

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 20 OCTOBER 2015

INJUNCTIVE ACTION

BRAMBLY HEDGE, LYNDHURST ROAD, LANDFORD, SP5 2BJ

Report by: Paul Hocking, Enforcement and Trees Manager

1.0 Summary

- 1.1 This report concerns the continued stationing of a residential mobile home at the above site in contravention of a longstanding Enforcement Notice. The current mobile home has been stationed at the site since the beginning of September 2012.
- 1.2 The owner of the land, Mr Witcher, purchased the land in May 2011. The land was already the subject of an Enforcement Notice which precluded the stationing of a residential mobile home, amongst other matters. Mr Witcher has been aware of the existence and requirements of the Enforcement Notice since at least July 2011 when he made a Freedom of Information Request using the address of his previous residence; a house in Calmore, Totton.
- 1.3 Following the refusal of a planning application in 2012 and the dismissal of the appeal last year, the mobile home still remains on the land and is principally occupied by Mr Witcher who is a Romany Gypsy. Injunctive proceedings were first issued in October 2012.
- 1.4 The purpose of this report is therefore to update Members on the progression of the current situation and approve the approach to widen the scope of the current injunctive proceedings in order to apprehend a possible future breach of planning control.

2.0 Enforcement and Court Chronology

- 2.1 In July 2005 Salisbury District Council, being the predecessor local planning authority, issued an Enforcement Notice against the previous owner of the land where an unauthorised residential mobile home had been stationed. An appeal was lodged against the Enforcement Notice which was dismissed in February 2006 subject to a variation.
- 2.2 The Enforcement Notice as upheld on appeal took effect in February 2006 and the requirements of the Enforcement Notice should have therefore been complied with before the end of August 2006.

- 2.3 The previous owner of the land did not comply with the requirements of the Enforcement Notice and so was prosecuted successfully in April 2008. A second successful prosecution followed in March 2009. The previous owner then finally removed the mobile home in November 2009.
- 2.4 Mr Witcher purchased the land in May 2011. It is agricultural land and there were no caravans present at the time of his purchase.
- 2.5 In June 2012 Mr Witcher applied for planning permission to use the land as a single pitch gypsy site. The application was refused planning permission in August 2012 for the following two substantive reasons:
1. Whilst the available evidence indicates that there is a need for additional gypsy and traveller sites in the South Wiltshire housing authority area, it has not been demonstrated that there is a need for the site to be located within the New Forest National Park. This is contrary to policy CP13 of the New Forest National Park Core Strategy and Development Management Policies DPD (December 2010).
 2. The proposal would harm the character and appearance of the National Park countryside and it has not been demonstrated that there are exceptional circumstances such as to override this harm. The proposal is therefore contrary to policies CP13 and DP1 of the New Forest National Park Core Strategy and Development Management Policies DPD (December 2010) and para. 115 of the National Planning Policy Framework.
- 2.6 Despite the refusal, Mr Witcher proceeded to station a residential mobile home on the land the following month in September 2012 which was also in contravention of the requirements of the 2005 Enforcement Notice. Mr Witcher was aware of the Enforcement Notice given his Freedom of Information request in 2011 about the planning and enforcement history of the site.
- 2.7 Given the level of public interest that followed and the flagrancy of the breach the Authority made an application in October 2012 pursuant to Section 187B of the Town and Country Planning Act for a High Court Injunction to compel Mr Witcher to cease his unauthorised residential occupation of the land.
- 2.8 The application for injunctive relief was first before the Court in November 2012 and adjourned pending the outcome of Mr Witcher appeal against the refusal of planning permission which had been lodged in the intervening period. The Judge did however make an Order that placed a number of restrictions on Mr Witcher such as limiting occupiers and further works at the site.

- 2.9 In July 2013 that planning appeal was allowed and Mr Witcher was granted planning permission to remain. However, the Authority challenged this decision in the Courts and in March 2014 the Planning Inspectorate was ordered to re-determine the appeal because the Judge concluded the Appeal Inspector had made an error in law that led to that planning appeal succeeding - *'namely a clear misapprehension as far as the policy CP13 is concerned'*.
- 2.10 The matter was therefore considered afresh by the Planning Inspectorate and a Public Inquiry was held over two days in October 2014. The appeal was subsequently dismissed in March 2015. In his decision the Inspector, in concluding, stated that:

'The proposal does not comply with Policy CP13. Substantial harm arises from this policy conflict and further significant harm as a result of the actual landscape effect on the ground. This harm is not outweighed by other considerations which favour the proposal, namely the wider unmet need for sites, the accommodation needs of the occupiers and their personal circumstances. This would be an unsustainable development contrary to the NPPF and development plan policies set out.

Dismissing the appeal would result in Mr Witcher, Ms Foster and Jessica losing their home and would engage their human rights to respect for their family life and home. For the reasons set out above I do not consider it would be necessary for Mr Witcher to take to a roadside existence or for the family to split up, notwithstanding his cultural preference for a caravan. It is in the best interests of Jasmine to have stability in her family life. She and her mother are not travellers and this stability can be provided just as well in conventional housing. There would be no need to disrupt her attendance at college or her employment. Whilst her best interests are a primary consideration they are not determinative and the actual weight to be given to in the balancing exercise depends on the degree of harm identified. In this case the adverse effects on the accommodation needs and personal circumstances of Jasmine warrant moderate weight.

Human rights are integral to considering personal circumstances and accommodation. As such they are already part of the planning balance. Having regard to the alternatives available to the appellant and his dependants and the policy and environmental harm to the National Park I consider dismissing the appeal is the minimum action necessary to avoid the harm and would be a proportionate response to this harm.'

- 2.11 Following this decision the Authority applied to the High Court to have its original injunctive proceedings restored. In August 2015 the Judge agreed that the matter should proceed and the trial has now been set for 25 and 26 November 2015.

- 2.12 Concurrently, Mr Whitcher, over the spring/summer of 2015, decided to challenge the latest Appeal Inspector's decision of March 2015. This challenge is being defended by the Secretary of State and is to be heard before a Judge on 13 October 2015.
- 2.13 An oral update will therefore be provided to Members at Committee. If Mr Whitcher's challenge is allowed, it may be necessary for our injunctive action to be adjourned to enable the planning appeal process to be re-run again. If it is dismissed, the application should proceed in November.

3.0 Application for Injunctive relief

- 3.1 If Mr Whitcher's challenge of the Appeal Inspector's decision fails, and the Authority's application for injunctive relief proceeds, it is considered appropriate and necessary that the application be widened in its scope to prevent Mr Whitcher from then commencing a new unauthorised residential use elsewhere in the National Park. This is because the planning merits (a locational need for Mr Whitcher to have a site in the New Forest National Park) have already been dismissed at appeal and so an approach to prevent a possible further planning breach taking place elsewhere in the National Park is considered necessary.
- 3.2 This approach has previously been accepted at the High Court, where the Authority has secured injunctive relief relating to the National Park as a whole in anticipation of future planning breaches. Whilst this would impact on Mr Whitcher's rights, it is considered reasonable and in the public interest for the reasons cited in the conclusion of this report.

4.0 Conclusion

- 4.1 It is accepted that the Authority will be interfering with Mr Whitcher's human rights in its pursuit of enforcement action against his home (Article 8 [right to respect for a private and family life]). The question is whether this interference is justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing a legitimate aim or aims and as being "necessary in a democratic society" in pursuit of that aim or aims. The mobile home and its residential occupation is clearly unauthorised and in breach of planning control. The Authority's "interference" therefore remains in accordance with the law in that the Authority would be acting in accordance with the powers conferred upon it by the Town and Country Planning Act. This would be the same should a further breach be triggered elsewhere in the National Park.
- 4.2 Indeed, Mr Whitcher and his family's Article 8 Rights were recently considered by the Appeal Inspector who took the view that the refusal of residential permission was proportionate and justified, notwithstanding the evidence presented to that Inspector (and that decision being made in full knowledge of the re-commencement of injunctive proceedings on refusal of permission). A Social Worker's

report has also been commissioned concerning the interests of Mr Whitcher's children. This is one of the primary considerations and Members will be orally updated as to the findings of the report at Committee as the Authority is currently awaiting receipt. This will also enable the Authority to establish the more historic relationship that Mr Whitcher has had with his children.

- 4.3 It must be noted that Mr Whitcher has a history of living in conventional housing and indeed had been doing so before his unauthorised residential occupation in Landford. The National Park Authority is not a Housing Authority and does not provide housing, but it is previously understood that there are options open to Mr Whitcher and it is naturally his choice as to whether he considers those options suitable in the circumstances.
- 4.4 The enforcement of planning control is in the wider public interest of the community by preventing inappropriate and harmful development within a very special environment of national significance, the New Forest National Park. It is a legitimate aim within a democratic society to protect the "rights of others" through the preservation of the environment. The appointed Appeal Inspector identified the environmental harm arising from Mr Whitcher's continued unauthorised residential occupation of the site.
- 4.5 In totality, whilst taking the action recommended would interfere with a number of Mr Whitcher and his families rights, the infringement is considered to be right, proportionate and in the wider public interest.

Recommendation:

Having considered the implications of the ongoing breach of planning control and all other relevant considerations, Members note and endorse the ongoing application for an injunction, to include the wider prohibition of Mr Whitcher's unauthorised residential occupation anywhere within the National Park.