



**PORTFOLIO AREA: HEALTH AND WELLBEING**

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**Date of Meeting:** 28th October, 2002

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**Public**

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**Key Decision:** No

**Recorded in Forward Plan:**

No

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**Inside Policy Framework**

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**Title:** PETITION - HESPIN WOOD EMERGENCY GYPSY SITE  
**Report of:** DIRECTOR OF ENVIRONMENT AND DEVELOPMENT  
**Report reference:** EN.117/2002

**Summary:**

The report addresses the management issues raised in the petition.

**Recommendations:**

Members are recommended to note the petition and await the findings of the appeal before considering future management of the site.

**Contact Officer:** M. BATTERSBY

**Ext:** 7400

**Note:** in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

## **1. BACKGROUND INFORMATION AND OPTIONS**

- 1.1. The site is in the ownership of Cumbria County Council and was provided in compliance with a former statutory requirement to ensure adequate accommodation for travellers. The site requires no Caravan Site Licence and there can therefore be no legally enforceable site licence conditions.
- 1.2. The routine management of the site is undertaken by Carlisle City Council on a re-chargeable basis.
- 1.3. Without an emergency accommodation site it is highly unlikely that the City Council would be able to obtain Court orders to remove unauthorised travellers encampments from any other land. The facilities on the site meet the Government's guidance for Emergency Traveller Sites.
- 1.4. The usage records for the site indicates that it has only been used irregularly as follows:-

April 2000, February 2001, April, 2002.

The site is only opened when large numbers of travellers occupy land or where a specific request is received from the Police to cater for smaller, but often problematic, groups.

## **2. The Petition**

- 2.1. The map attached as Appendix 1 shows the location of the households who have signed the petition. It can be seen that the vast majority of the signatories reside at such a distance from the site, coloured yellow, that it is very unlikely that they will be affected by activities on the site.
- 2.2. The issue of supervision of the site was one of the main grounds raised in the recent action taken against both the City and the County Councils. The Judge's reasons following that hearing were that the Council had not failed to take "positive action" to deal with complaints raised by residents.

Furthermore the Judge identified that there were no powers to maintain any site management rules by force. The full judgement of the case is attached as Appendix 2 with the consideration of the Council's management being covered in paragraph 23.

- 2.3. In the light of the current appeal against this judgement it would be inappropriate for the Council to more fully consider the need for any management changes until the appeal has been decided.

**2. CONSULTATION**

2.1 Consultation to Date. N/A.

2.2 Consultation proposed. N/A.

**3. STAFFING/RESOURCES COMMENTS**

N/A.

**4. CITY TREASURER'S COMMENTS**

N/A.

**5. LEGAL COMMENTS**

N/A.

**6. CORPORATE COMMENTS**

N/A.

**7. RISK MANAGEMENT ASSESSMENT**

N/A.

**8. EQUALITY ISSUES**

N/A.

**9. ENVIRONMENTAL IMPLICATIONS**

N/A.

**10. CRIME AND DISORDER IMPLICATIONS**

N/A.

**11. RECOMMENDATIONS**

Members are recommended to note the petition and await the findings of the appeal before considering future management of the site.

**12. REASONS FOR RECOMMENDATIONS**

The result of the appeal against the Court decision is likely to influence any future management of the site.

Mr Ian Dixon.  
Committee Services.  
Carlisle City Council.  
Civic Centre.  
Carlisle.  
CA3 8 QG

23<sup>rd</sup> September 2002

Dear Mr Dixon.

Please find enclosed a Petition from at least thirty adult residents in this community regarding the management of Hespian Wood emergency gypsy site. Please present the Petition to the Executive under the terms set out in the Councils constitution.

You may be aware that an appeal has been lodged against a court ruling in favour of Carlisle City Council in relation to private nuisance at Hespian Wood. The issues subject to appeal are different than those raised in the Petition, which relate to the future management of Hespian Wood only. The appeal should not be used to delay the hearing of the Petition bearing in mind that the site is likely to be opened in the near future to cater for gypsies currently trespassing on land near ASDA in Carlisle.

On behalf of this community I will present evidence, including documents and photographs when the Petition is heard. If you have guidance notes which may help me I will appreciate a copy.

I have sent the original petition to you but have retained copies.

Yours faithfully.

GYP MAN

# CRUTES

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F.A.O. Janet Blair  
Department of Environment & Development  
Carlisle City Council  
DX 63037  
CARLISLE

Fax No. 817346

5 September 2002

Dear Janet

Park v. Carlisle City Council and Cumbria County Council

We write further to our recent correspondence. We are pleased to enclose a copy of District Judge James' judgment in respect of the matter. As you can see we have successfully defended the matter.

Please do not hesitate to contact us if you have any questions.

Yours sincerely

*Crutes*

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IN THE CARLISLE COUNTY COURT  
BETWEEN

NO CA020785

LEONARD PARK

CLAIMANT

And

CARLISLE CITY COUNCIL

FIRST DEFENDANT

And

CUMBRIA COUNTY COUNCIL

SECOND DEFENDANT

**JUDGEMENT**

**The Claim**

1. The Claim is in damages for private nuisance against the Defendants in respect of their operation of an emergency caravan site at Hespian Wood Carlisle arising from its use by authorised occupiers. The occupiers having vacated the site prior to the issue of proceedings, the claim does not include an application for an injunction.
2. The claim had proceeded under the Small Claims Track, being heard on 27<sup>th</sup> August, when evidence was taken via Statements filed together with oral evidence from the Claimant, his wife and Mrs Blair for the Defendants.
3. Judgement was reserved.

**The Facts**

4. The Claimant is a farmer living and working at Bents Farm, which is situated adjacent to the A74 road north of Carlisle.
5. The Second Defendant owns land known as Hespian Wood, directly opposite Bents Farm, being on the opposite side of the A74 road (the relative positions being shown in Photograph 64 of the Trial Bundle).
6. Hespian Wood is designated a caravan site for members of the travelling community, under the terms of a Planning Consent given to the First Defendant who operates and manages the site. Under normal conditions the site is secure against unauthorised access. Its purpose is to making available caravan facilities for emergency requirements usually on request of the police.



7. Usage of the site is governed by Site Rules (set out from P39 of the Bundle), which rules reflect the conditions attached to the Planning Consent. The Site is not subject to Licence under the Caravan Sites and Control of Development Act 1960 (as amended) since the provision of the site falls within the powers given to Local Authorities under S24 of that Act. The Site rules are enforceable therefore only so far as they come to the knowledge of the parties occupying the site. The Rules are not permanently displayed but are put up "as and when required". Supervision of the site by the First Defendant is by way of daily visit whilst the site is occupied, the provision of a refuse skip and the repairs of the limited facilities present on the site as and when necessary.
8. The circumstances giving rise to the alleged private nuisance arose on Wednesday 10<sup>th</sup> April 2002 when the First Defendant was requested by the Police to open the site to provide accommodation for a "large invasion of gypsies then on the Park House Business Park in Carlisle". The site was opened up and Mrs. Blair reports that she visited the site on the following day (11<sup>th</sup> April) when some 23 caravans were found to be on site
9. The evidence now passes to the Claimant and his witnesses. He states that on the following day (12<sup>th</sup> April) he saw "thick black smoke rising from the caravan site. The smoke enveloped the house and farm buildings. The smoke was so black it looked similar to that given off by burning tyres and caused my eyes and throat to become sore". Mr. Park called the police and Fire Brigade who attended but to his knowledge felt it unnecessary to take further action. The Claimant stated that the fires continued from time to time over the next days. He informed a friend Mr. Jackson, who complained to the Council on the first available date thereafter i.e. Monday 15<sup>th</sup> April. Mr. Park confirmed that the fires continued unabated until the 20<sup>th</sup> April when "all the gypsies left the site. He said in his statement that a further group of "gypsies" arrived on 21<sup>st</sup> April who continued in similar fashion, burning producing "thick black smoke" which was "appalling"
10. Mr. Jackson confirmed the telephone call from Mr. Park on the 12<sup>th</sup> April and again on the 13<sup>th</sup> April. He attended upon Mr. Park on that day and gave evidence to confirm the presence of the smoke, which he described as "very acrid and choking". He and Mr. Park drove down the access road to the site and observed the presence of a fire, emitting the smoke. He took photographs of the site and its fire which are exhibited to the Bundle. Thereafter he made the telephone complaint and followed it up with written communication as set out in the Bundle. He had no further direct knowledge of the nuisance emanating from the site, but did carry out a further inspection immediately after the "gypsies" left on 20<sup>th</sup> April when he described the site as "so filthy as not to be fit for habitation". His ongoing communication with the First Defendant as to the second set of occupiers was based upon information supplied by Mr. Park, as he (Mr. Jackson) did not observe the presence of the second group.
11. Mrs. Park gave evidence in support of her husband.



12. The Court raised a number of questions of Mr. and Mrs. Park in an effort to quantify the alleged nuisance as to time and intensity. Although Mr. Park had in his statement and prior evidence given the impression that the problems caused by the smoke were very regular and intense, in examination by the Court the following evidence was given:-
- (a) that the smoke episodes were at the most 3 times each day (and that only on one or two occasions). They occurred mainly once a day and then in the evening.
  - (b) That each episode of smoke and smell would last about 10/15 minutes (presumably when the fire was starting)
  - (c) That he was unable to say on which days of those when the site was occupied the fires were burning, or on which days they were burning once twice or three times
  - (d) That whilst the prevailing wind would blow the smoke from the site towards Bents Farm, the wind did on occasions blow in a different direction, taking the smoke away from the Farm, and on other occasions was so light that it rose vertically without affecting the Farm. Again he was unable to say which weather conditions were applicable to which day during the period.
13. Mrs. Park agreed that the smoke affected Bents Farm for a 10/15-minute period, that the effect was noticed mainly in the evening, but not every evening. She was also unable to be specific as to the days of being affected
14. Evidence for the Defendants was given by Mrs. Blair, an Assistant Principal Environment Health Officer for Carlisle City Council. She confirmed the legal position of the site, namely that it was not licensed (such not being required under the Act) but was subject to Planning Consent from Cumbria County Council and the conditions attached thereto. Carlisle City Council in effect manages the site, ensuring that it is closed when not required, and ensuring that the basic facilities of water and refuse disposal are available when it is open. They operate under site rules. These do not arise from any licence but are by way of guidance to the travellers using the site as to the manner in which they should conduct themselves.
15. She personally attended the site on each day that it was open, but did not see any fires although she did see evidence that fires had been lit. She confirmed receipt of the complaint from Mr. Jackson, and her response thereto. This was to (a) ensure that a copy of the rules was displayed on site (b) write a letter to the occupants warning them that their right of occupation would terminate if fires were lit (c) warning them orally not to light fires. She told the Court that giving any notice or information to the travellers on site at any time was difficult, as many of them were unable to read, and any notices fixed on site were inevitably ripped down. (d) notify Cumbria County Council of the complaints and evidence with a view to their taking enforcement action to remove the travellers from site. She acknowledged that as this would require Court action it would take at least 7 days to achieve.

## The LAW

16. It is accepted by both parties that any claim for damages must be founded on the issue of nuisance.
17. As Clerk & Lindsell so clearly puts the position (Page 973 18<sup>th</sup> Ed) "The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land. In common parlance, stench and smoke and a variety of different things may amount to a nuisance in fact but whether they are actionable as the tort of nuisance will depend upon a variety of considerations and a balancing of conflicting interests". And again at Page 979 "In organised society everyone must put up with a certain amount of discomfort and annoyance caused by the legitimate activities of his neighbours.....the courts in deciding whether an interference can amount to an actionable nuisance have to strike a balance between the right of the Defendant to use his property for his own lawful enjoyment and the right of the Claimant to the undisturbed enjoyment of his property" and on Page 979 again "A nuisance of this kind to be actionable must be such as to be a real interference with the comfort or convenience of living conditions to the standards of the average man"
18. In considering an interference which is temporary, the Court is required to take into account the duration of the interference as an element in assessing its actionability, as nuisance can be said to require a "state of affairs" to be actionable.
19. The law differentiates between nuisance directly caused by a Defendant and that caused by others on his land but of which the continuation is permitted by him. In the case of *Sedleigh-Denfield v O'Callaghan* (1940) A.C. at 905 Lord Wright said "If the defendant did not create the nuisance he must, if he is to be held responsible, have continued it, which I think means that he neglected to remedy it when he became or should have been aware of it". Again in the case of *City of Richmond v Scantelbury* it was said "If the occupier knows or ought to have known of such a nuisance, and the possibility of damage occurring in consequence of a real risk, he must take such positive action as a reasonable person, in his position and circumstances, would consider necessary to eliminate the nuisance"

## The DECISION

20. The first decision I am obliged to make is as to whether the facts show there to have been an interference by a person exercising control over land, in this case the First Defendant with the authority of the Second Defendant, with the of the enjoyment or use of a neighbouring land in this case of the Claimant. On the basis that the actions of the occupiers of the site namely the travellers, in burning items on the site, caused smoke to enter the Claimant's premises on a number of occasions in April 2002, there clearly was such interference.

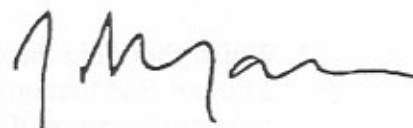
21. The second decision is as to whether that interference is itself actionable as a tort of nuisance. This must by reference to the law quoted be considered in two parts namely:- (a) whether the interference as factually found in the circumstances of the case is of such level as to create a real interference with the comfort and conditions of living of the Claimant and (b) whether if so found, the actions or lack of actions on the part of the First Defendant amount to a neglect to remedy or to take positive action necessary to eliminate the interference taking into account the background to the case.
22. Whilst the Claimant and his witnesses, (all of whom have relied on Mr. Jackson to decide the wording of the statements), have described the passage of smoke and smell onto the Claimant's land in graphic terms "very acrid and choking" and "the smoke was so black .....caused my eyes to water and throat to become sore" and "the black smoke caused me and my family to have sore eyes and throats which caused a lack of appetite and loss of sleep" the evidence they gave in court especially in cross-examination did not live up to that description. The incidence of fires was once sometimes three times a day and for only a few minutes on each occasion. On some of those occasions the direction of or lack of wind prevented any passage of smoke. I must also take into account the layout of the scene as described by the parties and illustrated by the photographs. The site is some 85 yards from the Claimant's property, being separated by the dual carriageway A74, and its verges. The site is, on the side facing the Claimant's land, surrounded by an earth embankment topped by scrub and trees, a substantial barrier, which will itself reduce the likely extent of any interference. It is noted that Mrs. Park confirmed that her sleep was not been disturbed, and any throat reaction was shortlived. The absence of Mr. Park from the farm was as much related to the need to conduct activities upon his other holding as to any perceived interference with enjoyment. Mr. Park himself was unable to identify on which days the smoke was sufficient to affect him, merely stating that it occurred on occasions during the period whilst the travellers were in occupation ( some 10 days)
23. Whilst therefore there was undoubtedly smoke emanating from the site on occasions, I do not find that on the facts as presented to the court, taking into account the temporary nature of the interference and the necessity of the circumstances, such amounted to a real interference as is required to found a claim in nuisance. On that basis alone the claim must fail
23. Although the claim has failed on that basis, for completeness I consider the second heading, as this must be a further cause of failure. To do so I must consider the actions of the First Defendant in the light of a need to take some positive action. The first they were aware of the problem was upon Mr. Jackson reporting it to them. They forthwith wrote to the occupants, put up the rules of the site and attended personally to ask them to desist. They warned them that failure would result in action to remove them. In reality over such short time scale I can find little else they could have done. Mr. Park and Mr. Jackson were pressed to identify the further actions the Council could have taken. Apart from an idea that they "should have done more" the only

suggestion was to the effect that they should have employed a security firm to patrol monitor and enforce the rules on the site. I am not aware of any powers given to such persons to maintain the rules by force. We fall back therefore on action through the courts to remove the perpetrators from site, a course of action which the First Defendant put into motion by request to the Second Defendant, but which did not proceed due to the voluntary departure of the travellers. I am unable to find therefore that the actions of the Defendants when viewed against their duty to provide the site, amounted to a "neglect of remedy" or a failure to take "positive action". There is no evidence which can show negligence on their part causative of the nuisance. On that basis as well the claim must fail.

24. It is said that in organised society every one must put up with a certain discomfort and annoyance caused by the legitimate activities of his neighbours. Here the elected representatives of the Claimant decided that in the interests of society in general, an emergency caravan site for travellers must be provided at Hespian Wood. On occasions such site will be used. On occasions the use of such site will cause interference with the enjoyment by the claimant of his land. Unless however the interference is of such an extent and in such circumstances as to meet the legal requirements of private nuisance, it is regrettably something the Claimant will have to put up with. In this instance it is not and he fails.

### ORDER

1. The Claim be dismissed
2. Unless the Defendant do by 4.00pm on 13<sup>th</sup> September 2002 file at Court a request for a hearing as to costs, there be no order as to costs



District Judge



