



Neutral Citation Number: [2013] EWHC 3076 (Admin)

Case No: CO/9603/2012

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Birmingham Civil Justice Centre  
Bull St, Birmingham B4 6DS

Date: 16/10/2013

Before :

**HHJ DAVID COOKE**

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Between :

**David Lloyd (1)**

**Claimants**

**Edith Lloyd (2)**

**- and -**

**Secretary of State for Communities and Local  
Government (1)**

**Defendants**

**Dacorum Borough Council (2)**

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**Kevin Leigh** (instructed on Public Access) for the **Claimants**  
**Zoe Leventhal** (instructed by **The Treasury Solicitor**) for the **Defendants**

Hearing date: 12 August 2013  
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**Approved Judgment**

## HHJ David Cooke :

1. This is a challenge pursuant to section 288 of the Town and Country Planning Act 1992 to a decision made by an Inspector dated 2 August 2012 by which he dismissed, after a hearing, the claimants' appeal against the refusal by the second defendant Council to grant planning permission to retain a log cabin on land at Doone Brae Farm, Pepperstock Hampshire.
2. The section provides that such a decision may be challenged on the grounds either that it was not within the powers of the Act or that a relevant requirement was not complied with. If the grounds are made out, and (to the extent that a procedural failure is relied on) the applicant has been substantially prejudiced the High Court has power to quash the decision. It is common ground that such a challenge is akin to a judicial review and may only be brought on the grounds that an error of law has been committed, and further that it is no part of the function of the court on such a challenge to interfere with the exercise of planning judgment by the inspector.
3. The farm is located in a rural area in the Green Belt. There were a number of existing buildings on the site. Prior to 2003, the claimants had lived in a caravan on the site. The caravan had no planning permission but been present for long enough to enable them to obtain a certificate of lawful use the effect of which was that they could not be required to remove it. In 2003 however they replaced the caravan with a log cabin, again without planning permission. Subsequently they made at least two applications for permission to retain the log cabin with alterations, both of which were refused by the council with its decisions being upheld on appeal by previous Inspectors. The claimants made a third application in which they proposed to alter the log cabin to reduce its size, and to knock down two buildings on the site if permission was given. Part of their case was that if this was done the total area of buildings on the site would be reduced, to the benefit of the openness of the green belt. On the other hand if permission was refused it was their case, accepted for the purpose of the appeal, that they would be entitled to revert to having a mobile home on the site, which could be as large as 136m<sup>2</sup>, and retain the two buildings (the so-called "fallback position") which, they contended, would be more harmful to the green belt.
4. That application was refused by the Council, and the claimants' appeal was dismissed by the Inspector. In Mr Leigh's skeleton argument he described the challenge as "essentially a (lack of) reasons challenge" although he also argued that it was Wednesbury irrational on the basis that it "appears to fly in the face of sound reasoning." His argument was in essence either that the reasons were not sufficient to enable the claimants to understand why they had lost, or that in so far as the reasons for the decision could be ascertained, they were wrong in law in critical respects.
5. It is common ground that the Inspector was required to determine whether the log cabin was "inappropriate development" within the Green Belt, and that that question was to be answered by reference to the Local Plan and the National Planning Policy Framework ("the Framework"). The interpretation of those documents is a matter of law to be determined by the court rather than the discretion of the Inspector (see *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13). If it was "inappropriate", it should only be permitted in "very special circumstances" if the harm caused to the Green Belt, including harm caused by definition by inappropriate development and any other

harm found in the circumstances of the case was clearly outweighed by other considerations; see paras 87-88 of the Framework.

6. At the appeal, the claimant's argument, which Mr Leigh pursued before me, was that the development was not "inappropriate" because:
- i) Section 9 of the Framework deals with "Protecting Green Belt land". Paragraph 89 provides that "a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are... the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces...".
  - ii) This should be interpreted as including the replacement of a mobile home by a building where the mobile home has the benefit of a certificate of lawful use, since although the placement of a mobile home constitutes, in planning terms, a "use" of land rather than permitted development on the land, the practical effect of the certificate of lawful use was that the site would always be used for residential purposes by people living inside a structure. Mr Leigh suggested that the change in language between the previous policy guidance given in PPG2 which referred to the replacement of a "dwelling" and the Framework referring to a "building" suggested a more generous interpretation of what was to be regarded as not inappropriate development. In my judgment however the opposite is the case. A mobile home might potentially be regarded as a "dwelling" as a matter of language simply because someone "dwells" in it, but it is much less easy to regard it as a "building".
  - iii) Policy 23 in the Council's Development Plan, entitled "Replacement dwellings in the green belt and the rural area" provides that "... the replacement of existing dwellings, including dwellings which have been destroyed, will be permitted provided that... (b) the proposed dwelling is not a replacement for temporary residential accommodation or a building constructed of short-life materials". Policy 26, entitled "Residential Caravans" provides that "Proposals for residential caravans and mobile homes will be treated as though they were for residential buildings and will therefore be subject to the same policies and criteria...". Read together, Mr Leigh argued, this meant that an existing residential caravan was to be regarded as being an "existing dwelling" for the purposes of Policy 23 in the same way that an existing residential building would be, and accordingly its replacement would be in accordance with policy 23.
7. The Inspector dealt with this argument specifically at paragraphs 8 and 9 of his decision letter, where he said

“ 8. Policy 23 of the Local Plan specifically excludes temporary residential accommodation from the type of residence that can be replaced by a dwelling house. The appellant contends that as the lawful use of the land allows for the permanent stationing of a mobile home, such a home would not be temporary residential accommodation and would effectively be a permanent dwelling. I concur with the first Inspector that it is well established in planning law that the stationing of a caravan

or mobile home comprises a use of land, not the creation of floor space, and is not operational development. As a consequence although the use of land for the siting of a residential home may be permanent, the accommodation itself is not. Therefore, whilst a mobile home could lawfully be placed on the site instead of the log cabin it would not constitute a permanent dwelling and so could not under the terms of policy 23 be replaced by a dwelling house.

9. Policy 26 of the Local Plan advises that proposals for residential caravans and mobile homes will be treated as though they were for residential buildings. However, as the justified reasoning to the policy explains, this means that as the two types of development can have a similar impact on their surroundings the same policies should apply in assessing those impacts. Given that policy 23 distinguishes between applications for residential caravans/mobile homes and applications for residential buildings policy 26 does not mean that in planning terms they are the same. ”

8. I agree with Ms Leventhal that this constitutes a sufficient explanation of the inspector's reasons. It is clear that he understood the argument that was being made to him, and why he rejected it.
9. Moreover, in my judgment he was right. Although Policy 23 referred to the replacement of "existing dwellings", when read as a whole and in the context of the remainder of the Plan that phrase does not include the replacement of mobile homes by buildings. Policy 4 entitled "The Green Belt" provides that "Within the Green Belt, there is a presumption against inappropriate development. New buildings will therefore only be acceptable where they are for the following purposes:... (e) the replacement of existing houses in accordance with Policy 23...". This clearly suggests that the "dwellings" referred to in Policy 23 are intended to be "houses" which implies a permanent building rather than a caravan or mobile home.
10. The explanatory notes to Policy 23 state that "strict control is applied over new building as part of the policies of general restraint which protect the countryside. The establishment of new permanent buildings, for example on sites occupied by structures not intended for permanent residential occupation, is not acceptable. However it is reasonable for house owners to replace their buildings when they are damaged or structurally unsound. The reconstruction of buildings already there should have no material impact on the countryside." The phrase "sites occupied by structures not intended to the permanent residential occupation" seems to me to refer very aptly to sites on which caravans or mobile homes are situated. They are "structures" which "occupy" a site, rather than buildings situated on such a site. Although they could in principle be permanently occupied and a particular occupier may have the personal intention to do so, they would not be the sort of structures that would normally be regarded as "intended" for permanent occupation. The log cabin would be a "new permanent building" on such a site, and therefore in my judgment clearly within the activity deemed unacceptable. It would manifestly not be "reconstruction of [a building] already there".

11. Given this explanation of the purpose behind the Policy, it is clear in my judgment that replacement of a caravan by a permanent building would be "a replacement for temporary residential accommodation" and thus excluded from the permission contemplated by Policy 23. A caravan or mobile home is inherently a structure of a temporary rather than permanent nature, notwithstanding that there may be a subjective intention of the present user to occupy that structure permanently and replace it with another as and when required.
12. Policy 26 is in my judgment restrictive rather than permissive. The explanatory notes refer to the similarity of impact they may have to "static forms of housing". A proposal to site a caravan is thus to be treated no more leniently than a proposal to build a house. This is not, in my judgment, at all the same as saying that a caravan once sited is to be treated as if it were a house for the purpose of considering its replacement, particularly given the contrary intention expressed in Policy 23 which deals with that matter specifically. That is the point the Inspector made at para 9 of his decision letter.
13. The Inspector was referred to other cases in which replacement of mobile homes by permanent buildings had been permitted on appeal, including one in 2012 particularly relied on by Mr Leigh against a decision of the Vale of White Horse District Council. It was he said inconsistent to decide the present case in a different way. While accepting the desirability in general terms of consistency of decision making, the decisions of Inspectors on matters that are heavily dependent on the facts and planning judgment in each case are in no sense to be regarded as binding precedents on subsequent appeals. In this case, the Inspector correctly noted that none of the appeals referred to him had related to land in the Green Belt, to which special restrictions apply, so that no analogy could properly be drawn with them. There was therefore no inconsistency between his decision and those earlier cases.
14. The Inspector was therefore right, and gave sufficient reasons, for his finding that the development was "inappropriate".
15. The Inspector went on to consider the impact of the proposal on the Green Belt under two headings, "Openness" and "Character and Appearance". In relation to openness, the Inspector concluded that there would be a marginal improvement because the built area of the log cabin (183 m<sup>2</sup>) was smaller by 29m<sup>2</sup> than the area of the buildings to be demolished (212m<sup>2</sup>). Mr Leigh again pursued before me the argument that had failed before the Inspector, that this treated the log cabin as if built on open land and ignored the fact that there was an established lawful entitlement to site a mobile home which would itself affect the openness of the land. He argued that the approach should have been that the appellants were entitled under Policy 23 to replace that with a permanent building of the same size as the largest possible mobile home, and under Policy 22, to increase that size further by 30% resulting in a building of 177m<sup>2</sup>, practically the same as the proposal, with the result that the improvement in openness was not 29m<sup>2</sup> but 206m<sup>2</sup>.
16. The Inspector rejected the argument based on entitlement to replace, for the reasons I have already stated and held to be correct. He said at para 12, "... as the log cabin does not have permission the starting point in terms of assessing the impact on openness is to assess the proposed development on its own merits as if the log cabin was not there". He did not ignore the effect on openness of the fallback position

though; he addressed it in his section headed "Other Considerations" dealing with matters in favour of the development that might amount to "very special circumstances". At para 22 he accepted on the evidence that it would be technically feasible to place the largest possible mobile home on the site, ie 136m<sup>2</sup>, albeit I was told that would require it to be lifted in by helicopter. At para 23 he said "The overall effect of the appeal proposal would be a reduction in built development of 29m<sup>2</sup>. A mobile home, in contrast, could be placed on site which would increase the footprint by 136 m<sup>2</sup>. As a consequence it would have an adverse impact on openness whilst the appeal proposal would not."

17. I accept Ms Leventhal's submission that the Inspector dealt with these issues in the right order by considering first the effect of the development itself and second whether any benefits achieved by implementation of that development (by reason of avoidance of the fallback position) amounted to "very special circumstances" outweighing that harm. She referred me to *Brentwood DC v SSE and Gray* (1996) 72 P&CR 61 in which the Deputy Judge held that an Inspector must approach the matter in this way and not by considering the harm caused by the development as a matter of comparison between it and the fallback position. One might question whether the difference of approach would be likely to affect the outcome in many cases; ultimately the Inspector has to make a planning judgment balancing the harm against the benefit of the proposal, and whether he takes a favourable point as reducing harm or increasing benefit should not in principle change the overall balance. But that is a point for another day; in relation to the present case the Inspector was not wrong to approach the matter as he did.
18. In relation to character and appearance the Inspector found at paragraphs 16 and 18 that the log cabin was set in a prominent imposing position overlooking an open agricultural valley clearly visible "in glimpsed views" from a road and accordingly poorly set in its landscape, and that its prominence would be increased by removal of the two other buildings. In paragraph 17 he found on balance that the appearance of the building would be in keeping with the local vernacular and not harmful to it. His conclusion at paragraph 19 was:

“ Taking all these matters into account, I therefore conclude that whilst the proposal would be of reasonable form and appearance its position within the landscape would be unduly prominent. As a consequence, it would unacceptably harm the character and appearance of the area contrary to policy 11(k) of the Dacorum Borough Local Plan. This finding adds further weight against the proposal. ”
19. He again dealt with the fallback position in his section headed "Other Considerations", finding at paragraph 24 that any mobile home would be smaller than the proposed log cabin and less prominent both for that reason and because the other two buildings would be retained. At paragraph 25 he said "the harm to openness caused by the fallback position would be greater than the appeal proposal, but the harm to the character and appearance of the area would be less. As a consequence, I attach only some weight to the fallback position in favour of the appeal."
20. Mr Leigh submitted that the conclusion that the log cabin was in keeping with the local vernacular was either inconsistent with the conclusion that it was unduly

prominent or that it was unclear whether the Inspector was treating the two issues separately. In my judgment is perfectly clear that the Inspector treated the appearance of the building as one matter, which he regarded as favourable, and its prominence in the landscape as another, which he regarded as unfavourable. No doubt both prominence and appearance affect the impact that a building has on the landscape, but they are plainly different aspects of that impact. The balance between the two was a matter of the Inspector's planning judgment, and he found that the prominence outweighed the appearance.

21. Mr Leigh also criticised the Inspector for "conflating the positive effect of removing [the two] buildings with an assessment of the impact of the appeal building", but in considering the prominence of the log cabin the Inspector was bound to take account of the fact that it would be more noticeable by reason of the removal of the other buildings. Mr Leigh submitted that the Inspector was wrong to assume that if the mobile home was placed on the site the other two buildings would be retained and so reduce its prominence. There was, he said, no legal obligation on the claimants to retain those buildings. This seems to me somewhat ironic given the emphasis placed on the benefits of improving the proposal in securing the removal of those buildings. To put the matter at its lowest, since there was no evidence before the Inspector that the two buildings would be removed if a mobile home was put back on the site, he was entitled to approach the matter on the footing that they would remain.
22. The Inspector expresses overall conclusion in his final paragraph as follows:

“ The proposal would cause substantial harm to the Green Belt by reason of inappropriateness. I have also found that the proposal would unacceptably harm the character and appearance of the area. Clearly, the degree of harm caused would be significant. I find that the other considerations in this case do not clearly outweigh the harm that I have identified and the very special circumstances necessary to justify the development did not exist. As such (sic) the proposal would be contrary to policies 4 and 23 of the Local Plan and the Framework. ”
23. The Inspector's reasons are required only to be sufficient so that on a fair reading by an informed reader (i.e. one having knowledge of the facts and the arguments deployed) they do not "[leave] room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved... on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication" (*Clarke Homes v SoS* (1993) 66 P&CR 263 at 271). In my judgment, the reasons expressed in the decision letter in this case amply satisfy that requirement. The Inspector addressed the correct questions, contrary to Mr Leigh's submissions did not omit to consider the fallback position as a material consideration, and expressed a clear conclusion which was a matter of his planning judgment and did not involve misinterpretation of the Framework or the Local Plan, or any other error of law.
24. Accordingly, the claim is dismissed.

### **Postscript: Permission to appeal**

25. Mr Leigh on behalf of the claimant seeks permission to appeal on the grounds set out in his email dated 16 October 2013, indicating that he is content for that application to be dealt with on paper.
26. He makes what appears to be a new submission, not made to me or, as far as I can see to the Inspector, that the effect of the certificate of lawful use is that two mobile homes up to the maximum size may be stationed on the site, rather than one. Even if this is so, since the point was not argued before the Inspector, his decision cannot have been in error in not dealing with it. He did reach a conclusion of fact as to the likelihood of any caravan being painted in garish colours, which was open to him.
27. I do not consider that any of the arguments made as to the construction of the relevant policies by the Inspector have any real prospect of success, for the reasons given in my judgment. In particular the argument that 'structures' means something more permanent than mobile homes seems to result in the suggestion that although replacement of 'structures' by permanent buildings was unacceptable in policy terms the same policy should be interpreted as permitting replacement of mobile homes. That would be bizarre.
28. The remaining arguments are in my judgment renewed criticisms of the merits of the Inspector's planning judgment (and so inadmissible) or submissions as to the consequences of enforcement action that the council may take, which are irrelevant.
29. None of the grounds advanced has any real prospect of success. The general proposition sought to be established that policy should permit mobile homes in the green belt to be replaced by permanent houses is not a compelling reason to allow an appeal that has no real prospect of success.
30. Accordingly permission to appeal is refused.