



Neutral Citation Number: [2020] EWHC 2768 (QB)

Case No: QB-2020-003118

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/09/2020

Before:
MR. JUSTICE SWIFT

Between:

EAST HERTFORDSHIRE COUNTY COUNCIL

Applicant

- and -

TIMOTHY MAHONEY & OTHERS

Respondents

MISS CAROLINE BOLTON appeared on behalf of the Applicant
MR ALAN MASTERS appeared on behalf of the Respondents
Hearing date: 14th September 2020

Judgment

MR. JUSTICE SWIFT:

1. This is an application to continue an injunction made by Saini J *ex parte* on 4 September 2020. The injunction, in very broad terms, seeks to prevent further development taking place on land at Chapel Lane, Little Hadham, SG11 2AB. The Claimant, East Hertfordshire District Council, is the relevant local authority. The Defendants, who include Mr Timothy Mahoney, are the owners of the land. The owners are travellers who moved on to the site in April 2019 and at that stage undertook unauthorised development on that site. On 20 April 2019, there was an order by Lane J which prohibited the continuation of that work.
2. On 30 April 2019, the Defendants applied for retrospective planning approval. That application was refused by the Council on 23 July 2019. There was then an appeal to the Secretary of State who asked one of his Inspectors to undertake the appeal proceedings on his behalf. The Inspector's decision, which is dated 4 February 2020, was that the appeal was allowed and planning permission was granted for change of use of the land to ten pitches, accommodating the siting of ten mobile homes, the stationing of ten touring caravans and ten utility buildings, and the formation of an access road and hardstandings on land off Chapel Lane, *et cetera*, in accordance with the terms of the application and the plan submitted with it subject to, said the decision, conditions set out in the schedule attached to the decision.
3. Various conditions were set out. The condition primarily in issue before me today is condition 5. Condition 5 is to the effect that the planning permission granted would lapse unless an appropriate application was made and permission granted for a Site Development Scheme. A Site Development Scheme would deal with matters such as drainage water, lighting on the site, site access, and the internal layout of the site including the siting of caravans. The conditions set a timetable for the application in relation to the Site Development Scheme. If that timetable is not met, the Inspector's decision provides that the permission that she granted for change of use of the land into ten pitches will lapse. I am told an application has been made by the Defendants relating to the Site Development Scheme, but that application has not yet been approved.
4. The Council's case before me, as it was before Saini J, is to the effect that notwithstanding that permission for work within the scope of the Site Development Scheme has not been granted, work has been undertaken on matters within the scope of the Scheme. The Council also says that separately from that, work has been taken in respect of laying water pipes. That work is not within the scope of the permission granted by the Inspector but would require a further permission unless undertaken by a statutory undertaker (because such undertakers have permission to undertake work that involves connecting land to a mains water supply).
5. The Council relies on evidence which is to the effect that it appears that a borehole has been drilled on the land, that pipes have been put in place to connect that borehole to the individual plots on the land, and that in addition to that, a large quantity of hardcore has been delivered to the site. The Council submits that I should infer from the delivery of the hardcore that the reason why that is being delivered is so that work within the scope of the Site Development Scheme can be undertaken. The evidence provided by the Council includes photographs of the water pipes and the pump being attached to where the borehole has been drilled. The Council says this evidence indicates, again

quite clearly, that work is being undertaken that is outside the scope of the planning permission the Defendants presently have.

6. The Order made by Saini J was, as I said, made *ex parte*. The Defendants today appear by counsel, Mr Alan Masters, who has made various submissions on their behalf. The Defendants have not, however, put in any evidence to deal with any of the matters canvased by the Council in its evidence.
7. Pausing there just for a moment, as a matter of evidence therefore, based on what is available to me, I accept the Council's position that piping for mains water has been laid in trenches that have been dug for that purpose and that work has been undertaken without the necessary permission required. I also draw the inference the Council invites me to draw that the delivery of large quantities of hardcore is consistent only with work being undertaken that is within the scope of the Site Development Scheme even though that development scheme has not yet been approved. On that basis, I am satisfied that there is evidence that work is being undertaken on the site that is outside the scope of the planning permission as it presently stands. (I add in parenthesis, that the Inspector's decision is itself subject of an appeal under the Town and Country Planning Act. That appeal, I am told, is due to be heard in the Planning Court at the beginning of November 2020. I mention that only so that I can make it clear that that appeal had nothing to say whatsoever about the issue before me this afternoon. I proceed simply on the basis of the permission was granted by the Inspector and my understanding of the conditions she attached to that permission.)
8. Based on the conclusions I have reached on the evidence, I am satisfied that there is a real prospect of success that were this matter to go to trial, the Council would obtain relief to the effect of preventing work being undertaken that is within the scope of the Site Development Scheme and preventing further work being undertaken concerning the connections to mains water that require planning authority unless undertaken by a statutory undertaker. For the sake of clarity, the point I have just made about connections to mains water excludes the work that has been undertaken in relation to the borehole. The Council does not contend that any particular permission was needed to drill for that borehole and no point is taken in relation to that in these proceedings.
9. Mr Masters, who appears for the Defendants this afternoon, made the point that his clients were content not to carry out works within the scope of the Site Development Scheme. His main submission was to the effect that to the extent that connections to mains water had not already been achieved by the work undertaken by his clients, they should not be prevented from undertaking the work necessary to complete connection of mains water to each of the ten plots. Of course, I do not know whether, in fact, there is any such outstanding connection to be made or whether the work that has already been undertaken has been sufficient to run a pipe from the borehole to each of the ten plots. Again, this is not a matter on which the Defendants presented any evidence that I could consider this afternoon.
10. I turn then to the balance of convenience. There is, as Mr Masters pointed out, an overall context for this application which is one of disagreement between the owners of the land and the Council as to the way in which the land may be used. This first arose in about April 2019 when the unauthorised work on the site commenced. It has continued through the proceedings before Lane J for injunctive relief around that time and continued again through the application for retrospective planning consent and the

proceedings before the Inspector, and it continues to the extent that the Inspector's decision is, itself, the subject of appeal proceedings in the Planning Court.

11. That being so, I place significant weight on the importance of development work being undertaken in accordance with proper authority. On that basis, I consider that the balance of convenience does lie in favour of granting some form of relief to the Council. I emphasise the words 'some form' as we will come in due course to the precise nature of that relief. Mr Masters says that any order that is made should be tempered to the extent that if it has not yet been possible to connect all of the ten plots to mains water coming from the borehole (I do not know whether that is the case or not), as a matter of common humanity the terms of any injunction should permit such connection.
12. I do not underplay or underestimate the significance of access to mains water but I note, of course, that all those on the site through the borehole do have access to a water supply. I also take note that for a number of months after April 2019, those who lived on the site were able to live on the site presumably obtaining necessary water for daily living needs without access even to water supply from the borehole. In those circumstances, I do not think that any exception should be made to permit, effectively, the completion of works that, on the evidence before me have been started (assuming they have not already been completed in the absence of the appropriate planning consent). Mr Masters has also suggested that the Council has in some way impeded or encouraged the statutory undertaker not to undertake work on the land to connect the water supply. I place no weight on that matter at all. There is simply no evidence of that before me.
13. These matters being so, I will grant a relief to the Council. However, I consider that the order presently before me in draft requires some form of modification, I hope, with a view to assisting the clarity of the position. There are two points that I think need to be made. The first in relation to paragraph 1(c) of the proposed draft is that to the extent that it is said by the Council that that would prevent moving a van from the particular position it has within a plot to a different position within the same plot, I do not think that there should be any restriction to that effect. As I understand the Inspector's decision, the permission that she granted was for change of use of the land to ten pitches, each pitch to have a mobile home and a touring van on it, and, in due course, a utility building. I do not read the Inspector's decision as requiring that within each plot, the van be placed in a specific place. The decision does refer to plans submitted but I have not been provided with copies of any of those plans and so I am unable to know whether those plans simply identify the ten plots or are more specific as to the location of the vans. For the moment though, I do not think that an order in the form of paragraph 1(c) could be understood as preventing the owner of a plot moving one of his vans within that plot from one place to another. Of course, he may not move that van to a different plot but so far as each plot is concerned, I do not see a need for any further particular restrictions that requires the van to stay in exactly the same place, either as it is now or that it may have been at the time of the inspector's decision.
14. The second point, a point made by Mr Masters to the effect that he was concerned that the order and, in particular, paragraph 1(b) might prevent the owner of a plot substituting one van for another. I do not read paragraph 1(b) as having that effect as it is limited by the closing words which refer to lawful planning consent which, of course, takes one back to the Inspector's decision. The Inspector's decision is quite clear on

this point at least that there may be ten plots with a touring van and a mobile home on each plot.

15. What I will do, given the time, is invite counsel to take some time to see if they can agree a slight reformulation of the proposed Order. I suggest along the following lines that it might be sensible to have a recital that reflects, either in whole or in relevant part, paragraph 1 of the inspector's report which is under the heading "Decision". That would, of course, be a useful tool by which to frame notions of lawful planning consent as they are later referred to in the operative paragraphs of the order. Secondly, I would be grateful if counsel would give thought to the way in which the order could be drafted so as not to prevent the owner of a plot moving either of his vans within the confines of that plot. Again, it may be that a small tweak is needed to the wording of paragraph 1(c).
 16. A further point was raised in relation to 1(g) of the Order. Mr Masters was concerned that that paragraph should not have any retrospective effect. I do not think it has any retrospective effect as presently drafted, and Miss Bolton for the Council has confirmed that that is not her understanding of the meaning of the provision either.
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