



Appeal Decisions

Hearing Held on 2 July 2019

Site visit made on 2 July 2019

by Thomas Shields DipURP MA MRTPI

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

Decision date: 05 September 2019

Appeal A: APP/H1840/C/18/3201408

The Paddocks, Plot 2, Comhampton Lane, Ombersley, DY13 9ST

- 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 Act").
- The appeal is made by Mr J Hodgkins against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 13 April 2018.
- The breach of planning control as alleged in the notice is:
 - a) Without the benefit of planning permission, the unauthorised material change of use of land from equestrian land to a mixed use of equestrian land; the use of the land for the siting of a touring caravan for residential purposes and the siting of two portable utility trailers used for purposes ancillary to residential use; and the use of the land for the storage of a static caravan.
 - b) The carrying out of operational development on the land by the creation of a new access track and hard standing on equestrian land.
- The requirements of the notice are:
 - 5.i Permanently cease the use of the land for the siting of a touring caravan used for residential purposes and the use of the land for the siting of two portable utility trailers for purposes ancillary to residential purposes.
 - 5.ii Permanently cease the use of the land for the storage of a static caravan.
 - 5.iii Permanently remove the touring caravan and the two portable utility trailers from the equestrian land.
 - 5.iv Permanently remove the static caravan from the equestrian land.
 - 5.v Permanently remove the hard standing and access track from the equestrian land and restore the land to its previous condition.
 - 5.vi Permanently remove from the land any domestic paraphernalia.
 - 5.vii Permanently remove from the land the septic tank and any utilities, cables, pipework, sewage connections associated with the residential use of the touring caravan and the two portable utility trailers.
- The period for compliance with the notice is 3 months for requirements 5.ii and 5.iv, and 6 months for requirements 5.i, 5.iii, 5.v, 5.vi and 5.vii.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b) and (g) of the Act.

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

Appeal B: APP/H1840/W/17/3190189

The Paddocks, Plot 2, Comhampton Lane, Ombersley, DY13 9ST

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr J Hodgkins against the decision of Wychavon District Council.

- The application Ref 17/01668/CU, dated 10 August 2017, was refused by notice dated 3 November 2017.
- The development proposed is material change of use of land for stationing of caravans for residential occupation with associated hard standing, fencing, septic tank and utility trailer.

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

Application for Costs

1. At the Hearing an application for costs was made by Mr J Hodgkins against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary matters

2. At the start of the Hearing it was clarified with the main parties that the occupation and use of the land as a gypsy and traveller site did not extend outside of the red line area on the location plan submitted to the Council with the application subject of Appeal B, it being a smaller area than as indicated on the plan attached to the enforcement notice subject of Appeal A. As such, it was agreed that the plan attached to the enforcement notice should be corrected by substituting it with the location plan submitted with application Ref. 17/01668/CU. I will therefore substitute the plan attached to the notice with the smaller location plan accordingly.
3. The alleged breach of planning control in the enforcement notice, from which the deemed application under s.177(5) arises, differs slightly in its terms to the description of development in the application in Appeal B. While the parties agree that the development undertaken is essentially as set out in the planning application description, they consider that the appeal site is in a mixed use for residential use and for keeping horses.
4. However, I take a different view. The appeal site (as corrected) accommodates the appellant and his family in caravans on one part of the land, while the remainder of the appeal site is fenced off as a small paddock for keeping the appellant's two horses. Having regard to all the evidence before me and to the long established tests set out in case law, I conclude that the primary change in use of the appeal site was to a use for the stationing of caravans for residential purposes, and that the keeping of horses by the appellant within the appeal site is ancillary to that residential use. The parties agreed that should I make such a conclusion, and subject to the appeal on ground (b) succeeding, which does so for reasons set out later, the notice description should be corrected to that set out in the application subject of Appeal B.
5. Given these factors, I am satisfied I can correct the notice as set out above using powers available to me under s.176(1) of the Act without injustice to the parties. Accordingly, the appeal under ground (a) of Appeal A, and Appeal B, can be dealt with together.
6. At the Hearing a number of people made reference to a previous appeal decision for development at Plot 1 (APP/H1840/W/17/3190058) and whether a "tipping point" had been reached. However, while that decision is a material consideration to which I have had due regard, particularly in respect of cumulative effects, it does not set a precedent for future decisions since each

case must be considered on its own merit, and as I have done so in reaching my decision.

Appeal A – ground (b)

7. An appeal on ground (b) is a claim that those matters (i.e. the matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact. The burden of proof in a ground (b) appeal falls to the appellant, and the test of the evidence is on the balance of probability.
8. The appellant argues that the part of the alleged breach of planning control which refers to storage of a static caravan has not occurred.
9. Prior to the appeal development being carried out the appeal site formed part of a larger parcel of land in single ownership and occupation, and used for equestrian purposes pursuant to planning permission W/06/01251/CU.
10. The appellant's evidence, supported by aerial photographs, is that the static caravan was brought onto the land by the previous owner around 2011 and used to store feed, straw and other sundry items related to the equestrian use of the land. Also, since occupation of the site by the appellant and his family, it has similarly been used for storage of feed, tack and other sundry items for their own horses. From my own observations of the static unit on the appeal site, I saw that it appeared to be quite old and showed no signs of any other use other than for storing feed and sundry items as described by the appellant. Accepting that the previous owner introduced the caravan onto the land, the Council were unable to provide any contrary evidence of their own as to the purpose for which it has since been used.
11. Taking account of all these factors it appears to me that the land is not being used for storage of a caravan as alleged, but rather the pre-existing caravan is being used to store items associated with the appellant's horses within the appeal site; being an ancillary purpose to the primary use of the land for residential purposes. Consequently, while the use of the land for residential purposes has occurred and is a breach of planning control, I find on the balance of probability that the alleged change of use of the land for *storage of a static caravan* has not occurred.
12. The appeal on ground (b) therefore succeeds and I shall correct the notice by deleting that part of the description from the alleged breach.

Appeal A – ground (a), and Appeal B

Background

13. Planning permission was originally granted in 2006 for equestrian use, including stabling and sheds, on a large parcel of land off the eastern side of Comhampton Lane ("the Lane"). This parcel of land was divided into 4 plots and the appeal site, Plot 2, comprises approximately half of one of those original plots.
14. Other gypsy and traveller sites exist in the Lane and which benefit from planning permission. There are three pitches on Plot 4 further to the north of the appeal site, and four pitches on Plot 1 adjoining the southern boundary of the appeal site. These sites are also located and accessed off the eastern side

of the Lane. This appeal, if allowed, would result in a total of eight pitches on this eastern side of the Lane.

15. There is a separate appeal outstanding against the refusal of planning permission for a further pitch on Plot 1. The development proposed in that case differs to the development before me since it would be an intensification of an existing site, rather than a new site with further land-take as is the case in this appeal. As such, it should be considered on its own merit. I have not taken account of it in reaching my decision.

Main Issues

16. The main issues are:

- (i) The effect of the development upon the character and appearance of the area;
- (ii) Whether or not the development is in a sustainable location;
- (iii) The effect on highway safety;
- (iv) Local need and provision of gypsy and traveller sites; and
- (v) Other considerations and personal circumstances.

Reasons

- (i) *Character and appearance*

17. The nearest settlement to the appeal site is the small rural hamlet of Comhampton. Other than a small cluster of housing in Comhampton residential development in the wider area is predominantly characterised by dispersed individual properties dotted along the network of single track lanes which turn and wind their way through the surrounding countryside, eventually linking to Dog Lane to the northwest, the A449 to the east, and Owlhill Lane to the south. This sporadic pattern of relatively isolated residential properties punctuating substantial spans of undeveloped countryside, visible in the considerable gaps between properties, inherently minimises the impact of urbanising development across the otherwise open and attractive countryside landscape. The existing sites at Plots 1 and 4 also closely follow this pattern of residential development in that there is a significant gap in the Lane (other than the appeal site) between them, and to other residential properties.
18. While I accept that views of the developed appeal site are limited from outside of the site due to a high hedgerow boundary, there is nonetheless some visibility. I consider that the appeal proposal results in further residential development in the countryside, infilling a substantial proportion of the existing gap on the eastern side of this part of the Lane. As such, the cumulative extent of residential development in this part of the Lane would be incompatible with the pattern of development and the prevailing character and appearance of the area I have described, thereby resulting in harm. Landscaping or further planting would not overcome this harm. The development would thereby conflict with criterion (v) of Policy SWDP 17 of the South Worcestershire Development Plan (2016).
19. While I have found harm with regard to the effect on the character and appearance of the area, I consider that the cumulation of gypsy and traveller

pitches in the area that would result would not amount to a total quantum, or be of such a scale, that it would lead to the nearest settled community (Comhampton) being dominated, or that existing local infrastructure would be overburdened. Thus, there would be no conflict with criterion (vii) of Policy SWDP 17, or with paragraph 25 of PPTS¹.

(ii) *Whether or not the development is in a sustainable location*

20. The appeal site lies approximately 3.7km north of Ombersley, and 2.3km south of Crossway Green which are category 1 and 3 settlements respectively. It is 1.2km from the nearest bus stop.
21. Given these distances to access services and taking account of the narrow Lane, with limited passing places and no footpaths, I consider it likely that occupiers of the site would be largely reliant on travel by motor vehicles. Policy SWDP 17 reflects the Framework² in seeking to promote sustainable development, in part by reducing the reliance on private motor vehicles. In this regard the appeal site is not within or on the edge of a town or a designated category 1, 2 or 3 settlement and so to that extent there is a degree of conflict with Policy SWDP 17(i).
22. However, PPTS acknowledges that gypsy and traveller sites may be located in rural areas. Also, Framework paragraph 103 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in both plan-making and decision-making. Furthermore, paragraph 13 of PPTS seeks to ensure that traveller sites are sustainable economically, socially and environmentally. In respect of transport issues, this means providing settled bases which reduce the need for long-distance travelling. By definition, gypsies and travellers are nomadic and travel is part of their way of life. However, a settled base reduces the need for frequent long distance travel, not least in order to find places to stay.
23. To conclude on this issue, I consider that the travelling distances to access shops and services are not significant in the context of provision of a gypsy and traveller site. As such, there would be no harm arising from the limited conflict with criterion (i) of Policy SWDP 17.
24. Additionally, PPTS paragraph 13 states that sites should have reasonable access to appropriate health and education services. Policy SWDP 17 is broadly consistent with PPTS in this regard and hence there would be no conflict with criterion (x). I find the site would be sustainably located overall.

(iii) *Highway safety*

25. It was accepted at the Hearing that given the likely speeds of traffic using the Lane acceptable visibility splays could be achieved in both directions from the site access. From my own observations during my visit to the appeal site I concur with that assessment. Appropriate provision for visibility splays could be secured by a planning condition.
26. The Council and the Highway Authority point out that the appeal proposal would result in additional vehicle trip generation to and from the site. They

¹ Planning Policy for Traveller Sites, DCLG, August 2015

² National Planning Policy Framework (2018)

consider that in the context of the physical limitations of the surrounding narrow lanes and their existing level of use, the additional traffic generated, including the towing of caravans, would result in unacceptable conditions of hazards and danger to all users. This view was supported by others who spoke at the Hearing. I also heard that in recent years the verges and corners of the Lane and wider lane network had become damaged.

27. Nonetheless, it is clear to me from all the evidence that existing use of the lanes by walkers, horse riders, cyclists and motor vehicles is relatively limited, and that because of the winding nature of the lanes, vehicle speeds also tend to be low, including along the Lane either side of the appeal site access. It seems to me that given the relatively small single pitch nature of the appeal proposal, the level of trip generation to and from the site would be a relatively modest increase in use of the lane network overall. Moreover, there is no evidence before me of accidents being recorded in the area.
28. To conclude, I find that the appeal proposal would not result in any significant increase in pressure on the highway network, or any significant increase in risk to highway safety. As such, there would be no material conflict with Policy SWDP 4 and 17, or Framework paragraph 109.

(iv) Local need and provision of gypsy and traveller sites

29. PPTS paragraph 24 identifies key matters that should be taken into account when considering planning applications for traveller sites. These include the existing level of local provision and need for sites. In this regard the Council provided its updated position statement³ at the start of the Hearing. This indicates that following the grant of planning permission in May and June 2019 for 5 pitches⁴ the Council was able to demonstrate a 5 year supply of pitches against its rolling 5 year requirement.
30. Although this position was rejected on behalf of the appellant, no detailed alternative analysis demonstrating a current under-supply of pitches is before me. However, that aside, I am cautious of placing full weight on the Council's evidence for reasons set out below.
31. In conjunction with other local authorities, and as required by Policy SWDP 17C (adopted 2016), the Council is in the process of preparing a Travellers and Travelling Showpeople Site Allocations Development Plan Document (DPD) which will allocate suitable sites in order to help meet identified need. However, the process for completing an up to date Gypsy and Traveller Accommodation Assessment (GTAA) of need, which would inform the DPD, is not yet completed and it is anticipated that the DPD itself will not be submitted for examination until October 2021. In the meantime, any provision of sites to meet need is most likely to be met through individual planning applications, such as the one subject of this appeal.
32. Prior to both this appeal and to the grant of permission for the 5 pitches in May and June, the Council was unable to demonstrate a 5 year supply. Moreover, its calculations relating to the need for pitches are based on data from a 2014 GTAA, with an addendum to that in 2016. As such the data on which it is based is of some age. The Council also conceded that the GTAA did not include an

³ Document 1

⁴ Ref 18/02589/FUL and 19/00595/FUL

allowance for inward migration of travellers into the area, thereby suppressing the future projected need figure for pitches.

33. In light of these factors I am unsure as to the reliability and longevity of the claimed 5 year supply against need. That notwithstanding, the rolling requirement for supply of pitches is a minimum figure.

34. I also heard that the 5 pitches granted permission in May and June are intended for other occupiers and highly unlikely to be available to the appellants. Neither the Council nor the appellant were able to suggest any other alternative suitable sites to which the appellant and his family could relocate. Taking account of all these factors I consider that on balance they weigh in support of allowing the appeal.

(v) Other considerations and personal circumstances

35. Prior to occupation of the appeal site the appellant and his family had been residing at a number of roadside locations for approximately 2 months. Prior to that they had been 'doubling up' on a pitch on another site in breach of planning conditions, and although being on the County Council's waiting list register for a site of their own for over 12 years, they have been unable to secure one. No alternative site is currently available to the appellant. Since dismissal of the appeal would result in the appellant and his family being forced to live on the roadside, the provision of the appeal site as a settled site would clearly be beneficial.

36. The best interests of children are a primary consideration and no other consideration is inherently more important. A settled site would provide the appellant's three young children the best opportunity of a secure and stable family life, safe play and access to education, health and other services. I consider that the prolonged uncertainty associated with roadside living would very likely be deleterious to the educational outcomes of the appellant's children who have established attendance at local schools.

37. Under Article 8 of the European Convention on Human Rights (ECHR) everyone has the right to respect for private and family life, home and correspondence. This carries with it a positive obligation to facilitate the gypsy way of life.

38. However, Article 8 is a qualified right. The degree of interference with the Article 8 rights arising from dismissal of the appeal must be balanced against the harm to the public interest, and the decision as a whole must be necessary and proportionate in the circumstances. Also, by virtue of the Equality Act 2010, I have a Public Sector Equality Duty (PSED) to have due regard to the need to eliminate discrimination and advance equality of opportunity between gypsies and others, and foster good relations between them and others.

The planning balance

39. I have identified that the proposed development results in harm to the character and appearance of the area and conflicts with Policy SWDP 17. I attach substantial weight to that harm. While I have found that the site would be sustainable in terms of its location, providing a settled base which would facilitate the gypsy and traveller way of life, with access to services available to the settled community, I conclude that these factors would not outweigh the identified harm. This indicates that the appeal for a permanent planning permission should be dismissed.

40. However, the appellant's personal circumstances should also be taken into account. Since no alternative site could be identified, dismissing the appeal would make the appellant and his family homeless. In contrast, provision of the site as a settled base would facilitate the best opportunity of a secure and stable family life with permanent access to health and other essential services, including continuous education for the appellant's children. In this regard it would serve the best interests of the children. I also take account of the family's rights under the ECHR, the provisions of the Equality Act 2010 and the PSED.
41. However, in my judgement I conclude that all of these factors, taken together, do not outweigh the enduring harm that would result from the grant of full planning permission.
42. Having concluded that full planning permission should be denied I turn to whether a time limited temporary planning permission is justified.
43. In assessing the planning balance, the harm to the character and appearance of the area would be reduced if planning permission were to be granted for a limited period of time with a planning condition requiring restoration of the site to its former condition at the end of the period. Additionally, for reasons set out earlier, there is uncertainty surrounding the extent of future need and provision of sites through the development plan process. That position is likely to become much clearer over the next two to three years with an updated GTAA and adoption of the emerging DPD. That process would provide greater clarity as to suitable alternative sites that may become available, and/or the suitability of this site in comparison to others that may come forward in the DPD process.
44. On this basis I conclude that the planning balance tips in favour of allowing the appeal and that planning permission should be granted for a limited period of three years.
45. In these circumstances it is not necessary to consider the appeal on ground (g) against the enforcement notice.

Conditions

46. A number of conditions were suggested during the Hearing which I have considered and re-worded where necessary having regard to the advice at paragraphs 54-55 of the Framework and the National Planning Practice Guidance.
47. As the planning permission will be time limited and relates specifically to the appellant and his family, conditions limiting the use in these terms would be necessary. It will also be necessary to restrict the number of caravans and commercial vehicles kept at the site, and to prevent any commercial activities to control the impact on the surroundings.
48. It would also be necessary for the appellant to submit a site development plan showing where the caravans and utility trailer would be located, foul and surface water drainage details, and how the site would be laid out in terms of lighting, areas of hardstanding, access road, parking and amenity areas, bin storage provision, boundary treatments, and access visibility splays to be provided. This will not include a requirement for landscaping or the provision of mains electricity supply since the permission would be a temporary one.

Formal Decisions

Appeal A: APP/H1840/C/18/3201408

49. It is directed that the enforcement notice be corrected by:-

- (i) substituting the appeal site plan attached to the notice with the location plan submitted with application Ref. 17/01668/CU.
- (ii) in Section 3 deleting all of the words in paragraphs (a) and (b) and substituting instead the words "Without planning permission, the material change of use of the land for stationing of caravans for residential occupation with associated hard standing, fencing, septic tank and utility trailer.

50. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Temporary planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the land for stationing of caravans for residential occupation with associated hard standing, fencing, septic tank and utility trailer, subject to the conditions set out in Annex A to this Decision.

Appeal B: APP/H1840/W/17/3190189

51. The appeal is allowed and temporary planning permission is granted for the use of the land for stationing of caravans for residential occupation with associated hard standing, fencing, septic tank and utility trailer in accordance with the terms of the application Ref. 17/01668/CU, dated 10 August 2017, and the plans submitted with it, and subject to the same conditions set out at Annex A to this Decision.

Thomas Shields

INSPECTOR

Annex A

Conditions

- 1) The site 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).
- 2) The use hereby permitted shall be carried on only by the following: Mr John Hodgkins, his wife Mrs Lisa Hodgkins, and their dependent children, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) When the premises cease to be occupied those named in condition (2) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 4) There shall be no more than 1 pitch on the site with stationing of no more than 2 caravans and 1 utility trailer, of which only 1 caravan shall be a static caravan.
- 5) No commercial activities shall take place on the land including the storage of materials, plant or equipment.
- 6) No vehicle on the site shall exceed 3.5 tonnes in weight.
- 7) Notwithstanding the plans submitted with application Ref. 17/01668/CU, dated 10 August 2017, the use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of this decision a site development scheme for the means of foul and surface water drainage of the site, proposed and existing external lighting on the boundary of and within the site; the internal layout of the site including the positions of caravans, hardstanding, utility trailer, access road, bin storage, parking and amenity areas and boundary treatments; and access visibility splays shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made 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 approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained until the use ceases.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) Any material change to the position of the static caravan referred to in condition (4) above and/or as approved under condition 7 above, or its replacement by another static caravan in a different location, shall only take place in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure other than those approved under condition 7 above shall be erected on the site.

End of Conditions.

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine BSc MSc MRTPI	Heine Planning Consultancy
Mr John Hodgkins	Appellant
Mrs Lisa Hodgkins	

FOR THE LOCAL PLANNING AUTHORITY:

Katherine Smith BSc MA MRTPI	Planning Officer - Wychavon District Council
Denise Duggan	Policy Officer - Wychavon District Council
Thomas Tudor	Enforcement Officer - Wychavon District Council
Chris Day	District Councillor - Wychavon District Council
Gareth Jones MIHE	Highway Authority - Worcestershire County Council
Peter Tomlinson	County Councillor - Worcestershire County Council

INTERESTED PERSONS:

Neil Morris	Local resident
Richard Essex	Local resident
Nicola Deakin	Local resident
Thomas Deakin	Local resident
Ros Davies	Local resident
Stephanie Ford	Local resident
Chloe Ford	Local resident
Stephanie Gait	Local resident
Laureen Moyse	Local resident
Alan Moyse	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Wychavon District Council - update document on 5 year supply of gypsy and traveller pitches.