



Appeal Decisions

Hearing Held on 5 May 2021

Site visit made on 6 May 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal A: APP/R4408/C/20/3249575

Appeal B: APP/R4408/C/20/3249576

Land off Worsbrough Road, Worsbrough, Barnsley S70 5LN.

- 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 Mr C Smith (Appeal A) and Ms A Doran (Appeal B) against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 6 March 2020.
- The breach of planning control as alleged in the notice is Without planning permission: The material change of use of land for the siting of a caravan for human habitation, storage of horseboxes, vehicles, plant, equipment, machinery, the laying of hardstanding and erection of walls, fencing and boundary gates to facilitate the unauthorised use over a number of unauthorised vehicular crossings on woodland which is covered by Tree Preservation Orders. ('The Unauthorised Works').
- The requirements of the notice are (i) Cease the residential occupation of the caravan for human habitation purposes and remove the caravan from the land; (ii) Remove the horseboxes stored on the land, all vehicles, plant, equipment, machinery stored on the land (iii) Demolish and remove the boundary walls, fencing and boundary gates erected at the land and Reinstall the land to its previous condition before the unauthorised development took place including removing unauthorised hardstanding which has been laid. (iv) Cultivate the earth and Re-seed the areas where hardstanding has been laid with agricultural grass seed to assimilate them back to a natural environment.
- The period for compliance with the requirements is (i) For requirement 5(i) - within one day from date this notice takes effect; (ii) For requirement 5(ii) - within two months from the date this notice takes effect; (iii) For requirement 5(iii) - within two months from the date this notice takes effect; (iv) For requirement 5(iii) - within two months from the date this notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Appeal C: APP/R4408/W/20/3251211

Land North Side of Worsbrough Road, Worsbrough Village, Barnsley S70 5LN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Smith against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2020/0044, dated 13 January 2020, was refused by notice dated 15 April 2020.

- The development proposed is material change in use of land to provide single pitch gypsy site for stationing of caravans for residential occupation with associated development (new access, hard standing, utility building, entrance wall and gates)-part retrospective.

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

Application for Costs

1. At the Hearing an application for costs was made by Barnsley Metropolitan Borough Council against Mr C Smith. This application is the subject of a separate Decision.

Appeal C

Main Issues

2. The main issues are:
 - whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area including heritage assets;
 - The effect of the development on trees subject to a Tree Preservation Order (TPO) and on wildlife;
 - Highway safety issues;
 - The accessibility of the site to local shops and services;
 - If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

3. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 134 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. There is no dispute between the parties that the proposal would amount to inappropriate development and that it would also be harmful to the openness of the Green Belt. The Government's Planning Policy for Traveller Sites (PPTS) expressly states that such sites in the Green Belt are inappropriate

development. As to the question of openness, I am in no doubt that the various caravans, building and operational development as proposed, despite their limited scale, would be seen to be taking up space that would previously have been free from development. I conclude that the proposal would amount to inappropriate development and moderate harm to the openness of the Green Belt.

Character and Appearance

5. The appeal site lies immediately to the north east of Worsbrough Village, within an area of woodland. Part of the site is just within the boundary of the Worsbrough Conservation Area (CA). It is a relatively short distance from built development on Hall Close, which includes Worsbrough Hall and the associated Worsbrough Hall Flats, formerly a service wing to the Hall, both of which comprise Grade II listed buildings.
6. The CA is characterised by a mixture of modern and older residential properties, with St Mary's Church at its centre. Buildings, including some with prominent tall boundary walls, are predominantly constructed in stone (or materials of similar appearance) and are interspersed by mature trees, which give the village an attractive and informal character. Worsbrough Hall and the adjacent Flats, both three storeys in height with prominent gables, are tall and imposing buildings, the appearance of which is softened by the presence of mature trees along, and to the north of, Hall Close. I consider that the woodland, of which the appeal site is part, is reminiscent of the verdant and informal character of the village, and is thus an important element of the character and setting of the CA, and the setting of the aforementioned listed buildings.
7. The proposed development would include a mobile home, a touring caravan and utility building. Although no details of the mobile home are provided, I have considered the principle of such development, in conjunction with the proposed utility building and the touring caravan. I consider that the simple and functional form of these features, and the brightness of the touring caravan in particular, would draw the eye as being incongruous with the various Hall Close buildings and the surrounding woodland, and would be harmful to the pleasant visual impression of the gateway to the village. Furthermore I find the height, solid design and ornamentation of the gates and railings at the site entrance to be excessively formal and at odds with the informal character of the surrounding woodland. Whilst I accept that a condition could be imposed to secure amended boundary treatments this would not overcome my concerns regarding the visual impact of the use of the site.
8. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. I have taken into consideration that the site lies only partially inside the CA boundary and also the appellant's representation that the wider woodland has been excluded from the CA. Notwithstanding this, for the reasons set out above, I conclude that the development would result in less than substantial harm to the character and appearance of the wider CA. However in terms of the guidance in the Framework, there would still be harm which is a consideration of significant weight.

9. I have a further duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the development on the setting of the aforementioned Grade II listed buildings. It seems to me that the special interest of these buildings derives from their age, form, and appearance. The Council has suggested that the woodland would historically have formed part of the curtilage of these buildings. Whether this was the case, it seems to me that the curtilage is now more tightly confined, due to the presence of the Hall Close cul de sac road and the more modern pair of semi-detached bungalows, on the opposite side of this road, which cumulatively give a sense of severance. Nevertheless, as set out above, I consider that the woodland still forms an important part of the setting of these buildings, even though the relationship may not be as close as it once was.
10. The Council referred, at the Hearing, to the possibility of the setting being strengthened once requirements to remove existing boundary treatments at the Hall have been complied with. I have considered the relevant Listed Building Repairs Notice, served by the Council, but doubt whether its requirements extend to covering external boundary features. In any event this does not alter or undermine the above findings regarding the importance of the woodland to the setting of the listed buildings.
11. The appeal site and listed buildings are sufficiently close to one another that the site and one or other of the buildings would each be visible from certain points along Worsbrough Road and Hall Close. I conclude that the development would result in less than substantial harm to the setting of the listed buildings.
12. I have taken into consideration the presence of various domestic gardening related paraphernalia and the modern bungalows on the opposite side of Hall Close, and also a more modern building sited at a lower ground level beyond the cul de sac road to the north. However these features and characteristics, which themselves result in a degree of impact on setting, do not alter my findings. The appellant has also referred to the presence of modern vehicles in Hall Close being out of keeping with the listed buildings. However these vehicles would be more transient features and, not being placed within the natural setting of the woodland, do not tend to draw the eye to the same degree that the site development would.
13. In such circumstances, where less than substantial harm is identified to the significance of a designated heritage asset, the Framework requires that this harm is weighed against the public benefits of the proposal. The appellant argues that the site could be developed at no cost to the Council. However the site is not unique in this regard, the same being true of any private site that may come forward. A convincing case has not been made that there would be public benefits from the scheme sufficient to outweigh the harm I have identified. The development would therefore be in conflict with Policies HE1 and HE3 of the Barnsley Local Plan 2019 (LP) and with the Framework insofar as they seek to protect the significance and setting of historic heritage assets, and with Policy D1 of the LP insofar as it seeks development to promote high quality design that reinforces distinctive local character.

Trees and Wildlife

14. I am satisfied, from the information provided, that a Tree Preservation Order was confirmed by the Council in August 2018 in respect of mixed deciduous

woodland, and that the Order included trees present on, or with root protection areas encroaching onto, the site. As set out above, I consider that the woodland as a whole has considerable value in terms of enhancing the visual amenity of the area.

15. From the survey information provided by the appellant, there are two mature oak trees adjacent to the site entrance, in relation to which the vehicle access to the site and part of the hardstanding laid within the site encroach to a considerable degree on respective root protection areas (rpas).
16. It is undisputed that over time the repeated passage of vehicles entering and exiting the site would cause progressive compaction of the soil, harming the ability of roots to take up nutrients. From the tree survey information provided, showing the position of trees and their respective rpas, I have no reason to take a contrary view and conclude that the development results in harm to visually important trees and the potential erosion of the woodland, albeit that the degree of harm is reduced due to the relatively small number of trees effected.
17. I have taken into account the possibility of mitigation through new tree and hedge planting. These replacement features would nevertheless take time to become established and it seems to me that development results in moderate harm. I conclude that the development would be in conflict with Policy BI01 of the LP which seeks to safeguard biodiversity, and also with Policy GT1 insofar as it seeks that sites for travellers should avoid locations with restrictive development constraints.
18. In terms of other wildlife interests, I am not aware that the site is formally protected for habitat reasons or that any protected species would be threatened. Mitigation is proposed in terms of replacing some of the hardstanding with seeding and through the introduction of bird and bat boxes. I am not therefore persuaded that there would be residual harm in this regard.

Highway Safety

19. There is no dispute between the parties that visibility splays of some 43 metres to the nearside kerb edge in either direction, from the point 2.4 metres back into the site access from the carriageway edge, should ideally be provided to serve the development. The appellant however considers that Worsbrough Road is lightly trafficked, and that sufficient forward visibility and road width exists, such that if a vehicle waiting to leave the site protrudes somewhat into the highway, this would not result in harm to highway safety. They say that given these circumstances a more flexible approach to visibility standards would be justified, which would be in keeping with advice in Manual for Streets 2 (MfS2).
20. From measurements taken during my visit, it was apparent that the aforementioned dimensions are not achieved at present in either direction, owing to the presence of the stone piers at the site entrance and the adjacent perimeter boundary fencing. I am however satisfied that it would be possible to achieve the required visibility to the south-west, either through removing or reducing the height of the relevant pier and through altering the alignment of boundary fencing and removing encroaching shrubbery.

21. It would not, however, be possible to achieve the required splay in a north-easterly direction because the requisite alterations to the alignment of boundary fencing would be on land outside the control of the appellant and highway authority and could not therefore be guaranteed. Furthermore it was apparent that the existing unaltered arrangements would not meet a more relaxed standard of visibility in this direction, as referred to above and commensurate with MfS2.
22. My concerns are tempered somewhat by the fact that MfS2 states that unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem. When applying the relaxed standard of visibility I consider that it would still be possible for a driver leaving the site to see the centre line of the road at the required distance north eastwards. Furthermore the end of the splay would be only a short distance before a sharp bend in the road and within a 30mph speed limit area. As such any traffic approaching the site from this direction is likely to be slow moving and unlikely to cross the centre line of the road for overtaking purposes. In addition, whilst I acknowledge that several third parties have referred to the location as an accident blackspot, this is unsupported by evidence and the Highway Authority, at the Hearing, confirmed that the existing arrangements, throughout the time they have been in place, have not resulted in any recorded accidents.
23. Drawing the above considerations together I conclude that subject to a condition requiring alterations to the visibility splay, in a south-westerly direction, the development does not result in harm to highway safety. Accordingly the arrangements would conform with Policy T4 and GT1 of the LP insofar as they require that development permits safe and secure access.
24. The Council has referred to a previous deemed planning application for the formation of several means of access to the road, including that which is the subject of the present application, and which was dismissed by an Inspector following an appeal¹. The Inspector in that case referred to a lack of substantiated evidence regarding visibility splays, which to my mind differentiates that case from the current appeal. It does not therefore automatically follow that the current appeal should fail on highway safety grounds.

Accessibility

25. The Council has set out in its statement that the appeal site is not in a sustainable location, in terms of accessibility to essential facilities and services. It confirmed at the Hearing that Worsbrough Village is lacking in such provision and as such there would be a requirement to travel further afield in order to gain access to day to day needs. The Council said at the Hearing that it seeks housing allocations to be within 400 metres of a bus stop, served as part of the core network, and within 800 metres of shops and services. It states that the site would not concur with these criteria. Despite the site being close to a bus stop, opposite Hall Close, the Council says that this benefits from only a limited service.

¹ Ref APP/R4408/C/18/3194068

26. I recognise, in keeping with the Framework, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I concur with the appellant's points that the site is nevertheless well placed to access a reasonable bus service (the Council did not dispute the availability of up to three services per hour, seven days per week) and furthermore that it is not common for developments of this nature to be so well placed.
27. Whilst private transportation would no doubt be relied on, and possibly to a high degree, it was undisputed by the Council that travel to essential services and facilities would not involve significantly lengthy journeys. Furthermore the travel constraints facing the occupiers of the site would be no greater than those faced by the adjacent settled community.
28. Drawing these considerations together I am not persuaded that the site is in a location that does not have good access to shops and services. I note that this was not a reason for the Council refusing planning permission or serving the enforcement notice and conclude that the development would not conflict with Policy GT1 of the LP insofar as it requires that sites have good access to facilities.

Other Matters

29. As to the appellant's gypsy status, this is not challenged by the Council and I have no reason to take a contrary view. The appellant set out at the Hearing that he travels to various locations in the United Kingdom, in connection with the buying and selling of second-hand horse trailers.
30. There have been a number of further representations received from third parties. Some general concerns have been raised about the development harming the living conditions of the settled community, because of increases in anti-social or criminal behaviour, or leading to an increased risk of flooding on the highway. However, there is no evidence to suggest these are other than generalised fears. Furthermore I am not persuaded that the nature and limited scale of development proposed would result in harm to the living conditions of local residents by way of noise or unacceptable traffic congestion in the village. Similarly there is no evidence to persuade me that a water and electricity supply cannot be achieved, or waste from the site managed. The question of adequate access for the emergency services, should this ever be required, was also raised. However again, no substantiated evidence has been provided that this would be a problem.
31. I have considered the argument that the grant of planning permission would set a precedent for similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not, in itself, justify withholding planning permission in this case. I have not been provided with evidence of private covenants restricting the use of the land. In any event such covenants, should they exist, would not be a matter for my consideration.
32. With regard to concerns raised about the impact of the development on property value, it is not the purpose of the planning system to protect the private interests of individual parties, and as such this consideration would not attract weight in the planning balance.

Other considerations

Need for Gypsy and Traveller sites

33. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan.
34. The Council's most recent assessment of land supply for gypsy accommodation is set out in its report dated July 2020. This refers to a requirement to 2025 for some 76.2 pitches (taking into account household formation). The Council says, as part of the report, that it has a supply of some 87 pitches, which includes recent permissions and pitches developed (10 pitches) and local plan allocations on two sites (19 pitches). However it conceded at the Hearing that the supply figure should be marginally reduced (by 2 pitches) due to a constraint issue at one of the sites².
35. I am mindful that the PPTS advises that to be considered deliverable, sites should be available now with a realistic prospect that development will be delivered on the site within five years. The Council relies on its local plan allocations to be able to demonstrate sufficient supply. It confirmed at the Hearing that meetings have taken place with the respective owners of the sites allocated in the local plan, and that those owners have expressed interest in bringing the sites forward. However it would appear that these meetings were more than a year ago, and planning applications have not yet been forthcoming. Whilst I understand that progress may have been delayed by the ongoing pandemic, there is no certainty as to a likely timescale for delivery of the local plan allocated sites.
36. However the LP was adopted in January 2019 and, despite limited progress to date, I am not presented with any evidence that leads me to doubt that the sites would be deliverable within the first five years of the local plan, that they will form part of the Council's supply going forward or that the appellant's family would be eligible and likely to obtain a pitch there. Irrespective of this the sites are not deliverable, in the sense of meeting the immediate requirements of the family, as the development of the sites are not within their control.
37. Notwithstanding further areas of disagreement between the parties regarding the level of need for and supply of sites, the fact that the local plan allocated sites cannot be said to be available now indicates that there is an immediate need for sites in the Borough. The Council has not been able to identify any suitable and available alternative sites for the appellant within the Borough or the wider area. This consideration therefore weighs in favour of the development.
38. Furthermore, there is agreement between the parties that a waiting list exists in relation to one of the gypsy sites in the Borough³. According to the Council's July 2020 report the size of the waiting list was some 9 pitches, although I am conscious that at the Hearing the appellant considers the waiting list to be

² Ings Lane

³ Smithies Lane

greater than this now. However, even by taking the Council's published figures this would serve to eliminate any surplus capacity, when taking the above concession into account, and would therefore cast doubt on the availability of an up-to-date five-year supply of deliverable sites.

Personal circumstances

39. It is undisputed by the Council that the appellant lives on the appeal site with his partner and two young children, aged 4 years and 17 months. The appellant's daughter will soon start school.
40. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
41. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
42. There can be no doubt that if the appeal was unsuccessful it would take away a settled base for the family, who may potentially need to resort to living on the roadside and face disruption to their general healthcare and their daughter's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. I consider that because there would be a clear benefit to the appellant's daughter of remaining on site, as part of a settled base, that this should attract significant weight in the planning balance.

Further Considerations

43. The appellant has referred to the constraint imposed by the high proportion of land in the Borough that is in the Green Belt (some 77% of land). This is not disputed by the Council and I note that one of the sites allocated in the local plan is on land that it is / was in the Green Belt. However this underlines the fact that each site must be considered on its own merits and I am not persuaded that the Green Belt constraint in itself should be held to overcome the harm that I have found. As referenced earlier, it is said that the site could be developed at no cost to the Council. However the site is not unique in this regard, the same being true of any private site that may come forward. These considerations do not therefore attract weight in the overall planning balance.

Green Belt Balance

44. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal site is inappropriate development in the Green Belt. In addition, the residential use and associated structures cause a loss of openness and harm to the purposes of including land in the Green Belt.
45. I have found that the development results in harm to the character and appearance of the area including heritage assets which is a consideration of significant weight; also to the well-being of protected trees to which I attach moderate weight.
46. Subject to conditions, the development would not result in harm to highway safety and I do not consider the site to be poorly located in relation to services and facilities. These 'absences of harm' do not weigh in favour of the appeal.
47. There are considerations which support the appeal. Having regard to advice in the PPTS when considering sites in Green Belt locations, I attach moderate weight to the lack of any alternative site being available to the appellant now, and to the apparent lack of an up-to-date 5-year supply of deliverable sites. I also attach significant weight to the appellant's personal circumstances.
48. The PPTS states 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. I have balanced the harm to the Green Belt and the other harm identified against the other considerations referred to above. However for the reasons given, having regard to the PPTS and even when considering the best interests of the children, I find that they do not clearly outweigh the harm identified. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the proposal conflicts with the Green Belt protection aims of the Framework and with Policies GB1 and GB3 of the LP, which seek to resist inappropriate development and changes of use which fail to preserve the openness of the Green Belt. The grant of a permanent planning permission would not therefore be appropriate.
49. However I also need to consider, by way of alternatives, the possibility of temporary or personal planning permissions instead. In principle I consider that a temporary permission (personal to the appellant) would serve to reduce the severity of harm identified. It would also allow for an increased possibility of alternative suitable sites becoming available within the Borough, having regard to the likely timescale for the delivery of sites allocated in the local plan. On this basis I consider that a personal planning permission, limited to a temporary three-year period would be appropriate. For the avoidance of doubt I would have arrived at the same conclusion even if I had found there to be an up to date 5-year supply of deliverable sites, because of the present situation regarding immediate unmet need.
50. By contrast a temporary planning permission, that was not personal to the appellant would not be appropriate, as the grant of temporary permission can only be justified by the additional weight of the appellant's personal circumstances. Similarly a personal planning permission on a permanent basis

could mean the site being occupied for many years to come. I consider it remains the case that with such an arrangement the appellant's personal circumstances are not sufficiently compelling to offset the various harms that would be caused.

Conditions

51. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. Conditions confirming that planning permission is granted for a temporary period of three years only; that occupation is restricted to the appellant, his wife and resident dependants and requiring remediation of the site following the expiry of the temporary permission or prior cessation of use, are necessary in the interests of environmental protection. A condition confirming the approved plans is necessary in the interests of certainty.
52. Conditions limiting the number of caravans stationed, the size of vehicles parked and preventing commercial activity on the site are all required in the interests of helping to safeguard the character and appearance of the area and / or the living conditions of residents.
53. A condition restricting construction working hours is required in order to protect the living conditions of local residents. A condition requiring habitat enhancement is required in the interests of biodiversity.
54. A condition requiring the provision and retention of suitable visibility splays is required in the interests of highway safety.
55. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the appearance of the utility building and mobile home, external lighting, boundary treatment, soft landscaping works, surface water drainage and ecological enhancement measures is required in order to ensure the site is serviced with adequate infrastructure and to help safeguard the character and appearance of the area and biodiversity interests.
56. I have considered whether it would be appropriate for a condition to be imposed requiring the surface of the access road to the site to be sealed, in part, in order to avoid loose material being dragged onto the highway. However, on balance, this consideration is outweighed in importance by tree protection interests which might be prejudiced by such alterations. I have also considered a requirement for tree replacement in the event that any new planting is lost for whatever reason. However I consider that this would be disproportionate in view of the temporary nature of the permission.

Conclusion

57. For the reasons given above I conclude that the appeal should be allowed subject to conditions.

Appeals A and B

Preliminary Matters

58. The appellants have set out that the notice should be regarded as invalid for two reasons. Firstly on the basis that it is considered to be vague as to the nature, quantity, and precise whereabouts of the alleged development.
59. Secondly the appellants say that the site covers an area much larger than the appellants' own interest, the notice having been served on others who have not appealed. In their view the site area includes multiple planning units. As such a ground (a) appeal was not made on the basis that the wider site was irrelevant to them and they did not wish to pay a greater fee for the deemed planning application than was necessary. Accordingly the appellants say that they have been denied the opportunity to make a ground (a) appeal for the part of the site in which they have an interest.
60. Because the static caravan has not yet been stationed on the site and the amenity building has not been built, there is currently less development on the appellants' site (as covered by the notice) than is sought through the s.78 appeal. Therefore the appellants consider that they would be prejudiced in the event that I do not grant a full permanent permission (through allowing the s.78 appeal) and I decide to uphold the notice; the point being that I may possibly have allowed a ground (a) appeal, had it been made, for less development on the site than that subject to the s.78 appeal.
61. With regard to the first point, notwithstanding the appellants' concerns I am not persuaded that it is unclear from the description of development alleged in the breach, and the wording of the subsequent requirements, as to what the respective parties with an interest in the land have done wrong and would be required to do to rectify the situation. I note that none of the other interested parties have appealed on this or any other basis. With the exception of minor typographical errors and clarifications, I would see no reason for the notice needing to be fundamentally corrected. The minor corrections necessary could be made without resulting in injustice to the parties.
62. Although the requirements do not specifically refer to remediating the vehicular crossings, these developments are separately 'attacked' by a separate extant enforcement notice that was previously upheld following an appeal⁴. The appellants also say that the notice does not refer to the grazing of the land by sheep. However this use was not apparent at the time of my visit, and the identification of the alleged breach of planning control is a matter for the Council.
63. With regard to concerns about the availability of the ground (a) appeal, although technically the deemed planning application would be for the whole of the matters alleged, in practice I see no reason why the appellants could not have made it clear they were only seeking permission under s177(1)(A) for part of the matters alleged. There is no evidence to persuade me that the principle of an enforcement notice spanning several planning units is problematic. Whilst I appreciate that this would not have overcome the need to pay a higher fee and the appellants feeling aggrieved about this, the level of

⁴ Ref APP/R4408/C/18/3194068

the fee is not a matter for my consideration in this appeal. The point is that it would have remained possible for the appellants to have appealed on ground (a), seeking planning permission for only part of the land covered by the notice.

64. Notwithstanding this, I am able to confirm that had an appeal been made on ground (a), I would nevertheless have found that despite a reduced scale of development on the site, the development would still have resulted in significant harm to the character and appearance of the area. Had the planning balance been applied in these circumstances I would still not have concluded that very special circumstances existed necessary to justify a permanent planning permission. Rather I consider it likely that a temporary personal planning permission would have been justified for the residential use of the site and the associated developments, in keeping with my findings in respect of Appeal C.
65. I have had regard to the temporary nature of the permission and the possible preference of the appellants to maintain the residential use of the site in the manner attacked by the notice, thus not obliging the appellants to further develop the site in keeping with proposed plans. I therefore consider it would be appropriate to word the relevant planning condition to allow the local planning authority the option to agree details of less development on the site accordingly.
66. Reference has been made to breaches of the stop notice, and to the possibility that further development has occurred at the site since the issue of the enforcement notice. This however is not a matter before me for consideration.

Appeals A and B on ground (g)

67. The appellants' case is that there is no justification for requiring the cessation of the use of the site within one day. I have concluded that it would be appropriate to grant temporary planning permission in relation to Appeal C for a three-year period. The requirements of the upheld notice would therefore cease to have effect so far as inconsistent with the planning permission which I will grant, by virtue of s180 of the Act.
68. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the appellant's residential use of the site and associated operational developments because they benefit from planning permission and are therefore lawful for planning purposes.
69. Whilst I concur with the view that allowing a single day for the cessation of the residential use of part of the site would not be reasonable, I have concluded that temporary planning permission for residential use and associated operational development in relation to part of the site should be subject to planning conditions. As discussed above the wording of the plans condition will allow for flexibility in terms of the details of accommodation on the site. Taking the above factors into account, I consider there would be no justification to allow the ground (g) appeals.

Conclusion

70. For the reasons given above, I conclude that the appeals on ground (g) should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

Appeals A and B

71. It is directed that the enforcement notice be corrected in paragraph 3 by inserting the word "and" between the words "equipment," and "machinery" and by pluralising the reference to "unauthorised use" so that it refers to "unauthorised uses"; and

By inserting the words "use of land for" between the words "Cease the" and "residential occupation" in paragraph 5(i); and

By inserting the words "Cease the use of the land for storage purposes and" at the beginning of paragraph 5(ii); and

By deleting the term "5(iii)" in paragraph 6(iv) and inserting the term "5(iv)" instead.

72. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Appeal C

73. The appeal is allowed and planning permission is granted for material change in use of land to provide single pitch gypsy site for stationing of caravans for residential occupation with associated development (new access, hard standing, utility building, entrance wall and gates)-part retrospective at Land North Side of Worsbrough Road, Worsbrough Village, Barnsley S70 5LN in accordance with the terms of the application Ref 2020/0044, dated 13 January 2020, subject to the conditions below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by the following: Mr Christian Smith, Ms Alice Doran and their resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1 above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto, or erected on 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.
- 3) The development hereby approved shall be carried out in accordance with the plans (Proposed Site Layout Plan – Rev A, Proposed Utility Blocks & 1054/LWR 02) and specifications as approved, unless otherwise agreed in writing by the local planning authority.
- 4) Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
- 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 6) No commercial or industrial activities, including storage of vehicles, equipment and materials, shall take place on the land, and no vehicles above 3.5 tons in weight shall be parked on the site.
- 7) The development shall be carried out in accordance with the mitigation and enhancement measures set out in section 4 of the Preliminary Ecological Appraisal (PEA) dated February 2020 by Weddle Landscape Design.
- 8) Within 3 months of the granting of this permission a visibility splay providing clear visibility of the nearside carriageway edge 43 metres to the south-west, when measured 2.4 metres back from the carriageway at the centre of the access road, and at a height not exceeding 900mm, shall have been provided at the junction of the access road with the highway. The visibility splay shall thereafter be retained for the lifetime of the development. The existing visibility splay providing clear visibility of the centre line of the carriageway 43 metres to the north-east, when measured 2 metres back from the carriageway at the centre of the access road, and at a height not exceeding 900mm, shall be retained for the lifetime of the development. No structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to be grown which obstruct the visibility splays.

- 9) The use hereby permitted shall cease and all associated caravans and materials shall be removed from the site and all associated operational development including gates, walls, fences, hardstanding and the vehicular access shall be demolished and removed from the site within **two months** of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within **two months** of the date of this decision details of the external materials for the utility building; the appearance of and external materials for the mobile home; boundary treatments; external lighting arrangements; soft landscaping works including details of the species, positions and planted heights of proposed trees together with details of the position and condition of any existing trees and hedgerows to be retained; surface water drainage and ecological mitigation and enhancement measures shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for their implementation.

ii) If within **ten months** of the date of this decision the local planning authority refuse to approve all the details or fail to give a decision within the prescribed period in respect of all the details, a valid appeal shall have been made to 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 and shall thereafter be retained for the lifetime of the development.

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

APPEARANCES

FOR THE APPELLANT:

Alison Heine	Agent
Christian Smith	Appellant
Alice Doran	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

James Hyde	Planning Officer
Paul Doherty	Group Leader – Planning Support, Monitoring and Enforcement
Wayne Lake	Highway Development Control
Anthony Wiles	Senior Conservation Officer
Bob Power	Senior Legal Officer
Emma Coveney	Senior Planning Policy Officer
Ed Jowett	Forestry Officer

Documents submitted following the Hearing

1. Confirmation of 2018 Tree Preservation Order
2. Public consultation responses in relation to the planning application
3. Listed Building Repair Notice