

APPEALS BY OWNERS AND OCCUPIERS OF CAROUSEL PARK

PROOF OF EVIDENCE

Of Mr James Flynn Plot 3A, 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. James Flynn, and I am giving this evidence on behalf of my family who occupy Plot 3A of the Carousel Park site. Plot 3A is a sub-divided part of the former Plot 3 of the site, which now comprises Plot 3, Plot 3A and Plot 3B.

2.2 I am speaking on behalf of all of my family group, who occupy the 4 static caravans situated on the land.

2.3 The site is occupied by the Flynn family, who are,

- Caroline Flynn,
- Maureen Flynn,
- James Flynn,
- Maggie Flynn,
- Maureen "Diamond" Flynn,
- 6 children,
 - o Jimmy (19 years old)
 - o Child B (17 years old)
 - o Child C (13 years old)
 - o Child D (9 years old)
 - o Child E (3 years old)
 - o Child F (5 years old)

2.4 I undertake work as a general handyman/builder. I do a bit of everything, as and when it comes up. I do travel for the work, around 3-4 months of the year, give or take, a few weeks at a time. The work that I do supports the family group on Plot 3A.

2.5 Maureen Flynn has early signs of dementia, and her daughter "Diamond" is her full time carer.

- 2.6 Child D suffers with type 1 diabetes, and requires a settled base to have access to medication, and storage facilities for the medication. He is required to carry a needle around with him at all times.
- 2.7 Two of the children, Child F and D, attend a local school in Micheldever.
- 2.8 The family group have occupied the site for just over 3 years. We have settled in quite well, and have become part of the community on the site. Our plot is already well laid out, although we understand we might need to alter the positions of the static caravans such that they are 6m apart. We have no issue with this, as we just want to be able to stay on the site and make it a home for ourselves.
- 2.9 If permission were to be refused, it would be devastating for us. The effects would be life changing having to go back to the road after having settled into the site. The children are so used to this site, and have settled in quite well in school, the others are homeschooled. Having to go back to the roadside would be incredibly difficult for us all, particularly for Diamond and her mother.