
Appeal Decisions

Hearing held and site visit made on 25 October 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 November 2016

Appeal A Ref: APP/V3310/C/16/3144545

Land at OS Field No. 9682, Withy Lane, East Huntspill, Highbridge, TA9 3NW

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Jimmy Jones ("the Appellant") against an Enforcement Notice issued by Sedgemoor District Council ("the Council") on 27 January 2016.
- The Council's Enforcement Notice reference is E25/104A.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, change of use of the Land from an agricultural field to use of the Land for the retention of caravans for residential purposes.
- The requirements of the Enforcement Notice are: 1. Permanently cease the use of Land for the retention of caravans for residential purposes. 2. Remove all the caravans and associated amenity block from the Land. 3. Remove all hardstanding associated with the residential use of the Land (other than that permitted by planning permission 25/01/00004).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld with a correction and a variation as set out in the Formal Decision below.

Appeal B Ref: APP/V3310/W/16/3144546

Land at Withy Lane, East Huntspill, Highbridge, TA9 3NW

- The appeal is made under Section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by the Appellant against the decision of the Council.
- The application Ref 25/15/00023, dated 5 November 2015, was refused by notice dated 21 January 2016.
- The development proposed is the erection of two day rooms, siting of three mobile homes and two touring caravans and alterations to access for gypsy site.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions as set out in the Formal Decision below.

Procedural Matters – Appeal B

1. I will refer to the land to which the Enforcement Notice relates as Little Orchard (which is the name given to the land by the Appellant).
2. The Appellant submitted an amended "Proposed Layout Plan" (Drawing No. 1218/02A) ("the Amended Plan") which would site two mobile homes and two dayrooms at least 6m away from the drainage ditch ("the Ditch") which runs around the perimeter of Little Orchard. On this basis the Council, on the advice of the Somerset Drainage Boards Consortium, withdrew Reason for Refusal No.

- 1 as set out in the Refusal Notice dated 21 January 2016¹ ("the Refusal Notice").
3. The Amended Plan reduced the number of mobile homes from three to two.
 4. The red edging on the Location Plan submitted with the application did not reflect where the development as proposed on the Amended Plan would be carried out. An amended Location Plan was submitted by the Appellant and agreed by the Council. I have determined Appeal B on the basis of the Amended Plan and the amended Location Plan.
 5. The Environmental Agency objected to the proposed development for the reasons set out in their letter dated 17 December 2015². Officers from the Environmental Agency attended the Hearing. No further written evidence to support their case was submitted.
 6. Development in the form of the erection of buildings, sheds, fences and the laying of hardstandings all within 6m of the Ditch has been carried out at Little Orchard without the benefit of planning permission (where such permission is necessary).

Policy – Appeals A & B

7. The Development Plan for the area includes the Sedgemoor District Core Strategy 2006 to 2027 ("the Core Strategy"). The Core Strategy was adopted after the National Planning Policy Framework ("the NPPF") was published. I have also been referred to policies and advice in:
 - a) The NPPF.
 - b) The Technical Guidance to the NPPF ("the Technical Guidance").
 - c) The Planning Practice Guidance.
 - d) Planning Policy for Traveller Sites ("PPTS").
8. I handed out a document entitled, "Policy Referred to During the Appeal"³ to those who attended the Hearing which details those parts of the documents referred to above which I had been specifically referred to. No other policies or national advice was advanced by any participants at the Hearing.

Background Matters and other Issues Agreed at the Hearing

9. The Appellant and other members of his family reside at Little Orchard. I will refer to them jointly as "the Site Occupiers".
10. The following matters were agreed at the Hearing, namely that:
 - a) The proposed caravan site use at Little Orchard complies with the criteria specified in Core Strategy Policy D8 (Gypsies, Travellers and Travelling Show People).
 - b) The Council does not have a five year supply of pitches for gypsies and travellers.

¹ Document 5

² Document 6

³ Document 4

- c) There are no known alternative pitches that the Site Occupiers could relocate to if they had to vacate Little Orchard.
- d) Little Orchard is within Flood Zone 3a.

Reasons – Appeal B

The Flooding Issue – Will the gypsy caravan site use of Little Orchard be safe for its lifetime?

11. The Core Strategy (which has had regard to the NPPF and the Technical Guidance) explains that:

- a) All development will take into account flood risk and vulnerability and be located at lower risk wherever possible. Where it is sequentially demonstrated that this is not possible, the benefits of the development will need to outweigh the flood risk and be safe for its lifetime taking into account long-term flood defence strategies.
- b) Much of the Council's administrative area is at significant risk of flooding.
- c) In respect of the Sequential Test the area of search for alternative sites could be the whole of the District.
- d) In terms of assessing alternative sites, these need to be able to accommodate the requirements of the proposed development and be deliverable (considered to be available at the time of consideration and with a reasonable prospect of implementation within five years).
- e) All development proposals in Flood Zone 3 will only be permitted where the Sequential Test is passed. In undertaking the Sequential Test it is the responsibility of the applicants to demonstrate that there are no reasonably available alternative sites with a lower flood risk within a defined area of search where the proposed development could be sited. For the purposes of the Sequential Test, reasonably available alternative sites are those that are within the relevant area of search, can accommodate the requirements of the proposed development and are deliverable.

Are there any gypsy caravan sites in the District that are in a lower flood risk area?

12. There are no gypsy caravan sites in the District that are available to the Site Occupiers. I was advised that the Appellant has carried out a search of his own for a suitable alternative site and has been unable to identify any such site. This evidence was not challenged. Accordingly, I am satisfied that the Sequential Test has been successfully demonstrated in this case.

What are the benefits of the gypsy caravan site use at Little Orchard?

13. The benefits of the gypsy caravan site use at Little Orchard are that:

- a) The use would provide a lawful home for the Site Occupiers. The Site Occupiers do not have any other site to which they could relocate.
- b) Two of the Site Occupiers are pregnant and are due to give birth in the early part of 2017. It is clearly preferable and in the best interests of those children that they have a site on which they can lawfully reside and are not forced to live on unauthorised sites or on the roadside.

- c) In the longer term it is anticipated that the Appellant's grandchildren will be able to receive an education at local schools. It is in the best interests of those children that they receive an appropriate education.
- d) The Appellant and one of his sons have serious health issues which are documented in paragraphs 53 and 54 of Dr. Murdoch's Statement of Case and in letters from the NHS (Somerset Lung Centre)⁴. In addition the Appellant gave evidence as to his wife's medical wellbeing. I am satisfied that living at Little Orchard would allow those Site Occupiers in need of regular medical care and assistance to receive that from the appropriate medical authorities.

What is the risk of flooding at Little Orchard?

- 14. There is no historical evidence before me that Little Orchard has flooded.
- 15. The use of Little Orchard as a gypsy caravan site is a highly vulnerable use within Flood Zone 3a as defined by the Level 1 Strategic Flood Risk Assessment.
- 16. The Appellant has looked at the various sources of flooding. The only risk of flooding which was identified was from sea or tidal flooding. The risk of flooding from all other sources was considered to be low. There was no evidence before me to suggest that this assessment was incorrect.
- 17. The evidence before me is that Little Orchard is adequately defended by existing defences and if those defences are retained and maintained no flooding at Little Orchard would occur. If there were no defences in place Little Orchard would flood.
- 18. Little Orchard and the surrounding area is defended from tidal inundation by defences including those along the banks of the River Perrett and the River Brue. The general long term policy as set out in the Somerset Shoreline Management Plan ("the Management Plan") is to "hold the line".
- 19. The evidence before me is that risk of flooding to Little Orchard from the sea is low.
- 20. The Appellant has also considered the effect of climate change on flooding at Little Orchard. It is clear that rising sea levels would reduce the level of protection provided by the existing sea defences. However, as explained above, the Management Plan for these defences is to "hold the line" until at least until 2115. Accordingly, the defences will be improved to maintain the current level of defence and it is highly likely in my view that the defences will be maintained over the lifetime of the use of Little Orchard as a gypsy caravan site.
- 21. It is clear from my site visit and from all the other evidence before me that there are no sequentially preferable locations within Little Orchard where the mobile homes could be sited to reduce flooding risks. Further, there is no evidence before me to suggest that the gypsy caravan site use of Little Orchard does, or will, increase the risk of flooding elsewhere.

What would happen if the defences failed?

⁴ Documents 1 & 2

22. Part of the railway line between Highbridge and Bridgwater which is close to Little Orchard is built on a raised embankment. Similarly, that part of the M5 motorway near Little Orchard is built on raised land. Whilst neither of these features is in a true sense a barrier to floodwaters they would significantly impede the inland spread of flood water. The Appellant's evidence is that if the defences failed and taking a precautionary approach, the depth of flooding at Little Orchard would be about 30 centimetres above the existing ground level. Officers of the Environmental Agency suggested that it might reach 50 centimetres above ground level.
23. The Appellant is agreeable to raising the floor levels of the mobile homes to 90 centimetres above ground level. If he were to do that the mobile homes would not be inundated by flood waters and the velocity of flood water would be unlikely to damage the hardstanding on which the mobile homes would be sited.
24. The Appellant is also willing to subscribe to the Environmental Agency's Flood Warning service. Due to the ability to forecast weather conditions it is highly likely that any breaches of the sea defences will be predicted well in advance of flood water reaching Little Orchard. I am of the view that the Site Occupiers would have sufficient time to arrange for a safe evacuation from Little Orchard. Further, the Site Occupiers have access to touring caravans which would provide them with somewhere to stay until such time as the flood waters receded.
25. I therefore conclude, that subject to conditions, the gypsy caravan site use of Little Orchard would:
 - a) Be safe for the Site Occupiers and for its lifetime.
 - b) Not be contrary to the relevant parts of the Core Strategy.
26. I am aware that the current advice in PPTS postdates the adoption of the Core Strategy. I note the advice in paragraph 13(g) but for the reasons explained above I do not consider that Little Orchard is in at a high risk of flooding. I acknowledge that there is a residual risk but I am of the view that this risk is acceptable given the lack of alternative sites to which the Site Occupiers could go to.

Other Matters – Appeal B

27. I asked the Appellant about the matters raised by interested parties at the application and appeal stages. My findings on the evidence that is before me is that:
 - a) The Appellant did not remove any trees or shrubs to facilitate access to Little Orchard other than those which belonged to him.
 - b) The generator used prior to the installation of mains electricity is no longer used and there is no continuing noise nuisance from that source.
 - c) The Appellant's ponies did escape from Little Orchard into a neighbouring field. However, the hole in the hedge through which the ponies escaped is now blocked-up. The Appellant informed me that he spoke to the owner of the neighbouring field and no problems arose from the escape incident referred to.

- d) It is highly unlikely that human noise arising from the residential occupation of Little Orchard results in unacceptable living conditions for neighbouring occupiers due to the separation distance between Little Orchard and the nearby residential houses.
- e) The issue of noise nuisance from the barking from dogs which live at Little Orchard can be addressed, if there are on-going problems, through other legislation.
- f) There is no unacceptable level of overlooking from neighbouring properties resulting in loss of privacy due to the distance between Little Orchard and those properties and the height of the hedgerows which are growing around the perimeter of the Little Orchard.
- g) The Site Occupiers occupied Little Orchard without the benefit of planning permission. I do not condone such acts but the Appellant explained that there was no lawful place where they could stay.

28. Finally, while I note local concerns as to the impact of the gypsy caravan site use on property values it is a long established principle of planning that in respect of private interests that the basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposed use would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest. This is the approach that I have adopted in these appeals.

Conditions – Appeal B

29. It is not necessary, in my assessment, to impose a condition:

- a) Regarding the position of gates as the Amended Plan clearly shows that the proposed gates to Pitches 1 and 2 are more than 9.4m from the nearside edge of the carriageway along Withy Road.
- b) Requiring the surface of the access off Withy Road to be sealed and bound because the Amended Plan shows the access as being tarmacked and that Amended Plan has to be adhered to.
- c) Requiring registration with the Environmental Agency's Floodline Warnings Direct Service or to evacuate Little Orchard within a specified timescale. The Site Occupiers will be fully aware of the Floodline Warnings Direct Service and the need to evacuate Little Orchard if it is going to flood. It is in their best interests to register with that Service and to evacuate Little Orchard if flooding is going to occur but I do not consider that it is necessary or reasonable to impose a planning condition requiring that to be done.

30. I have imposed planning conditions requiring:

- a) Foul and surface water disposal schemes to be agreed so as to limit flooding from surface water and pollution from foul water.
- b) That the development be carried out in accordance with the approved plans. This is required in the interests of proper planning for the area.

- c) That Little Orchard is only occupied by gypsies or travellers as the need for to use Little Orchard for this use is generated by the lack of provision for gypsies and travellers generally within the District.
- d) That no commercial or business uses be carried out at Little Orchard as these uses could be harmful to the open countryside location within which Little Orchard is situated.
- e) That the numbers of caravans are limited to that applied for so as to protect the open countryside location from unacceptable development.
- f) That the agreed visibility splays are maintained in the interests of highway safety.
- g) That the floor levels of the mobile homes are sited 0.9 of a metre above the existing ground level. This would ensure that the mobile homes do not flood or float.

Conclusion on Appeal B

31. For the reasons given above I conclude that Appeal B should be allowed.

Formal Decision – Appeal B

32. The appeal is allowed and planning permission is granted for the erection of two day rooms, siting of two mobile homes and two touring caravans and alterations to the access for a gypsy site at Little Orchard, Withy Lane, East Huntspill, Highbridge, TA9 3NW in accordance with the terms of the application, Ref 25/15/00023, dated 5 November 2015, subject to the following conditions:
- 1) The development hereby approved shall not commence until foul and surface water disposal schemes have been submitted to the Local Planning Authority and approved in writing (“the Approved Schemes”). The Approved Schemes shall be implemented prior to the occupation of either of the mobile homes hereby approved and shall be retained thereafter unless otherwise approved in writing by the Local Planning Authority.
 - 2) The development hereby permitted shall be carried out in complete accordance with the details shown on the following approved plans: a) Proposed Site Layout Drawing No. 1218/02A. b) Site Location Plan – 001 – November 2016. c) Proposed Dayroom Plan and Elevations – Drawing No. 425/10.
 - 3) The development hereby approved shall be completed within nine months of the date of the Appeal Decision unless otherwise agreed in writing by the Local Planning Authority.
 - 4) Little Orchard shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
 - 5) No commercial or business uses shall take place on the land at Little Orchard unless otherwise approved in writing by the Local Planning Authority.
 - 6) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of

which no more than two shall be static caravans or mobile homes) shall be stationed on the site at Little Orchard at any time.

- 7) The visibility splays (2.4m x 85m) identified on Drawing No. JPH1 shall be retained whilst Little Orchard is used as a gypsy or traveller caravan site.
33. The floor level of the mobile homes hereby approved shall be 0.9 of a metre higher than the ground level shown on the Site Survey plan (Drawing No. 157 dated 7 October 2015) in the position where the mobile homes are sited and shall be retained at that height thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reasons – Appeal A – Ground (a)

Procedural Matter

34. There is a small typographical error in the numbering of the requirements in Part 5 of the Enforcement Notice i.e. the numbering is shown as 1, 2, and 2 whereas it should be 1, 2, and 3. I intend to correct the numbering. No injustice arises from this minor correction.

My Comments on Appeal A

35. I have explained why Appeal B is successful. The Appellant explained at the Hearing that he wished to implement the Appeal B proposal.
36. Appeal A seeks planning permission to retain the mobile home and caravans stationed at Little Orchard in positions that are materially different from that shown on the Amended Plan.
37. Further, the Enforcement Notice requires an amenity building to be removed and the Ground (a) appeal implicitly seeks planning permission for its retention. The amenity building is built within six metres of the Ditch. The Appellant now accepts that a 6 metre margin should be kept clear of development so that the Ditch can be readily accessed and maintained as necessary.
38. Further, the Enforcement Notice requires hardstanding associated with the residential use to be removed. I noted at the site visit that areas of hardstanding had been laid on areas of land shown as “grass” on the Amended Plan. Even in those areas where hardstanding is indicated on the Amended Plan it is identified as being made of stone. This is important in terms of allowing surface water to drain. Some of the hardstanding which has been laid at Little Orchard and is clearly impermeable. This raises concerns for me relating to surface water drainage.
39. On the areas of hardstanding which would be “grass” if the Amended Plan is implemented currently:
- a) Stand sheds, buildings and caravans.
 - b) Have private cars parked on.

I consider that it is important that the Enforcement Notice is complied with. The retention of the unauthorised areas of hardstanding and the amenity building fails to comply with Core Strategy policies which seek to take account of flood risk.

40. No injustice for the Site Occupiers arises from upholding the Enforcement Notice because they now have the benefit of planning permission for the continued residential use of part of Little Orchard and planning permission for the dayrooms subject to those works being carried out in accordance with the Amended Plan and the planning conditions imposed in relation to that permission.
41. I am aware that other buildings have been erected at Little Orchard that are not the subject of the Enforcement Notice nor is planning permission for their retention sought through Appeal B. It remains open to the Appellant to either remove those buildings or to seek retrospective planning permission for them. Failure to do so may result in the Council having to make a decision as to whether it is expedient to take further enforcement action against them.

The Ground (g) Appeal

42. The thrust of the Appellant's argument on this ground was that he needed 24 months to find an alternative site for the Site Occupiers. Clearly that no longer applies given the planning permission granted pursuant to Appeal B. The Appellant explained at the Hearing that he needed a period of 9 months in which to implement the scheme identified on the Amended Plan. I therefore intend to vary the period for compliance with the Enforcement Notice to 9 months. Accordingly, it is anticipated that at the end of 9-months from these Appeal Decisions the only development at Little Orchard will be that shown on the Amended Plan or any subsequent planning permission.
43. If the Appellant encounters any unforeseen problems in complying with this timescale then he should approach the Council and fully explain what additional time he may require. The Council have powers under the 1990 Act to extend the compliance period.

Conclusions on Appeal A

44. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with the correction and variation explained above and refuse to grant planning permission on the deemed application.

Formal Decision – Appeal A

45. It is directed that the Enforcement Notice be:
- a) corrected by deleting the figure "2" which appears before the words "Remove all hardstanding ..." and substituting the figure "3" in Part 5; and
 - b) varied by deleting the figure and word "6 months" and substituting the figure and word "9 months" in Part 6.

Subject to this correction and variation the appeal is dismissed and the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Dr Angus Murdoch BA(Hons), MSc, MA, PhD, MRTPI	Murdoch Planning Limited
Ian Walton BSc(Hons), MSc, Dip Imperial College, MICE, CEng	Technical Director - SLR Consulting Ltd
Jimmy Jones	The Appellant

FOR SEDGEMOOR DISTRICT COUNCIL

Colin Arnold BA(Hons), DipTP	Senior Planning Officer
Jo Storey	Planning – Enforcement
Mark Willitts	Environmental Agency Officer
Sam Archer	Environmental Agency Officer
Nick Stevens	Axe Brue Drainage board

INTERESTED PERSONS

Heather Dixon	East Huntspill Parish Council
Emma Stradling	Local Resident

DOCUMENTS

Document 1	–	Letter from NHS Somerset Lung Centre dated 23 March 2016.
Document 2	–	Letter from NHS Somerset Lung Centre dated 17 October 2016.
Document 3	–	Statement of Common Ground – Highway Matters.
Document 4	–	“Policy Referred to During the Appeal”.
Document 5	–	Refusal of Planning Permission dated 21 January 2016 (Council Reference 25/15/00023).
Document 6	–	Letter from the Environmental Agency to the Council dated 17 December 2015.