



TOWN AND COUNTRY PLANNING ACT, 1990

Reference No: 7/0264/02/F/HOD

Mrs E Saunders
Number 3 Chalet
Hertford Road
Hoddesdon
Herts
EN11 9JL

Description of Development: Addition of 2 no. residential caravans (Post Facto)

Location of Development: Number 3 Chalet, Hertford Road, Hoddesdon, Hertfordshire, EN11 9JW

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council **HEREBY REFUSE** the development proposed by you in your application dated 19th March 2002 and received with sufficient particulars on 26th March 2002. The reasons for the Council's decision to **REFUSE** permission for the development are:-

1. The site is within the Metropolitan Green Belt as described in the Hertfordshire County Structure Plan Review 1991-2011, the precise boundaries of which have been defined in the Borough of Broxbourne Local Plan Review 1994. Policy 5 of the adopted Structure Plan Review states that within the Green Belt there is a presumption against inappropriate development and permission will not be given, except in very special circumstances, for development for purposes other than those detailed in PPG2 'Green Belts'. Suitable uses are defined in Policy GC3 of the Borough of Broxbourne Local Plan Review 1994. The proposed development cannot be justified in terms of the purposes specified and no very special circumstances are apparent in this case. It is considered that that the consolidation of residential caravans on gypsy sites would erode the rural character of the area.

1. INFORMATIVE:

The applicant is reminded of the need to remove the two unauthorised residential caravans from the site within a period of 3 months of the date of this decision.

Dated: 15th May 2002

Signed:
Director of Environmental Services

TOWN AND COUNTRY PLANNING ACT 1990

Appeals to the Secretary of State

- If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Department of the Environment at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notices

- If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council of the District or London Borough in which the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Compensation

- In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.
- These circumstances are set out in Sections 114 and related provisions of the Town and Country Planning Act 1990.



Appeal Decision

Hearing held on 8th April 2003

by **Sean Slack** BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date

08 MAY 2003

Appeal Ref: APP/W1905/C/02/1099133

Land at Woollensbrook (Chalet No.3) Hertford Road, Hoddesdon, Herts

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs E Saunders against an enforcement notice issued by Broxbourne Borough Council.
- The Council's reference is ENF 04/02.
- The notice was issued on 23rd August 2002.
- The breach of planning control as alleged in the notice is a material change of use of land from agriculture to a mixed use of agriculture and a site for the siting and occupation of 2 additional residential caravans, without planning permission.
- The requirements of the notice are; (i) cease the increased residential occupation of the site that is to remove the 2 additional caravans; (ii) remove from the site and do not *return*, all unauthorised caravans.
- The period for compliance with the requirements is 2 months.
- The appeal was made on the grounds set out in section 174(2)(a) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the ground (a) appeal the deemed application for planning permission does not fall to be considered.

Summary of Decision: The notice is corrected as set out in the formal decision. Subject to this correction, the enforcement notice is quashed

Appeal Ref: APP/W1905/A/02/1096259

Land at Woollensbrook (Chalet No.3) Hertford Road, Hoddesdon, Herts

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs E Saunders against the decision of Broxbourne Borough Council.
- The application (Ref.7/0264/02/F/HOD), dated 19th March 2002, was refused by notice dated 15th May 2002.
- The development proposed is the addition of 2 residential caravans (total 4) for own family use.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions as set out in the formal decision

Nature of the alleged development

1. The notice alleged a change of use from agriculture to a mixed use for agriculture and the siting of additional residential caravans. It is clear from the evidence at the hearing and my site inspection that no agricultural activities take place on the appeal site as the land is used solely as a caravan site. I shall correct the allegation to refer to the siting of 2 caravans. This correction can be made without causing injustice to either party
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The appeals site and planning background

2. The site subject of both appeals is a small private gypsy caravan site situated on the south side of Hereford Road in an area of predominantly open land close to an elevated section of the A10. On the north side of Hereford Road are a number of detached properties identified as Woollensbrook. The appeal site was originally part of a larger area subject to enforcement action by the Council in 1983. Two notices were issued alleging the stationing of caravans and mobile homes, and the laying down of hardstanding, without planning permission. Appeals against the notices were successful and planning permission was granted for the retention of 3 mobile homes and a caravan together with a hardstanding. Permission was subject to conditions including a personal condition in favour of the then appellants, Mr J Brown and Mr T Saunders. In 1988 an appeal by Mr Brown against a further temporary planning permission succeeded and permanent permission was granted. In 1989 the Council granted a permanent planning permission to Mr T Saunders. In 1992 planning permission was granted for a single storey amenity block to provide a toilet and washroom
3. The caravan site is presently occupied by Mrs Saunders, her husband and their 3 adult children. They occupy separate caravans or mobile homes. The site occupied by the appellant and her family is identified by the Council as pitches numbered 3 and 4. (Referred to as Chalets 3 and 4 by the appellant) That part of the site occupied Mr Brown has a separate access off Hereford Road. (Pitches 1 and 2) Prior to the stationing of additional caravans the appeal site was occupied by Mr and Mrs Saunders in one mobile home identified as Chalet 3, with a further mobile home (Chalet 4) now occupied by their daughter, Anne and her 3 children. The site is almost entirely surfaced with concrete hardstandings or recycled tarmac. A tall wooden fence has recently been erected enclosing the entire site such that only the upper parts and roofs of the mobile homes and caravans are visible from Hertford Road. It was said that the two additional caravans or mobile homes are required to provide separate accommodation for the appellant's son, William and his family, which includes his wife and 3 small children aged 5, 2 and 1 year old. Their remaining daughter, Ivy, and her 2 year old son occupies a further mobile home. She is expecting a second child in August.
4. The development plan is the Hertfordshire Structure Plan review 1991-2100 adopted in 1998 and, the Borough of Broxbourne Local Plan Review adopted in 1994. The appeal site is within the Metropolitan Green Belt the boundary of which is defined in this part of Hertfordshire in the adopted local plan. Structure plan policy 5 sets out the purposes of including land in the Green Belt and restates the national policy presumption against inappropriate development unless very special circumstances can be shown. Policy GC3 of the Local Plan Review identifies those types of development which are considered appropriate in the Green Belt. The Council have also referred to structure plan policy 12 seeks to make provision for gypsies through support for the development of permanent caravan and transit sites in satisfactory locations.
5. There is no policy on the provision of sites for gypsies in the 1994 local plan review. The Council have included extracts from the Local plan Second Review 2001-2011 which is at an early stage towards formal adoption. Paragraph 2.5.12 states that provision of accommodation for gypsies is the responsibility of the County Council and that the Borough Council is not aware of any identified need for additional accommodation for gypsies. There is one permanent public gypsy site in Broxbourne at Halfhide Lane which

provides accommodation for 15 families with a capacity of 30 caravans (2 caravans per pitch). The County Council's Gypsy Officer reports that there are currently no vacancies on that site. (Document 4) I have also taken into account the advice Circular 1/94 which stresses the need for local planning authorities to make adequate gypsy site provision in development plans. The Circular notes that where it is not possible to identify suitable locations for gypsy sites in development plans, they should set out clear realistic criteria for suitable locations as a basis for site provision policies. My attention has also been drawn to national policy advice on Green Belts in PPG2.

The section 78 appeal

6. In considering the appeal I am aware of the statutory requirement under Section 54A of the 1990 Act (as amended) that determinations on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise. I have also taken into account national policy guidance on Green Belts in PPG2 and Gypsies in Circular 1/94. Paragraph 13 to that circular states that gypsy sites are not regarded as being among those uses of land which are normally appropriate in Green Belts and that such land should therefore not be allocated for gypsy sites in development plans. The circular also cautions against gypsy sites in protected areas of open land.
7. The appeal site is within the Green Belt where there is a presumption against inappropriate development except where very special circumstances can be shown. Having regard to the statutory duty under section 54A the appeal must turn firstly, on whether there are very special circumstances which would justify an exception to Green Belt policy, and secondly, whether the objections concerning the visual impact of the development could be overcome by the imposition of reasonable conditions.
8. The Council have refused permission on grounds that the development is inappropriate in a Green Belt as it is not within any of the exceptions listed in the adopted policy GC3. The reasons for refusal also state that the consolidation of residential caravans on gypsy sites would erode the rural character of the area. The reasons for taking enforcement action make no reference to the appellant as a gypsy or policies which address the accommodation needs of such groups. The Planning Officer's report to committee (Document 5) acknowledged that the application was for a gypsy family but considered that the attendance of children at nearby schools was not sufficient to outweigh the harm to Green Belt policy.
9. It was said that the Council had failed to address the adequacy of provision for gypsy sites in this locality. There were no vacancies at the Halfhide Lane site which was the only public gypsy site in Broxbourne. The appellant's son and daughter had been on the County Council's waiting list for almost a year without success. The most recent gypsy counts for 2002 recorded no caravans on private sites in the Borough. Following the judgements in the Hedges and Rexworthy cases, it was important that the issue of need was given proper consideration and not treated as part of the appellant's personal circumstances. The second important consideration concerned the educational needs of the appellant's extended family and the health problems experienced by various family members. The additional caravans housed 4 children one of which was of school age and attended a local school. The family were registered with a local medical practice in Hoddesdon. Medical reports by Dr Willis confirm that the appellant and her husband suffer poor health and that William is also unable to undertake manual work owing to an arthritic condition. The removal of the appellant's son and daughter from the site would be a violation of Article 8 of the European

Convention on Human Rights. The appellant and her family had now become settled on their own land in line with national policy which encouraged gypsies to seek their own sites. It was also claimed that the enforcement notice constitutes a violation of the gypsy family's rights under the European Convention on Human Rights as regards to the right to a home and education. The appellant and her family have been resident on the appeal site for over 20 years. The site was acquired by Mr Saunders in order to provide his family with a more settled way of life after many years on a Council owned site at Edmonton in the London Borough of Enfield. The 2 caravans provided separate accommodation for William and Ivy who had spent most of their lives on the appeal site.

10. I find in this case that there are special circumstances which would justify an exception to Green Belt Policy. The adopted local plan does not have a policy for gypsy sites. The emerging policy (Document 10) places responsibility for gypsies with the County Council and appears to disregard the guidance in Circular 1/94 that adequate provision should be made in development plans through locational policies and where this is not possible criteria based policies should be used. Whilst the appellants status as a gypsy does not justify inappropriate development in the Green Belt, I consider the failure of the Council to make any provision for gypsy sites in their local plan to be an important consideration in assessing whether an exception to the adopted policy is justified. Should the notice be upheld, the appellant's son and daughter would have to seek accommodation outside the Borough, given the evidence that there are no vacancies on the Halfhide Site.
11. The additional caravans provide accommodation for family members who have grown up on the site. The new caravans have not resulted on an encroachment on open land outside the original site boundary but have been sited on hardstanding areas which had been used for the parking of vehicles and touring caravans. The additional caravans have not contributed to any additional loss of openness of the Green Belt. I consider any adverse visual impact of the development could be mitigated by carrying out landscape treatment to the site boundary and ensuring that caravans are sited so that they are not clearly visible from outside the site.
12. Whilst the health problems of the appellant and her husband are not unusual, the evidence clearly points to an increasing dependency among members of this family for mutual support. Mr Saunders and his son are no longer able to carry out their traditional manual work. Mrs Saunders relies on her daughters for help with transport to local services. These factors assist this extended family to lead a more settled life on the appeal site. This is consistent with the aims of national policy to encourage gypsies to seek their own private site provision rather than through local authority sites.
13. My conclusion is that subject to those conditions as discussed at the Hearing, to make the planning permission personal to William and Ivy Saunders and the ensure that additional landscaping work is carried out on the site, the section 78 appeal should succeed. I do not consider those other conditions suggested by the Council concerning means of access and provision for refuse disposal to be necessary as such facilities are already in operation on the site. In the circumstances the enforcement notice appeal on ground (g) does not need to be determined. In coming to my conclusion on the appeals I have considered all other matters raised at the hearing and in writing including the submissions concerning the European Convention on Human Rights.

Formal Decisions

Section 174 Appeal against the Enforcement Notice: APP/W1905/C/02/1099133

14. For the reasons given above, and in exercise of the powers transferred to me, I direct that the notice be corrected by deletion of paragraph 3 and the substitution of a new paragraph as follows;

3. THE BREACH OF PLANNING CONTROL ALLEGED

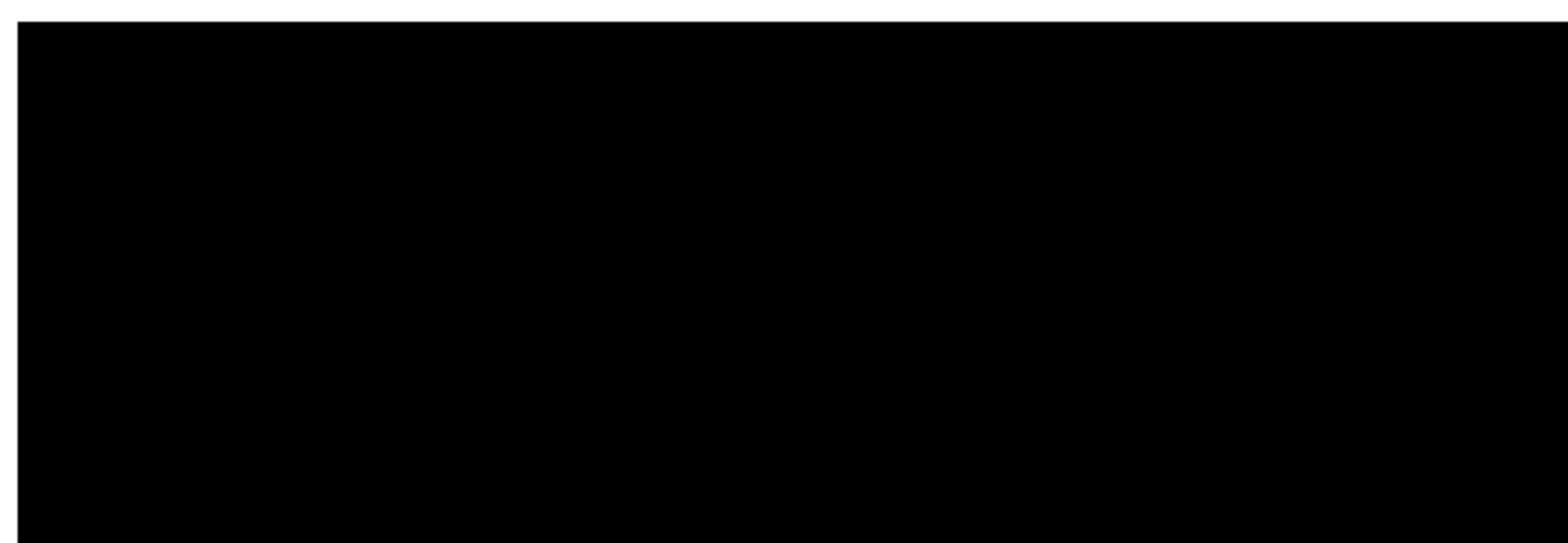
Use of land for the siting and occupation of 2 additional residential caravans, without planning permission.

Subject thereto, I quash the enforcement notice.

Section 78 Appeal against the refusal of Planning Permission APP/W1905/A/02/1096259

15. For the reasons given above and in exercise of the powers transferred to me, I hereby allow the appeal and grant planning permission for the addition of 2 residential caravans (post facto) Woollensbrook, Hertford Road, Hoddesdon, Herts in accordance with the terms of the application 7/0264/02/F/HOD dated 19th March 2002 and the plans submitted therewith, subject to the following conditions;

- 1) The use hereby permitted shall be carried on by Mrs E Saunders for the benefit only of William Saunders and Ivy Saunders and shall be limited to 2 caravans or mobile homes.
- 2) When the caravans cease to be occupied by William Saunders and Ivy Saunders, the use hereby permitted shall cease and the caravans shall be removed.
- 3) Within 6 weeks of the date of this decision a landscaping scheme for treatment of the site boundary shall be submitted for approval in writing by the local planning authority and these works shall be carried out as approved within 12 months of the date of the approval. These details shall include proposed finished ground levels and levels of thresholds of the 2 caravans, position of existing trees, proposed planting of trees and shrubs including species, size and number of plants.
- 4) If within a period of 3 years from the date of the planting of any tree, that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.



Sean Slack
Inspector

Notes

The decision is issued as the determination of the appeals. Particulars of the right of appeal against the decision to the High Court are enclosed for those concerned.

This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period

