



Appeal Decisions

Hearing held on 10 March 2020

Site visit made on 10 March 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 27 April 2020

Appeal A: APP/M4320/C/19/3221283

Land south of Spurriers Lane, Melling, Liverpool, L31 1BA

- 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 Jerry Doherty against an enforcement issued by the Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 25 January 2019.
- The breach of planning control alleged in the notice is, without planning permission and within the last ten years, the unauthorised change of use of the land for residential purposes including the siting of caravans.
- The requirements of the enforcement notice are:
Cease the use of the land for residential purposes and remove all caravans, vehicles and domestic paraphernalia from the site.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on grounds set out in section 174(2)(a) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

Appeal B: APP/M4320/C/19/3221286

Land south of Spurriers Lane, Melling, Liverpool, L31 1BA

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr Jerry Doherty against an enforcement notice issued by the Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 25 January 2019.
- The breach of planning control as alleged in the notice is, without planning permission and within the last four years, the performance of unauthorised engineering works to strip turf and import hardcore to the site to create a hardstanding area.
- The requirements of the enforcement notice are:
Remove all of the imported hardcore from the site, then topsoil and turf the site to return it to its former condition.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

Appeal C: APP/M4320/W/19/3220481

Land south of Spurriers Lane, Melling, Liverpool, L31 1BA

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr Jerry Doherty against the decision of the Sefton Metropolitan Borough Council.
- The application Ref DC/2018/00844, dated 30 July 2018, was refused by notice dated 18 December 2018.
- The development proposed is change of use from a disused pony paddock to provide 6 No. Gypsy/Traveller pitches inclusive of 6 No. static caravans, 6 No. touring caravans, 6 No. amenity blocks, access driveway and bio-disc.

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

Applications for Costs

1. Cross applications for costs were made by the Council and the appellant. These are subject of separate Decisions.

Procedural Matters

2. Appeals A and B against the enforcement notices are made on ground (a) and include deemed applications for planning permission for the development carried out. Taken together therefore they seek planning permission for the same form of development as applied for in the refused planning application subject of Appeal C. For the sake of simplicity I have therefore determined all three appeals together.
3. Prior to the Hearing a revised site layout plan (Rev E¹) was submitted in support of the ground (a)/deemed planning application in Appeal A. It is essentially the same as the original layout plan in the refused planning application subject of Appeal C, but with minor layout amendments which sought to address the Council's concerns in respect of the location of a bio-disc package sewage treatment plant, and a raw water main within the site. The Council confirmed that plan Rev E, subject to planning conditions, overcame the third reason for refusal of the planning application and issuing the enforcement notices. I have taken Rev E into account in reaching my decision.

APPEALS A B C

Main Issues

4. There is no dispute between the main parties that the appeal site constitutes 'inappropriate development' within the Green Belt and that the appellant and his extended family meet the definition of 'gypsies and travellers', as set out in the Framework² and PPTS³. Based on the information before me I have no reason to disagree.
5. As such, the Framework and PPTS are relevant material considerations, in addition to the Council's Development Plan policies against which the development should be assessed.

¹ Site Layout Plan 71095:1001 Rev E

² The National Planning Policy Framework, DCLG (2019)

³ 'Planning policy for traveller Sites', DCLG (2015)

6. Having regard to the above the main issues are:

- (a) the effect on the openness and purposes of the Green Belt;
- (b) the effect on the character and appearance of the area; and
- (c) whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Planning policy

7. Policy HC5 of the Sefton Local Plan (2017) (LP) is the Development Plan policy most relevant in respect of Gypsies and Travellers. The appeal site is not one of the specifically allocated sites⁴ for Gypsy and Traveller accommodation in Part 1 of the policy. As a new proposal it falls to be tested against the criteria in HC5 Part 2. Those are:
- a) The site should provide a safe environment for intended occupants including from flood risk
 - b) The site should have good or adequate access to the primary road network
 - c) The site should be within easy reach of a range of essential facilities and services, including health services, schools, and jobs
 - d) The use should not cause significant harm to the amenity of neighbouring properties
 - e) The site should, as far as possible, be in a location that meets the aspirations of the Gypsy and Traveller community
 - f) The development of the site should not result in unacceptable harm to the local environment, including to the integrity of internationally important nature sites.
8. It is common ground between the main parties, and I agree, that the appeal site meets all of the above criteria. Hence, there is no conflict with Policy HC5.
9. LP Policy MN7 reflects the provisions of the Framework in setting out that inappropriate development in the Green Belt will not be approved except in very special circumstances. LP Policy EQ2 sets out design criteria against which all development will be assessed, including the need for development to respond and relate positively to the character, local distinctiveness and form of its surroundings.
10. A WMS⁵ updated national planning policy by making intentional unauthorised development a material consideration. In respect of Gypsy and Traveller sites in the Green Belt it also confirmed national policy in PPTS; 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.

⁴ HC5.1 – HC5.4

⁵ Written Ministerial Statement: 'Green Belt protection and intentional unauthorised development', December 2015

Effect on openness and purposes of the Green Belt

11. In *Turner*⁶, referred to by the parties, the Court held that perceptions of openness can be visual as well as spatial. Additionally, the Court in *Samuel Smith*⁷ established that the matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law. It also highlighted that openness is the counterpart of urban sprawl and that it does not imply freedom from *any* form of development.
12. The appeal site is an L-shaped parcel of land which lies to the south and east of Bells Farm House with a single access taken from Spurriers Lane, and a second boundary frontage onto the A506 Prescott Road. The site appears in the past to have been used for agriculture and/or as a pony paddock and is separated from the road and some of the surrounding open land by a combination of close boarded fencing and hedgerow. However, it was vacant and overgrown prior to occupation by the appellant and his family.
13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. The proposed development, extending to 0.41Ha, would comprise a relatively small scale Gypsy and Traveller site. However, the level of proposed hard-surfacing and 6 pitches, each with up to two caravans and an amenity block, would undoubtedly reduce spatial openness by introducing a level of development not previously present on the land.
14. The appeal site's immediate context is of fields to the south, but there is other development nearby. It adjoins the United Utilities borehole site to the east, the A506 road to the west with houses opposite, Bells Farm House to the north, and several buildings within an animal sanctuary on the other side of Spurriers Lane. The proposed layout shows the pitches adjacent each other against the line of the southern boundary on an east-west alignment and at 90° to Prescott Road. This alignment, together with future boundary treatment to enhance that already existing, would mean that only the upper parts of amenity blocks and some of the caravans would be visible in limited views from outside the site. Given these factors and the immediate context I have described, the loss of openness in purely visual terms would be limited. The degree of encroachment into the countryside would also be limited.
15. To conclude on this first issue, I consider that there would be a significant loss of openness and a limited adverse impact on one of the Green Belt purposes which seeks to safeguard the countryside from encroachment.

Effect on character and appearance of the area

16. The nature of the appeal development as a Gypsy and Traveller site does not of itself confer an adverse effect on the character and appearance of the area. Indeed, PPTS and LP Policy HC5 acknowledge that such sites can be located in the countryside. The immediate site context is of a small cluster of low density developments as previously described. The proposed development would add to and form part of that cluster, all being set within a wider landscape character of predominantly rural countryside. However, there are other

⁶ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 h

⁷ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3 e

features which also add to this wider character. Starting approximately 350 metres to the south of the appeal site there is housing, a commercial garage and a public house. Also, during my visit to the appeal site and the surrounding area I noted a touring caravan site⁸ for leisure purposes about 400 metres to the north on Prescott Road. While I acknowledge that such a leisure site is different in nature and use to the appeal site, and likely to be seasonal and very low key in comparison, it is simply noteworthy that the appearance of caravans in the wider landscape is not an entirely unfamiliar feature.

17. Appropriate additional landscaping to boundaries would soften the appearance of the caravans and amenity blocks and help to assimilate the site with its surroundings. Local residents also referred to the extent of external lighting on the site during darkness. However, I am satisfied that these matters can be controlled and adequately mitigated through the imposition of appropriate planning conditions.
18. To conclude, there has been some limited harm to the character and appearance of the area from the partially developed site. However, taking into account local and national planning policies which acknowledge sites can be located in the countryside, the scale of the site, the proposed linear layout along the southern boundary, and the potential for existing and further landscaping to mitigate the effects of the development, I find overall that there would be no significant harm to the character and appearance of the area. Consequently, there would be no material conflict with the requirements of LP Policy EQ2 or with the provisions of the Framework.

Other considerations

Need and provision of sites

19. Relevant data to assess current and future need for provision of sites was collected in 2013 and published in the GTAA⁹ in August 2014. It identified a need for 15 permanent pitches in Sefton borough up to 2033: (4 in 2013-2018; 6 in 2018-2023; 4 in 2023-2028; 1 in 2028-2033).
20. The Council state that following the grant of planning permission for a 4 pitch site, which opened in October 2014, there was a residual shortfall of 11 permanent pitches to 2033, and for the current 5 year period (2019-2024) this equates to a need for 7 pitches. In order to meet need permanent pitches were allocated as set out in LP Policy HC5 (HC5.1-HC5.3). The Examining Inspector (EI) in March 2017 found the GTAA and policy HC5 to be robust.
21. Planning permission was granted for 8 pitches at the allocated site (HC5.3) at Plex Moss Lane in 2018 and development of that site has commenced. The Council argue therefore that they can demonstrate a 5 year supply of specific deliverable sites against locally set targets.
22. Although the Council's position on need and supply of pitches was rejected on behalf of the appellant, claiming a shortfall of 3 pitches, 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 the following reasons.

⁸ Lyons Farm Caravan Site

⁹ Merseyside and West Lancashire Gypsy and Traveller Accommodation Assessment, 2014

23. The current 5 year period falls within the period referred to in the GTAA as 'Longer-term pitch requirements'¹⁰. Unlike assessment of the initial short term period, the GTAA projections for this current period are not based on detailed household survey information, but rather on demographic information and assumptions used in formulaic statistical modelling. In recognition of this the GTAA states that the detailed household survey evidence should be reviewed "*at least every five years*" to ensure that the evidence base to identify need is up to date. However, the evidence base has not been reviewed since it was collected in 2013, now approaching 7 years ago, and I understand it is not likely to be reviewed for another 18 months to 2 years.
24. Following on from the above, while I reject the appellant's assertion that LP Policy HC5 is out of date, I find that the underlying evidence base for pitch need, against which the policy is applied, is not up to date. While I note that the GTAA was found robust by the EI in 2017, his finding was within the first 5 year period of the GTAA. The Council acknowledge that a review of evidence of need is overdue but say they have in any event over-supplied pitches against the stated need figure. That is commendable action in the circumstances, but nonetheless it makes a questionable assumption about satisfying current (and future) need given that the need figure itself is not based on detailed up to date evidence. Moreover, it should be noted that the predicted figures for overall pitch need in the GTAA and LP Policy HC5 should be regarded as minimums.
25. Taking account of all of these factors, while I find there is a degree of doubt on the reliability of the Council's claimed supply of pitches meeting existing need, I find on the balance of the evidence before me that there is unlikely to currently be any significant level of unmet need.

Alternative sites

26. PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. It is the aspiration of the appellant and his extended family (3 generations) to live together on their own single family site, that being a recognised cultural tradition of Romany Gypsies.
27. The 6 pitches would be occupied by the appellant and his wife on one pitch, with their sons and daughters with their respective partners and children on 4 other pitches. A sixth pitch would be occupied by 2 sisters (and one child) of one of the other pitch occupants.
28. There is a waiting list in operation at the Council-managed Broad Lane site. Although the appellant had not made enquiries about the availability of pitches, or applied for him and his family to join the waiting list, there is no evidence before me that pitches are available. Moreover, the Council's evidence indicates that when single pitches have become available from time to time in recent years they have been taken up in quick succession. The Plex Moss Lane site is a privately owned site for 8 pitches, of which 2 are occupied. The appellant states that the site is reserved for the site owner's own family and not available to anyone else. There was no contrary evidence from the Council to demonstrate otherwise. The appellant also stated that the

¹⁰ GTAA, paragraph 6.27

Plex Moss Lane site would not be suitable for sharing with his family in any event, this being due to the cultural and social differences between his family as Romany Gypsies and the site owner/occupiers as English Travellers.

29. On the balance of the evidence I find that there is no currently available suitable alternative sites which would facilitate the appellant and his family living together.

Personal circumstances

30. The extended family group comprises 12 adults ranging in age from 18 to 62 years old, 12 children ranging from 9 months to 17 years old, and another baby due in August 2020. While some of the family group have at times been able to live and travel together, this has not been possible for them all. For a number of years some have been 'doubling up' on other sites or staying on the roadside at various locations for brief periods before being moved on.
31. Submitted medical records and oral evidence at the Hearing demonstrate that some of the adults and one of the children in the family group suffer from poor health, and within the adult individuals there are some very serious medical conditions. I heard that due to the unpredictability of roadside living some of the medical conditions had been made more problematic. A settled base would likely support the alleviation of some of the health issues and provide better and regular fixed access to health and social care provision.
32. I also heard that periodic changes to living locations had caused some of the older children's education to be interrupted and for it to suffer, while some of the younger children are now settled into a local school and are performing well.
33. It is widely acknowledged that in the UK Gypsies and Travellers have some of the worst outcomes in society in terms of health, education and social care. In this regard the *best interests of the child* are a primary consideration and no other consideration is inherently more important. Allowing the appeal would provide a permanent settled site, thereby delivering the children the best opportunity of a secure and stable family life, safe play and access to education, health and other services. In contrast, dismissing the appeal would result in a return to fragmented and unpredictable living conditions and would very likely be deleterious to the health and social outcomes for the family group as a whole, and particularly so to the educational outcomes of the children.

Other matters

34. Concerns have been raised in respect of noise from the appellant's dogs, while others referred to them being aggressive and able to roam into the lane and onto other properties. In this regard, noise between neighbouring properties is an issue that can often occur in any given residential area. However, I understand that the noise complaint is under investigation by the Council's Environmental Health team which is a more appropriate procedure for dealing with such issues. The appellant stated that although his dogs had on occasion escaped from the site, this would not occur if planning permission were granted and the proposed access and permanent gates were completed. That notwithstanding, this issue together with the noise concern are matters which are capable of being resolved through other procedures.

35. I have taken into account all other objections from third parties submitted in response to these appeals and in response to the original planning application. In the absence of any direct evidence that the proposed occupiers have been, or would be, associated with criminal activity, a generalised fear of crime does not add any material weight against allowing the appeal.
36. The Council concluded that there would be no significant ecological impact resulting from the development, and there is no convincing information before me which would lead me to reach a different conclusion.
37. With regard to highway safety and flood risk, there is no evidence before me, nor any that I saw, to indicate that the development would result in any significant increase in risk to highway safety or to flooding. Moreover, the local Highway Authority and the Environment Agency, who are the expert consultative bodies on these matters, do not object to the proposal.

Planning Balance

38. The Framework, reflected in LP Policy MN7, requires that substantial weight is given to any harm to the Green Belt, and that *very special circumstances* will not exist unless any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
39. The proposed development is inappropriate development and is therefore harmful by definition. I attach substantial weight to that harm. I have also previously identified some loss of openness and a limited adverse impact on one of the Green Belt purposes which seeks to safeguard the countryside from encroachment. The additional harm arising from these matters, together with the status of the development as intentional unauthorised development, attract collectively a further degree of weight.
40. Against the totality of this harm there are factors which weigh in support of allowing the appeals. I attach significant weight to the site being sustainably located with good access to the primary road network, public transport links, and a range of essential facilities and services, and in all other respects against which new unallocated sites should be assessed, that it is compliant with LP Policy HC5. The absence of alternative suitable sites for this particular family, together with the fact that any additional unallocated sites which come forward are also highly likely to be in the Green Belt, attracts additional weight.
41. I attach substantial weight to the family's personal circumstances. In this regard a permanent base would result in significant benefits for the wellbeing and healthcare of the group as a whole. With regard to health, education and establishing a stable and secure family life, the best interests of the children on site are a primary consideration.
42. The PPTS and WMS set out that personal circumstances are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, in this case I find on balance that the totality of the harm to the Green Belt and any other harm is clearly outweighed by the combined weight I attribute to the best interests of the children on site; the wider family's personal circumstances; the site being sustainably located in compliance with LP Policy HC5; the lack of alternative suitable sites which would meet the particular needs of this family; and the very high likelihood

that any other suitable sites would also be in the Green Belt. Together these considerations amount to the very special circumstances necessary to justify the development.

43. The proposed development complies with all of the criteria of LP Policy HC5. Given that I have found there are very special circumstances necessary to justify the inappropriate development, it also complies with LP Policy MN7. As such, the proposal complies with the Development Plan as a whole.

Conditions

44. A condition (1) would be necessary to ensure compliance with approved plans. In order to ensure that the exceptional justification for the development is retained and to secure the site as part of the Council's supply of traveller sites against future identified need, a condition (2) would be required reserving occupation of the site to gypsies and travellers. Conditions (3), (4) and (5) are necessary in the interests of safeguarding the character and appearance of the area and the below ground water pipeline.

Conclusion

45. For all these reasons I conclude that the appeals should succeed.

FORMAL DECISIONS

Appeal A

46. The appeal is allowed and the enforcement notice is quashed. 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 change of use of the land for residential purposes including the siting of caravans, subject to the conditions set out in Annex A to this Decision.

Appeal B

47. The appeal is allowed and the enforcement notice is quashed. 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 engineering works to strip turf and import hardcore to the site to create a hardstanding area.

Appeal C

48. The appeal is allowed and planning permission is granted for change of use to provide 6 No. Gypsy/Traveller pitches inclusive of 6 No. static caravans, 6 No. touring caravans, 6 No. amenity blocks, access driveway and bio-disc at land south of Spurriers Lane, Melling, Liverpool, L31 1BA, in accordance with the terms of the application, Ref DC/2018/00844, dated 30 July 2018, and subject to the conditions set out in Annex A to this Decision.

Thomas Shields

INSPECTOR

ANNEX A - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan; drawing 71095:1001 Rev E; drawing 71095:1002.
- 2) 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).
- 3) There shall be no more than 6 pitches and no more than 12 caravans stationed on the site. On each pitch there shall be stationed no more than 2 caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 1 shall be a static caravan or mobile home. No vehicles kept on the site shall exceed 3.5 tonnes in weight.
- 4) There shall be no external lighting on the site other than in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.
- 5) 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 4 months of the date of this decision a site development plan for the means of managing works adjacent to the water pipeline through the site; and for proposed landscaping and boundary treatment of the site; shall have been submitted for the written approval of the local planning authority and the plan shall include a timetable for its implementation.
 - ii) If within 8 months of the date of this decision the local planning authority refuse to approve the site development plan 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 site development plan shall have been approved by the Secretary of State.
 - iv) The approved site development plan shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development plan it shall thereafter be retained. 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.

End of Conditions.

APPEARANCES

FOR THE APPELLANT:

Jerry Doherty	Appellant
Trevor Mennell	Consultant, Trevor Mennell Planning
Kathie Mennell	Trevor Mennell Planning
Phillip Brown BA (Hons) MRTPI	Phillip Brown Associates
Gerry Doherty	Appellant's son
Martin Maloney	Appellant's son-in-law
Kelly Maloney	Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Piers Riley-Smith of Counsel	Kings Chambers
Ian Loughlin	Policy Team Leader
Diane Humphreys	Senior Planning Officer
Steven Faulkner	Planning Team Leader
Derek McKenzie	Chief Planning Officer

INTERESTED PERSONS:

Anthony Carr	Councillor
Sue Kerwin	Headteacher St. Andrews Primary School
Father David Nixon	Parish Priest
Patricia Burke	Local resident
Dave Pilgrim	Local resident
Mrs Sinclair	Local resident
4 others	Local residents

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1	2 x aerial photographs of site
DOC 2	Letter from local resident Mrs Sinclair
DOC 3	Extract from Local Authority Monitoring Report 2018/19
DOC 4	Extract figs. 4.1 and 4.4 Sefton Local Plan