



Appeal Decisions

Hearing Held on 16 June 2021

Site visit made on 16 June 2021

by Simon Hand MA

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

Decision date: 29 June 2021

Appeal A: APP/L2630/C/20/3250478

Land at Plots 1-8 South East Side of London Road, Sutton, Wymondham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Christine Falquero against an enforcement notice issued by South Norfolk District Council.
 - The enforcement notice, reference: 2020/8033, was issued on 5 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land from agricultural land to land used for residential purposes, for the standing of caravans for human habitation and the standing of associated timber buildings and structures.
 - The requirements of the notice are i) Remove all the mobile homes/caravans from the site in their entirety. ii) Remove all buildings, structures, material and equipment associated with the residential use of the land from the site in their entirety. iii) Cease the residential use of the land.
 - The period for compliance with the requirements is 1 year.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Appeals on the same grounds except for (a) have also been made by Ms Debra Tidd (3250479), Ms Violet Smith (3250480), Mr Jimmy Smith (3250481), Mr Andrew Biddle (3250482), Ms Jodie Barham (3250483), Mr William Tidd (3250484), Ms Jeanette Tidd (3250485), Mr Nathan Young (3250486), Ms S Smith (3250487) and Mr A Tidd (3254088).
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Appeal B: APP/L2630/W/20/3246540

Land at Plots 1-8 South East Side of London Road, Sutton, Wymondham

- 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 Ms S Smith against the decision of South Norfolk District Council.
 - The application Ref 2019/0330, dated 6 February 2019, was refused by notice dated 23 August 2019.
 - The development proposed is change of use of the land to allow formation of 8 No plots each with mobile home, day room, hard standing for touring caravan and stable building.
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Decisions

Appeal A and all other Enforcement Appeals

1. It is directed that the enforcement notice be varied by deleting requirement (ii) and replacing it with "*ii) Remove all buildings, structures, material and equipment – including but not limited to all hardstandings and all fences and*

gates except those fronting the B1172 - associated with the residential use of the land from the site in their entirety". Subject to this variation the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B – 3246540

2. The appeal is dismissed.

Preliminary Matters

3. The appeals were made on all grounds. At the hearing the appellants withdrew the ground (e) appeal. I had already explained that complaints about the use of correct delegations by the Council was not a matter for an appeal under s174.
4. The appeals on (b), (c) and (d) were primarily concerned with the gates and fences that had been constructed on the site. The appellants argued these were permitted development in any event and so could not be attacked by the notice. The Council pointed out the word "structures" in the notice could be read so as to not mean gates and fences and so were happy for me to correct the requirements to make this clear. However, as Mr Charles, who represented a number of local residents said, the gates and fences could be taken to be part of the material change of use and so could be required to be removed by the notice. I agree, and this is something I shall consider under ground (f).
5. Similarly, the appellants argued the notice did not specifically include the hardstanding that had been laid, which is correct, but it does require all the "buildings, structures, material and equipment associated with the residential use" to be removed from the land. If the hardstanding was laid as part and parcel of the material change of use then that too can be required to be removed. There are thus no substantive arguments on grounds (b), (c) and (d).

The Appeal on Ground (a) and the Planning Appeal

6. The site lies in the countryside, on the south-eastern side of the B1172 which runs from the junction with the A11 to Wymondham. I was informed this is the old A11 before Wymondham was bypassed. Morley Hall Farm lies opposite the entrance to the site.
7. The current development plan for the area comprises the Joint Core Strategy (JCS) amended in 2014 (which covers Broadland, Norwich and South Norfolk) and the South Norfolk Local Plan Development Management Policies Document (2015). These are due to be superseded by the Greater Norwich Local Plan, which covers the same area as the JCS. This latter document is at an early stage and is yet to be submitted for Inquiry. The appellants have registered objections to the draft version. I shall give this document little weight.
8. The JCS policies are pretty general, dealing with climate change, design and local transport, the more directly relevant policies are in the local plan. DM 1.4 deals with environmental quality and local distinctiveness; DM 3.10 promotes sustainable transport; DM 4.5 landscape character; 4.10 heritage assets and of most relevance DM 3.3 deals with gypsy and traveller sites. In addition the

Council consider they have planned for a 5 year supply of gypsy sites which is disputed by the appellant.

9. The main issues in the appeal are therefore whether there is a 5 year supply of sites and if so whether there are any alternative sites for the appellants? Where is the site located in relationship to nearby settlements or communities and how would it impact on them? Does it have an impact on the character of the local area and any local heritage assets, and finally the personal circumstances of the appellants?

5 Year Supply Issues

10. The question of a 5 year supply depends on the validity of the Accommodation Needs Assessment produced in 2017 for the greater Norwich area. This was discussed at a Hearing¹ held back in 2018 when the Inspector concluded that although he had reservations about the ANA it was the best available published evidence and the Council did have a 5 year supply.
11. It is clear the ANA is not a full scale Gypsy and Traveller Accommodation Needs Assessment (GTAA), but a rather more broad-brush accommodation assessment of people not living in bricks and mortar, such as gypsies and boat dwellers. The details of the evidence which underpins its conclusions is not reproduced, apparently for reasons of confidentiality, but this does make it difficult to gauge how comprehensive it is. The appellants claimed there are numerous gypsy families that have not been included, but it is certain the current appellants say they have never been approached and because of the lack of transparency surrounding the ANA it is impossible to verify this.
12. Of greater significance in my view is that it seems to have relied on information from the Council and so only looked at sites that already had planning permission or in one case was unauthorised. I find it hard to believe there was only a single unauthorised gypsy camp in the district. Also, as far as I can tell, there is no allowance for any inward migration.
13. In May of this year the Council produced an ANA addendum, which shows that based on the figures in the ANA they have a 5.27 year supply of pitches. I have no reason to doubt the mathematics of that report but it depends entirely on the validity of the ANA in the first place. The ANA was originally produced as a document to inform the GNLP, which is still moving slowly along the path to a local plan inquiry at which the ANA can be tested for the first time. Assuming that inquiry does take place this year the original research for the ANA will be five years out of date. It also seems the appellants, who require 8 pitches, were not included in the ANA, that alone would affect the 5 year supply figure. Consequently, I am less sanguine than the Inspector in 2018 about the value of the ANA and do not consider I can find the Council does have a reliable 5 year supply of gypsy sites.
14. Whatever my conclusions on the 5 year supply however, it remains undisputed that the appellants have nowhere else to go. They have mostly been living on the road in recent times. Several of them were at another site, Romany Meadows, but were evicted as the owner wants to put that forward for housing. Mr Carruthers argued this was a recurring problem for gypsy sites especially those on the edge of settlements. If the site is sustainably located then its

¹ APP/K2610/W/17/3189064, Honingham Road, issued 31 August 2018

value for housing is considerably greater than as a gypsy site. Further back in 2005 several of the families were involved in the Kingsland Farm² appeal and at that time it was noted they were itinerant, living mostly on the road and had nowhere else to go. The Inspector also noted it should now be clear to the Council that gypsy sites were required in the area far quicker than the then local plan timetable would allow. So it is clear that at least some of the families have been well known to the Council for many years, so it is odd they have not been included in the latest ANA.

15. Consequently, the lack of a 5 year supply of gypsy sites and the lack of any alternative accommodation weigh in favour of the appeal.

Relationship of the site to the settled community

16. There is no dispute the site is located in the open countryside and it was accepted at the Hearing that it is away from the nearest settlement. PPTS at paragraph 25 advises that new sites in the countryside away from existing settlements should be very strictly limited. It goes on to say such sites should respect the scale of and not dominate the existing community.
17. Having carefully looked around the area on my site visit my impressions confirmed the view from the Ordnance Survey map and aerial overlays that it is largely pleasant, open countryside with very scattered dwellings and farms. The nearest grouping of buildings that I would consider to be a settlement is Spooner Row, some way to the south beyond the A11 and the railway, and this is very small. Sutton itself is just part of the general scatter of properties in the area. Morley St Botolph has more the feel of a village, but is a couple of kilometres to the north, while Attleborough and Wymondham, more substantial towns lie to the east and west respectively along the A11, 3-4 km away. I have no reason to dispute therefore that the site is in the open countryside and is away from local settlements.
18. What comprises the "nearest settled community" as described by the PPTS was subject to some discussion. In my view none of the villages or towns mentioned above are near to or affected by the appeal site. The nearest settled community is clearly not the same as the nearest settlement, or that phrase would have been repeated. The appellant argued the Parish of Spooner Row formed the settled community and that consisted of over 700 people. I do not agree otherwise the idea of dominating the settled community would have no real meaning unless the gypsy site was big enough to dominate an entire parish. In my view the nearest settled community is the scatter of houses and farms that lie within a kilometre or so of the site.
19. I do not agree with some of the more fanciful estimates of numbers on the appeal site, but 8 families with their dependants is a sizeable number of people without counting any visiting families travelling in the area. Within the context of the local settlement pattern the site amounts to a small village in its own right and with the numbers of people and its compact nature it would clearly dominate the locality and so be contrary to DM 3.3 1(a).
20. In reaching this conclusion I have not taken into account the nearby gypsy site at Chepore Lane, which lies about 1/2km to the south adjacent to the junction with the A11. This was allowed by the Council in 2012 for 8 pitches for an

² APP/L2630/A/04/1151371, issued 22 June 2005

extended Romany gypsy family, much the same as the current appellants. Its very isolation was taken to not dominate the local community and it does seem as if few people live nearby, which is not the same as the appeal site. The general view of local residents was that they already have a gypsy site and one is enough. While I would not put it quite in those terms, it is clear that two, 8 pitch sites, in such a scattered and sparsely populated community would clearly be disproportionate and so contrary to DM 3.3 1(i)

Access to services

21. Access to local services would appear to be reasonable. The local senior school is Wymondham College, which is in the grounds of Morley Hall, across the road from the site, but actually a couple of kilometres away by road. It is a similar distance to the nearest primary schools at Morley St Botolph and Spooner Row, the latter having a station as well. There is a bus stop on the road near to the site which provides a service to Attleborough and Wymondham. Despite this, it was accepted that the occupants of the site would be dependent on the car for access to local services. That is because of the realistic acceptance that culturally gypsies are most likely to drive, but also because the surrounding road network is not conducive to walking. Even the bus stop, which would ordinarily be considered within walking distance was along the B1172, which is straight and well trafficked at fast speeds and with no pavement or lighting. The verge would also not seem to be easily walked on, so the bus stop is essentially out of reach of the site.
22. I agree therefore that the local facilities are most likely to be predominantly accessed by car. Nevertheless, they are nearby and the site is well connected for a rural gypsy site. It is accepted that by their very nature gypsy sites are likely to be rural and that locational sustainability criteria can be relaxed slightly when compared to permanent housing. There is also the difficulty to quantify contribution that having a settled base would make compared to being on the road. This would seem to be recognised by DM 3.3 which says that gypsy sites should "*not be so isolated from Settlements that the occupiers cannot gain convenient access to schools and facilities to meet their daily needs*". Taking all that together therefore I do not think the proposal is unsustainable and so is not contrary to DM 3.3 1(f).

Impact on landscape and heritage assets

23. The local parish has a complex administrative history, but that does not detract from the essential landscape characteristics of the area. The Council's Landscape Character Assessment describes the area as a "*pleasant rural working landscape of farmland with sparse settlement comprising villages and isolated dwellings*". The most relevant of the development considerations is to maintain the perception of the rural working landscape and for proposed development to relate to the existing pattern of small villages and scattered development.
24. I would agree with these assessments, the area is pleasantly agricultural, with fields bounded by hedges and trees and generally quiet rural lanes. There are long views across the landscape as it is predominantly flat and the site is clearly visible from Chepore Lane, across the fields to the east. Even where local development straggles along the road, each house is well separated from its neighbours, set back and often hidden by hedges and trees. Within this landscape the site stands out as an alien intrusion that looks entirely out of

place. It will be a densely populated block of caravans, mobile homes, stables, day rooms and vehicle parking on an otherwise flat open field that is wholly incongruous within the landscape context of its surroundings.

25. What makes it worse is the central road that has been laid down the middle of the site and the extensive fencing that divides the 8 plots, made of concrete posts with wooden panel inserts. A number of the pitches have also had hardstanding put down and this gives an indication of how the final site will look. Essentially it looks like a small village made up of caravans and mobile homes that is set to become more developed if the appeal is allowed.
26. Some of these issues, such as with the fencing, could possibly be dealt with by conditions, although no proposed landscaping or boundary treatments have been suggested, but that would not overcome the fundamental objections I have identified. In my view it is out of place, intrusive and harmful. It is thus contrary to DM 3.3 1(d). It will also harm local character and distinctiveness, contrary to DM 1.4(d)(i) and DM 4.5.
27. There is a pair of estate cottages opposite the site which are non-designated heritage assets. These are attractive substantial Edwardian cottages with distinctive chimneys and half-timbered gables. The NPPF and DM 4.10 require that the impact on the significance of any non-designated heritage assets is taken into account in reaching planning decisions. Here the impact is limited to the setting of the cottages. Historically they fronted the main road in an isolated position within the patchwork of local fields. At present this situation would still pertain if it wasn't for the appeal site. Given my conclusions above on landscape harm, it follows there is considerable harm to the setting of the cottages which would no longer be isolated in the countryside but opposite a busy campsite.
28. Although I have been given no information on whether the cottages are particularly rare it does seem they are a good example of their type and are a prominent feature in the immediate neighbourhood. The impact on their setting is considerable and this is contrary to DM 4.10.

Personal circumstances

29. I have no reason to doubt the appellants are all gypsies who fall within the definition in the PPTS. It was explained the families are interrelated or have other close ties. It would seem that three of the families have children of various ages, all of whom would benefit either now or in the future from a stable home from which to access schools and medical facilities and one of the occupants suffers from an illness that requires frequent hospital attendance. The other families either seem to be older or young working couples. I have no independent verification of any of these facts but no reason to disbelieve them.
30. Certainly some of the appellants have been on the road for a long time and have been involved in various attempts to find settled accommodation, to no avail and Mr Jay made an impassioned speech to this effect at the hearing.

Other issues

31. A number of other issues were raised by local residents. They were concerned at the speed of traffic on the B1172, which is straight and fast. However, there were no technical objections from the highway authority, I assume because visibility was good and it wasn't actually that busy in the greater scheme of

things. The site would be well screened and secured from the road so there should be no specific highway problems.

32. Local residents also were concerned about flooding. Photographs showed part of the field with large puddles but they hardly represent a danger to the occupants. The site is not in a flood zone and there is no evidence flooding would render the development unsafe. There was also a discussion about the treatment of sewage. It is not unusual for any development, not just gypsy sites, to come forward and expect to deal with foul and rainwater treatment through conditions. Unless there is evidence that there are specific problems at a particular site there is usually a technical solution that can be found.

Conclusions

33. I am obliged to consider the best interests of the children, which is a primary consideration, and have had that uppermost in my mind, along with the human rights of the appellants, their right to a home and to retain their cultural lifestyle. All of these attract considerable weight. I have also concluded the Council does not have a 5 year supply of sites and the appellants do not have any alternative accommodation. However, the site is prominent and incongruous and causes significant harm to the landscape, it harms the setting of the nearby non-designated heritage assets and is disproportionate in size and would dominate the nearby settled community. These factors are sufficiently serious and of sufficient weight that they are not outweighed by the factors in favour of granting planning permission.
34. I note the Council allowed the nearby site at Chepore Lane against officers' advice on the basis of a shortage of gypsy sites in the area and that it was not harmful to the character of the area. Chepore Lane is indeed tucked away close to a roundabout junction with the A11 and has quite a different impact on its surroundings than the appeal site. Consequently, while I recognise the situation the appellants are in, I consider this to be the wrong site in the wrong location. The interference in their human rights is proportional and the harm caused significant enough to warrant dismissal even considering the best interests of the children.
35. A temporary condition was considered, the appellants suggested 5 years, but agreed that not a lot was likely to change in that time. In my view, the locational disadvantages would not be affected by a temporary condition, the harm is immediate and continuing. A temporary condition is not therefore warranted. A large number of other conditions were discussed but they deal with the specific issues raised by a grant of planning permission and do not affect the outcome of the appeal. I shall therefore dismiss the appeals and uphold the notice.

The Appeal on Ground (f)

36. I agree that the allegation does not mention the fences or the hardstanding but it is directed against the material change of use. It uses the unusual phrase "standing of associated timber buildings and structures". I assume this is because at the time the notice was issued there were no permanent day rooms or other structures apart from a few timber sheds and stables, which the Council would seem to allege are placed on the land as part of the material change of use rather than comprising separate operational development.

37. However, exactly what is meant is not important as the requirements are to cease the use and to remove the caravans and *"all buildings, structures, material and equipment associated with the residential use of the land from the site"*. It is thus clear exactly what the scope of the notice is. Anything that has been introduced to the field that is part and parcel of facilitating a gypsy site should be removed. Apart from the fence fronting the B1172, which could be said to be useful for agriculture, all the rest of the structures, stables, the fences and gates that sub-divide the site into plots, the individual hardstandings and the access road that runs through the site are part of the material change of use and would serve no purpose without it. They all fall comfortably within the long established and well known series of court judgements beginning with *Murfitt*³ in 1980 and culminating, as far as I am aware, with *Kestrel Hydro*⁴ in 2016, which confirm that works associated with a material change of use can be removed if they were integral to that change of use.
38. Mr Carruthers relies on a different case, *Egan v Basildon*⁵ from 2011, which was part of the long running Dale Farm controversy. This was an injunction to prevent the council from over-enforcing their notice. It was held the Council could only remove structures such as fences, gates and walls, which were unlawfully constructed prior to the issue of the enforcement notice if they were included in the notice itself. The Council couldn't rely on the principle of enabling works *"which exists at common law or by virtue of section 111(1) of the local government Act 1972"*. No mention is made of *Murfitt* or the other pre-2011 cases I have referred to above. That is because these are two separate issues. In this appeal the notice does refer to all the fences, gates, hardstandings etc in the catch-all phrase *"all buildings, structures, material and equipment associated with the residential use"*. Thus the principles outlined in *Egan* do not arise.
39. Given that this is a matter of dispute I shall vary the requirements to make it clear they refer to all the hardstanding and the fences and gates other than those fronting the B1172.

The Appeal on Ground (g)

40. The notice gives the occupants 12 months to vacate the site. This seems appropriately generous to me as they will be losing their established base and there is nowhere obvious for them to go. I do not think a shorter period is warranted, even though this appeal has dragged on since April 2020. The appellants are entitled to assume success and they should not be penalised for delays in the planning system.
41. The appellants suggested a 5 year compliance period would be better, but that would be tantamount to granting a temporary planning permission and I have dealt with that above. There is no need to alter the compliance period.

Simon Hand

Inspector

³ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

⁴ *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] EWHC 1654 (Admin), [2016] EWCA Civ 784

⁵ *Mr Patrick Egan v Basildon BC* [2011] EWHC 2416 (QB)

APPEARANCES

FOR THE APPELLANT:

Stuart Carruthers – Agent
Simon Jay – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Adam Banham – South Norfolk District Council
Andy Baines
Glen Beaumont
John Shaw – Norfolk County Council (highway matters)

INTERESTED PERSONS:

Sebastian Charles – solicitor representing a group of local residents
Rachel Hall
Shaun Daly

DOCUMENTS

- 1 List of appellants and plots
- 2 Plan of site with plot numbers and relevant appellants noted