
Appeal Decisions

Hearing Held on 7 September 2021

Site visit made on 8 September 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal A: APP/P0240/C/20/3262339

Land at Knyghton land adjacent to Toddbury Farm, off Mill Road, Little Billington, Leighton Buzzard, LU7 9BP (Land between Toddbury Farm and Greenacres)

- 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 Mr Dermott Barrett against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice was issued on 1 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the creation of an area of hardstanding and building a fence on the Land.
 - The requirements of the notice are to remove the hardstanding and fence from the Land, and restore the Land to its former condition.
 - The period for compliance with the requirements is 6 (six) months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/P0240/C/20/3262343

Land at Knyghton land adjacent to Toddbury Farm, off Mill Road, Little Billington, Leighton Buzzard, LU7 9BP (Land between Toddbury Farm and Greenacres)

- 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 Mr Dermott Barrett against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice was issued on 1 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of paddock land ("the Land") to use of the land for the stationing of caravans for residential use.
 - The requirements of the notice are:
 - (i) Cease using the Land for the stationing of caravans.
 - (ii) Remove from the land all caravans and other items associated with the use of the land.
 - The period for compliance with the requirements is 4 (four) months from the date when this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A ref APP/P0240/C/20/3262339

1. It is directed that the enforcement notice be:

- (i) corrected in section 2 by deleting "Knyton" and substituting "Knyghton" and by deleting the words "edged red" and substituting "edged with thick black lines";
- (ii) corrected by deleting the original plan attached to the notice and substituting the plan attached to this decision;
- (iii) corrected in section 3 by deleting the words "and building a fence"; and
- (iv) varied in section 5 by deleting the words "and fence".

Subject to these corrections and that variation the appeal is 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 ref APP/P0240/C/20/3262343

2. It is directed that the enforcement notice be:

- (i) corrected in section 2 by deleting "Knyton" and substituting "Knyghton" and by deleting the words "edged red" and substituting "edged with thick black lines";
- (ii) corrected by deleting the original plan attached to the notice and substituting the plan attached to this decision;
- (iii) varied in section 5, by deleting requirement (ii) and substituting:
"(ii) Remove from the Land all caravans and other items, including fencing, associated with the use of the land for the stationing of caravans."

Subject to these corrections and that variation the appeal is 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.

Applications for costs

3. At the hearing applications for costs were made by Central Bedfordshire Council against Mr Dermott Barrett in relation to both appeals. These applications will be the subject of a separate Decision letter.

Procedural matters

- 4. Though not formally linked, appeals A and B concern the same land and appellant, and I considered them at a single virtual hearing. It is convenient to deal with them in one decision document.
- 5. Appeal A initially included ground (d), and appeal B also cited grounds (c), (d) and (e). However, following my pre-hearing note of 24 August 2021, in which I

queried the basis of those grounds, they were withdrawn in an email from the appellant's agent dated 2 September 2021.

6. Since the appeals were lodged, the Government published its revised national planning policy framework (July 2021). The parties have had an opportunity to comment on the implications of the changes during the appeal process.

The notices

7. Both notices referred to the land as "Knyton land", but the Council indicated shortly before the hearing that the correct spelling is "Knyghton", as per the heading to these decisions. It was agreed that I should correct this in the notices, and no injustice would result.
8. The land edged red on both notices comprises the entire field or paddock between the Toddbury Farm travellers' site to the west and the Greenacres travellers' site to the east. This is the area known as the Knyghton land, which I am told is owned by the Knyghton Trust. However, the parties agreed that the great majority of that field was unaffected by any operational development or material change of use. Aerial photographs and my site inspection confirmed this. The new hardstanding, fencing, residential caravan site use, and associated items were all confined to relatively small areas. These effectively extended pitches 9/4, 11 and 12 on the Toddbury Farm site.
9. I had raised this matter in my pre-hearing note, and the parties agreed that the notices should be corrected by the substitution of a plan, identifying only the smaller, affected areas. At my request, the Council prepared a new plan, which was submitted as hearing document 3. I will correct the notices by substituting that plan, both parties having agreed that no injustice will result.
10. It was also confirmed that the appellant's only interest is in the area which extends pitch 9/4. No appeals have been lodged by the owners or occupiers of pitches 11 and 12, or those of the remainder of the Knyghton land.
11. Although appeal A had never included ground (c)¹, my pre-hearing note also questioned why the operational development notice had alleged the erection of a fence. This is because, in this location, provided it did not exceed 2m in height, a fence would normally be permitted development (PD).² Notwithstanding some debate about this during the hearing, I am satisfied that fences along the eastern boundaries of the relevant pitches would function as means of enclosing them, so as to benefit from PD rights.
12. Ultimately, the Council and appellant agreed that the operational development notice, the subject of appeal A, should be corrected and varied by deleting references to the fence, and no injustice would result from that. Having said that, as discussed during the hearing, it is also clear that the material change of use notice, the subject of appeal B, could have required the removal of fences, if they were erected as part and parcel of, and integral to the material change of use. This is true, regardless of whether their erection would be PD, as requiring their removal would be legitimate to achieve restoration of the land to its condition before the breach took place.³

¹ Ground (c) is that the matters alleged do not constitute a breach of planning control.

² The Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 2, Class A.

³ Indeed, the material change of use notice could also have required the removal of hardstanding, but it was open to the Council to take action against that in a separate notice, in the way that it has.

13. In fact, the material change of use notice required removal from the land of all caravans and "other items associated with the use of the land." The appellant's agent suggested a fence is not an "item". However, that is a broad term, and the expression used in the notice can encompass a fence erected to enclose the area used.
14. Having heard representations on this during the hearing, I am satisfied that the requirements of the material change of use notice should be varied to refer to the other items associated with the use of the land "including fencing". Whilst indicating that he felt it would be wrong to transfer a requirement from one notice to the other, the appellant's agent was unable to identify any injustice that would result, and he said he would defer to me on this. In any event, this is a clarification of the existing requirement in the material change of use notice, rather than the importation of a new one. Moreover, notwithstanding my conclusion that the operational development notice should not refer to the fence, the appellant had not challenged the requirement in that notice to remove it. In all these circumstances, I am satisfied that no injustice will result from this change.
15. Finally, on this point, and for the avoidance of doubt, the requirement to remove a fence associated with the use of the land identified on the new plan would not prevent the erection of new fencing along the original eastern boundaries of pitches 9/4, 11 and 12, within PD limits. Such fencing would not be associated with the use of the areas of land enforced against.

Ground (a)/the deemed applications for planning permission

Main Issues

16. The appeal land, as now identified on the substitute plan, lies within the Green Belt (GB). During the hearing, the parties confirmed their shared view that the developments the subject of both notices (as corrected in the case of appeal A) constitute inappropriate development in the GB. I am satisfied that is the case, having regard to Policy SP4 of the Central Bedfordshire Local Plan 2015 – 2035, adopted 22 July 2021 (LP); the National Planning Policy Framework, revised July 2021 (the Framework); and Planning Policy for Traveller Sites, August 2015 (PPTS). LP Policy SP4 states that development in the GB will be assessed in accordance with the Framework, which in turn makes clear that inappropriate development is, by definition, harmful to the GB and substantial weight should be given to that harm.
17. Against that background, the main issues are as follows:
 - The effect on the openness of the GB;
 - The effect on the character and appearance of the countryside;
 - Whether there is adequate access to services and facilities (appeal B only);
 - Whether the development constitutes intentional unauthorised development and, if so, what weight should attach to that; and
 - Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

The openness of the GB

18. Prior to the laying of the hardstanding and the material change of use, the land now covered by the notices was just part of an open field/paddock, which was devoid of any built development. As a matter of fact, the laying of hardstanding has eroded that openness, albeit that the proportion of the field affected is small.
19. The change of use has brought with it the stationing, or potential stationing, of caravans on the areas affected, along with sheds, vehicles and other domestic paraphernalia and the erection of fencing further into the field. The visual impact of all this is limited, given the backdrop of the existing Toddbury Farm traveller site development, the size of the remaining open field and the limited views from the road. Nevertheless, both the operational development and change of use result in a modest reduction in openness, which adds some limited weight to the already substantial harm by reason of inappropriateness.

Character and appearance

20. The Council's representative fairly acknowledged that the Knyghton land is not part of a rolling countryside landscape. In its current state, it appears as scrub land, but I nevertheless accept that it performs a useful function in helping to ameliorate the impact of the adjoining developments on the countryside. The areas now covered by the notices formerly contributed to that, and the Framework indicates that the intrinsic character and beauty of the countryside should be recognised, and planning decisions should contribute to and enhance the natural and local environment. This is reinforced in PPTS and reflected in LP Policies H7, EE5 and HQ1.
21. In conflict with those policies, these developments cause some minor harm to the character and appearance of the area and encroach on the countryside. This adds further limited weight to the harm by reason of inappropriateness.

Access to services and facilities

22. This issue is only relevant to appeal B. LP Policy H7 indicates the circumstances in which proposals for Gypsy and Traveller sites and extensions to such will be permitted. It sets out several requirements, in addition to those in other relevant LP policies, and criterion 5 is that there should be adequate schools, shops, healthcare, and other community facilities within reasonable travelling distance.
23. The Council confirmed during the hearing that it is no part of its case that the change of use should be refused permission on the grounds of poor access to services and facilities. The Council merely contends the location does not weigh in favour of the development.
24. In addition to the fact that no additional travellers are occupying the disputed part of pitch 9/4 and there is no appeal, or evidence from anyone on pitches 11 or 12 to suggest increased occupation, I note the appellant's evidence that around 100 traveller families have lived in the locality for many years, and arguably this demonstrates its sustainability. In all the circumstances of this appeal, I find no additional harm on this issue and no conflict with policy.

Intentional unauthorised development

25. The Planning Policy Statement on Green Belt protection and intentional unauthorised development issued by the Secretary of State on 31 August 2015 makes intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals.
26. The appellant did not personally take part in the hearing but, according to his agent, when he purchased pitch 9/4, it had already been extended and he was not aware this was unauthorised. The Council's representative said it was understood the previous owners knew what they were doing at the time, and it would be a very optimistic person who thought moving fences and putting down hard surfaces did not require consent. Notwithstanding that fair point, I have very little evidence of what was intended or understood when the works and change of use were undertaken on pitch 9/4 and I have no evidence of intention concerning pitches 11 and 12. In these circumstances, I do not attach any significant weight to this factor in my decisions.

Very special circumstances

27. As indicated, I must attribute substantial weight to the harm by reason of inappropriateness. To this I add the limited weight attached to the modest reduction in openness and the minor harm to the character and appearance of the area. Very special circumstances will not exist unless that cumulative harm is outweighed by other considerations.
28. In his written statement of 11 March 2021, the appellant's agent relied in short on his claims that:
- Romany Gypsy families live on the site;
 - the site provides a safe and affordable place for them to live, from where the children can access education and the occupiers can pursue their traditional gypsy way of life;
 - there is significant unmet need for gypsy and traveller sites;
 - the Council is unable to demonstrate that it has a 5-year supply of deliverable sites, which is not a ceiling in any event, and PPTS encourages the provision of more private traveller site provision; and
 - there is considerable support for the development and little public opposition.
29. However, in my pre-hearing note, I drew attention to the fact that the same March 2021 appeal statement also said, "*The site residents don't live on the disputed part of the site, and so the impact on them is unlikely to be significant, although there could be some knock on effects.*" During the hearing, the appellant's agent confirmed that the three mobile homes occupied by Romany Gypsy families were on that part of pitch 9/4 which lies outside the area covered by the notices. Whilst there is a fourth mobile home on the disputed area, he was not sure whether anyone lived in it.
30. The Council's evidence was that the fourth mobile home stationed on the appeal land had been occupied by a North Macedonian family. The Council's Compliance Officer from the Gypsy and Traveller Unit, said they had spoken to that family three times, including on the morning of the hearing. The family

- had confirmed they were not gypsies and travellers; they had simply rented the caravan from the appellant and would leave on the day of the hearing.
31. The appellant's agent did not dispute any of that, as he had never spoken to the occupiers of the fourth caravan. Over the lunch adjournment, he took further instructions from the appellant and reported that no one was now living in the caravan on the disputed area. During my site inspection there was nothing to suggest that caravan was occupied. The Council's Compliance Officer also knocked on the caravan door, and there was no reply.
32. In terms of need, PPTS says that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm, so as to establish very special circumstances. In fact, the Council's LP was adopted very recently, with Policy SP8 recording that the Council has already approved enough pitches to meet the Gypsy and Traveller accommodation need in Central Bedfordshire over the period 2015 – 2035. No specific evidence was presented to me to indicate that this recent assessment is incorrect.
33. In any event, I need not explore that issue further because, on the appellant's own evidence, no gypsies and travellers meeting the PPTS definition, and no ethnic Gypsies, would be displaced if these notices were upheld. Accordingly, the personal circumstances and need issues outlined above cannot amount, or contribute to, the very special circumstances required.
34. The appellant's statement referred to the possibility of some "*knock on effects*" but, at the hearing it was explained that this referred to how other applications and appeals might be determined, if these appeals were dismissed. This includes how the question of need for, and supply of, gypsy and traveller sites might be approached. In particular, there are current appeals concerning changes to the nearby 'Greenacres' and 'The Stables' gypsy and traveller sites, though these are in abeyance pending the Council's consideration of a planning application in relation to them.⁴
35. As explained, my decisions on these appeals, the circumstances of which are very different to the others referred to, do not address need and supply, because this appeal land has not been occupied by gypsies and travellers. It is therefore difficult to see how there could be any "*knock on effects*" along the lines described by the appellant's agent. Any such perceived effects do not weigh in favour of the appeals against the harm by reason of inappropriateness and other harm.
36. Although the appellant's statement referred to considerable public support for the developments, no support has been drawn to my attention. Indeed, the Vice Chairman of Billington Parish Council spoke in opposition to the appeals.
37. No other relevant considerations weighing positively in favour of the appeals have been drawn to my attention and I therefore conclude on this issue, that the harm by reason of inappropriateness, and the other harm identified, is not clearly outweighed by other considerations. Accordingly, very special circumstances do not exist to justify the development.

⁴ Hearing document 2 provides some background to these.

Overall conclusion and the planning balance on ground (a)/the deemed applications for planning permission

38. The developments the subject of appeals A and B constitute inappropriate development in the GB, which also reduce openness and harm the character and appearance of the area to a limited degree. No very special circumstances exist and the developments conflict with the development plan as a whole. No material considerations indicate that planning permission should be granted despite that conflict with the development plan, and so the appeals on ground (a) must be dismissed, and the deemed applications for planning permission refused.
39. Although comments made separately under grounds (f) and (g) raised the possibility of a temporary permission, there would be no obvious justification for this, and no obvious planning conditions would overcome the harm identified.

Ground (f)

40. This ground is that the requirements of the notices (as varied) exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach. Having regard to the requirements of both notices, the parties agreed their purpose was to remedy the breach.
41. When the “grounds and facts” were submitted in relation to appeal A on 31 October 2020, it was said that information would follow. No information followed in relation to appeal A, but the grounds and facts submitted on 19 November 2020 for appeal B indicated in short that:
- repositioning the fence and an alternative site layout may overcome objections;
 - it may be possible to reduce the amount of hardstanding;
 - the building⁵ that has been erected on the land could potentially be modified; and
 - a temporary planning consent could be granted for what is on the land.
42. No specific lesser steps were advanced and, in any event, none of these broad suggestions would remedy the breaches enforced against. Any temporary planning permissions would need to be granted under ground (a)/the deemed applications, rather than ground (f), but the appellant put forward no justification for any such permission. During discussion of ground (f), the appellant’s agent said it was not necessary to consider temporary permissions, given that no one is living on the area covered by the notices.
43. I am satisfied that ground (f) should fail in both appeals.

Ground (g)

44. This ground is that the periods specified in the notice for compliance with the requirements fall short of what should reasonably be allowed.

⁵ Though no building is mentioned in either notice, there is a shed in the south-eastern corner of pitch 9/4.

45. The appellant's statement suggested that the significant clear and immediate unmet need and the lack of available, suitable, acceptable, affordable alternative sites meant that it would be difficult for the residents to find an alternative, culturally appropriate place to live come if required to leave the site. An alternative period of five years was suggested.
46. Allowing a five year compliance period would be tantamount to a grant of temporary planning permission, but the acceptance that no one will be displaced from the appeal land removes the basis of this ground anyway. The appellant's agent did not wish to pursue this at the hearing.
47. Having regard to the requirements in both notices, the periods for compliance are adequate, and I am satisfied that ground (g) should fail in both appeals.

Overall conclusions

48. For the reasons given above, I conclude that both appeals should not succeed. I shall uphold the enforcement notices, with corrections and variations, and refuse to grant planning permission on the deemed applications.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joseph Jones

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes
BA(Hons) MRTPI FRGS Dip Man
MCMi TCPA affiliate member of
RIBA

Director of PHD Chartered Town Planners Ltd

Amir Delic

Compliance Officer, Gypsy and Traveller Unit, for
Central Bedfordshire Council

David Hale

Gypsy and Traveller Planning Manager for the
Council

Helen Heanes

Gypsy and Traveller Unit Manager for the Council

Steve Jarman
BSc Dip TP PGC in sustainable
leadership

Senior Research Executive, Opinion Research
Services

INTERESTED PERSONS:

Don Brewin

On behalf of Billington Parish Council

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Statement of Don Brewin, Vice Chairman of Billington Parish Council
- 2 Email from appellant's agent dated 7 September 2021 enclosing letter from the Council to the residents of Greenacres and The Stables Gypsy and Traveller sites dated 26 August 2021
- 3 Council's suggested substitute notice plan



Plan

This is the plan referred to in my decision dated: 24 September 2021

by **J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

Land at: Knyghton land adjacent to Toddbury Farm, off Mill Road, Little Billington, Leighton Buzzard, LU7 9BP (Land between Toddbury Farm and Greenacres)

Reference: APP/P0240/C/20/3262339 & 3262343

Scale: DO NOT SCALE

