



## Appeal Decisions

Hearing Held on 7 August 2018

Site visit made on 7 August 2018

**by Mr K L Williams BA, MA, MRTPI**

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

**Decision date: 28 August 2018**

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### **Appeal A: APP/K3415/W/17/3181654**

**Land on south side of Gravelly Lane, Stonnall, Walsall, Staffordshire, WS9 9HL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lee Rogers against the decision of Lichfield District Council.
- The application ref: 17/00513/COU, dated 12 April 2017, was refused by notice dated 27 June 2017.
- The development proposed is the change of use of the land to use as a residential gypsy caravan site including the stationing of 6 caravans and the erection of a day room.

**Summary of Decision: The appeal succeeds and planning permission is granted in the terms set out in the Formal Decision.**

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### **Appeal B: APP/K3415/C/17/3181628**

**Land west of Oak Street Farm, Gravelly Lane, Stonnall, Staffordshire, WS9 9HL**

- 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 appeal is made by Mr Lee Rogers against an enforcement notice issued by Lichfield District Council.
- The enforcement notice, ref: 17/00071/ENFCU, was issued on 5 July 2017.
- The breach of planning control as alleged in the notice is the change of use of the land to a residential gypsy caravan site including the formation of a hardstanding and the stationing and residential occupation of 3 caravans on the land.
- The requirements of the notice are to:
  1. Cease the residential use and permanently remove all caravans from the land shown edged red on the plan attached to the notice.
  2. Grub up the hardstanding from the space in the approximate location cross hatched on the plan attached to the notice and permanently remove the resulting material from the land outlined in red on the plan attached to the notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be determined.

**Summary of Decision: The appeal succeeds. The enforcement notice is corrected and quashed. Planning permission is granted in the terms set out in the Formal Decision.**

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## **Preliminary Matters**

1. When the notice was issued 3 caravans were in place near the site entrance. They are no longer there but caravans are now in place within the site area of planning application 17/00513/COU. Notwithstanding the descriptions in the planning application and the enforcement notice the development in both appeals is a material change of use of the land to the stationing of residential caravans. The number of caravans and their occupation are matters for planning condition. For precision, requirement 1 of the notice should refer to the use of the land for the stationing of residential caravans. Requirement 2 should refer to the hatched area rather than the cross-hatched area on the enforcement notice plan. The Council and the appellant agree that a small area of pre-existing hardstanding near the site entrance should be excluded from requirement 2. These matters are addressed in the Formal Decisions. The correction of the notice to deal with these matters does not cause injustice to the main parties.
2. During the site visit the Council requested that the notice's requirements should be extended to include the removal of hardstanding from part of the site adjacent to the eastern boundary, on which caravans now stand. This would make the requirements more onerous. Had the notice as issued included such a requirement it is possible that the appellant would have produced additional evidence on that matter or appealed on other grounds. To vary the notice in this manner would result in injustice to the appellant. It will therefore not be varied as the Council requests.
3. I have assessed both appeals on the basis of the number of caravans and related development sought by the appellant. The site area in Appeal A is shown on the submitted site plan. It is more limited in extent than the area shown on the enforcement notice plan, which covers all the land in the appellant's ownership.

## **Background**

4. The appeal site is to the south of Gravelly Lane. It is in the countryside and outside Stonnall village, although within the area of the Stonnall Neighbourhood Plan 2014-29, 2016 (NP) The site area for Appeal A includes the existing, gated site access. Further into the site and adjacent to the eastern site boundary is a broadly rectangular area. On this area the site layout plan shows 2 mobile homes, 4 touring caravans and a small amenity building. Post and rail fencing is shown on the boundaries of that area, together with tree and hedge planting. The site area in Appeal B also includes land shown as paddocks on the submitted site layout plan.
5. The site would be occupied by 3 Romany Gypsy families. They include Lee and Nana Rogers and their 1 year old child. A further child is expected. The other families are Billy Dean Lee and Scarlet Rogers and John and Tiffany Rogers. The Council does not dispute that they fall within the definition of gypsies and travellers in Annex 1 of Planning Policies for Gypsies and Travellers, 2015 (PPTS). On the basis of the evidence before me I take the same view.
6. In August 2015 planning permission 15/00488/FUL was granted on the Appeal B land for a change of use for the keeping of horses; construction of a stable block comprising 4 stables, store, tack room, WC, creation of menage (*sic*) and associated works. The stables would be close to the site entrance but they have

not been built. The appellant contends that the development has nevertheless been commenced because works consistent with the permission have been implemented. They comprise the installation of a cess pit and the laying of material in preparation for hardstanding. Condition no.4 of the 2015 planning permission requires that "*Before development hereby approved is commenced, full details of the finished floor levels of the stable block, including its relationship to existing ground levels, shall be submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be undertaken in accordance with these approved details unless otherwise agreed in writing by the Local Planning Authority.*" Those details were not submitted before the above works were carried out. The stable block is a principal component of development approved in 2015. Its finished floor level is not a minor detail but is fundamental to its overall appearance and to its relationship with the surrounding land. In that context condition no.4 is one which goes to the heart of the development and the works carried out have not had the effect of implementing the 2015 permission.

### **Appeal A, Ground (a) of Appeal B and the Deemed Planning Application**

#### *Main Issues*

7. It is not disputed that this would be inappropriate development in the Green Belt. On that basis the main issues are:
  - i) The effect on Green Belt openness and purposes;
  - ii) The effect on the character and appearance of the area;
  - iii) Accessibility to services and facilities;
  - iv) The effect on highway safety;
  - v) The need for sites for gypsies and travellers, the provision of sites and the availability of alternative sites;
  - vi) Personal circumstances, human rights and the best interests of children;
  - vii) The overall balance and whether the harm from inappropriateness and any other harm would be clearly outweighed by other considerations. If so, whether this would amount to very special circumstances which would justify the proposal.

#### *The effect on Green Belt openness and purposes*

8. There are various buildings and structures on land which is adjacent to the appeal site and forms part of a farm. Nevertheless the appeal site and much of the surrounding area is predominantly open in character. The proposed hardstanding would have little effect on openness. However, the presence on the land of the mobile homes, touring caravans, an amenity building, fencing and related vehicles and domestic items would significantly reduce openness. There would also be a conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. The extent of these Green Belt harms would be limited to a degree by the modest extent of the land on which caravans would be stationed and the very limited public viewpoints from which these effects can be appreciated.

9. Policy NR2 of the Lichfield District Local Plan Strategy 2008-2029, 2015 (LP) deals with the Green Belt. The development conflicts with that policy's requirement that the character and openness of the Green Belt must be retained. That element of the policy is not consistent with the approach of the National Planning Policy Framework, 2018 (The Framework). It does not seek to retain Green Belt character as such. I give moderate weight to the conflict with Policy NR2.

*The effect on the character and appearance of the area*

10. Notwithstanding the development on the adjacent land, the area surrounding the site is characterised by generally open, undulating land, much of it in agricultural use. This part of Gravelly Lane is bounded by mature deciduous hedgerows, with some hedgerow trees. Although the site falls within the area covered by the NP, it is outside the village of Stonnall. The caravans, day room and living area would occupy quite a small area. They would be set well back from the site entrance. There would be views of the caravans from near the site entrance when the gates were open but they would not be unduly prominent features. There is no other nearby public viewpoint of the site. There would be some effect on the roadside hedgerow and hedgerow trees if they were cut back to enhance visibility for drivers at the site entrance, although their removal is unlikely to be required.
11. The development would result in moderate harm to the character and appearance of the area. That harm could be mitigated to some extent by tree and hedge planting, which could be secured by planning condition. The use of post and rail fencing would also be appropriate. It is not necessary for gypsy and traveller sites to be hidden from view but this planting would go some way to integrating the development into its surroundings. PPTS envisages that some gypsy and traveller sites will be in rural areas, so that a degree of harm to local character and appearance is not unusual. Having regard to the limited scale of the development, its siting and visual separation from the village the development would not infringe NP policy H4. It seeks to protect the character and setting of the village.

*Accessibility to services and facilities*

12. LP policy H3 seeks to locate gypsy and traveller sites within or adjacent to Lichfield, Burntwood or a Key Rural Settlement or close to the A5 or A38 corridors. This site does not meet that criterion. There is a limited bus service through Stonnall and walking or cycling would not be precluded. Nevertheless, it is likely that most journeys made by those living on the site would be made by private vehicle. On the other hand, the site is reasonably close to Stonnall, which the NP describes as having a good range of facilities for its size. It is also within about a mile of Aldridge, where a wide range of services and facilities is available. Framework paragraph 103 explains that opportunities to maximise sustainable transport opportunities will vary between urban and rural areas. I find that the development is acceptable with regard to accessibility to services and facilities. PPTS paragraph 25 requires strict control of traveller sites that are in open countryside that is away from existing settlements. Having regard to its proximity to Stonnall village, this site is not one that is away from settlements.

*The effect on highway safety*

13. The site residents would rely on the existing 7.6m wide access onto Gravelly Lane. Although forward visibility on this part of Gravelly Lane is reasonably adequate, visibility for the drivers of vehicles leaving the site is restricted in both directions. This is mainly as a result of roadside vegetation. There is also a crest in the road about 55 m to the west of the site access. There is scope for some cutting back of vegetation, either on land in the appellant's control or within the highway verge. This would improve visibility but only to a limited extent. The national speed limit of 60mph applies on this part of Gravelly Lane. Actual average speeds are likely to be significantly lower as a result of the narrow width of the road, which has hedgerows close to the carriageway and only informal passing places. This part of Gravelly Lane is said to be lightly trafficked. While I find that to be credible, no survey of traffic speeds or volumes is submitted.
14. The occupation of the site by 3 families would not generate a large number of vehicle trips. Some of those movements would include caravans but the appellant explains that these are occasional and the residential caravans usually remain on site. The residential caravan use would not preclude the development of the stables and manege, although that is uncertain. If the stables and manege were built their use would generate some additional use of the access but would not involve a large number of vehicle movements.
15. The entrance to Oak Tree Farm is about 60 m to the east of the site access. There are no recorded accidents in the vicinity of the appeal site. Significant levels of traffic movements occur at the junctions of Gravelly Lane with Church Lane and with Chester Road. There is local concern about the risk of accidents at these junctions. However, they are some distance to the west of the appeal site. Traffic generated by the proposed development would not add significantly to the levels of traffic movements or the risk of accidents at those junctions.
16. Amongst the criteria in LP policy H3 is the provision of safe access. Framework paragraph 109 explains that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety. Having regard to the limited number of likely traffic movements, the character of Gravelly Lane and the extent to which visibility for drivers at the site access could be improved I conclude that there would be a modest degree of harm to highway safety in this case.

*The need for sites for gypsies and travellers, the provision of sites and the availability of alternative sites*

17. The aims of PPTS include increasing the number of sites permitted in appropriate locations to address under provision, maintaining an appropriate level of supply and promoting private traveller site provision.
18. The Council acknowledges that it does not have sufficient allocated land for traveller sites and is unable to identify a 5 year supply of deliverable sites. Nor has the Council been able to allocate sufficient sites over a long period. The Local Plan Allocations Methodology Paper: Gypsy and Traveller Sites, 2016 is intended to inform local plan preparation. It is based on a Gypsy and Traveller Accommodation Assessment (GTAA) which was published in 2007. The GTAA estimated a need for 14 residential pitches in the period up to 2026. Planning

permissions have since been granted for 7 permanent pitches, leaving an outstanding unmet need of 7 pitches.

19. The Methodology Paper assessed 95 sites, with a detailed appraisal of 21 sites. Only one site is proposed for allocation. It would provide only 1 additional pitch. It would be within the boundaries of an existing site at Bonehill Road, Mile Oak, a site which is also in the Green Belt. Other than that pitch, the Council has no firm plans to allocated further traveller sites. Following adoption of the Local Plan Allocations Document, which is to be examined later this year, it intends to carry out an early review of the Local Plan, including reviewing the need for further gypsy and traveller site allocations. The Council anticipates adoption of a reviewed local plan during 2020.
20. The 3 families who would occupy the site have a personal need for a settled site to enable access to health, education and other services and provide a stable base from which travelling for work can be undertaken. No suitable alternative site which would be available to these families has been identified. At the Hearing the appellant referred to 4 other sites which he says are full. Letters from the operators of 3 caravan sites are submitted and they confirm that no pitches are available on those sites. A roadside existence would be likely if the families are required to leave this site.
21. I conclude on this issue that a robust and up to date assessment of the need for gypsy and traveller sites is not in place. On the basis of the information available there is an unmet need for sites for gypsies and travellers in the area. This development would go some way to meeting that need. There is also the personal need for a settled site and there is no evidence of any suitable alternative site being available. Other than the single pitch at Bonehill Road, Mile Oak further allocations are unlikely until at least 2020. The failure of the Council to put in place effective policies for delivering adequate provision of sites over a long period also carries weight in the appellants' favour.

*Personal circumstances, human rights and the best interests of children*

22. One of those living on the site has significant medical conditions and relies on easy access to a local health centre for effective ongoing treatment. If these appeals fail it is likely that the families would have to leave the appeal site. This would result in an interference with their human rights with regard to Article 8 of the European Convention on Human Rights. It encompasses respect for family life and the home. It is consistent with relevant caselaw that the best interests of children should be a primary consideration in my decision, although not necessarily the determining factor. The best interests of the child living on the site and those of the expected child are to remain on this site and for it to be developed as proposed. An ordered and settled site would afford them the best opportunity of a stable, secure and happy family life, opportunities for education, ready access to health and other services and opportunities for play and personal development. While similar benefits might be achieved on another settled site, no suitable alternative sites have been identified. A roadside existence does not preclude all access to education and health services. Nevertheless, it is likely that the prolonged absence of a settled site would lead to serious disruption to access to education, health and other services for these children. These matters weigh in the appellant's favour.

### *Other matters*

23. The appeal site does not make use of previously developed land. On the other hand, the limited scale of the development would not dominate the local community or put undue pressure on local services or facilities. If planning permission was granted it would reflect the particular circumstances of this case rather than creating an unacceptable precedent. The appellant says that a cess pit was installed in preparation for development of the stables. Details of foul and surface water drainage can, in any case, be required by condition. The development was unauthorised, with the related risk of enforcement action. However, these appeals remain to be determined with regard to relevant planning policies and other material considerations.

### *The Overall Balance*

24. In accordance with the Framework I give substantial weight to the harm to the Green Belt. It includes harm through inappropriateness, to Green Belt openness and to the Green Belt purpose of assisting in safeguarding the countryside from encroachment. I give moderate weight to the harm to character and appearance and to the harm to highway safety.
25. PPTS paragraph 17 explains that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. In this case the best interests of the child living on the site and of the expected child do fall to be considered. They are a primary consideration in my decision and are worthy of substantial weight in favour of the development. The unmet need for sites in the area weighs heavily in the appellant's favour and personal circumstances are worthy of moderate weight. There are other matters which together also weigh substantially in the appellant's favour. They include the lack of alternative sites, the effect on human rights if these appeals fail, the Council's failure to allocate sufficient sites over a long period, adequate accessibility from the site to local services and facilities and the likely harmful effects of a roadside existence if these families are required to leave the appeal site.
26. Having regard to the above and to all other matters raised my overall conclusion is that the harm to the Green Belt and the other harm which would result from this development would be clearly outweighed by other considerations. Taking into account in particular the best interests of the children in this case I find that there are very special circumstances which would justify the granting of planning permission in both appeals subject to appropriate conditions.

### **Conditions**

27. The development has commenced so that conditions should be in the retrospective form where appropriate. My decision relies in part on the best interests of the children living on the site and on personal circumstances. A personal condition is therefore required. To protect the character and appearance of the area and residential amenity conditions should also address the number of pitches and caravans, site layout and related matters, compliance with submitted plans, external lighting, vehicle type, commercial uses, landscaping, site restoration, surfacing near the entrance and the storage of waste and recyclables. To protect the environment a condition on foul and

surface water drainage is also needed. In the interests of highway safety details of improvements to visibility at the site entrance should also be required.

### **Overall Conclusions**

28. Having regard to the above and to all other matters raised Appeal A should succeed and planning permission should be granted subject to conditions. Appeal B should succeed on ground (a). The enforcement notice should be corrected and quashed and planning permission should be granted on the deemed planning application subject to conditions. Considerations of grounds (f) and (g) of Appeal B is therefore not required.

### **Formal Decisions**

#### **Appeal A: APP/K3415/W/17/3181654**

29. The appeal is allowed and planning permission is granted for the material change of use of the land to the stationing of caravans for residential use and the erection of a day room on land on the south side of Gravelly Lane, Stonnall, Walsall, Staffordshire, WS9 9HL in accordance with the terms of the application ref: 17/00513/COU and the drawings submitted therewith and subject to the conditions set out in the Schedule attached to this decision.

#### **Appeal B: APP/K3415/C/17/3181628**

30. It is directed that the notice be corrected as follows:

- i) By the replacement of the words at paragraph 5(i) with the words: "Cease the use of the land for the stationing of residential caravans and permanently remove all caravans from the land shown edged black on the attached plan."
- ii) At paragraph 5(ii) by the replacement of the word "cross hatched" with the word "hatched".
- iii) By the replacement of the plan attached to the notice with the plan attached to this decision.

31. The appeal is allowed. The enforcement notice is corrected and quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the material change of use of the land to the stationing of caravans for residential use and the formation of hardstanding on land west of Oak Street Farm, Gravelly Lane, Stonnall, Staffordshire, WS9 9HL subject to the conditions set out in the Schedule attached to this decision.

*K Williams*

INSPECTOR



## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr P Brown BA (Hons), MRTPI	Planning Consultant.
Mr L Rogers	Appellant.
Mr L Rogers Senior	Appellant's father.
Mr J Rogers	Site resident.
Mrs N Rogers	Site resident.

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr A Baldwin	Spatial Policy and Delivery Manager, Litchfield District Council.
Mr P Gittins	Principal Planning Officer, Litchfield District Council.
Mr M Evans	Project Engineer, Staffordshire County Council.

### **INTERESTED PERSONS:**

Councillor D S Smith	County Council ward member.
Councillor D Thompson	Chairman of Shenstone Parish Council Planning and Property Committee.
Mr Trawford	Local Resident.

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copy of Site Layout Plan.
2. Traffic Counts C210 Church Road Stonnall.
3. Proposal 3: Church Road Gravelly Lane Junction, with attached photographs.
4. Copy of Shenstone Parish Council representations.
5. Stonnall Neighbourhood Plan 2014-2029.
6. Walsall Wood Health Centre letter, 17 July 2018 .
7. Walsall Wood Health Centre letter, 6 August 2018.
8. Three letters of support for the appellant.
9. Letters from the owners of three caravan sites.
10. Plan agreed by the Council and the appellant.

## **SCHEDULE OF CONDITIONS**

- 1) The use hereby permitted shall be limited to 3 pitches. On 2 of the pitches no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed at any time on each of them and no more than 1 caravan on each of those pitches shall be a static caravan. On the other pitch no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed at any time and neither of those caravans shall be a static caravan.
- 2) The use hereby permitted shall be carried on only by the following persons: Mr Lee Rogers and Mrs Nana Rogers and their resident dependents; Mr Billy Dean Lee and Ms Scarlett Rogers and their resident dependents and Mr John Rogers and Ms Tiffany Rogers and their resident dependents.
- 3) When the premises cease to be occupied by those named in condition no.2 the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the land in connection with the use shall be removed and the land restored to its condition before the development was carried out.
- 4) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites, 2015.
- 5) The proposed amenity building shall be built in accordance with the submitted drawing entitled Proposed Utility/Day Room and in accordance with details of external materials to be submitted to and approved in writing by the Local Planning Authority before its construction commences.
- 6) No more than 3 commercial vehicles shall be kept on the land. Those vehicles shall be for use by the occupiers of the site and shall not exceed 3.5 tonne in weight.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of that use shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
  - i) Within 3 months of the date of this decision, or such other period as the Local Planning Authority may agree in writing, a scheme shall be submitted in writing to the Local Planning Authority for its written approval. The scheme shall include details of the following: the internal layout of the site, which shall accord with the submitted 1:500 Site Layout Plan, areas of hardstanding, vehicle parking, fencing, gates, walls and other means of enclosure; the provision and retention of visibility splays at the site entrance, provision and retention of a bound surface material within 5 metres of the carriageway edge, external lighting on the site boundaries and within the site; the means of foul and surface and surface water drainage of the site; tree hedge and shrub planting (including plant species, plant sizes, number, density, seeding or turfing and measures for replacing plants which die, are removed or become diseased); provision for the

storage of waste and recyclables, measures for the restoration of the site to its condition before the development took place should the use hereby approved cease and a timetable for the implementation and retention of each element of the scheme.

- ii) Within 11 months of the date of this decision, the scheme referred to above shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.
- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been finally approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the approved scheme shall thereafter apply.



## Plan

This is the plan referred to in my decision dated: 28 August 2018

**by Mr K L Williams BA, MA, MRTPI**

**Land West of Oak Street Farm, Gravelly Lane, Stonnall, Staffordshire, WS9 9HL**

**Reference: APP/K3415/C/17/3181628**

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