the site could not be met at any other school;

- *Impact on a high-pressure gas main* - It was acknowledged that any caravans would have to be moved to carry out emergency work on the gas main but since there was no evidence given by Transco to the Inquiry it was unknown whether there were any safety issues regarding stationing residential caravans on the site; and
- *Human Rights* - It was recognised that dismissal of the appeal would interfere with the occupants rights under Article 8 of the European Convention on Human Rights. However, it was concluded that since the objections to the development were numerous and serious, interference with Article 8 rights by securing the cessation of the use was necessary to safeguard the public interest and would not be a disproportionate measure or unjustified interference in this particular case.

Situation as at 14 June 2005:

4. It is considered that the only material changes in circumstances since the appeal was considered are that the site is not fully occupied (although the level of occupation varies from time to time) and that some of the occupants of the site did not live there at that time.
5. Notwithstanding the lower level of occupancy of the site, the unauthorised works still exist and although a number of pitches are not currently occupied, they remain capable of occupation. There is therefore no material change in the planning considerations and the continuation of the use together with the retention of the works facilitating it remain unacceptable.
6. Officers visited the site on 10, 19 and 24 May 2005 and have found that approximately half the plots are occupied. A total of 58 people appear to be living on the land. That includes 19 children under 14 years old of whom 11 are receiving education in the District and the remaining 8 are below school age. Five of the occupants are being treated for medical conditions or undergoing medical tests. They are being treated by their GP or as outpatients. It does not appear that the needs of the occupants of the site are different to those of the general population. The occupant who was receiving chemotherapy when the appeal was considered was not found to be at the site.
7. It is understood from discussions with people living at the site that more gypsies may buy Plots at Birchfield despite the extant enforcement notice. Two such individuals have been interviewed. They, together with all other people interviewed at the site were told of the existence of the notice, its requirements and the dates for compliance. They were also told that the Council is seeking compliance with the notice. Periodic inspections and necessary additional interviews will continue to be carried out and, to date, this is being done with the co-operation of the occupants of the site.

Human Rights Issues:

8. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law and is a relevant consideration. Officers have taken steps to find out the personal circumstances of the occupants of the site to ascertain the need for them to be at this particular site and therefore ascertain whether taking 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 States decision to dismiss the appeal against the Notice following the public inquiry held in January and February 2004.
9. The educational and health needs of the occupants of the site are not such that they can only be met at the site. They could certainly be met at another site and in that respect there is no change since the appeal against the Notice was considered. In reaching his decision to extend the period for complying with the requirements of the Notice the Secretary of State had specific regard to the difficulty the occupants were likely to have in finding alternative sites. 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.

Conclusion:

10. There is no material change in the planning considerations and the continuation of the use together with the retention of the works facilitating it remain unacceptable. In the circumstances and having regard to the extended compliance period given by the Secretary of State, the consequent interference with the Article 8 rights of the current occupants of the site in order to secure compliance with the requirements of the enforcement notice as varied is considered to be necessary and proportionate.
11. The options to secure compliance with the enforcement notice as varied are to either start proceedings in the Magistrates Court or commence Injunctive Proceedings in the High Court. It is considered the most effective course of action would be to commence Injunctive Proceedings in the High Court and the sub-committee is asked to confirm this intended action and to give authority to take either course of action.