

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

13 April 2011

Report of the Legal Services Partnership Manager

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site: **Land west of Branbridges Road, East Peckham**
Appeal **Against an enforcement notice issued by the Council alleging a breach of planning control, namely the change of use of land to a residential caravan site and the creation of a hard surface**
Appellant **Kevin Eastwood**
Decision **Appeal dismissed and enforcement notice upheld. Period for compliance varied from 3 months to 18 months.**

The main issues in this case, having regard to the objectives of the relevant policies in the TMBLP are whether there are any material considerations that clearly outweigh the Green Belt harm and any other harms identified and if there are, do they amount to very special circumstances that would justify the granting of planning permission in this particular instance and secondly, whether there is an unacceptable degree of flood risk to development on this site.

Reasoning

The site is located in the Metropolitan Green Belt and as the development is inappropriate it is, therefore, harmful by definition as stated in paragraph 3.2 of Planning Policy Guidance Note 2: Green Belts. There is a general presumption against inappropriate development in the Green Belt and, in view of that, substantial weight must be attached to the harm to the Green Belt when determining appeals.

The site is located in a gap between the residential development off Old Road to the north (which forms the southern limit of the built up area of East Peckham) and a small industrial/commercial estate to the south. Branbridges Road is at a high point immediately to the east of the site (by the site access) as it passes over a small stream via a bridge and there are very clear views of the appeal site from the road and also from Pinkham Lane to the west.

The appellant argued that it was a small gap and so harm was limited. Viewed from Branbridges Road to the east and from Pinkham Lane some distance to the west the Green Belt at this point is basically in the form of a narrowing finger of land that goes right up to the urban boundaries. The land is open and the development on the site is visually intrusive particularly from the bridge on Branbridges Road from where the open views into the countryside have been lost.

The development appears as a piecemeal spread of the urban area into the Green Belt across a very clearly defined edge to the settlement. Such areas are always vulnerable and in this instance the well defined edge to the built up area would be lost should this development be allowed. It is a very clear encroachment into open countryside and is, therefore, contrary to one of the five main purposes of designating land as Green Belt. As such it also reduces considerably the openness of the Metropolitan Green Belt at this point, one of the most important attributes of green belt land. In summary the development is materially harmful to the openness and purpose of the Green Belt representing an encroachment into the open countryside. As such it is also materially harmful to the appearance and character of the countryside.

The site is also located on land at risk from flooding. Whether it is on the functional flood plain (Zone 3b; the Council's view) or an area of High Probability or even Medium Probability (Zone 3a or Zone 2; the appellant's view) was a matter of some disagreement between the parties. It was agreed that the data from a 2006 Flood Risk Assessment (FRA) was incorrect; the land levels were about 0.9 to 1.0 metres lower than contained in that report.

In the 2010 FRA the site levels had been checked against LIDAR information and found to be accurate. It was accepted by the appellants that the land had flooded to 13.38 metres AOD (Above Ordnance Datum) in 1968 and the 2010 figures found the site levels at approximately 13.1 to 13.2 metres AOD. The appellant had raised part of the land since then with about 250mm of hardcore and paving in the central part to form a base for the mobile home.

The 2010 FRA did not include flood risk from the River Medway which was the major source of flood risk for the site; it had only included maps showing flood risk from the Beult and the Teise. It was therefore flawed and incorrectly assessed the correct flood zone for this site. The River Medway had been modelled by the Environment Agency as likely to flood to 13.3 metres AOD but there had been no modelling for the Coult stream (another source of flood risk to the site).

The appellant accepted 13.3 metres AOD as an appropriate figure to use for assessing the flood risk but considered it made little difference as the site of the mobile home was just above that level. As submitted by the Environment Agency there may be a very small area that has been raised and it might provide a refuge for the occupants in the mobile home itself but most of the appeal site and much of the surrounding land other than the road bridge itself was lower and, as the

appellants own photographs showed, would be under water. There would be no means of escape for the occupants other than by boat or helicopter.

The Inspector considered that the raising of a small part of the site makes no difference to the fact that it is on the functional flood plan in Zone 3b or, at best, in the High Probability Zone, 3a. Caravans and mobile homes are considered to be one of the most vulnerable uses and should not be permitted in Zone 3 areas at all. Whilst the occupants could sign up to the Environment Agency Flood Warning service which is good in this particular area, that is not a reason to allow development in a place that is high risk and where national advice states that uses of this nature should not be allowed.

There would also be some minimal loss of floodwater storage capacity due to the raising of part of the site and this has an impact on adjoining occupiers whose land might be flooded as a result of the reduced storage capacity in times of flooding. The appellant was prepared to lower part of the land by about 250mm on the western part of his site which would more than compensate for the lost storage capacity but that would do nothing to overcome the other objections the Inspector found on this issue. Taking all the above factors into account he concluded the site is unsuitable for this use due to the flood risk.

Turning to the considerations to weigh in the appellants favour against the harm already identified above, the appellant raised five matters; need for gypsy sites in the area; inadequate policy provision with no five year supply; there were no alternative sites; the appellant needed a site in this area and lastly, the appellant had need to access services such as health and education facilities.

Dealing firstly with the general need and the five year supply, the Council accepted that there was a shortage of sites and the GTAA undertaken in 2005/6 suggested a need in the order of 10 pitches. The appellant thought the requirement was about 16 as the Council had assumed too many would be happy to move into permanent dwellings. Further, whilst there was a site at Hoath Wood which the Council stated would contribute 8 pitches, the occupants believed they were to be displaced.

The Council also relied on refurbishing a site at Coldharbour but whilst it had planning permission and would provide an additional 10 pitches the appellant stated that there was no funding available to do the refurbishment work and there was unlikely to be any for 3 or 4 years. Also it was a Council owned site rather than the preferred alternative of a private site owned by its occupants.

There is clearly some shortage of sites to meet an identified need in the area but the Council expects the Coldharbour site to become available sooner than the appellant suggests. It is a site that could provide accommodation for the appellant's family and has the advantage of not being in the Green Belt or in the floodplain. There was no evidence that the appellant investigated sites not in the

floodplain or land not in the Green Belt which, although large in extent in the Borough does not cover it completely outside of the urban areas.

The Council had recently granted permission albeit on a temporary basis for three sites where a need had been shown in the GTAA; that involved families who had resided in the Borough for some time. The five year supply will be identified in a DPD but in the meantime there is provision coming forward in the short term even if it is not quite sufficient to meet the identified need.

There was no dispute that the appellant was from this area, had relations in the area with parents living in East Peckham and had long standing family, social and health care connections with the area (he was still with the same doctor he had been registered with as a child). It was clear from the undisputed information put forward that the appellant was a gypsy and that he had always stayed in this area when he was not travelling.

As to alternative sites, nothing was put forward in the representations or at the Hearing other than the general claim that in a Borough with a large area of Green Belt and much land that was prone to flooding, finding alternative sites was difficult. It was also argued that it was almost impossible to get spaces that became available on public sites as they seemed to be reserved for family members and/or friends. There was no evidence, however, that any search had been undertaken either in the immediate area or further away within the Borough for an alternative site.

Finally on other material considerations, there was nothing put forward on health or education grounds by the appellant. His three children were not yet of school age (being just 4 months, 1 and 2 years of age at the date of the Hearing) and no one in the family had any health problems and a need to stay in the area for specialist treatment. The appellant accepted that he could be elsewhere but there were, in his view, no alternative sites that he could go to.

Turning to the balancing exercise, PPG2 sets out the approach to be taken in a green belt location. The development is inappropriate and that is, by definition, harmful and substantial weight has to be given to that harm. In addition there is also material harm by reason of loss of openness and encroachment into the countryside at this location which is clearly seen as outside the built up area.

The character and appearance of the area has been materially harmed by the development on this site which is easily viewed from the bridge on Branbridges Road to the east and Pinkham Lane to the west. Openness is one of the main attributes of a green belt and one of the main purposes of including land within it is its continued protection as open land. Substantial weight must also be attributed to these harms. Additionally the site is located in the floodplain. A sustainable gypsy site is not one that is located in an area that is at high risk of flooding. There was disagreement about which Zone the site came within. Even on the appellant's

figures, and noting that raising the land levels in certain parts of a site does not alter which zone it is classified as falling into, this site is in Zone 3a at best. That is still an area where caravans and mobile homes should not be located at all; the high risk of flooding is always there and the advice in PPS25 is that highly vulnerable development should not be located here. The Inspector therefore attached substantial weight to the objections to this location due to flood risk.

Against these harms there are a number of material considerations to weigh in the appellant's favour in the balancing exercise. There is a shortfall of pitches in the short term but the Council will provide allocations in a DPD, permission has been granted on appropriate sites and that will continue, and permission has also been granted for the provision of 10 extra pitches on a public site. There has been no progress on that Coldharbour site since permission was granted to refurbish it however, and work on the allocations DPD has made little progress. In these circumstances the Inspector attached some weight to the shortfall in provision.

With alternative site availability there was no evidence that any investigation had been undertaken before the appellant came to this site. The Council did admit that alternatives were limited in the area due to the considerable amount of land designated as Green Belt and also much of the land was subject to flood risk. The Inspector attached considerable weight, therefore, to the lack of alternative sites.

He also attached considerable weight to the appellant's desire to stay in an area where he grew up and where he still has connections including his immediate family and relatives. Finally, there was nothing else in terms of personal circumstances that tied him to the area.

The children were below school age and there were no special health or educational requirements that could only be dealt with in this locality.

There was nothing put forward regarding personal circumstances that in the Inspector's view could be described as out of the ordinary in itself or was likely to be even if added to other factors. He therefore attached very little weight to the personal circumstances that were put forward as a material consideration.

The harm to the Green Belt, the rural character and appearance of the countryside and the risk of flooding are very serious in this instance and there are strong environmental reasons why this development should not be allowed. After careful consideration the Inspector concluded that harm is not clearly outweighed by the material considerations put forward even when they are taken together. In these circumstances there are no very special circumstances to consider.

The Inspector recognised that dismissing these appeals would result in an interference with the appellants' home and family life. He took into consideration throughout his deliberations Article 8 of the European Convention of Human Rights which sets out the right to respect for private and family life and the home

and a positive obligation to facilitate the gypsy/traveller way of life. It is a qualified right, however, requiring a balance between the rights of the individual and the wider community interest.

The Inspector also took fully into consideration Article 14 which prohibits discrimination and the duty under S71(1) of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and race relations between different racial groups.

The harm the development causes in terms of its detrimental effect on the environment and flood risk is considerable. Those are matters which it is right to protect in the wider public interest and the legitimate aims of protecting that wider public interest can only be adequately safeguarded here by dismissing this appeal and removing this development from the land. Accordingly the Inspector dismissed the appeal and upheld the notice.

The appeal on Ground (g)

The appellant argued that three months was not enough bearing in mind the difficulty of finding alternative sites. The Council had a duty to facilitate the appellant's way of life and 18 – 24 months was realistic in this instance. Whilst the Inspector recognised that the site is in a vulnerable location, there is an early flood warning service that the appellant can sign up to which would help to secure the family's safety bearing in mind the vulnerability of the site. This is the appellant's only home and the alternative is another unauthorised site or stopping by the roadside. There is a possibility that alternatives may come to fruition in about 18 months, despite the appellant's fears that they won't. In those circumstances the Inspector varied the period for compliance to 18 months and to that very limited extent the appeal succeeds.

Application for costs by the Council

The Council made a partial claim for costs relating to the Flood Risk Assessments (FRA) and representations made concerning flood risk at the site. The original FRA was found to have significant error in grossly misrepresenting the risk of flooding.

Another FRA had to be commissioned and whilst it confirmed the earlier one had an error of about 0.9 metres for the ground levels, the second one had its own errors.

There was disagreement about whether the site was in zone 2 or 3 but the appellant's claims were based on wrong information. The Inspector considered that even if the appellant was not aware of the errors when he first submitted the FRA he should certainly have been aware in mid August when it was explained that there were fundamental errors, in particular where the flood risk to the site came from and what zone it was in.

There was time (nearly two months) from when the appellant was informed that there were errors in the FRA to come to the hearing with an accurate FRA and indeed to agree what the situation was. If that had happened no time at the hearing and virtually no time by the officers of the Environment Agency and the Council would have been necessary in researching the situation and putting the correct information before the hearing.

The Inspector therefore found unreasonable behaviour resulting in unnecessary expense in relation to the flood risk and that a partial award of costs be justified.

2. FORTHCOMING PLANNING INQUIRIES AND HEARINGS

This list includes forthcoming inquiries and hearings for all three Areas which have now been arranged. Unless otherwise indicated, they will be held in the Civic Suite at the Gibson Building and will last one day. All hearings and inquiries commence at 10.00 hours on the first day.

There are also a number of other outstanding appeals for which hearing/inquiry dates have not yet been allocated. It is now the practice of the Planning Inspectorate not to list new cases for hearing more than three months in advance.

- 2.1 Site **180 High Street, Tonbridge.**
 Details **Appeal against the refusal of permission re Conservation Area Application: Demolition of existing office building and development of new building to provide 13 apartments together with 13 car parking and cycle spaces and refuse storage, including restoration of boundary wall and refurbishment of garden areas.**
 Date **hearing - 19 May 2011 (to be held at Council Chamber, Tonbridge Castle)**
 Background papers file **PA/07/11**
- 2.2 Site **Sunny Paddock, Birling Road, Leybourne.**
 Details **Retrospective application for the stationing of touring caravan for residential occupation and conversion and use of stable block as ancillary living accommodation.**
 Date **Inquiry – 19 July 2011**
 Background Papers file **PA/11/11**

Adrian Stanfield

Legal Services Partnership Manager

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	NO	Information report
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.