Neutral Citation Number: [2011] EWHC 2416 (QB)

Case No:

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/09/2011

Before:

MR JUSTICE EDWARDS-STUART

- -

Between:

Mr Patrick Egan	**Claimant**
- and -	
Basildon Borough Council	**Defendant**

- -
- -

Marc Willers (instructed by **Davies Gore Lomax LLP**) for the **Claimant**
Reuben Taylor (instructed by **Loraine Browne of Basildon Borough Council**) for the **Defendant**

Hearing dates: 23 September 2011

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE EDWARDS-STUART

Mr Justice Edwards-Stuart:

Introduction

1. This is an application for an injunction by Mr Patrick Egan, the owner of three plots on a site known as Dale Farm near Billericay in Essex. By my order he has been made a representative claimant (in substitution for Mary Sheridan, who was in turn substituted for the Dale Farm Residents Association, an unincorporated association), suing on behalf of all those residents who own plots or are currently occupying land on the site. They are members of the travelling community.

2. The application was first made to the Basildon County Court on the morning of Monday, 19 September 2011, but the case was transferred to the High Court in London and it came before me, as the Interim Applications Judge, that afternoon. At that hearing the residents were represented by a Mrs Mary Sheridan, one of the residents, assisted by Mrs Candy Sheridan, a volunteer with extensive experience of working with gypsies and the travelling community. Also present was a Mr Stuart Hardwicke Carruthers, who has also been assisting the residents of Dale Farm.

3. The application was made without notice, but in fact the defendant ("the Council") became aware of it and counsel on its behalf, Mr Reuben Taylor, and his instructing solicitor, joined the hearing during the course of the afternoon (having been in the Court of Appeal earlier that day in relation to an unconnected appeal by one of the residents). I was grateful to them for doing so.

4. The application arises out of the issue of a number of enforcement notices by the Council between 2002 and 2004 requiring the occupiers of 53 of the 54 plots, or pitches, on the site to take steps to rectify the breaches of planning control identified in the notices. The application is for an injunction to restrain the Council from taking any steps under section 178 of the Town and Country Planning Act 1990 to remedy the breaches of planning control identified in the notices.

5. Since no steps to comply with the notices had been taken by the residents, they were told that the Council proposed to carry out the necessary work itself, commencing during the week beginning 19 September 2011.

6. There is no dispute that the enforcement notices are valid and that all remedies that may have been available to the residents by way of planning control have been exhausted. The residents' position on this application is that they fear that the Council plans to move onto the site and demolish and/or remove all the hard standings (apart from those on six of the plots and a section of road known as Beauty Drive) and all the buildings, walls, fences and gates whether or not such extensive measures are justified by the terms of the enforcement notices. They contend that the Council has refused to explain, on a plot by plot basis, exactly what it proposes to do and that this refusal has fuelled their fears that what the Council is planning to do goes well beyond the steps that the enforcement notices entitle it to take.

7. More particularly, the residents contend that a wholesale removal of the hard standings (apart from the excepted plots), removal of fixed caravans and demolition of certain buildings and other fixed structures, such as walls, fences and gates, goes beyond the scope of the steps described in the notices. The Council submits (with very limited

exceptions) that these objections are misconceived and that, save for the six excepted plots and the associated section of road where the hard standings are to remain, it is entitled to carry out what is, in effect, a wholesale clearance of nearly all of the plots on the site (for the sake of brevity and clarity I have summarised the Council's position in terms that are perhaps a little oversimplified, but I trust that this does not do it any injustice).

8. In these circumstances it became clear to me during the hearing on Monday, 19 September 2011, that the Council should, both as a matter of good practice and ordinary fairness, identify with precision in a schedule what it proposed to do on each plot and that the residents should then have an opportunity to respond to this schedule, so that any real differences between the parties could be identified and, if necessary, adjudicated upon by the court. Mr Taylor resisted the making of any order that would result in delay to the start of the operation to enforce the notices on the grounds that the Council had mobilised very substantial resources in order to mount the operation and that the cost of any delay, even of a few days, would be measured in millions, or at least hundreds of thousands of pounds. However, when I asked on precisely what date the operation had been scheduled to start, I was just told "sometime this week".

9. Whilst I have no doubt that any delay of more than a few days would have serious financial consequences, which would be in neither party's interests, this did not in my view justify a wholesale rejection of the residents' concerns if there was any possibility that there might be real differences between the parties giving rise to triable issues that might be capable of resolution within a very short time frame - that is a time frame measured in days, rather than weeks.

10. When I raised these concerns with the parties at the hearing last Monday it became clear that the Council, having perhaps anticipated some such requirement, would be in a position to serve a schedule showing the work proposed on a plot by plot basis by mid-day on the following day and that the residents would be able to respond to this with a counter schedule within 48 hours thereafter. This timetable would enable the court to hear further submissions from the parties on Friday, 23 September 2011 and, if possible, determine at that hearing any issues of principle that did not require any further factual investigation. If there were any questions which raised triable issues of fact that could not be determined on 23 September, the court could then give directions for the speedy determination of those issues.

11. Having concluded that there appeared to be triable issues, that damages would not be an adequate remedy and that the balance of convenience favoured granting an interim injunction for a short period, I made an order to this effect and the application was adjourned to Friday, 23 September 2011 on that basis.

12. However, on Thursday, 22 September 2011 there was another development. The residents lodged an application for permission to apply for judicial review of the Council's decision to implement the enforcement procedure. An obvious difficulty facing this application was that the Court of Appeal determined a very similar application in relation to this site in the Council's favour in 2009. However, since that application concerned a resolution to take enforcement measures under section 178 of the 1990 Act that was made by the Council in December 2007, it is argued on behalf of the residents that the circumstances, both factual and in relation to the development of the jurisprudence in relation to the position of minority groups, such as these travellers,

have changed in the intervening period so that the decision of the Court of Appeal in 2009 should not be decisive of the current application.

13. This application was referred to me and I formed the view that it was not an application that should be determined on paper on a without notice basis. I therefore decided, in my different capacity as a designated judge of the Administrative Court, that I would give directions for an expedited oral hearing that could take place in parallel with the present proceedings. I have now given directions that this application for permission is to be heard on Thursday, 29 September 2011. Unfortunately, this may result in a further delay of a few days before the Council knows whether and to what extent its enforcement action can go ahead, but in the circumstances I can see no realistic alternative

14. The resumed hearing of the residents' application in relation to the current enforcement notices came back before me last Friday, 23 September 2011, by which time the parties had complied with the directions given the previous Monday in that they had served a schedule and counter schedule in compliance with the order of the court, together with further witness statements. The parties are to be commended for having achieved this in such a tight time frame.

15. On the resumed hearing the Council was represented, as before, by Mr Taylor, and the residents were represented by Mr Marc Willers, for whose assistance the court was very grateful even though he had been instructed only a very short time before the hearing. At the conclusion of the hearing at the end of the afternoon I indicated that I hoped to deliver a written judgment on the following Monday, 26 September 2011. This is that judgment.

The history of the site and of the events leading up to these proceedings

16. In order to understand some of the issues raised by the parties on this application it is necessary to say a little about the history of the site.

17. In the 1990s Dale Farm was owned by a Mr Roy Bocking. The site, or at least part of it, was used as a scrapyard to store cars and for that purpose substantial parts of it, said by the residents to be about 2 hectares, were covered by a hard standing, formed of either concrete or compressed hardcore. The site is in a green belt.

18. In 1992 the Council served a total of 42 enforcement notices against various unauthorised activities on the site. These notices concerned 14 units on the site, and in the case of 12 of these units, required the removal of an existing hard standing. There were also requirements to remove unauthorised fences erected on all 14 units. I cannot tell precisely what proportion of the whole site was covered by the 12 units, but clearly the extent of hard standing or hard-core in 1992 must have been significant. According to an internal report of the Council dated 18 April 2007, following unsuccessful appeals "*compliance with the notices was subsequently achieved*".

19. In 2001 the present claimant, one of the existing residents, and other residents purchased the site. It is the residents' case that at the time of this purchase an area of about 20,000 m² of plots and roads on the site was covered by hard standings of one form or another, whereas since the site was purchased by the present owners only about a further 2,760 m² has been covered by a hard standing. I did not understand the Council to agree these figures, but it did not submit any evidence to the contrary.

20. Whatever the true position as to the precise area of the site covered, it is reasonably clear that a substantial part of the site was covered by hard standing in 2001 when the present owners acquired it. It seems likely that a proportion of the present hard standing may have been the subject of the 1992 enforcement notices, although how much and where is not clear, and so it is something of a mystery as to why the Council's report of 18 April 2007 referred to there having been compliance with the 1992 notices. However, as Mr Taylor reminded me, by virtue of section 181 of the Act of 1990, the 1992 notices remain in force (there being no subsequent planning permission to the contrary) irrespective of whether or not they were complied with at the time.

21. Between 28 March 2002 and 17 December 2004 the Council issued the present enforcement notices against all but one of the 54 plots on the site. These notices require, amongst other things (but not all of them for every plot): removal of hardcore or hard standings and subsequent re-seeding of the land, the cessation of residential use on the plots, the removal of caravans and vehicles and other mobile and portable structures. For plot 14, there is a requirement to demolish a building and brickwork enclosing a portacabin. Apart from this, there is no requirement in any of the notices to demolish or remove buildings. Unlike the 1992 enforcement notices, none of the current notices requires the removal of unlawfully erected fences.

22. On 13 December 2007 the Council resolved to implement enforcement of the notices under section 178 of the Town and Country Planning Act 1990 because the residents had not taken the steps that the notices required them to take. That decision was the subject of challenge by way of judicial review and at first instance the decision was quashed by Collins J. This decision was appealed and, in 2009, the Court of Appeal declared that the enforcement notices were validly issued (*R (on the application of McCarthy) v Basildon District Council* [2009] EWCA Civ 13). It is important to note that the Court of Appeal decided that the Council's decision was lawfully and properly reached, so that the challenge to the enforcement notices failed. However, as Lloyd LJ made clear, the Council's decision under review "*was not a decision as to what action should be taken or when*". It is therefore not open to the residents to challenge the validity of the enforcement notices in these proceedings or to submit that the steps required by the notices go beyond what is necessary to remedy the identified breaches, and they do not seek to do so, but they say that they are entitled to challenge the nature of the action that the Council actually proposes to take under section 178 of the 1990 Act if it is not in accordance with the terms of the enforcement notices. I did not understand this to be disputed.

23. By a further resolution taken on 17 May 2011 the Council gave its solicitor instructions to take action under section 178 of the 1990 Act in relation to the enforcement notices. On 4 July 2011 the Council issued a "28 day notice" warning the residents of the decision to take action under section 178. By an e-mail from the Council dated 22 July 2011 the residents were informed, through Mr Carruthers, that the enforcement notices required the removal of caravans, mobile homes and other portable structures from certain plots (identified in the e-mail), the breaking up of hard standings or hardcore on all plots save for plot 28 and the demolition of the building on plot 14. There was no mention of the removal of walls, fences and gates or the demolition of any other buildings. The residents were subsequently told that no action would be taken until the week commencing 19 September 2011. On 19 September 2011 the residents issued the current application.

The issues

24. During the course of the hearing the following issues were identified:

    (1) Whether or not buildings constructed in breach of planning controls, including in particular those on plots 8 and 33, can be demolished or removed when there is no reference to their demolition or removal in the relevant enforcement notice.

    (2) Whether or not walls, fences and gates existing (in breach of planning control) at the time of the relevant enforcement notice can be removed if there is no reference to them in that notice.

    (3) Whether or not the Council can take action under section 178 of the 1990 Act in relation to matters that were the subject of the 1992 enforcement notices when it has been stated that these matters had been remedied and that there had been compliance with those notices.

    (4) Whether or not the "chalets" or caravans on certain plots are caravans within the meaning of the relevant legislation and whether or not the relevant enforcement notices either require their removal or require cessation of their occupation for residential use.

25. In relation to buildings and structures not mentioned in the enforcement notices, two further questions may arise. First, whether or not they have been built so that they have become integrated with the concrete hard standing - for example, by incorporating the hard standing as a foundation such that it has become an integral part of the building. And if so, second, whether or not the construction of the building preceded the date of issue of the enforcement notice.

26. As to the second question, it seems to me to be self evident that an occupier of land which is the subject of an enforcement notice cannot avoid a requirement of the notice to remove a hard standing constructed in breach of planning control by the expedient of subsequently constructing on it, without planning consent, a building. Were it otherwise, this would enable the occupier to defeat an enforcement notice by committing a further unlawful act. I did not understand Mr Willers, for the residents, to challenge this proposition.

27. A local authority is entitled to take any step that is incidental to the discharge of its statutory functions: see section 111(1) of the Local Government Act 1972. This provision reflects the long established rule that powers conferred by statute are taken to include, by implication, a right to take any steps which are reasonably necessary to achieve the statutory purpose: see *AG v Great Eastern Railway* (1879-90) LR 5 App Cas 473.

28. Accordingly, it seems to me that where a valid enforcement notice required the removal of a hard standing constructed in breach of planning control a local authority would be entitled under this rule to demolish and remove any building which had been constructed on the hard standing (in breach of planning control) after the issue of the enforcement notice.

29. However, the question that I have to decide is whether the Council can demolish and remove a building that has been constructed on the hard standing (and was integral with

it) if it was in existence in breach of planning control at the time of the enforcement notice and its demolition or removal is not mentioned in the notice. It is not disputed that items or structures not fixed to the land can be removed by the Council when exercising its powers under section 178 of the 1990 Act, provided that the Council takes proper steps to preserve the item and return it to the relevant resident. This would include, say, a portacabin that was simply resting on the hard standing and was not in any way fixed to it.

Buildings constructed prior to the issue of an enforcement notice

30. In the case of buildings on two of the plots, plots 8 and 33, it was conceded on behalf of the Council that there is a triable issue that justifies the continuation of the injunction so far as those two plots are concerned.

31. However, it seems to me that I can and should decide now the issue that I have set out at paragraph 24(1) above, namely whether a local authority can demolish and remove a building or structure which is not mentioned in an enforcement notice under its incidental powers in spite of the fact that the building was unlawfully erected and already present at the time of the issue of the notice (and that the building or structure is one which is fixed to the hard standing). If I decide this issue in favour of the residents, the only remaining issue will be whether or not any particular building was in existence in breach of planning control at the time of the issue of the enforcement notice. That is a question of fact which ought to be capable of speedy determination.

32. At this point I remind myself that failure to comply with an enforcement notice is a criminal offence: see section 179 of the 1990 Act. Accordingly, such a notice must, in accordance with established principles, be construed strictly and any real doubt or uncertainty as to its scope should be resolved in favour of the recipient of the notice.

33. The enforcement notices relating to the removal of the hard standings (whether of concrete or hardcore) refer to the unauthorised formation of the hard standings in breach of planning control and require the recipient of the notice to "*break up the hard standing [or hardcore and road chippings forming hard standings] and remove all resultant debris*" and, in some cases, to "*re-cultivate the land by levelling and re-seeding with grass seed*".

34. I should now set out in more detail the relevant provision in the Local Government Act 1972 and the relevant passage in the decision in *AG v Great Eastern Railway* relating to the right to carry out work incidental to the exercise of the primary statutory power. Section 111(1) of the Local Government Act 1972 provides as follows:

> "Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing ... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

35. In the *Great Eastern Railway* case the Lord Chancellor said, at page 478:

> "... whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*."

36. It seems to me that both of these formulations of the rule, relating to what I will call for convenience "enabling works", are based on the premise that the enabling works in question are not, if they were to be carried out in isolation from the exercise of the relevant power, authorised by that power. If it were otherwise, there would be no need to invoke the enabling works provision because the relevant acts or operations could be carried out under the primary power.

37. The other aspect of this, albeit a practical one, is that since the enabling works are likely to be temporary it must be implicit in the rule that the local authority or statutory undertaker will, so far as reasonably possible, restore the status quo after the statutory power has been exercised. For example, suppose that the Council needs to take down a lawfully erected gate to the site because it is not wide enough to permit access for the necessary plant. It is, in my opinion, clear that the Council would have to put the gate back after the principal operation had been completed. Similarly, if it was necessary to erect a temporary ramp on the site (or elsewhere) in order to carry out the work identified in the enforcement notice, the ramp would have to be removed and the land made good when the work was completed. It does not seem right that enabling works should involve the irreversible and permanent demolition of a building (unless that building has been deliberately erected in breach of planning control after the issue of the relevant enforcement notice).

38. Reverting to the current enforcement notices, by the expedient of including the demolition and removal of the buildings on, for example, plots 8 and 33, as part of the enabling works, the Council avoids the need to mention the buildings in the relevant enforcement notice and thereby deprives the occupier of the opportunity to challenge the inclusion of the building in the notice. Thus in the absence of any reference to the relevant work in the notice, the occupier may not find out about it until it actually happens - by which time it may be too late to prevent it.

39. I can give a further example by reference to this case. Suppose that there is an unlawful building immediately adjacent to a hard standing whose removal is required by the enforcement notice. Unknown to the occupier the Council is proposing to demolish the building prior to removing the hard standing because it considers that it is in the way. If the information given in the enforcement notice pursuant to subsections 173(1) and (3) of the 1990 Act does not mention the building, the occupier will not know that the Council proposes to demolish it by way of enabling works. My attention has not been drawn to any statutory provision that requires a local authority to give notice of any proposed enabling works.

40. At paragraph 26 of his skeleton argument Mr Taylor submitted that:

> "It is therefore clear that the Defendant Council has the power pursuant to section 178 of the 1990 [Act] to do anything that is reasonably necessary to achieve compliance with the steps required by the enforcement notices, even if that action is not specifically described in the enforcement notice itself."

41. I reject that submission as being too wide. For the reasons I have already given, I consider that the Council may do anything reasonably necessary to achieve compliance with the steps required by the enforcement notice provided that such action is not something that could itself have been the subject of an enforcement notice. No

authority has been cited to me that indicates that this qualification to Mr Taylor's submission is wrong.

42. Mr Taylor also advanced an argument based on section 181 of the 1990 Act. So far as material that section provides as follows:

> (1) Compliance with an enforcement notice whether in respect of-
>
> (a) the completion or alteration of any buildings or works;
>
> (b) . . .
>
> shall not discharge the notice.
>
> (2) . . .
>
> (3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the enforcement notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works has reinstated or restored as it is applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4), the provisions of section 178(1) and (2) shall apply accordingly.
>
> (4) Where, at any time after an enforcement notice takes effect-
>
> (a) . . .
>
> (b) the local planning authority [propose], under section 178(1), to take any steps required by the enforcement notice for the removal or alterations of the buildings or works in consequence of the reinstatement of restoration, the local planning authority shall, not less than 28 days before taking any such steps, serve on the occupier of the land notice of their intention to do so.

43. Mr Taylor submitted that, since the 1992 enforcement notices remained in force, these provisions enabled the Council to take appropriate steps under section 178(1) to remove buildings or structures that had been erected in place of those that had been removed in compliance with the 1992 notices. I consider that there are a number of flaws in this argument. First, the Council is not purporting to take action under section 178(1) in respect of the 1992 notices. Second, even if it was, it would have to serve a notice of its intention to remove the relevant building 28 days before doing so. Third, there is no evidence before the court that the buildings or structures that the Council is now seeking to remove were buildings or structures that were constructed in reinstatement of buildings or structures removed following the 1992 notices. The buildings and structures that the Council now seeks to remove by way of enabling works do not, so far as I can tell, bear any relation to any buildings or structures that were removed pursuant to the 1992 notices.

44. Accordingly, in my judgment it follows that the Council cannot, when exercising its powers under section 178, demolish buildings or structures that had been erected

unlawfully before the issue of the enforcement notice, which could have been but were not the subject of an enforcement notice (or mentioned in an enforcement notice), under the rule in relation to enabling works which exists at common law or by virtue of section 111(1) of the Local Government Act 1972. Since the residents assert that the buildings in question were constructed prior to the issue of the notices, it is for them to prove this in the case of each building.

45. I should make it clear that I do not rule out the possibility that the principle that I have set out above, although it is (as it seems to me) one of general application, may be subject to exceptions where the facts justify a departure from it. For example, if the enabling works involve taking down a structure that could have been the subject of an enforcement notice but the local authority has undertaken to reinstate it following the completion of the steps specified in the enforcement notice, there would be little or no prejudice to the occupier - and certainly no permanent damage - and so the action may be legitimate.

46. I regard it as a corollary of this principle that the removal of a structure unlawfully erected subsequent to the issue of an enforcement notice is permitted if that is necessary for the carrying out of the necessary steps under section 178 of the 1990 Act. This is because such a structure could not have been mentioned in the enforcement notice (since it did not exist at the time), with the result that the Council could not exercise a statutory power to remove it. As I have already indicated, I see no reason why the Council has to issue a fresh notice if the structure has been erected in breach of planning control and with the knowledge of the existing enforcement notice.

Walls, fences and gates

47. In relation to this issue I am referring only to walls, fences and gates that are structurally fixed to the land (or a hard standing). I am not referring to portable fences and the like - if there are any. For the reasons that I have already given in relation to unlawful buildings, I consider that walls, fences and gates that were unlawfully present on the site at the time of an enforcement notice and could therefore have been mentioned in that notice, cannot be removed under the guise of enabling works. I understand that some of the gates have ornate metalwork.

48. Although Mr Taylor submitted that the Council would return any fences or gates to the occupier, for him to put back if he wished, he did not accept that they would have to be put back by the Council. It is unclear to me why the Council did not include unlawful walls, fences and gates in the current enforcement notices when fences had been the subject of the 1992 enforcement notices.

49. However, as with the buildings, I consider that there are triable issues as to precisely what walls, fences and gates were present and amounted to a breach of planning control at the time of issue of the relevant enforcement notices. According to the residents' counter schedule, this affects plots 2, 4-27 (inclusive) and 29-53 (inclusive). Accordingly, I find that there are triable issues as to the extent, in relation to each of these plots, that there were unlawfully erected walls, fences and gates at the time of the issue of the relevant enforcement notice. To the extent that such walls, fences and gates were unlawfully in place at the time of the issue of the enforcement notice in breach of planning control, they cannot be the subject of the steps to be taken pursuant to the current enforcement notices under the guise of enabling works. If this proves to be the

case, then again, as I see it, the Council will have to issue fresh enforcement notices. Again, I consider that the onus of proving this in each case is on the residents.

Whether or not the Council can take action under section 178 in relation to matters that were the subject of the 1992 notices

50. As I have already noted, this action does not concern the 1992 enforcement notices although, as Mr Taylor has pointed out, they remain in force irrespective of any subsequent compliance with them. The issue is whether the Council can proceed now under the current enforcement notices when it has previously stated that the breaches of planning control in respect of the hard standings or laid hard-core that had occurred prior to the 1992 enforcement notices have been rectified and compliance with those notices achieved.

51. The basis for the residents' argument in relation to this issue is a report to the Council's Development Control and Traffic Management Committee dated 18 April 2007 by the Head of Planning Services with responsibility for local land charges. This report stated:

> "In 1992 the Council served a total of 42 enforcement notices against various unauthorised commercial activities on land at Dale Farm. Appeals were lodged against these notices and they were the subject of a Local Public Inquiry, which was held in April 1994. The appeals were dismissed with the issue of the Inspector's decision letter dated May 1994 **and compliance with the notices was subsequently achieved**."
>
> (My emphasis)

52. Mr Willers submits that, having been satisfied that compliance had been achieved with the previous notices, the Council cannot issue further notices in respect of the same breaches. He does not, and could not, submit that this belief was communicated to the Claimant, or to any other of the present residents, prior to the acquisition of the site in 2001.

53. I have to say that I can discern no legal foundation for this submission. The report of 18 April 2007 was an internal document: there is no suggestion that the statement in the report was the subject of some form of public announcement prior to the issue of the current enforcement notices or, indeed, at all.

54. Further, since by statute the 1992 enforcement notices remain extant irrespective of any subsequent compliance, I cannot see how this position can be altered by a statement by a member or employee of the Council in an internal report.

55. In any event, I find that the underlying factual premise for this submission has not been made out. There is no evidence before me that all (or even most) of the hard standings that were in existence at the time of the 1992 enforcement notices were still in existence in 2001: the 1992 hard standings may have been wholly or partly removed and later replaced with similar or additional hard standings prior to the Claimant's acquisition of the site. Although I consider that it is likely that some of the pre-1992 hard standing was still present at the time of issue of the current enforcement notices, the position is not clear and there is no evidence - or certainly no reasonably cogent evidence - as to which

part or parts of the present hard standing existed in 1992. Accordingly, I do not consider that, on this aspect, the residents have established a triable issue.

56. But even if there was a triable issue on the facts, as I have said I remain unable to see how this would have precluded the Council from issuing the current enforcement notices. This is not a case in which it is alleged that some form of assurance was given by the Council at the time when the site was acquired that the existing structures complied with all planning controls. For these reasons, I determine this issue against the residents.

The "chalets"

57. The structures referred to in the residents' counter schedule as "chalets" are, and this is not disputed, twin-unit caravans within the meaning of the Caravan Sites Act 1968. This section provides that such a structure is not to be treated as a caravan if its dimensions when assembled exceed 20 m in length, 6.8 m in width or 3.05 m in height.

58. Many of the current enforcement notices require the removal of caravans from the site. The residents claim that on several plots the structures are in fact twin-unit caravans of which at least one dimension exceeds those set out in section 13 of the 1968 Act. Accordingly, say the residents, they cannot be "caravans" within the meaning of the enforcement notices.

59. It is not disputed that the chalets in question are twin-unit caravans: Mr Costen, the Council's Manager of Planning Enforcement, said so unequivocally in a letter dated 14 July 2011. However, in his witness statement dated 22 September 2011 Mr Costen said that he had been "*able to establish following inspection of an aerial photograph*" taken on Sunday, 18 September 2011, that the "chalets" fell within the definition of a caravan as set out in section 29 of the Caravan Sites and Control of Development Act 1990 and section 13 of the Caravan Sites Act 1968.

60. However, in the residents' counter schedule prepared by Mr Carruthers, who also prepared a witness statement for the hearing, it is said that the structures on plots 42, 48, 53 and 54 are twin-unit caravans of which in each case one of the dimensions exceeds those set out in section 13 of the 1968 Act, with the result that they do not fall within the requirement in the enforcement notices to remove caravans. It is accepted by Mr Taylor that there are triable issues in relation to the dimensions of these structures.

61. I should add, for completeness, that in the case of plot 29, although the "chalet" exceeds the statutory dimensions, there is a requirement in the relevant enforcement notice to stop using the land for residential purposes and therefore the size of the "chalet" is immaterial in this context. In the case of the other plots, either there is no requirement in relation to residential use at all (plot 48) or the requirement is to stop using "caravans" for residential purposes and to remove any "caravans" (plots 42, 53 and 54).

62. In the case of plots 28, 45, 50 and 51 it is accepted that the Council cannot enter and remove the caravans because there is no relevant requirement in any enforcement notice.

Matters agreed between the parties

63. It is agreed between the parties that, subject to any successful application for judicial review, there is no arguable case to prevent the cessation of residential user on all plots other than plots 28, 33 (insofar as there is residential use of the building thereon), 42,

45, 48, 50, 51, 53 and 54, subject to determination of the question of whether or not the units on plots 42, 48, 53 and 54 are "caravans".

64. It is also agreed that there is no arguable case to prevent the removal of all caravans on all plots other than Plots 28, 29, 42, 45, 48, 50, 51, 53 and 54, subject to determination of the question of whether or not the units on plots 29, 42, 48, 53 and 54 are "caravans".

65. In respect of the removal of hard standing, there is an arguable case in respect of plots 21, 22, 23, 28, 52, 53 and 54. However, the Defendant contends that it has the power to remove hardcore and road scalpings from these plots. If agreement cannot be reached on this, I will have to determine the question.

66. In respect of plots 29, 42, 45, 48, 50 and 51 there is an issue between the parties as to what should be done with the caravans/chalets stationed on those plots whilst the hard standing thereon is removed. I am told that it may be that agreement can be reached between the Defendant and individual plot owners/occupiers. However, the Claimant contends that if the Defendant removes any such caravans/chalets from those plots in order to take direct action then it must return the caravans/chalets to the plots once that work has been completed unless the owner/occupiers agree otherwise. If agreement cannot be reached on this, I will have to determine these questions.

67. There is no arguable case to prevent the Defendant from disconnecting the electricity supply to all plots other than 28, 29, 33, 42, 45, 48, 50, 51, 53 and 54. If it is necessary to disconnect the supply to plots 28, 29, 33, 42, 45, 48, 50, 51, 53 and 54 in order for the Defendant to exercise its powers under section 178 of the 1990 Act then the Defendant will ensure the provision of an alternative electricity supply to those plots.

Conclusions

68. There were two far reaching issues of principle argued before me: I have decided one in favour of the residents and the other in favour of the Council.

69. Since I have concluded that there are triable issues in relation to almost every plot as to whether or not the steps that the Council proposes to take under section 178 of the Town and Country Planning Act 1990 are within the terms of the enforcement notices, there must be a further hearing to determine the relevant facts. This hearing will be concerned principally with the date of construction of each structure that the Council is proposing to remove or demolish. I consider that this hearing should be held within a few days, and I will hear submissions from the parties about this.

70. This result has come about mainly because the terms of the enforcement notices issued between 2002 and 2004 may not have been sufficiently precisely drawn, although the extent to which this may prove to be the case has yet to be finally determined. The consequence of this is that the injunction may have to be continued for a short period. I will hear further submissions about this.

71. I will now summarise the conclusions that I have reached in a little more detail.

72. In respect of plots 8 and 33 I consider that there are triable issues as to:

    (a) whether the buildings that the Council seeks to remove were constructed in breach of planning control prior to the issue of the relevant enforcement notice; and

(b) whether those buildings are structurally fixed to the land or hard standing.

73. In respect of all plots save for plots 1, 3 and 28, I consider that there are triable issues as to:

(a) whether the walls, fences all gates that the Council seeks to remove were constructed in breach of planning control prior to the issue of the relevant enforcement notice; and

(b) whether those walls, fences or gates are structurally fixed to the land or hard standing.

74. In respect of plots 42, 48, 53 and 54, I consider that there are triable issues as to whether the "chalets" on those plots that the Council seeks to remove or prevent occupation for residential purposes have at least one dimension that exceeds those set out in section 13 of the Caravan Sites Act 1968. This may apply to plot 29 also.

75. For completeness, I should point out that in respect of plots 28, 45, 50 and 51, it has always been accepted that the Council cannot enter and remove the caravans because there is no relevant requirement in any enforcement notice.

76. In relation to all the triable issues set out above, I consider that the onus of proof lies on the residents.

77. Once the parties have had an opportunity to consider this judgment, I will give directions for a speedy trial of the above issues.

Further submissions

78. In view of the very limited time in which this judgment has had to be prepared, with the result that there has been no opportunity to hand down a draft judgment, and the fact that I have only just received the promised schedule from the parties concerning the particular plots in which it was conceded that there is a triable issue, I will ensure that the consequent order is not drawn up without counsel for the parties having had an opportunity to address me in case there are any factual errors or other slips.