

The Ombudsman's final decision

Summary: The complaint concerns unauthorised development in the greenbelt. There was failure by the Council to take the action it had identified as being necessary between September 2018 and September 2019.

The complaint

1. Ms B complains the Council has failed to take action to control development in the greenbelt and failed to regularise development which is considered to be acceptable.

What I have investigated

2. Ms B is not directly personally affected by the matters about which she complains as she does not live on or near to the site. However she has pursued the Council over the last eight years in supporting the residents of the site and near neighbours. We therefore consider Ms B has injustice in the outrage she feels at what she considers to be failings by the Council. We rarely consider outrage in itself sufficient grounds to consider a complaint. We will only do so where the fault complained about is particularly significant, exceptional or unusual. Remedies in such cases will generally seek to address or remove the cause of outrage rather than compensate an individual for their sense of outrage.
3. The allegations of fault here are significant and would affect a large number of people. We therefore decided to investigate the complaint.
4. My investigation has covered events since March 2017.

The Ombudsman's role and powers

5. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

7. I considered the complaint and documents provided by Ms B and spoke to her. I asked the Council to comment on the complaint and provide information. I sent a draft of this statement to Ms B and the Council and considered their comments.

What I found

Overview

8. The site the subject of this complaint is in the greenbelt and is just over 25 hectares in size. The Council considers it as four distinct areas: Area 1, Area 2, Area 3 and Area 4. It has a long history of occupation by travelling show people and almost half of it (Area 3) was designated for such use in the 1997 Local Plan. Most of the current occupation and development of the site does not have planning permission. Ownership of the land is fragmented.
9. The Council should set a target for the number of pitches needed in its area by travelling show people. Travelling show people are defined in planning guidance. As part of its development of the Local Plan the Council has identified there is a need for 233 plots for travelling show people.
10. The Caravan and Control of Development Act 1960 allows a local authority to set conditions on any site licence issued; these can include conditions to ensure that “proper measures are taken for preventing and detecting the outbreak of fire and [to ensure that] adequate means of fighting fire are provided and maintained”.
11. Most travelling show people are members of the Showmen’s Guild of Great Britain, which provides exemption from the requirements of the Caravan Sites and Control of Development Act for both touring fairground sites and winter quarters. It does not provide exemption from planning permission.

What has happened

12. Over the spring and summer of 2017 the Council says it reviewed the site and the planning history and developed relationships with external agencies. In the autumn it served planning contravention notices on people living in Area 1.
13. In late 2017 the Council commissioned agents to survey the occupation of the site. They reported in July 2018. This found there were over 460 households on the site, many of which were one person households, that were not travelling show people. Subletting and advertising to homeless or other applicants regardless of status appeared to be endemic. The report concluded that most of the current and future need for accommodation for travelling show people in the Council’s area could probably be met on the site if all the people who were not travelling show people were removed.

September 2018 decision

14. In September 2018 the Council’s senior management team considered a report on the site. This set out the planning history and results of the survey of the site. It reported that across all areas of the site there were incidences where caravans were in close proximity to one another which posed a fire risk. Officers did not consider the Council could take action to control the layout of the site under caravan site legislation because there was no planning consent for the use of the site.
15. It went on that due to the way the site had developed and the occupation there was evidence of a lack of basic infrastructure to service the development. There were inadequate water and sewerage facilities and electrical supply was a

problem. The living conditions on some plots were far from acceptable and there were likely to be a range of health, educational and social implications arising from such environments.

16. The report identified action that was open to the Council to address the unauthorised occupation of the site in addition to any planning enforcement action. This included:
 - Selective prosecutions under the Caravan Sites and Control of Development Act 1960 where there was occupation of a caravan without a licence;
 - Action for non-payment of council tax.
17. The report referred to the Council's housing obligations to any of the residents of the site who were not travelling show people if they were made homeless. It reported it was probable the Council would need to facilitate the provision of safe, suitable and secure accommodation for all households with dependent children or other dependents. But that a large number of the residents on the site were childless single people, mostly men, who were working in the area. It would be unlikely for the Council to have significant obligations to single households in employment. More information would be needed about the number of households likely to require support before the amount of extra resources needed could be established. The Council would have to use the private rented sector as well as its own stock to accommodate the projected numbers of households being moved off the site. That would have an impact on other households not connected with the site as well as the allocation of the authority's own housing stock.
18. The report noted that the site is in the greenbelt with special provisions in local and national policy for travelling show people and no expectation for anything else should be entertained.
19. The agreed way forward was for the Council to work with the Showmen's Guild and landowner(s) to develop one or several planning applications to regularise development that related to travelling show people accommodation through a phased programme of development. By working with landowners it was anticipated that formal enforcement action could be largely avoided. The aim was for a planning application to be submitted within 6 months.
20. In May 2019 the Council appointed a lead project officer for the site and all other gypsy, traveller, and show people sites. And in June the Council obtained landowner details for all the sites from the Land Registry.

The pre-planning application submission

21. In July 2019 a landowner of a large part of the site made a formal pre-planning application submission. This was for two developments. One was for Area 1 for plots for travelling show people. This area forms just under half of the total area. The other part of the submission was for a nearby plot of land which does not form part of the site. This is for a housing development and is described as an enabling development.
22. In early December the Council responded to the pre-application submission. It referred to the relevant policy considerations and that both areas were in the greenbelt. This meant the harm caused to the greenbelt by the proposed development would need to be clearly outweighed by other considerations. Any planning application would need to present a site-specific, policy-based and compelling case in order to justify a departure from established national and local planning policies. Any planning application would be treated as a 'departure' and,

a decision made by the Council's Planning Committee and could potentially be referred to the Secretary of State. The Council said it would provide more comment when further information had been submitted.

September 2019 meeting

23. The Council's senior management team met again in September 2019 to review progress. The report referred to events since the last meeting a year before. It repeated much of the comment from the previous report. It noted that "the receipt of the pre-application submission represents the end of the first phase of the project; to ensure a positive future for the Showpeople communities at [the site], a more holistic and multi-agency approach to [the site] is required". It proposed that it was necessary to have a multi-disciplinary team and to appoint a project lead to "lead the delivery of the previously endorsed strategy".
24. The Council commented that the lead project officer who started in May 2019 left in August 2019 and it has now appointed a corporate lead.

Analysis

25. The Council has taken other action not detailed here in relation to specific parts of the site including injunctive action in the courts. I have not referred to that in detail because this complaint concerns the site as a whole and the action the Council is taking. I do not consider these actions affecting small distinct parts of the site are directly relevant to the broader issues I am considering.
26. I have limited my consideration to matters since March 2017. In correspondence with Ms B at that point the Chief Executive accepted issues with the site had taken far too long to resolve. She said she had identified additional resources within the planning service to consider the ways it could be addressed as quickly as possible. And the Council would take whatever action was appropriate to deal with the current unauthorised activity.
27. The Council then did some work looking at the site but the significant event over 2017 and into 2018 was the appointment of consultants to survey the site. This was a significant step in the Council understanding the occupation of the site. That would be needed to inform action it could take.
28. When the consultants reported this was considered by senior management in September 2018 and a way forward was agreed which involved seeking planning application(s) to regularise the use of the site for travelling show people. I do not consider there was any fault in how the Council reached this point. The report set out various options and explored the issues on the site and the risks from the options available. The officers decided on a course of action with a timeframe and a budget.
29. The next consideration by senior management in September 2019 referred to the submission of the pre-planning application submission as being the completion of the first phase. But the September 2018 report said it was intended that a planning application should be submitted within six months – that did not happen. And it is clear from the Council's response to the pre-planning application submission that there is still some way before a planning application will be submitted. The pre-application submission only covers part of the site. The Council has said it covers Areas 1 and 2 but my reading of the documents is that it only covers Area 1; the enabling application is for a plot of land which is outside the recognised areas of the site.
30. The Council has commented it has focused on area 1 because that is in single ownership and where there are the most households who are not travelling show

people. I accept the logic of the Council's approach here but the other areas of the site present different problems because of the multiple landowners. I do not, therefore consider the approach adopted for Area 1 will, necessarily, provide a basis for resolving the issues on the other areas. This Council will need to ensure the whole site is kept under review as the situation for Area 1 becomes clearer.

31. The September 2019 report says a more holistic approach is needed and a project lead needs to be appointed. The Council has commented that during the process of the pre-application case it became apparent there was a risk that if planning permission was granted the land owner would evict the people from the site. It said it had not been possible to envisage this as a potential risk until after the Council had engaged with the landowner and understood his views and approach.
32. The Council's report in 2018 identified the risks of large scale evictions from the site. It was evident it was a potential significant issue which the Council would need to address. I cannot, therefore, agree that this only became clear in the discussions with the land owner. The September 2018 report referred to the problems and associated risks and identified the need to set up of a multi-disciplinary team and additional resources. But the working group only started meeting in October 2019.
33. I do not, therefore, consider the Council took adequate steps after the September 2018 meeting to implement the agreed multi-agency approach and the action needed to address the long-standing breaches of planning control. But the Council has now established a working group which is meeting monthly and the new project manager started in January. I therefore consider the Council has shown that it is now taking action and that will have to be given some time to come to a conclusion.

Final decision

34. There was failure by the Council to take the action it had identified as being necessary between September 2018 and September 2019.

Investigator's decision on behalf of the Ombudsman