

Neutral Citation Number: [2014] EWHC 390 (Admin)

Case No: CO/13040/2012

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

20/02/2014

B e f o r e :

MR JUSTICE LEWIS

Between:

**MARY FLYNN
- and -
NORA SHERIDAN**

Claimants

- and -

**SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL
GOVERNMENT**

Defendant

**- and -
BASILDON BOROUGH COUNCIL**

Interested Party

**Stephen Cottle (instructed by Lester Morrill “incorporating Davies Gore Lomax”)
for the Claimant**

Jonathan Moffett (instructed by Treasury Solicitor) for the Defendant

Hearing date: 4th February 2014

Mr Justice Lewis:

Introduction

1. The Claimants, Mrs Mary Flynn and her daughter, Mrs Nora Sheridan, are travellers who formerly lived in caravans on a site known as Dale Farm in Essex. In November 2011, following their eviction from Dale Farm, the Claimants moved their caravans to a roadway or access track which leads east from Oak Lane to Dale Farm. On 24 July 2012, Basildon District Council (“the Council”) served an enforcement notice on the Claimants amongst others alleging that there had been a breach of planning control in that there had been a material change of use of the access track to use for residential purposes and the stationing of residentially occupied caravans. An appeal was lodged. By a decision dated 3 September 2012, the planning inspectorate decided that the appeal was not valid as the appellant, whom they regarded as Mrs Flynn, did not have an interest in land and was not a relevant occupier as she did not have a written or oral licence from the landowner to occupy the land to which the enforcement notice related. Consequently, they considered that Mrs Flynn did not have a right of appeal against the enforcement notice under section 174 of the Town and Country Planning Act 1990 (“the 1990 Act”)
2. The Claimants contend that the decision is unlawful in that the Defendant failed to consider whether Mrs Flynn was a relevant occupier as she had an implied licence to occupy the land. Further the Claimants contend that the provisions of section 174 of the 1990 Act must be interpreted so as to enable Mrs Flynn to appeal in order to avoid a breach of her right to respect for her home and private life under Article 8 of the European Convention on Human Rights (“ECHR”).

The Facts

3. Travellers began moving caravans on to the site at Dale Farm at the end of 2001 or the start of 2002. Mrs Flynn and Mrs Sheridan lived on a pitch at Dale Farm from 2003 to November 2011. The Council issued enforcement notices alleging a breach of planning control in respect of the stationing of caravans at Dale Farm. There was unsuccessful litigation in relation to those notices. The authority subsequently took action to enter the land and take the steps required by the enforcement notices, including removing the caravans, pursuant to section 178 of the 1990 Act. A challenge to the lawfulness of the decision to take such action was dismissed by the Court of Appeal: see *Basildon District Council v McCarthy and others* [2009] EWCA Civ. 13. Permission to bring a further challenge was refused by Ouseley J. who sets out in detail the history of the matter: see *R (Sheridan and others) v Basildon District Council* [2011] EWHC 2938 (Admin). An appeal against that decision was unsuccessful.
4. Following the eviction, Mrs Flynn and Mrs Sheridan moved their caravans from their pitch at Dale Farm and on to the site of an access track running east from Oak Lane to Dale Farm in November 2011. The access track appears from the evidence to be situated over land owned by a number of different people. Part of the access track appears to lie on land forming part of a field owned by a Mrs Palmer. The field includes the access track to the south and extends further north. Other parts of the access track appear to be situated on other plots of land to the south of the field. Those other plots, according to the Land Registry documents put in evidence, are said to be owned by individuals who include a Mr Woods, a Mr O’Brien, a Mr Flynn, a Mrs Gammell, and jointly by a Mrs Bridget Flynn and a Mrs Quilligan. Their plots of land include the access track and their properties which are to the south of, and look onto, the access track. I will return to the location of Mrs Flynn’s and Mrs Sheridan’s caravans later in this judgement.
5. It is said that others also moved their caravans on to the access track. There is no evidence before this court as to which other people moved caravans onto the access track nor is there any evidence as to the particular locations in which those other individuals stationed their caravans.

6. On 24 July 2012, the Council issued a planning notice alleging a breach of planning control. The land affected was described as land east of Oak Lane, Crays Hill, Billericay in Essex and was identified on an accompanying plan. It included the access track. The breach of planning control alleged was:

“Without planning permission the unauthorised making of a material change in the use of the land and access track to residential use and the stationing of residentially occupied caravans. “

7. The reasons for issuing the enforcement notice were as follows:

“The land is located within the Metropolitan Green Belt and outside any area allocated for development in the Basildon Local Plan Saved Policy Document. The development of this land is contrary to the aims and objectives of national Green Belt planning policy as set out in the National Planning Policy Framework (NPPF) and Planning Policy for Travellers Sites (PPTS)

The NPPF sets out the purposes of including land in a Green Belt, it states that development will not be permitted, except in very special circumstances or when required for agricultural and certain other limited purposes appropriate to the Green Belt. The use of the land and access track for stationing and residential occupation of caravans is inappropriate development that conflicts with national planning and the purposes of including land within the Green Belt.

Furthermore, the use is in breach of the NPPF and PPTS policies relating to the strict control of development in the open countryside. The use gives rise to a detrimental effect upon the character and appearance of the area in conflict with Local Plan Policy BAS BE12. The use is unsuitable in transport terms and gives rise to unacceptable risks to highway safety.

The Council has taken into consideration all known personal circumstances of those occupying the land and access track. These include the healthcare needs of the occupiers, and the welfare and educational needs of the resident children. These considerations do not whether taken individually or collectively amount to very special circumstances that would clearly outweigh the harm to the Green Belt and other harm identified. The use of the land and access track for the stationing of residentially used caravans restricts the access to the lawful traveller pitches to the south; to the detriment of the occupiers wellbeing and safety in the event of an emergency situation occurring which may require the prompt attendance of the emergency service vehicles.

Planning permission for these reasons could not be granted as planning conditions would not overcome the objections to the retention of this change in the use of the land and access track.

The Council considers that in the circumstances remedying the breach of planning control is expedient and in the public interest, and therefore reasonable, proportionate and indiscriminate. Any interference with an individual's Human Rights as conveyed by Article 8 of the European Convention on Human Rights is justified as being in the wider public interest.”

8. The persons served with the notice included nine named individuals who owned land comprised within the enforcement notice, including Mrs Palmer, Mr O'Brien, Mr Woods, Mr Flynn, Mrs Gammell, Mrs Bridget Flynn and Mrs Quilligan. The notice was also served on persons described in the notice itself as “the Owner and any Occupiers, Land east of Oak Lane, Billericay, Essex”. The category of persons served in accordance with that description included Mrs Flynn and Mrs Sheridan. That category is said to include others but there is no evidence before this court of who else was served with the notice
9. The enforcement notice required those served to cease using the land and access track for residential purposes and for stationing caravans and to remove all residential material and all

rubbish. The time for compliance was 1 month after the notice took effect. The notice took effect on 29 August 2012.

10. An enforcement notice appeal form was completed and submitted to the planning inspectorate. Section A of that form asks for details of the appellant. The name of the appellant is shown as “Mrs M Flynn (Dale Farm Residents Association)”. Mrs Flynn’s address is given. Section B gives the name of the agent as “Mr Stuart Hardwick Carruthers (Dale Farm Residents Association)”. Details of the appeal are given. Section 4 asks for the appeal site address. Question 2 asks what is the appellant’s interest in land and gives three choices owner, tenant or mortgagee. None of these boxes were ticked. Question 2 continues by asking if the appellant occupies the land under “a written or oral licence BOTH on the date the enforcement notice was served AND on the date of making this appeal”. If the answer is no, the form asks for details of the appellant’s involvement in the land. The submitted form has a tick in the box for “yes” to indicate that the appellant has a licence. However, the submitted form also goes on to complete the section for those who do not have such a licence. Entered on the form were the words:

“The appellant is the occupier of land”.

11. There is then a section dealing with the grounds of the appeal. There are seven parts corresponding to the 7 grounds of appeal provided for under section 174 of the 1990 Act. The submitted form ticks the box for “no”, in relation to six of the potential grounds. The only ground of appeal that was ticked “yes” was ground (g), that the time given to comply with the enforcement was too short. The facts given to support this ground were as follows:

“There is insufficient time for compliance as there is nowhere for those displaced from Dale Farm to find alternative accommodation. This has already been demonstrated. There is nowhere else available, and this is likely to remain the case. “

12. By virtue of the fact that the appeal notice does not seek to appeal on the other grounds it is clear that the appeal notice was not seeking the grant of planning permission for the stationing of the caravans on the access track (that would have involved an appeal under ground (a)). It is also clear that the appeal notice accepts that the stationing of the caravans on the access track was unlawful as a breach of planning control (as otherwise the notice would have included an appeal on grounds (b), (c) or (d)). The appeal notice also accepts that the steps required to be taken – ceasing to use the access track for residential purposes and the stationing of the caravans and removing them – were reasonable (or the notice would have included an appeal on ground (f)). The sole issue, therefore, was whether the one month period for compliance, measured from date when the enforcement notice took effect, was too short.
13. The final section of the appeal form required signatures. In the submitted form, the name of the signer is entered as “Mr Stuart Hardwicke Carruthers” on behalf of “Mrs M Flynn”.
14. On 9 August 2102, the Council’s planning enforcement officer sent an e-mail to the planning inspectorate in response to the appeal notice. The e-mail stated that “The appellant does not live on land forming Dale Farm” It also said that:

“The appellant may not have a licence to park her caravan on the land or reside on the land. It is depended (*sic*) on where along the track the appellant’s caravan is located”.

15. On 14 August 2012, the planning inspectorate wrote to Mr Carruthers, heading the letter “Town and Country Planning Act 1990 Appeal by Mrs M Flynn”. The letter explained that under section 174(1) of the 1990 Act, a person had to have an interest in land or be a relevant occupier in order to be able to appeal. The letter further explained that an interest in land meant a legal or equitable interest such as ownership, a tenancy, a lease or a mortgage. Relevant

occupier was said to mean anyone occupying the land with the owner's "oral or written consent". The letter asked that details of the interest in land be submitted.

16. Mr Carruthers replied by e-mail the same day. It is clear that Mr Carruthers was trying to do his best to help Mrs Flynn and to respond to the queries raised. However, it appears that he is not a lawyer and some of his answers are not clear and, on occasions, appear to run different concepts together. In any event, he sought to reply to the request made. He contended that all of the owners and occupiers of Dale Farm had a right to register use of the enforcement notice land as, without access to that land, they would not be able to access and use their own land on Dale Farm. He also said:

"It is further understood that none of the owners of land on the lawful site facing Oak Lane (East) would raise any objections to an application for Oak Lane East to be registered with possessory title by those required to use the land provided it was used as a gypsy traveller site (temporary) until such time as Basildon Council makes provision and ensures that land for this purpose is made available for gypsy/travellers in the district."

17. Mr Carruthers sent a further e-mail on 22 August 2012. That dealt with a number of points. First, it suggested that the access track formed part of land belonging to a Mr Bocking. Secondly, it points out that Mrs Palmer had erected a fence on the land and was not asserting any claim to ownership of the land to the south of that fence and forming part of the access track. Thirdly, he said this:

"The notices were issued at least 21 days ago and none of the residents living at the occupied plots at Oak Lane (fronting the road) have requested anyone to leave or asserted any right of ownership to the land (neither has Ms Palmer who benefits from a slightly moved boundary opposite Patrick Egan's land (Plot 28 at Dale Farm) that was mistakenly moved by the Council and appears to have caused confusion on the part of the Council ... obviously if Patrick Egan believes that Ms Palmer's revised boundary needs moving ... this can be subject to civil proceedings (there remains the fence). All have identified that they are happy with the current occupiers to remain ... these are technically in adverse possession of the land (roadway) although they do all have rights over the road identified in deeds and through prescription. Those occupying the land have a right to have registered possessory title at HM Land Registry ... and the Council's nonsense can cease. This would be a land registration issue rather than a planning issue.

Mrs M Flynn and the Dale Farm Residents Association have asserted possession of the land (for well over 21 days) ... and this has not been challenged."

18. The planning inspectorate asked the Council for their comments on what were seen as the 7 points raised by Mr Hardwicke Carruthers. The e-mail requesting comments ended by stating that the writer would need to take advice and may have to consult the legal department on whether or the inspectorate could accept the appeal. The writer says that she thought "a lot depends on where the actual caravans are, and Ms Flynn's in particular".
19. Included in the evidence are handwritten notes of a telephone conversation between Mr Carruthers and a member of staff at the planning inspectorate. The notes were made at the time by the member of staff. The notes record that the adjacent owners were happy. I take that to mean the writer understood Mr Carruthers to be saying that owners of land forming part of the access track were content with the presence of caravans on their land although, again, the names of these owners and the caravans to which reference is being made are not identified. There is a reference to a suggestion that Mrs Palmer had put up a fence and abandoned the land to the south of the fence. There is also a reference which I take to mean that the writer told Mr Carruthers that there was a need to obtain letters from Mr John Flynn and Mrs Gammell (owners of two plots on which part of the access track lay) to show that people could live there.

There is a further reference to a need for written proof from the land owners that “they can be there” (which I take to mean that the occupiers of the caravans are permitted to be on the landowner’s land).

20. On 24 August 2012, the Council’s planning enforcement manager replied to the inspectorate’s request for comments. He confirmed that the Land Registry records showed that Mr Bocking did not own the entire length of the access track but only a section at the very eastern end. He contended that the fact that Mrs Palmer had erected a fence on part of the land did not mean that the fence constituted the boundary, nor that she abandoned the land, nor that she had given any person a written or oral licence to occupy the land with caravans for residential purposes. The e-mail deals with the definition of an interest in land and concludes as follows:

“The Council’s position is that the occupiers of those caravans stationed in the access track do not have any legal interest in the land and do not have any written or oral licence to be on the land. The appeal should be turned away as being invalid.”

21. On 3 September 2012, the planning inspectorate wrote to Mr Carruthers setting out their decision that the appeal was not valid and said the following:

“Dear Mr Hardwicke Carruthers

Town and Country Planning Act 1990

Appeal by Mrs M Flynn

Site at Dale Farm, Oak Lane, Crays Hill, Billericay, Essex, CM11 2YJ

Thank you for your emails of 14th and 22nd August 2012 about the appeal against the enforcement notice(s) issued by Basildon Borough Council. The notice(s), dated 24 July 2012, allege(s):

The unauthorised making of a material change in the use of the land and access track to residential use and the stationing of residentially occupied caravans

We have examined the evidence available and conclude, on the balance of probability, that the appellant does not fulfil the requirements of S174(1) of the 1990 Act, in that you have not established they have an interest in (or that they are a relevant occupier of) the land to which the enforcement notice(s) relates(s).

The definition of a “relevant occupier” is given in S174(6) of the Town and Country Planning Act 1990:

6) In this section [s174], “relevant occupier” means a person who –

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence and

(b) continues so to occupy the land when the appeal is brought.

This means that the appellant must have a written or oral licence from the **land owner** to occupy the land subject of the enforcement notice in order to make a valid appeal against it. Whether or not they occupy (or can occupy) Dale Farm itself is irrelevant.

The notice refers to Land East of Oak Lane and the access track, and not Dale Farm itself.

I sought comments from the LPA in response to your emails, and they are attached. We are in agreement with them that the Land Registry is an accurate record of land ownership. The register of the title of the land show that Joyce Palmer is the registered proprietor of the land concerned, with title absolute, which is the highest class of title granted by the Land Registry. Whilst the Palmers have erected a fence, this does not mean their ownership of the land beyond it has been abandoned. You have not demonstrated that the appellant has written or oral permission from the owner(s) to occupy the land, and therefore they are not a “relevant occupier” as defined by the Act.

In the circumstances your appeal is not valid.

The Secretary of State will therefore take no further action in this matter.

The Secretary of State’s conclusion in this respect is open to judicial review by the High Court. In the absence of any such application to the High Court, the enforcement notice(s) would take effect from the date stated in it, in accordance with provisions of S173(8) and S175(4) of the 1990 Act.

The **compliance period** specified in the notice **starts from the effective date**.

If you intend to apply for leave to initiate a judicial review in the High Court, we strongly recommend that you consult a lawyer urgently about the merits of the application and the likely cost of litigation.

A copy of this letter is being sent to the local planning authority.”

22. It is accepted by the Defendant that they did not consider whether or not Mrs Flynn had an implied licence to occupy the land. Further, the Defendant did not consider whether, even if Mrs Flynn had originally stationed her caravan on the access track without permission and so was originally a trespasser, the land owner had acquiesced and impliedly granted her permission to remain on the land at some stage before the enforcement notice was served.
23. On 25 November 2012, Mrs Flynn and Mrs Sheridan issued a claim form challenging the decision of 3rd September 2012. The grounds originally stated that Mrs Flynn’s caravan is either on land owned by John Flynn or is in front of Mr O’Brien’s plot. Amended grounds say additionally that the Claimant’s caravan is on the land shown on a map attached to a witness statement of Mrs Flynn. That map shows that Mrs Flynn’s caravan is, in fact, stationed on land forming part of the land within the registered title of Mrs Palmer. Although reference was made to the land of Mr Woods, the map shows, and counsel for Mrs Flynn conceded, that Mrs Flynn’s caravan is not stationed on Mr Woods’ land but on the land within Mrs Palmer’s registered title. No details of the location of Mrs Sheridan’s caravan is given in the claim form. The map attached to the statement of Mrs Flynn appears to show Mrs Sheridan’s caravan being stationed partly on land within Mr Wood’s registered title and partly on land within Mrs Palmer’s. The claim form does not refer to or give any details of any other individual who has stationed a caravan on the access track.
24. Permission was refused on the papers on the basis that there was no evidence that the Claimants had asked or received permission from the owner and there was no reasonable basis for concluding that the Claimants had a licence to occupy the land. The Claimants renewed their application at an oral hearing and that application was adjourned to an oral hearing to consider whether permission should be granted and, if it were, for the substantive hearing to follow immediately.

The Law

25. Planning permission is required for development: see section 57 of the 1990 Act. Development means the carrying out of building or other works, or the making of a material change in the use of land: see section 55 of the 1990 Act. In the present case, the relevant provisions are those concerned with a material change of use in land, in this case the change of use to use for residential purposes and for the stationing of residentially occupied caravans.
26. Section 172 of the 1990 provides that an enforcement notice may be served in the event that there is breach of planning control, that is, if an individual carries out building works or makes a material change of use in land without planning permission. Section 172 provides as follows:

“172.— Issue of enforcement notice.

“(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

“(2) A copy of an enforcement notice shall be served—

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

“(3) The service of the notice shall take place—

- (a) not more than twenty-eight days after its date of issue; and
- (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.”

27. Section 173 of the 1990 Act sets out requirements relating to the matters that must be contained in an enforcement notice. Section 174 of the 1990 Act deals with appeals against enforcement notices and provides, so far as material, as follows:

“174.— Appeal against enforcement notice.

“(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

“(2) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;

- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

.....

(3) An appeal under this section shall be made —

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
- (c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.

“(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “relevant occupier” means a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence ; and
- (b) continues so to occupy the land when the appeal is brought.”

28. Section 179 of the 1990 Act provides that an owner of land is in breach of an enforcement notice if any step required for compliance with an enforcement notice has not been taken or if any activity which the notice requires to cease is still being carried on. Where the owner of land is in breach of an enforcement notice, he is guilty of a criminal offence unless he can show that he has done everything he could be expected to do to secure compliance with the notice. Furthermore, subsections 179(4) and (5) of the 1990 Act provide that

- “(4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- “(5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.”
29. Where an appeal against an enforcement notice is brought, however, section 175(4) of the 1990 Act provides that the enforcement notice shall “be of no effect pending the final determination or the withdrawal of the appeal.”
30. Section 285 of the 1990 Act deals with challenges to the validity of enforcement notices and provides, so far as material, as follows:

“285.— Validity of enforcement notices and similar notices.

- “(1) The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
- “(2) Subsection (1) shall not apply to proceedings brought under section 179 against a person who—
- (a) has held an interest in the land since before the enforcement notice was issued under that Part;
 - (b) did not have a copy of the enforcement notice served on him under that Part; and
 - (c) satisfies the court—
 - (i) that he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - (ii) that his interests have been substantially prejudiced by the failure to serve a copy of it.”

The Issues

31. Against that background, the following issues arise:
- i) What is the proper meaning of “interest in land” and “relevant occupier” in section 174 of the 1990 Act;
 - ii) Was the decision of the Defendant of 3 September 2012 that the appeal was invalid flawed?
 - iii) Does any need to avoid a breach of Article 8 ECHR require any different interpretation to be given to section 174 of the 1990 Act or is any claim that the enforcement action taken by the Council is incompatible with Article 8 ECHR to be dealt with by a claim for judicial review of the decision to issue an enforcement notice or the notice itself?

The First Issue – The proper construction of Section 174 of the 1990 Act

Interest in Land

32. The first issue concerns the meaning of “a person having an interest in land” in section 174(1) of the 1990 Act. The phrase “an interest in land” has a well established meaning in the law of England and Wales. It means a legal or equitable interest in land. That is the interpretation given to the identical words in a predecessor section to section 174 by the Court of Appeal in *Stevens v Bromley London Borough Council* [1972] 1 Ch. 400 at page 410A-B. The same interpretation was given to the phrase in section 174 of the 1990 Act itself by Penry-Davey J. in *R (Benham-Crosswell) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC (Admin.) 146 at paragraph 17.
33. Mr Cottle, for the Claimants, submits that a different and wider interpretation should be given to “interest in land” in section 174 of the 1990 Act. He submits that the phrase encompasses anyone who has a home on the land and can demonstrate a sufficient and continuous link with the land. He relies on three authorities to support that submission. First, he relies on passages in *Stevens v Bromley London Borough Council* [1972] 1 Ch. 400 which suggests that the word “occupy” is a word of uncertain meaning and sometimes denotes legal possession and sometimes nothing more than physical presence. However, as Mr Moffett for the Defendant correctly observed, the passages relied on relate to the meaning of “occupier” under the legislation then in force. The Court was not dealing in those passages with the meaning of “an interest in land”. Rather, as is clear, it is the passage at page 410A-B which deals with the meaning of an interest in land and regards it as a legal or equitable interest in land.
34. Secondly, Mr Cottle relies upon the decision in *Pennine Raceway Ltd. v Kirklees Metropolitan Borough Council* [1983] 1 Q.B. 382 as indicating that a broad approach should be taken to the interpretation of those words. However, the Court of Appeal in that case was dealing with the phrase “a person interested in the land” in the context of considering whether there was an entitlement to compensation on revocation or modification of a planning permission. The majority of the Court of Appeal considered that that phrase was not synonymous with, and was wider than, “an interest in land”. Far from supporting the conclusion that “interest in land” is a broad concept, the decision of the Court of Appeal supports the conclusion that the phrase has a well-established meaning and refers to an estate in land, that is a legal or equitable interest in land: see the judgements of Eveleigh L.J. at page 389 G-H and Kerr L.J. at page 394-B to 395B. Finally, Mr Cottle relied upon the decision in *Scarborough Borough Council v Adams* [1983] JPL 673. However, as Mr Moffett correctly points out, that case concerns the definition of occupier not the definition of an interest in land.
35. In my judgement, therefore, applying the usual principles of statutory construction, the words “a person having an interest in land” in section 174(1) of the 1990 Act means a person having a legal or equitable interest in land and does not include a person who has no such interest but has some other link with the land.

Relevant Occupier

36. Section 174(1) of the 1990 Act also provides that “a relevant occupier” may appeal against an enforcement notice. Section 174(6) of the 1990 Act provides that a relevant occupier means a person who satisfies both of two conditions. First, the person must, on the date on which the enforcement notice was issued, occupy the land to which the notice relates “by virtue of a licence”. Secondly, the person must continue so to occupy the land when the appeal is brought.
37. In my judgement, a licence within the meaning of section 174(6) means a permission to enter and to occupy the land in question. The licence may be a contractual licence, that is one supported by payment or some other consideration. The licence may be a bare licence, that is a permission to enter upon a person’s land and occupy it, the licence being terminable on reasonable notice: see, e.g., the description of such a licence in *E & L Berg Homes Ltd v Grey* [1980] 1 E.G.L.R. 103 at 106C-D and *R v Doncaster Metropolitan Borough Council ex p. Braim* (1986) 57 P. & C.R. 1 at pages 15-16.

38. A licence to occupy may be granted expressly or impliedly. If it is an express licence, it may be granted in writing or orally. If there is no express licence, the grant of a licence to enter on and occupy land may be implied or inferred from the circumstances. Whether there is such an implied licence will depend upon all the relevant circumstances including the particular relationship between the parties involved and the circumstance in which the premises were occupied. See *Buckinghamshire County Council v Secretary of State for Environment, Transport and the Regions* (2001) 81 P & C.R. 342 at paragraphs 34 to 35.
39. Mr Cottle submitted that a different interpretation should be given to the phrase “relevant occupier” in section 174 of the 1990 Act. He submits that it should be interpreted in the light of, and to accord symmetry with, the provisions of section 172 of the 1990 Act which deals with service of an enforcement notice. Section 172 provides for service on the owner, occupier and any person having an interest in land. Service is not restricted, submits Mr Cottle, to those occupying land by virtue of a licence. If an enforcement notice is served upon a person as occupier, then submits Mr Cottle, that person is to be treated as a “relevant occupier” for the purposes of section 174(1) of the 1990 Act.
40. In my judgement, that argument is not correct. Section 174(1) expressly defines the class of occupier who may appeal by inserting the word “relevant” before “occupier”. Section 174(6) of the 1990 Act then expressly defines “relevant occupier” as those occupying at the date of the issue of the enforcement notice by virtue of a licence and continuing to do so when the appeal is brought. There may be an issue as to who is an occupier for the purposes of section 172(1) and whether it includes a person who is in physical occupation, irrespective of whether that is pursuant to a licence or not. Whatever the meaning of “occupier” in section 172(1) of the 1990 Act, however, a person entitled to appeal under section 174(1) of the 1990 Act is specifically defined as a “relevant occupier”. Applying the usual principles of statutory construction therefore, the mere fact that a person is physically in occupation, or is in such occupation and has been served, does not entitle that person to a right of appeal. The person must be a relevant occupier, that is he must occupy the land at the date of the issue of the enforcement notice by virtue of an express or implied license and continue to do so when the appeal is brought.

The second issue – Was the decision of 3rd September flawed?

41. The second issue is whether the Defendant was correct in concluding that Mrs Flynn did not have a right of appeal as she did not have an interest in land and was not a relevant occupier as she did not have a written or oral licence from the landowner to occupy land that was subject to the enforcement notice.
42. First, Mrs Flynn has no legal or equitable interest in the land. On the interpretation of section 174(1) of the 1990 Act set out above, Mrs Flynn was not a person interested in land and would not therefore be entitled to appeal against the notice on that basis.
43. Secondly, there is no basis for concluding that the Defendant erred in considering that there was no evidence that a written or an oral licence had expressly been given to Mrs Flynn by the owner of the land on which she had stationed her caravan. There was no evidence produced to the Defendant that she had such an express licence. The evidence before this court also does not establish that she had a licence. There has been reference to two letters from Mr Woods, one dated 3 December 2012 and one dated 18 February 2013 stating that the travellers evicted from Dale Farm have his permission to reside upon his land. There are two separate difficulties with this evidence. First, according to Mrs Flynn’s own written evidence and accompanying map, her caravan is not on land owned by Mr Woods. Secondly, that express licence was not granted until 3 December 2012. There is no evidence that a licence had been granted permitting occupation as at the date of the issue of the enforcement notice on 24 July 2012. There is, therefore, no basis for concluding that Mrs Flynn occupies land owned by Mr Woods and nor is there any basis for concluding that she had been granted an express licence to occupy land by

Mr Woods at the date of the issue of the enforcement notice. There is no evidence to suggest that Mrs Palmer, on whose land Mrs Flynn's caravan is stationed, has granted a written or oral licence to occupy land. Further, the Defendant was correct in my judgement in concluding that the fact that Mrs Palmer had erected a fence did not alter the boundary of her land and did not constitute an abandonment of her land to the south of the fence. That land may, although it is by no means certain, be the part of Mrs Palmer's land upon which Mrs Flynn's caravan is situated.

44. Thirdly, however, the Defendant did, in my judgement, err in not considering whether Mrs Flynn had an implied licence. Mrs Flynn had stationed her caravan on the land in November 2011, some 8 months before the enforcement notice was issued in July 2012. There was no evidence of any objection to her presence on the land over that length of time. Even if she had originally entered on the land as a trespasser, it may be that, depending on the facts, the owner of the land had acquiesced and impliedly granted her a licence to remain and occupy the land at some date before the enforcement notice was issued.
45. Mr Moffett, for the Defendant, contended that the Claimant had not raised that issue with the Defendant prior to its decision of 3 September 2012 and the Defendant could not be said to have erred by not considering the possibility of an implied licence. I accept that Mr Carruthers was not always clear in the points that he was making as to why Mrs Flynn had a right of appeal. However, he did say, in his e-mail of 22 August 2012 to the planning inspectorate that "none of the residents living at the occupied plots at Oak Lane (fronting the road) have requested any one to leave or asserted ownership to the land (neither has Ms Palmer who benefits from a slightly moved boundary)" and later in the same e-mail he said that "All have identified that they are happy with the current occupiers to remain". In my judgement, given the length of time that Mrs Flynn had been on the land and given the fact that it was being said that the owners had not asked them to leave and were content with their occupation, the possibility of an implied licence was in issue. The Defendant, therefore, erred in not considering whether Mrs Flynn had an implied licence to occupy the land at the date when the enforcement notice was issued and continued to do so when the appeal was brought.
46. Mr Cottle for the Claimants also submitted that other persons had stationed caravans on the land and they might have an express or implied licence to occupy and they may have a right of appeal. This raises the question of whether only Mrs Flynn had appealed or whether others had sought to do so. In my judgement, that issue turns on a proper reading of the appeal notice that was submitted. Reading that notice as a whole, the sole person seeking to appeal was, in my judgement, Mrs Flynn. I reach that conclusion for the following reasons.
47. The submitted form gives the appellant's details as "Mrs M Flynn (Dale Farm Residents Association)". The submitted form is signed by Mr Carruthers on behalf of "Mrs M Flynn". In the section dealing with the appeal site, Mr Carruthers has entered the words "The appellant is the occupier of land". There is no reference to there being more than one appellant. Reading the form as a whole, there is, in my judgement, only one appellant, namely Mrs M. Flynn. No other person is identified or named as an appellant. No other person is identified as seeking to appeal and no details are given as to the basis on which any person, other than Mrs Flynn, claims to be entitled to appeal. Any reader of the form would not know that there were other individuals seeking to appeal. It is correct that the submitted form refers to "Dale Farm Residents Association" and the reason for the appeal is said to be that there is insufficient time to comply as there was nowhere for those displaced from Dale Farm to go to. However, those references fall far short of identifying named individuals who are said to be seeking to exercise a right of appeal on the basis that they have an interest in land or are relevant occupiers.
48. Mr Cottle submitted that the planning inspectorate treated those who had been displaced from Dale Farm as appellants as appears from the correspondence. That correspondence does not, however, support Mr Cottle's submissions. On 14 August 2012, the Defendant wrote to Mr Carruthers. The letter is headed "Appeal by Mrs M Flynn" and asks for information on the

nature of the interest in land said to give rise to the right of appeal. That indicates that the Defendants did, indeed, understand the appellant to be Mrs Flynn and only Mrs Flynn. The same is true of the decision letter of 3 September 2012, which is again headed "Appeal by Mrs Flynn". Mr Cottle relies on one e-mail dated 23 August 2012 from a person in the planning inspectorate to the Council's planning officer which says "I think a lot depends on where the actual caravans are, and Ms Flynn's in particular". In my judgement it would not be correct to treat a comment in an e-mail as indicating who the writer considers to be the appellant, still less as establishing that the appeal was in fact made by a person referred to in such an e-mail. Furthermore, the writer of that e-mail sent another e-mail dated 29 August 2012 headed "RE: Appeal by Mrs Flynn". In my judgement, the only person who lodged an appellant's notice, and who was seeking to appeal is Mrs Flynn. There is nothing in the subsequent correspondence from the planning inspectorate to indicate otherwise.

49. In those circumstances, the Defendant did not err by not considering the position of other persons such as the second claimant, Mrs Sheridan, or any of the other unnamed and unidentified persons who are said to have been seeking to appeal. For completeness, if I am wrong on that, Mrs Sheridan has not established that she has any interest in land. She contends her caravan is situated on land owned by Mr Woods and he has granted permission in writing. The licence must, however, have been granted as at the date of the enforcement notice for the purpose of section 174 of the 1990 Act. The letters written by Mr Woods are dated many months after that date and do not, in my judgement, evidence the grant of a licence to occupy as at the date of the enforcement notice. If Mrs Sheridan had attempted to appeal (which she did not), it is possible that she may or may not have had an implied licence to occupy. No other individuals have been identified to the Defendant (or indeed, even to this court) as persons seeking to appeal. If it is said that the other persons wishing to appeal are the (unidentified) occupiers of other caravans evicted from Dale Farm, there is no evidence that they had an interest in land or an express oral or written licence to occupy any area of land to which the enforcement notice related. Depending upon the circumstances, and the locations of their caravans, it may be that there would have been an issue as to whether one or more other persons would have had a right of appeal. As no such person sought to appeal, the issue does not arise.
50. For completeness, I note that the Claimants also submitted that they were entitled to have the question of whether or not any appellant had a licence to occupy at considered at an oral hearing before an inspector. There is no absolute entitlement, in my judgement, to an oral hearing or an inquiry into the question of whether or not a particular person has a right of appeal under section 174 of the 1990 Act. The Defendant may determine that question in the way that he considers appropriate, provided that he acts in a way which is procedurally fair. Whether fairness requires an oral hearing, or whether, in all the circumstances, a different procedure is sufficient, will depend on all the circumstances of the case.

The third issue

51. Mr Cottle submitted that, if Mrs Flynn were a trespasser, then section 174 of the Act would have to be interpreted to enable her to appeal to avoid a breach of her right to respect for her home and private life under Article 8 ECHR. He submitted that the section would have to be interpreted to enable persons (even trespassers) whose home is on the land and who can demonstrate a sufficient and continuous link with the land to have a right of appeal against an enforcement notice.
52. The starting point is section 6(1) of the HRA. That provides that it is unlawful for a public authority to act in a way incompatible with a Convention right. Here, the question is whether the decision of the Council to serve an enforcement notice is incompatible with any right that Mrs Flynn may have under Article 8 ECHR. In that regard, it should be borne in mind that Mrs Flynn accepts that her caravan was stationed unlawfully on the land, that is, it was stationed on

the land in breach of planning control. She does not seek to be granted planning permission for the caravan to be stationed on the land. She accepts that it was reasonable to require her to remove the caravan. The only question is whether it was disproportionate to require her to remove the caravan within 28 days of the enforcement notice taking effect.

53. Mr Cottle submits that the decision of the European Court of Human Rights in *Chapman v United Kingdom* (2011) 33 EHRR 18 is relevant. That case concerned a person who stationed a caravan on her own land but doing so was unlawful as that was in breach of planning control. Mr Cottle submits that similar principles apply even if an individual stations a caravan on someone else's land and is a trespasser. The Court in *Chapman* observed that the compatibility of the decisions of the local planning authority refusing planning permission and taking enforcement action with Article 8 ECHR involved consideration of the legal and social context in which the action was taken. The Court recognised that the question of whether or not the home was established lawfully or unlawfully was highly relevant. The Court took into account the fact that there were procedural safeguards available in that case in the form of an appeal to independent planning inspectors. Mr Cottle submits that similar procedural safeguards must be made available if the Council's action here is not to breach Article 8 ECHR. He further submits that a challenge by way of judicial review to the enforcement notice would be precluded by section 285 of the 1990 Act. Consequently, he submits, section 174 of the 1990 Act must be interpreted to enable even a trespasser to appeal if she has a home on land and can establish a sufficient and continuous link with the land.
54. Mr Moffett, for the Defendant, submits that even if there is a need for a degree of procedural protection, that is in fact provided in this case by a claim for judicial review of the decision of the Council to issue an enforcement notice. A court considering such a claim is well able to assess the proportionality of actions of public bodies to ensure they comply with Convention rights and a court can, if necessary, adapt the judicial review procedure to ensure that adequate procedural safeguards are available: see *Manchester City Council v Pinnock* [2011] 2 A.C. 104 especially at paragraphs 73 to 76. Mr Moffett further submits that section 285 of the 1990 Act does not, in fact, preclude such a challenge. That section provides that the validity of an enforcement notice shall not be questioned in any proceedings on "any of the grounds on which such an appeal may be brought". Those are the grounds set out in section 174 of the 1990 Act itself. A challenge to the compatibility of the actions of the Council on the ground that the Council is acting in breach of section 6 HRA as it is not acting compatibly with a person's Convention rights is not one of the grounds upon which an appeal may be made. Therefore, submits Mr Moffett, this is one of the residual categories of cases, recognised in *Gazelle Properties Ltd. v Sustainable Environmental Services Ltd. v Bath and North East Somerset Council* [2011] JPL 702 where judicial review of an enforcement notice is still possible.
55. There is, in my judgement, considerable force in the submissions of Mr Moffett. It is, however, unnecessary and unwise to resolve that issue in this judgement. It is unnecessary as it may transpire that Mrs Flynn has an implied licence to occupy and may have a right of appeal in any event. Such a right would be sufficient to satisfy any procedural requirement that might need to exist in relation to the enforcement notice. It is only if the Defendant decides, lawfully, that Mrs Flynn is a trespasser that any question of compatibility with Article 8 ECHR arises. Furthermore, Mr Cottle's submission depends both on section 285 of the 1990 Act precluding judicial review in these circumstances and also it being possible, in accordance with the duty imposed by section 3 of the HRA, to read and give effect to section 174 in a way that is compatible with Article 8. The Claimants did not make submissions on how section 174 could be interpreted in that way and did not refer to the relevant case law on the proper role of the court in performing the duty imposed by section 3 HRA. In those circumstances, it would be unwise to express a concluded view on the constructions of sections 285 and 174 of the 1990 Act when it is not yet necessary to do so and in the absence of full argument.

Remedy

56. Finally, there is the question of the remedy to be granted as a result of the fact that the Defendant erred in failing to consider whether or not Mrs Flynn had an implied licence to occupy the land at the relevant times. Mr Moffett submitted that the role of the court was simply to review the decision of the Defendant, reached on the material put forward to the Secretary of State, to determine whether its decision that Mrs Flynn did not have a right of appeal was lawful, relying on the approach adopted in *R (Benham-Crosswell) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin. 146 at paragraph 19 and *R v Secretary of State for the Environment ex p. Davis* [1989] 3 P.L.R. 73 at page 80E-F.
57. Mr Cottle in his skeleton argument submitted that the question of whether or not a person had an interest in land or was a relevant occupier for the purposes of section 174 of the Act was a jurisdictional question which was, ultimately, for the court to determine. In oral submission, however, he indicated that his primary submission was that the decision of the 3 September 2012 should be quashed and the matter remitted to the Defendant to reconsider.
58. Even if an issue were jurisdictional, a court may still consider it appropriate for the body concerned to reach an initial conclusion and only then to entertain a challenge. In the present case, both parties consider that it is appropriate for the Defendant to consider first whether or not Mrs Flynn had an implied licence to occupy at the relevant times for the purposes of section 174 of the 1990 Act. The issues have only now been fully refined. There is only limited evidence before this court. There may be further material that Mrs Flynn wishes to ask the Defendant to consider and the Defendant may wish to initiate further inquiries. In all those circumstances, in my judgement, the appropriate order at this stage is to quash the decision of 3 September 2012 and allow the Defendant to consider whether or not Mrs Flynn had an implied licence to occupy land to which the enforcement notice related at the time when the enforcement notice was served and the appeal brought.

Conclusion

59. A person has a right to appeal against an enforcement notice under section 174 of the 1990 Act if he has an interest in land, that is, a legal or equitable interest, or is a relevant occupier. A person is a relevant occupier if he occupied the land at the time that the enforcement notice was issued by virtue of an express or implied licence and continues to do so when the appeal was brought. In the present case, the only person who sought to appeal against the enforcement notice was Mrs Flynn. The Defendant correctly concluded that she did not have an interest in land and did not have an express written or oral licence to occupy land to which the enforcement notice related. The Defendant erred, however, in failing to consider whether or not Mrs Flynn had an implied licence to occupy the land at the relevant times. In those circumstances, permission to apply for judicial review is granted and the decision of 3 September 2012 will be quashed.