

# **APPEALS BY OWNERS AND OCCUPIERS OF CAROUSEL PARK**

## **PROOF OF EVIDENCE**

**Of Mr. Tommy Stokes Plot 2A, Carousel Park**

**regarding three Enforcement Notices served by Winchester City  
Council**

**at Carousel Park, Basingstoke Road, Micheldever, Winchester**

**August 2023**

WS Ref:	J004151
LPA Ref:	None
PINS Ref:	APP/L1765/C/22/3296767

## 1.0 **INTRODUCTION**

1.1 To summarise the information in the statement, it relates to matters of personal circumstance. The following matters should be taken into account in the overall planning balance,

- a) **the personal need for accommodation of the applicant**
- b) **the availability (or lack) of alternative accommodation for the applicant**
- c) **the medical and/or welfare considerations of the applicant**
- d) **the best interests of children**

1.2 Case law is clear that there is a duty on both the LPA and Secretary of State to treat the best interests of the child (including unborn children) as a primary consideration, and that no other consideration is inherently more important. This was established in the case of *AZ v SSCLG & South Gloucestershire Council [2012]* and *Collins v SSCLG [2013]*. **As such, the best interests of the children occupying the site are a paramount consideration which must be taken into account by the Decision Maker.**

1.3 The Best interests of the children arise from the duty set out under Article 3.1 of the United Nations convention on the right of the child. The Court of appeal in the case of *Collins v Secretary of State for Communities and local Government and Fylde Borough Council 2013 EWCA 1193* confirmed that inspectors must apply the principles set out by Mr Justice Hickinbottom out at paragraph 69 of *Stevens v SSCLG and Guildford [2013] EWHC 792* which states as follows:-

*“69. From these authorities, in respect of the approach of a planning decision-maker, the following propositions can be derived.*

- i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision-making will often engage article 8. In those circumstances, relevant article 8 rights will be a material consideration which the decision-maker must take into account.*

- ii) *Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC, which requires a child's best interests to be a primary consideration.*
- iii) *This requires the decision-maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision-maker can assume that that carer will properly represent the child's best interests, and properly represent and evidence the potential adverse impact of any decision upon that child's best interests.*
- iv) *Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls is maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.*
- v) *However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of the child is proportionate.*

- vi) *Whether the decision-maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out his reasoning with regard to any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision-maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that that impact is in all the circumstances proportionate. I deal with this further in considering article 8 in the context of court challenges to planning decisions, below."*

- 1.4 It is now the case that the Decision-Maker has a duty to ask themselves what the best interests of the children are, and to keep that at the forefront of their mind. The best interests of the children must carry at least as much weight as any other material consideration and that the balancing exercise must be an exercise of substance rather than form.

## **2.0 PERSONAL**

- 2.1 I am Mr. Tommy Stokes, and I am occupying Plot 2A of Carousel Park, which is part of the former Plot 2. I am renting, privately, my plot (2A) from the owners of the land, who are Mr. and Mrs. Black.
- 2.2 I am not a travelling showperson, nor do I consider myself to ethnically be such. I am however a Traveller, as are my family, who occupy the plot. I have been living on Plot 2A for about 18 months, and arrived prior to the service of the enforcement notices. I was not personally served a copy, nor was I aware that they had been served when they were apparently done so. I became aware of the Notices through others, Mr. O'Donnell lodged an appeal on behalf of Plots 2A, B, and C.
- 2.3 I have 4 static caravans on the Plot, which are all occupied by my family. I occupy static 1 with my youngest daughter Paige.
- 2.4 Static 2 is occupied by my eldest daughter, who is separated from her husband. She is Tilda Stokes (formerly married to Donovan). She has 3 children, Child A (7), Child B (4), and Child C (1). Child A is enrolled in a school in Micheldever, and Child B is due to start in September.
- 2.5 Static 3 is occupied by Philomena Stokes, my daughter who has recently divorced. She has no children. Philomena suffers from mental health issues, and anxiety.
- 2.6 Static 4 is occupied by my two sons, Willie and Tommy.
- 2.7 My sons and I undertake work as groundworkers and landscapers. We travel to the horse fairs regularly.
- 2.8 Prior to moving onto this site, I had been leading a roadside life. I have been looking for a long long time for a site of my own, and had never had the fortune to find a decent one prior to this site. I have never been able to afford one, even if I could find it. As such, I have had to resort to relying upon family and friends, doubling up where I can, or the families who provide private sites for rental.
- 2.9 I cannot return to leading a roadside existence, one reason is my age and my concern over the new laws which could make me actually homeless, another reason is my family have all grown up. We would be a large group moving around,

and it is just not practical for us to do. I genuinely have no idea where my family could, or would, be able to go if we were forced to leave the site.

2.10 If planning permission was granted, I am happy just staying here. It is not my property to change, but I would like to tidy it up, and make it nice.