



Appeal Decisions

Site visit made on 10 December 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 23 December 2020

Appeal A: Appeal Ref: APP/P1805/C/19/3230509 and Appeal B: Appeal Ref: APP/P1805/C/19/3230510
Land known as 'Woodland View', Billesley Lane, Portway, Worcestershire B48 7HG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs C Stokes (Appeal A) and Mr B Stokes (Appeal B) against an enforcement notice issued by Bromsgrove District Council.
 - The enforcement notice was issued on 22 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land from use for agriculture to use of the Land for the stationing of caravans on 3 pitches for residential purposes (including the installation of related services for the purpose of serving the caravans) (the "unauthorised use") and associated operational development including:
 - i) The creation of hardstanding in the approximate position shown marked 'X' on the Plan;
 - ii) The erection of a toilet block in the approximate position marked 'Y' on the Plan;
 - iii) The construction of an access track in the approximate location between points A and B on the Plan; and
 - iv) The creation of a vehicular access in the approximate position marked 'Z' on the Plan(together the "unauthorised development").
 - The requirements of the notice are:
 - i) Permanently cease the use of the Land for the stationing of caravans for residential purposes and remove the caravans from the Land;
 - ii) Remove from the Land any artefacts, infrastructure, waste water treatment facilities and pipework associated with the caravans;
 - iii) Remove the toilet block from the land;
 - iv) Permanently remove from the Land the material forming the hardstanding and the access track and return the land to agricultural pasture in appearance by seeding the Land with grass;
 - v) Permanently close the vehicular access, by removal of the gates and fence flanking the access track and reinstating the gap in the remnant frontage hedgerow with mixed species hedgerow plants.
 - The period for compliance with the requirements is 2 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal C: Appeal Ref: APP/P1805/C/19/3230498
Land off Billesley Lane, Portway B48 7HZ

- 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 Mrs C Stokes and Mr B Stokes against the decision of Bromsgrove District Council.
 - The application Ref 19/00062/FUL, dated 18 January 2019, was refused by notice dated 8 May 2019.
 - The development proposed is material change of use of land for stationing of caravans on 3 pitches for residential use with facilitating development (hard standing, access track, widen existing access, utility blocks) and keeping of horses.
-

Decisions

Appeal A: Appeal Ref: APP/P1805/C/19/3230509 and Appeal B: Appeal Ref: APP/P1805/C/19/3230510

1. It is directed that the enforcement notice be corrected: by the deletion of all the words after "without planning permission," in section 3 of the notice, *The Breach of Control Alleged*, and the substitution of the words "the making of a material change of use of the land through the creation of a hardstanding and the stationing of four touring caravans for residential purposes, the erection of a timber shed and the creation of a vehicular access." Subject to these corrections 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 making of a material change of use of the land through the creation of a hardstanding and the stationing of four touring caravans for residential purposes, the erection of a timber shed and the creation of a vehicular access on the land shown edged and hatched black on the plan annexed to this decision, subject to the conditions set out in the Schedule.

Appeal C: Appeal Ref: APP/P1805/C/19/3230498

2. The appeal is dismissed.

Appeals A and B: The Notice

3. Although there is no appeal on ground (b), that the matters alleged have not occurred as a matter of fact, that is the gist of a section of the appellants' grounds of appeal. In short, the appellants argue that the Council has used the description of the development for which planning permission was sought and refused to frame the breach of planning control alleged rather than describing the circumstances on the ground when the notice was issued.
4. As the breach sets the terms of the deemed planning applications which must be determined through the appeals on ground (a) it is important that it is correct. In response to a note about these matters sent to the parties at my request they have agreed, with a caveat from the appellants to which I shall return, that the breach alleged should be corrected to:

The making of a material change of use of the land through the creation of a hardstanding and the stationing of four touring caravans for residential purposes, the erection of a timber shed and the creation of a vehicular access.

5. There remains a dispute about the inclusion of the vehicular access within the breach alleged. The dispute is not whether or not it had been installed when the notice was issued or even whether the appellants were responsible (they were not). The dispute is whether it is reasonable for the notice to require its removal. That is properly a matter for the appeals that have been made on ground (f).
6. Given the above, I shall use the powers available through s176(1) of the principal Act to correct the breach as set out above since there would be no injustice to either party in so doing.

Appeals A and B: the appeal on ground (a) and the deemed planning application and Appeal C

Preliminary matters and main issues

7. It is common ground that the appellants are gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS).
8. I have not been able to find within the Council's appeal documents any report assessing the need for, or seeking authorisation to take, enforcement action. Enforcement action appears to have simply followed the Council's refusal of planning permission for the Appeal C development. The Council's appeal statement treats the two developments as being the same. However, as set out above, that is not the case.
9. While the Appeal C development was refused for three reasons, an additional reason was cited for issuing the notice. This relates to the creation of the vehicular access and alleges a conflict with policy BDP1 of the Bromsgrove District Plan 2011-2030 (BDP), adopted in January 2017. However, this policy simply develops in the local context the presumption in favour of sustainable development set out in the National Planning Policy Framework (Framework) of 2012 against which the BDP would have been prepared. Nowhere in the Council's evidence is it explained how the Appeals A and B development causes the policy conflict alleged. Furthermore, the Highway Authority confirmed that, subject to conditions, the Appeal C proposal would not have an unacceptable impact on highway safety. In the circumstances, I see no reason to consider this reason for issuing the notice any further.
10. Following a review of further information provided by a group of local residents and businesses (BRAID) the Council indicated that it would no longer pursue the ecological reasons for issuing the notice (reason 4) and for refusing planning permission (reason 3).
11. The appeal site is within the West Midlands Green Belt and it is common ground that the appeal developments amount to inappropriate development in the Green Belt. In the light of this and the other matters set out above the main issues for the determination of these appeals are:
 - (a) The effect of the developments on the openness of the Green Belt.
 - (b) The effect of the developments on the character and appearance of the area; and
 - (c) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposals.

The effect of the developments on the openness of the Green Belt

The Planning Unit

12. The land edged red on the notice plan is identical to the land for which planning permission is sought. The appellants argue that the material change of use alleged affects only a small part of the land; most of the remainder is in use as a paddock/agricultural land.
13. To establish whether or not a material change in the use of land has taken place, it is necessary to identify the planning unit. Although the material change of use may take place on a small area only, a local planning authority is entitled to anticipate changes to defeat the operation of a notice by enforcing against the planning unit as a whole.
14. Case law¹ has established the tests for determining the planning unit. Ultimately, it is a matter of planning judgement. The appeal site is in single occupation and has a single means of access from the highway. It is clear from the Appeal C proposal that the intention is to give over a good proportion of the land to the three pitches and associated development leaving, on the appellants' estimate, about half the area as paddock.
15. It is said that Mr Stokes is a keen horse dealer travelling to all the main horse fairs in England. This could imply the 'keeping of horses' set out in the Appeal C proposal is for breeding which would be agriculture. But it is also said that Mr Stokes intends to keep his current three horses on the land '...so that he can pass on his horse skills to his children and grandchildren.' This could be either a recreational use or one incidental to the residential occupation of the land, neither of which is an agricultural use of land. There is a further statement that the family intend to buy a small horse to graze the land that has been cleared of weeds and brambles, implicitly to assist with land maintenance.
16. On the appellants' own evidence the nature of the use of the paddock area is therefore wholly unclear. On a fair reading of the Appeal C supporting planning statement, the keeping of horses would appear to be incidental to the material change of use of the land for what is described as occupation as a private gypsy-traveller site for a single extended family. There is no suggestion that I can see that in the event of the appeals being dismissed the land would be used simply for keeping of the appellants' horses.
17. Taking account of all these factors my judgement is that the appeal site should be considered as a single planning unit in a single gypsy-traveller site use. I have considered the 'openness' issue on that basis.

Context-relevant to all Appeals

18. The appeal site is close to the junction of the dual carriageway A435 and the M42. Highway infrastructure is therefore a significant built element affecting the openness of the Green Belt in the local area.
19. Very near to the appeal site entrance is the entrance to and part of the extensive car park of the Rose and Crown, a large building of traditional public house design. To the south of the junction of Billesley Lane and the A435 are a number of residential and vacant commercial properties with frontage access to

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 12071 is the leading case

- the A435. The appeal site lies immediately to the rear of some of these properties. The appellants advise that the corner house has been sold to developers and the former restaurant has been purchased by a national coffee chain. At the very least, this raises the prospect of yet further development in the immediate area.
20. Further along Billesley Lane are a number of residential and other properties, in some cases standing in large grounds. There is little doubt, in my judgement, that each of these developments diminishes the openness of the Green Belt in this area.
21. That said, Billesley Lane is largely lined with mature trees and vegetation, particularly so in the vicinity of the appeal site. The land to either side can be glimpsed and over much of its length these glimpses reveal open fields or areas of woodland. Many of the residential properties have planting to the front, albeit of a maintained domestic appearance. The effect of these properties on the openness of the Green Belt that I have noted is only visually apparent when passing the accesses.
22. Prior to the Appeals A and B development taking place my understanding is that the appeal site was open land possibly in an agricultural use with only one building in a state of some disrepair. The evidence, which includes photographs provided by the local community, is that a vehicular access was created in the hedgerow along Billesley Lane before the land was sold. Of itself, this exposed the land to view from the highway, but the view would have been of undeveloped Green Belt land.
23. It appears that the appellants then further widened the gap in the hedgerow, created a vehicular access and set the gates further back from the highway. The height of part of the boundary hedgerow was also reduced. Visually the land became far more prominent than previously was the case. In my judgement, any material change of use, particularly one involving built development and/or the stationing of caravans on the land, would not preserve the openness of the Green Belt.
24. However, given that the s174 and the s78 appeal developments are different, the degree to which each adversely effects the openness of the Green Belt is a matter to which I now turn.

Appeals A and B

25. In her letter dated 2 June 2020 the appellants' agent points to changes made to the site in the year since the notice was issued. These include the erection of an additional building, planting and fencing, works to the old piggery building and what I understand to be a reduction in the number of caravans from four to two following the stationing of a single unit mobile home. That was also the situation at the time of my site visit. However, in assessing the effect on the openness of the Green Belt from the Appeals A and B development it is the site as it was in May 2019 that is relevant. It is notable too, that even now, the development that exists on site is well short of that for which planning permission was sought through the Appeal C proposal.
26. The Council does not dispute the appellants' description that the site then comprised sufficient hardstanding for just four touring caravans and associated vehicles on what would be the front pitch in the Appeal C proposal. The only

other physical development was the erection of a timber shed to provide a utility building containing laundry facilities, a fridge/freezer and a small bathroom.

27. Despite the removal of some boundary hedgerow to create the vehicular access and a reduction in height of much of the rest, there remains good screening of the appeal site when the vegetation is in full leaf. When that is not the case, the site becomes quite exposed in near views and can also be seen across the Rose and Crown car park from the southbound carriageway of the A435. However, the footways along this section of the road are not continuous and unlikely to be well used by pedestrians in my view.
28. This view would also be available fleetingly mainly to those in vehicles gathering speed as they depart the motorway junction. However, for those travelling south along the A435 this is quite a complex junction with free-flowing traffic joining from the west-bound M42. Given the levels of concentration required to navigate this safely I do not believe vehicle drivers would have any significant appreciation of the appeal site although any passengers may.
29. In considering the Appeal C development, the Council also contends that the appeal development would appear in wider views across the A435. However, from my site inspection it is not clear to me from where in the public domain such views would be available.
30. It would be possible to impose a condition on any planning permission to ensure that, as far as possible, the layout of the site is such that the caravans are stationed so as to maximise the extent to which they are screened by the boundary hedgerow and close-boarded fencing already in place. The timber utility building is already so positioned. In that case, my view is that the adverse effect of the development already carried out on the openness of the Green Belt would be moderate.

Appeal C

31. The proposed development would be, in my view, of a different order of intensity. There would be three pitches, each on hardstanding and enclosed by post and rail fencing. Each would accommodate a touring caravan, a mobile home, parking for two vehicles and a utility building. On pitch 1 this would be 4m to the ridge and have a floor area of some 30 sqm. On the other two pitches the utility building would be slightly smaller at some 3.56m to the ridge and about 20sqm in floor area. There would also be a bin store close to the site entrance and therefore prominent in view given the changes to the boundary hedgerow made as part of the Appeals A and B development.
32. The above layout would be set towards the western side of the site but, in my judgement, would read as covering a substantial proportion of the open ground. Additional planting is proposed along both the frontage and a section of the site inside the eastern boundary. While this would help to screen the views available across the Rose and Crown car park from the A435 referred to earlier, it would not significantly impact those from Billesley Lane. I note too that some reliance appears to be placed on the screening provided by an existing conifer hedge on adjoining land. Such reliance would be misplaced in my view.

33. My conclusion is that the proposed development would have, both spatially and visually, a substantial adverse effect on the openness of the Green Belt.

Non-Green Belt harm - The effect of the developments on the character and appearance of the area

34. The appeal site is within the Timbered Pastures Landscape Character Area (LCA). Key features include a small-scale landscape with a well-defined pattern of small, hedged fields; notable tree cover pattern of mature hedgerow oaks; ancient wooded character; pastoral land use; and dense network of minor lanes.
35. The appellants and ecologists acting for BRAID are agreed that there is only one standard oak tree within the frontage hedgerow. The appellants also confirm that the other boundary planting is not characteristic of the LCA. Billesley Lane should, in my view, be characterised as a minor lane and the appeal site is certainly a small field. There is however very little evidence of its previous pastoral use. In the context of the immediately surrounding area, characterised as it is by major highway infrastructure wholly at odds with the minor lanes typical of the LCA and a number of large commercial and residential properties with associated parking areas, extensive in some cases, in what is much like ribbon development along the highways, it is my view that the undeveloped appeal site makes very little positive contribution to the key features of the LCA.
36. However, the LCA Guidelines for Land Management suggest that, for hedgerows, existing hedgerows and their patterns should be restored, strengthened or protected and that areas of permanent pasture/pastoral land use character should be conserved or restored.
37. I acknowledge that some of the hedgerow was removed prior to the appellants occupying the appeal site. However, the evidence is that further reduction in both its width and height has taken place since. Although it is argued that the opportunity is now being taken to manage the hedgerow in accordance with the Guidelines, the fact remains that it has not been protected or enhanced as BDP policy BDP19 (e) requires.
38. Paragraphs 14 and 25 of PPTS implicitly accept that traveller sites with all the associated development that entails may be located in rural areas. Caravans themselves are not unusual features in the countryside, typically being found on farms and in tourist areas.
39. Nevertheless, it is difficult to see how laying an area of hardstanding, considerable in the case of the Appeal C development, together with the associated development and stationing of caravans and, in the case of Appeal C, three mobile homes too, is consistent with either conservation or restoration of the small-scale pattern of hedged fields as claimed by the appellants. In my view it does not in respect of Appeals A and B and would not with regard to Appeal C. None of the appeal development therefore achieve the enhancement of the character and distinctiveness of the local Appeal C area required by BDP policy BDP19 (e).
40. For these reasons, I conclude that the Appeals A and B development do and the Appeal C proposal would conflict with BDP policy BDP19 (e) in this regard.

Non-Green Belt harm – other policy matters

41. BDP policy BDP11.2 confirms that proposed gypsy and traveller sites should be in sustainable locations providing good access to local facilities such as health and education. It also requires them to accord with the sustainable development principles set out in BDP policy BDP1.
42. The Council reports that the main services such as shops, schools and health care are at Wythall, some 2.7km to the north. Although there is a shop at a service station, this too is on the other side of the M42. There are a number of bus services running along the A435 at varying frequencies. The appellants acknowledge that while these are accessible to the appeal site when travelling north, a return journey by bus would require crossing the dual carriageway. I saw during my site inspection that there is no obvious safe way to do so. Although alternative travel options are available, it appears to be common ground that most journeys from the appeal site would be by private vehicle.
43. In concluding that, nevertheless, the appeal site is not in a materially unsustainable location and thus not contrary to BDP policy BDP11.2, the Council has followed an appeal decision² allowing a new dwelling on land nearby but yet more distant from the facilities and services referred to above. While recognising the views of local people on this point, regard must also be had to the implicit recognition in PPTS paragraphs 14 and 25 that gypsy and traveller sites may well be located in rural areas and that paragraph 13 promotes the importance of accessibility to various services rather than the mode of travel to them. I therefore see no reason to disagree with the Council's analysis and find no harm on this point.
44. The Council's Addendum Report to Committee gives the response of the responsible authority to a number of matters raised by the local community including noise, air quality, drainage, access for emergency vehicles and the location of the bin stores. In all cases, Members were advised that, subject in some cases to appropriate conditions being imposed, there would be no reason to refuse Appeal C on any of these grounds. I see no reason why the same conclusion should not be drawn in relation to the Appeals A and B development.
45. Finally, the local community have suggested that the manner in which the site was developed by the appellants has prejudiced the achievement of community cohesion promoted by PPTS paragraph 13(a). It seems to me very unlikely that the single-family site that would result from one or both appeals being allowed would dominate the settled community in this area. The Council considers that the occupiers would have the opportunity to integrate with the local community and I see no reason to take a different view.

Other considerations

46. The appellants have put forward 12 other considerations which are considered to weigh in support of the developments. Several have already been addressed in the policy consideration above and the remainder are subsumed within those assessed below.
47. Extensive evidence has been given about the *personal circumstances* of the appellants and their extended family who would occupy the development. This

² APP/P1805/C/16/3163441

was provided within the supporting statement that accompanied the planning application, in a personal statement by Mrs Stokes provided to the Council prior to determination of the application and in the statement of case supporting Appeal C. Furthermore, letters were provided by healthcare professionals with detailed knowledge of the medical conditions of two of the children who occupy the site, one of whom is below age 18.

48. The family GP, who the appellants' agent confirms has extensive experience of working with the gypsy/traveller community and who holds a senior clinical tutor role at Cambridge University, explained in a letter to the Council the need for regular engagement with a GP surgery and hospital consultants. The letter states that not having a permanent home is detrimental to the health of the two children and not in their best interests.
49. Prior to purchasing the appeal site and occupying it the appellants have never had a settled base. They have moved from place to place often on unauthorised roadside encampments where the risk of being moved on by the authorities is ever present. That is wholly contrary to the health needs of the family and the best interests of the children.
50. The benefits to the family as a whole since occupation of the appeal site have been substantial and are set out in detail in an update statement of case dated 2 June 2020 relating to all appeals. These include access to clean water, toilets and washing facilities, the many benefits of having a permanent address, being able to arrange home tutoring for another child and registering with local GP surgeries.
51. In my view, the personal circumstances of the appellants are a consideration supporting the developments to which very substantial weight should be given.
52. Turning to *the need and supply of sites*, the Council acknowledges that there is an identified need for additional pitches in the next five-year period, that it cannot demonstrate a five year supply of deliverable sites and that there were no available pitches or allocated sites within the Council area at the time when the Appeal C planning application was refused planning permission. There is no evidence of any change in these positions.
53. BDP policy BDP11.3 confirms that any additional sites that are required will be identified through a local plan review. It is not clear when that review is to take place. The Council states that it is possible the review process could identify appropriate sites outside the Green Belt. However, a high percentage of the Council area is Green Belt (the appellants put it at around 90%) which another Inspector³ felt implied a distinct possibility of sites having to be identified in the Green Belt. His view was that the site he was dealing with could therefore be promoted through the local plan review process. In my view, that could also be the case in the appeals before me.
54. The Council and the appellants are agreed that this is a consideration that attracts significant weight in support of the developments although, as noted above, the Council has approached this matter as if the s174 and s78 appeal developments are the same. However, as I understand PPTS paragraph 27 that is only where considering applications for the grant of temporary planning permission with an exception in any event where the proposal is on land within

³APP/P1805/W/18/3205163se

the Green Belt. PPTS is a material consideration to which substantial weight should be given. Nevertheless, in the particular circumstances of this appeal site located in an extensive Green Belt area as set out above, I believe this is a matter that could attract significant weight in the event of a temporary planning permission being considered.

55. Finally, I turn to *intentional unauthorised development*. My understanding is that this is a consideration that applies where development has taken place in advance of planning permission being granted or even sought. However, where, as here, the Council has issued a notice in respect of the unauthorised development and there is also a s78 appeal against the refusal to grant planning permission for what is, in fact, a somewhat different development, this is not a consideration that can apply to both the s174 and the s78 appeals. In my view, it is the Appeals A and B development that is unauthorised while the Appeal C development has yet to take place. I therefore believe that this is a consideration to be taken into account only in relation to Appeals A and B. The provisions of a Written Ministerial Statement⁴ made on 17 December 2015 are therefore material. The House of Commons Briefing Paper dated 19 December 2019 referred to by BRAID is not policy or a Written Ministerial Statement and is therefore a document that I give very little weight.
56. This is a case where a family with the personal circumstances set out above were in roadside accommodation but in ownership of land that they could occupy. While it is undeniable that work was carried out in advance of the determination of the planning application for the development that they wished to implement, a lesser development was carried out broadly in parallel with that decision-making process.
57. While this is a consideration that weighs against the scheme that is subject of the Appeals A and B, as is accepted, it is one to which I attribute limited weight in the particular circumstances of these appeals.

The Green Belt balance

Green Belt harm

58. Framework paragraph 143 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Framework paragraph 144 states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. It also requires local planning authorities and, by extension, the Secretary of State on appeal to ensure that substantial weight is given to any harm to the Green Belt.
59. With regard to the openness of the Green Belt, I have found that the Appeals A and B development has caused moderate harm while the harm that would be caused by the Appeal C proposal would be substantial. Nevertheless, for both appeals the weight to be given to the totality of the Green Belt harm is, as a matter of policy, substantial.

⁴ Green Belt protection and intentional unauthorised development

Other policy harm

60. Turning to the effect on character and appearance I have found harm to be caused by both the s174 and the s78 appeal developments. In the case of Appeals A and B, I consider this harm to be mitigated to a degree by the limited amount of development that has taken place. I therefore consider the weight to be attributed to the harm to be moderate. However, the nature and scale of the development proposed in Appeal C is such that I believe significant weight should be given to the harm.
61. Where there is no policy harm this has a neutral effect and weighs neither against nor for the development. This is the case when considering the appeals against BDP policy BDP11.2 and in relation to the matters raised by the local community.

Other considerations

62. I have found that the intentional unauthorised development is a consideration that weighs against the Appeals A and B development but that the weight attributed should be limited. Since the Appeal C development is not the development that has been carried out and therefore not the unauthorised development, I do not consider that the limited weight that arises should be added to the balance in that case.
63. In favour of both appeals are the personal circumstances of the appellants and their extended family who occupy the appeal site. Very substantial weight should be given to this consideration.
64. Need and supply of sites is a consideration attracting significant weight in the balance for the appeals but only in the context of a temporary planning permission being considered.

The balance – Appeals A and B

65. In the report to Committee on the Appeal C proposal the Council officers rightly acknowledge that refusing the application could lead to the family returning to roadside camping and travelling. This was recognised as 'undoubtedly' representing an interference with their human rights under Article 8 of the Human Rights Act 1998. As the evidence makes clear, this would also emphatically not be in the best interests of the children in this case. Having due regard to the Public Sector Equality Duty contained in the Equality Act 2010 I believe that this consideration, on its own, at the very least balances the totality of the Green Belt and other harm, particularly when recognising that the effect on the openness of the Green Belt is moderate, the harm to the character and appearance of the area is also moderate and limited weight only arises from the intentional unauthorised development. .
66. When adding the significant weight due as a result of the 'need and supply of sites' in the event of a temporary planning permission being contemplated, I believe that the other considerations in this case clearly outweigh the harm that I have identified. I therefore conclude that very special circumstances do exist to justify the grant of a temporary planning permission for the development subject of Appeals A and B.

The balance – Appeal C

67. In this case, I have concluded that the extent of the development proposed would have a substantial effect on the openness of the Green Belt and that the harm to the character and appearance of the area should attract significant weight. While the weight to be afforded to the personal circumstances of the appellants and that arising from the 'need and supply of sites' consideration would be the same as for Appeals A and B, I do not believe that in this case they clearly outweigh the totality of the harm identified, even if a temporary planning permission is contemplated and the significant weight accruing in that event from 'need and supply of sites' is added to the balance. Consequently, the very special circumstances necessary to justify the Appeal C development do not exist. In coming to this view, I am mindful that allowing a temporary planning permission for the Appeals A and B development would secure the best interests of the children.

The balance - conclusion

68. I shall therefore allow the s174 appeals on ground (a) and grant a temporary planning permission for each of the deemed applications made in respect of Appeals A and B but shall dismiss Appeal C

Appeals A and B - Conditions

69. The Council has suggested 11 conditions that might be imposed in the event of Appeals A and B being allowed and planning permission being granted. The appellants have commented on each and I have considered both in the light of the advice in the Planning Practice Guidance. The comments below refer to the Council's numbered conditions. In bold is the numbered condition in the Schedule that addresses the matter discussed.

70. As the development has already taken place condition 1 is not required. Condition 2 relates to developments that are proposed under Appeal C and so is not relevant.

71. Condition 3 **(1)** needs to be framed so as to recognise those who were occupying the site when the notice was issued while condition 4 **(2)** should reflect the corrected breach of planning control alleged and relate to caravans, not pitches. However, given the effect of the development on the openness of the Green Belt and the character and appearance of the area I consider it necessary to restrict the number of static caravans or mobile homes to the one that was stationed on site at the time of my site inspection. The site development scheme will also control their siting to minimise the visual effect on the openness of the Green Belt. I recognise that, strictly, this would be a minor departure from the breach, as corrected, which refers to touring caravans only. However, I consider the effect on all the matters discussed above from one static caravan replacing one touring caravan to be non-material.

72. Condition 5 is required to ensure the site is returned to its condition before the development took place, but this can be combined with the temporary permission condition that is necessary. The condition **(3)** will allow a period of 5 years by which time the provision of sites through the local plan review may be resolved. This is within the range suggested by the appellants, albeit at the outer margin.

73. Conditions 6, 7 and 8 concern a site development scheme and, in my view, can be combined into a single condition. Although the appellants questioned the need for an arboricultural report to inform the root protection plan I believe that is a reasonable requirement to understand the implications of the site layout that may be put forward.
74. Conditions 9, 10 and 11 would control the design of the site access, external lighting and, as the appellants have clarified, surface water drainage respectively. They are required for reasons of highway safety, the protection of the living conditions of the occupiers of adjoining properties and local flooding protection respectively. Again, I believe all these matters can be incorporated into the site development scheme.
75. The site development scheme is secure by **condition 4**. This condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the site development scheme before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
76. The Council requested that such details be submitted within a period of 2 months. The appellants requested 3. I am conscious that this decision is likely to be issued just before the Christmas/New Year holiday period and only shortly before what may well be a further period of national lockdown given the rising rates of Covid-19 infection in many parts of the country. It may therefore be difficult for the appellants to obtain the advice necessary to comply with the condition requirements in a short timescale. I shall therefore allow a period of 5 months for submission to the Council. In the event that cessation of the use becomes necessary under the terms of the condition, I shall specify a period of 6 months, this being the revised compliance period that the Council proposed as a variation to the notice in response to the appellants' ground (g) appeal.

Overall conclusions

Appeals A and B

77. It is clear from the representations that the description of the development in the enforcement notice is incorrect in that it does not describe the development that had taken place at the date of issue. The appellants and the local planning authority have agreed in correspondence prior to the site visit that it was open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
78. For the reasons given above I conclude that the appeals should succeed on ground (a) and I will grant planning permissions in accordance with the applications deemed to have been made under section 177(5) of the 1990 Act

as amended, which will now relate to the corrected allegation. The appeals on grounds (f) and (g) does not need to be considered.

Appeal C

79. For the reasons given above I conclude that the appeal should be dismissed.

Brian Cook

Inspector

Schedule of Conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr and Mrs Stokes Snr; Mr and Mrs Martin Stokes; Antonia Stokes.
- 2) There shall be no more than 4 caravans stationed at any time, of which only 1 caravan shall be a static caravan.
- 3) When the premises cease to be occupied by those named in condition 1 above, or at the end of 5 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) 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 5 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; the location of fencing and other means of enclosure around and within the site; proposed and existing external lighting on the boundary of and within the site; details of the extent and specification of hard surfacing; details and locations of soft landscaping including details of species, plant sizes and proposed numbers and densities and measures for their protection and retention; a BS5837:2012 arboricultural report and protection plan with particular regard to the boundary hedges and to the woodland to the tree lines on the south-east and north-west boundaries, and where hardstanding is proposed over a root protection zone, a suitable grade of 'no-dig' construction should be employed; a specification of the vehicular access to include provision for the first 5 metres measured back from the carriageway edge to be constructed in a bound material; a scheme giving details of the surface water drainage, the scheme to include the results of an assessment into the potential of disposing of surface water by means of a sustainable drainage system (SuDS) and provide an appropriate level of runoff treatment; and the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate (hereafter referred to as the site development scheme) 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 13 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 site development scheme specified in this condition, that site development scheme 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 Schedule of Conditions



Plan

This is the plan referred to in my decision dated: **23 December 2020**

by Brian Cook BA (Hons) DipTP MRTPI

**Land at: Land known as 'Woodland View', Billesley Lane, Portway,
Worcestershire B48 7HG**

References: APP/P1805/C/19/3230509 and APP/P1805/C/19/3230510

Scale: not to scale

