

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

23 June 2010

Report of the Legal Services Partnership Manager

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

1.1 Site **Land off Pinkham Lane, East Peckham**
Appeal **Against an enforcement notice alleging without planning permission, the change in use of the land to the use for the stationing of caravan(s) for residential purposes and the creation of hard surfaces and the use of a paddock area as domestic gardens**

Appellant **Mr J Fuller**

Decision **Enforcement notice quashed**

Background papers file:
PA/38/09

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The Validity of the Enforcement Notice

The enforcement notice encompasses both changes of use (stationing of caravans for residential purposes and use of paddock as domestic garden) and operational development (creation of hard surfaces and, in the requirements of the notice, domestic paraphernalia including all children's play equipment). There is no good reason why a single enforcement notice should not allege both operations and change of use without planning permission (*Valentina of London v Secretary of State for the Environment and Islington London Borough Council* [1992] JPL 1151), but in the Inspector's experience, it can become difficult to disentangle the two, especially where there is history of previous planning enforcement action relating to similar development on the same site. In these circumstances, there must be distinct danger of finding a notice to be invalid, based on failure of the test set out by the Court of Appeal in *Miller-Mead v Minister of Housing & Local Government* [1963] 2 WLR 225, does the notice fairly tell the appellant what he or she has done wrong and what must he or she do to remedy it?

The first allegation in the notice is the stationing of a caravan or caravans for residential purposes. This in itself may be said to be non-specific but in the Inspector's opinion it need not be fatal to the notice. At the time of its issue, the site was being used residentially by the siting of both a mobile home and a touring caravan. By the time of

his visit to the site only the touring caravan was left. However, considerable confusion arises from the previous enforcement notice relating to the site. On 11 October 2000 a notice was issued alleging change of use of agricultural land to land used for the stationing of a caravan. The requirement of the notice was to cease the use and remove the caravan from the land.

An appeal was lodged against the notice, as now only under section 174(2)(g) of the amended 1990 Act. The appeal was allowed to the extent that the period for compliance with the requirements of the notice was lengthened to three months. The notice was complied with and the caravan removed from the site. The reference to caravan(s) in the current notice reflects the circumstances after they were brought onto the site in 2008. They presumably were tolerated while a planning application was under consideration but permission was refused and no appeal was lodged. After the mobile home element of the two caravans was removed, it was unclear to the Inspector what purpose a ground (g) appeal concerning a single caravan could serve other than to rerun arguments that had changed little in the intervening nine years. At paragraph 3.1 of its statement, the Council asserts that the 2000 enforcement notice is still extant on the site and the Inspector had no reason to disagree with that.

It may be that it could be possible to run another ground (g) appeal for the same form of development that is currently the subject of an effective enforcement notice whose period for compliance has long since expired. However, to compound the difficulty over two use notices seemingly attacking the same unauthorised development, the Inspector found confusion over the operational allegations in the current notice conspire to make it very difficult, if not impossible, to unravel the allegations contained in the more recent notice and the requirements to put them right. The main operational allegation is 'the creation of hard surfaces'. The plan attached to the notice does not show where they are; it merely identifies the boundaries of the site. Therefore, the only inference one can come to is that the whole site is hard-surfaced in an unsatisfactory manner, especially as a requirement in Step A is "to remove from the land... all hard surfaces".

Nevertheless, at paragraph 6.9 of its statement, the Council says that it has not considered it expedient to take action against stables standing on a hard surfaced area as 'the principle of stables, used to accommodate livestock, of this size, design and location, is not contrary to planning policy'. The overall effect on this situation is that, as it stands, the Council considers it expedient to take enforcement action against all of the hardstanding on the site but the stables, which are sited on part of the hardstanding, should be allowed to remain. Taking all of this into account, the Inspector was firmly of the opinion that this aspect of the notice fails the *Miller-Mead* test cited in paragraph 2 above. It does not fairly tell the appellant with sufficient precision, within its four corners, what he has done wrong and, as a result, what he needs to do to put it right. Accordingly, the Inspector found the notice to be invalid and determined that it should be quashed.

1.2 Site: **34 Castle Way, Leybourne**
 Appeal **Against the refusal of permission for the erection of a terrace of 3 no. two bedroom cottages**
 Appellant **Mr G Smith**
 Decision **Appeal dismissed**
 Background Papers file : PA/05/10

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The Inspector considered the main issues to be the effect of the proposal on: the character and appearance of the surrounding area; and highway safety and the free flow of traffic.

Character and appearance

The Appellant suggests that the area around the appeal site is so mixed in terms of house designs, sizes, styles and positioning that there can be no objection to the proposal on grounds of design and appearance. However, this struck the Inspector as too simplistic an analysis of the local townscape and was very much at odds with his own perception.

In his view, this stretch of Castle Way is characterised by low density residential development, encompassing a wide range of architecture and house types but dominated by modern detached and semi-detached houses. Although, as the Appellant points out, there are terraced properties in the locality, these play little part in the street scene of the main road. Some vestiges of the historic core of Leybourne remain, such as the converted water mill directly opposite No 34. However, these are now largely subsumed by more recent development which tends, for the most part, to be set well back from the road behind substantial planting. This results in a very pleasant, spacious and sylvan sense of place.

The Inspector acknowledged that plot sizes vary considerably, with newer dwellings generally occupying smaller sites than older properties and that some houses encroach closer to the road than others. There are no clearly defined building lines in this part of Castle Way and dwelling orientation varies. However, there is a significant distinction in character between the two sides of the road. The western side is more urbanised, with built development prominent in the street scene. By contrast, the eastern side is dominated by substantial frontage vegetation, with buildings positioned some considerable distance from the road until one moves northward past the appeal site. He therefore give little credence to the notion that, subject to considerations of height and materials, almost any type of residential development could be accommodated in the area in a satisfactory way.

The proposal would sit prominently within the swathe of frontage greenery on the eastern side of the road. It would be set far further forward than any significant building to the immediate north or south, such that its somewhat bland flank elevations would be highly visible. In particular, when approaching from the south the existing vista of trees and shrubs would be decimated by the intrusion of an obtrusive built form, the urbanising

effect of which would be jarring and visually harmful. Whilst none of the specimens within this belt of landscaping is worthy of preservation on its individual merits, in combination they make a valuable contribution to the street scene, the loss of which could not be mitigated effectively by compensatory planting.

The Inspector noted the Council's approval of development on land adjacent to 42 Castle Way, a little further to the north. However, each development must be considered primarily on its own merits and, in any event, he perceived marked differences in both layout and context between that case and the proposal before him. He noted that the overall size of the proposal would be comparable to that of a large detached dwelling, the staggered ridge line would reflect the gradient of the site and traditional materials are envisaged. Nonetheless, he found nothing in the form or design of the appeal scheme of such interest or quality as to outweigh the above concerns.

On the contrary, the extent to which the envisaged terrace draws successfully on surrounding architecture or the history of the locality is, in his assessment, very limited. It would read as an incongruous and pale pastiche of Victorian workers' cottages, lacking traditional fenestration and detailing, and would fail to establish any meaningful conceptual link with the nearby mill. He concluded that the proposal would amount to development of poor design quality that would be inappropriate in its context. It would thus be harmful to the character and appearance of the surrounding area and contrary to Policies CP1, CP15 and CP24 of the adopted Tonbridge & Malling Borough Council Core Strategy 2007 (CS) and national guidance in Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*.

Highway safety and the free flow of traffic

The Council objects to the scheme on the basis that vehicles would have to reverse onto the highway due to an absence of on-site turning areas. In its assessment, such manoeuvres would conflict with vehicles queuing at adjacent traffic calming build-outs at busy times of the day. The provision of two parking spaces in tandem is also flagged as a matter of concern, adding to the likely degree of vehicular activity generated by the development.

The Inspector acknowledged that neither speed limits nor build-outs will necessarily slow traffic down as it passes the appeal site when the road is not busy. However, inter-visibility at both access points and the distance of the driveways from the vehicular carriageway are such that, even in circumstances where traffic calming is less effective, drivers would be able to see each other in good time. This being so, there is no reason why additional manoeuvring arising from the tandem arrangement of parking spaces need prove problematic, particularly as this would cater for only one of the units.

At busier times, the build-outs would fulfil their intended function and, having seen no cogent evidence to the contrary, the Inspector thought it likely that vehicle speeds would be sufficiently slow to preclude any serious conflict or disruption. He gave little credence to the argument that drivers would be focussing on negotiating the build-outs rather than

monitoring activity on either side, given the reasonable expectation that they would be exercising due care and attention. The location is sustainable and the provision of four parking spaces is thus in accordance with national guidance in PPS3: *Housing*, irrespective of the Council's unsubstantiated claim that its own adopted standards would be breached.

The Inspector concluded that there would be no significant detriment to highway safety or the free flow of traffic in this case and that the proposal accords with national guidance in Planning Policy Guidance Note 13: *Transport*. The views of Kent Highway Services corresponded with his own assessment of highway-related matters and it is not clear to him why, in the absence of properly substantiated technical evidence to support its assertions, the Council should choose to go against the advice of a recognised source of relevant expertise. Nonetheless, notwithstanding conclusions on this issue, he considered that the harm to the character and appearance of the area is of overriding importance and that for this reason alone the development should not go ahead.

- 1.3 Site: **Drayhorse Meadow, Fields Lane, Waterringbury**
 Appeal **Against (1) an enforcement notice alleging a breach of planning control namely, the unauthorised change in use of the land from land used for grazing of horses to a residential caravan site and, (2) the refusal of planning permission for the change in use to residential, stationing of one mobile home and four touring caravans with associated hardstanding, connection to sewer and conversion of 2 stables to utility rooms.**
- Appellant **Mrs Ann Medhurst**
 Decision **Enforcement notice period for compliance varied to six months, subject to this amendment both appeals dismissed.**
- Background Papers file : PA/25/09 Contact: Cliff Cochrane
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The Inspector considered that these appeals raise two main issues. The first is whether the appellant and her grown up family fall within the definition of "Gypsies and Travellers", for planning purposes. If such status is found it is necessary to consider whether permission is justified on the basis of the appellant and her family's need for a site within the Borough.

The second issue is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. From the evidence at the inquiry the Inspector considered the following considerations material to his decision;

- (i) The impact of the development on openness of the Green Belt and the character and appearance of the locality.
- (ii) The personal circumstances of the appellant and her family.

Gypsy and Traveller Status

Having heard in evidence that whilst Mrs Medhurst and her family have gypsy ancestry, there was little in their housing or employment history to indicate travelling as a way of life. The Inspector considered the travelling undertaken by the boys during school holidays to be no different to that undertaken by many settled families. A mere aspiration to follow a gypsy lifestyle or nomadic habit of life was not, in the Inspector's view, sufficient to make a person a gypsy for planning purposes. His finding on the evidence was that while the appellant or family members may on occasions have travelled for work purposes for some periods during the last few years, they have not an established nomadic lifestyle sufficient to fall within Circular 01/2006 definition of "Gypsies and Travellers".

Green Belt

The appeal site lies within the Metropolitan Green Belt. Policy CP3 of the Tonbridge and Malling Core strategy 2007 provides the basis for control of development in the Green Belt and restates the national policy presumption in PPG2 against inappropriate development unless very special circumstances can be shown. The appellant has accepted that a gypsy caravan site is not one of those categories listed as appropriate development for purposes of national or local policy. Inappropriate development is, by definition, harmful to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

Other objections raised by the Council, Parish Councils and residents were the visual impact of the development which was considered to have a materially detrimental effect on the quality and distinctiveness of the landscape in this part of the Medway valley to the east of Watringbury in conflict with policy CP14 of the adopted core strategy. In particular it was said that the caravans were visible from the nearby recreation ground, and from public footpaths which criss cross land to the south and over a wide area from West Farleigh, Yalding and Nettlestead.

The Inspector saw that the appeal site was in predominantly open pastureland not far from the built up area of Watringbury where the land slopes gently towards the River Medway. To the south of the river, the land rises more steeply towards the escarpment on Bow Hill and east to West Farleigh. He considered that the stationing of the mobile home, touring caravans and parking of vehicles by their nature has resulted in a concentration of structures in an area of open countryside outside the built up area of Watringbury which conflicts with a stated purpose of the Green Belt to assist in safeguarding the countryside from encroachment. He also saw that the site is particularly conspicuous when viewed from the public footpaths and highway to the south of the river where it appears as an isolated urban feature extending into the open land between Watringbury and Teston.

There are existing trees and shrubs along the northern boundary close to the playing fields and pavilion. However, the site is open to view to the south and west which affords little scope to mitigate the impact of the development through planting of trees or shrubs. Given the temporary nature of the proposal as amended at the Inquiry, it would be unreasonable and impracticable to require planting measures. In view of the predominantly open nature of the site which is visible over a wide area, the Inspector considered the development to be an intrusive and alien feature in the landscape which is harmful to the character and appearance of the countryside in this part of the Medway valley. In coming to this conclusion he took into account the existing stable development and horse walking structure already on the site and that it would be likely to remain irrespective of the outcome of the appeals.

The personal circumstances of the appellant and her family

No claim is made of any special health or educational needs on behalf of the grown up family members or their children. The evidence of Mrs Medhurst was that she has a serious back condition and can no longer travel to Dagenham with her hot food trailer. She is registered with a Doctor in Wateringbury and has undergone tests in Dartford Hospital and has attended the Penbury Hospital Pain Clinic. Her medical report dated June 2008 confirms longstanding (greater than 20 years) neck and shoulder pain. The report gives her address as 49 Ingoldsby Road, Gravesend.

Although a settled base would clearly assist the mental and physical wellbeing of Mrs Medhurst, the evidence concerning her health, was not, in the Inspector's view, exceptional, and would not constitute very special circumstances for purposes of Green Belt policy. It appeared to him that her health needs would be capable of treatment.

Overall Conclusions

The Inspector's conclusion on the evidence was that Mrs Medhurst and her family are not Gypsies or Travellers for planning purposes and that the unauthorised residential caravan site is in conflict with Green Belt and landscape protection policies. The fact that there is an acknowledged unmet need for Gypsy sites in the Borough is not therefore a material consideration. He further concluded that Mrs Medhurst or her family members have no overriding personal needs or circumstances that justify their continued occupation of the appeal site on a permanent or temporary basis. The objections to the development in its present form in terms of its impact on openness of the Green Belt and the appearance of the landscape are substantial and cannot be overcome by granting permission subject to conditions such as those agreed by the parties in the Statement of Common Ground

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