



Appeal Decisions

Hearing Held on 2 September 2021

Site visit made on 7 September 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2021

Appeal A: APP/P1045/C/20/3255861

Land east of Grove Lane, Somersal Herbert, Derbyshire

- 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 John Varey against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 17 June 2020.
- The breach of planning control as alleged in the notice is Without planning permission the change of use of land for the stationing of caravans for the purposes of human habitation with associated building and engineering works comprising of the construction of amenity buildings, laying of hard surface and erection of fencing.
- The requirements of the notice are a) Permanently cease use of the site for siting of residential caravans; b) Permanently remove all caravans, associated buildings, hardstanding and fencing from this land and reinstate the land to its former condition as grassland.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: APP/P1045/W/20/3255859

Land east of Grove Lane, Somersal Herbert, Derbyshire

- 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 John Varey against the decision of Derbyshire Dales District Council.
- The application Ref 19/01005/FUL, dated 26 August 2019, was refused by notice dated 16 January 2020.
- The development proposed is Change of use of land to use as a residential gypsy caravan site, including the stationing of 13 caravans, of which no more than 5 shall be static caravans, laying of hardstanding, erection of 4 No. amenity buildings and, construction of boundary fencing.

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

Preliminary Matters

1. The appellant confirmed at the Hearing that he intended to modify the proposed development, reducing the number of caravans such that there would be a maximum of one static caravan and one touring caravan sited on each of

the four pitches. I am satisfied that I may deal with this modification without any risk of prejudice being caused to the parties.

2. Prior to the Hearing the appellant submitted a Transport and Highways Technical Note (TN). This note sets out the findings of a traffic survey of vehicle numbers and speeds in relation to Grove Lane. It concluded that Grove Lane is lightly trafficked and that vehicles tend to travel significantly below the national speed limit. It found that visibility splays of some 63 metres in both directions along Grove Lane at the site entrance would be required and were achievable over land controlled either by the appellant or highway authority.
3. The Council confirmed at the Hearing that it accepted the findings of the TN and consequently was able to withdraw its objections to the development on highway safety grounds. I have no reason to take the view that highway safety should be treated as a main issue in this case.

Appeal A on ground (a) (that planning permission should be granted) and Appeal B

Main Issues

4. In light of the Council's concession regarding highway safety concerns the main issues are (i) the need for and availability of gypsy and traveller sites ; (ii) whether the site is in a sustainable location; (iii) the effect of the development on the character and appearance of the surrounding area; (iv) the effect of road traffic noise on the living conditions of site occupiers and (v) the personal circumstances of the appellant.

Reasons

Need for gypsy and traveller sites

5. The Government's Planning Policy for Traveller Sites (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.
6. The Council accepts that it is unable to demonstrate a 5-year supply of deliverable sites, acknowledging that a local plan allocated site is not deliverable at present. Furthermore it accepts that there is an unmet need for new pitches within the District. Policy HC6 of the Derbyshire Dales Local Plan 2017 (LP) identifies a need for a minimum of nine additional pitches until 2033.
7. The Council has not been able to identify any suitable and available alternative sites for the appellant within the District or the wider area, a further indication that there is an immediate need for sites in the District. These considerations therefore weigh significantly in favour of the development.

Sustainable Location

8. The PPTS states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan. Policy HC6 of the LP sets out a range of criteria that will be taken into account in the determination of applications for gypsy and traveller sites. These include that

the site should be situated in a suitable location in terms of local amenities and services to allow access by sustainable means.

9. In terms of the nearest settlements, Doveridge to the west of the site is some 1.7 kilometres away (to the edge of the settlement) by road. Here there is a limited range of facilities, including a shop and primary school. The hamlet of Somersal Herbert is a similar distance along Grove Lane to the north of the site, although I am not aware of any significant presence of services there. Travel to Uttoxeter, the centre of which is in excess of 6 kilometres from the site, would likely be necessary in order to access a full range of services and facilities.
10. With regard to physical separation, even when considering limited information available to me regarding a more direct right of way to Doveridge across nearby fields, I conclude that the site is in the open countryside away from existing settlements. In arriving at this conclusion I have had regard to the findings in previous appeal cases that have been referred to me by the appellant¹. However it seems to me that the sites in those cases were located nearer to settlements.
11. I am mindful that the Framework states that the development of isolated homes in the countryside should, subject to certain limited exceptions, be avoided. However, Grove Lane to the north of the appeal site is characterised by a sporadic linear development pattern, on the west side of the road, which consists of a mixture of commercial, agricultural, and residential uses. Whilst these developments are relatively small in scale the site is close to this arrangement of development. It is also only a short distance away from the buildings associated with Palmer Moor Farm to the south. Therefore, when considered in the round I do not regard the site as being in a physically isolated or remote location.
12. With regard to connectivity, Grove Lane is unlit, of single lane width and does not incorporate footways. It is undisputed that a bus route between Uttoxeter and Burton, via Doveridge, with a number of daily services, operates along Derby Road, with the nearest stop some 350 metres walking distance from the site (approximately five minutes away). I also agree with the appellant that the appeal site is within reasonable cycling distance of Doveridge. It would, however, be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would be significant reliance on the private car in order to gain access to services and facilities.
13. Notwithstanding this, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a very high degree of reliance on the private car it seems to me that there would still be realistic opportunities to gain access to services and facilities by sustainable means of travel. Furthermore I consider that the length and duration of journeys necessary to access essential services and facilities, even if taken by car, would not be excessive for a rural location.
14. For the aforementioned reasons I consider the site has reasonable access to key services and facilities and is in a reasonably sustainable location. It is apparent that in order to safeguard their continuity of education in a stable and

¹ Refs APP/L3245/A/14/2215836; APP/R0660/W/15/3137298 & APP/J0405/C/13/2193601

familiar environment, the children who would occupy the site attend a school that is not within the nearest settlements. However it is potential connectivity with services, rather than the specific circumstances of the site occupiers, that bears on the consideration of whether the site should be regarded as in a sustainable location.

15. Drawing the above considerations together I conclude that the development is in conflict with the PPTS in terms of being 'away from' existing settlements. However I conclude that the development would not be in conflict with Policies S1 and HC6 of the LP or with the Framework insofar as they seek to reduce reliance on car travel and gypsy and traveller sites to be in a suitable location in terms of local amenities and services to allow access by sustainable means. This therefore limits the weight that I attach to the harm identified in this case.

Character and Appearance

16. The site consists of four relatively spacious pitches, divided by close boarded fencing, with taller fencing around the site perimeter and surfaced with permeable stone. The pitches contain a mixture of development including mobile homes and storage and amenity sheds.
17. The appeal site is broadly triangular in shape, bounded to the north by the route of the A50 dual carriageway and to the west by Grove Lane. Both of these boundaries are characterised by dense mature planting which serves to significantly screen the site from these directions. The landscape is generally undulating and agricultural, with mature field boundaries.
18. The route of the east-west oriented public right of way, known as Footpath 11, passes a little way to the south of the site. Having walked this route during my visit it was apparent that the upper parts of some of the buildings on the site are visible from the south. Further along the path to the south east of the site, the visibility of buildings is greater, as the existing intervening planting thins and therefore becomes less effective on the eastern side of the site.
19. The buildings, however, are viewed against the solid barrier of planting along the northern and western boundaries of the site. This helps to mitigate the sense of intrusion of the development into the surrounding landscape. Furthermore, because of the noise from traffic on the nearby dual carriageway, there is not the sense that the development is intruding into a landscape of tranquil rural character. When considering the position and height (some 2.4 metres) of the proposed acoustic barrier I agree with the appellant that this feature would not be obtrusive in its surroundings.
20. I am also mindful that it would be possible to impose a planning condition requiring additional boundary planting in order to help further assimilate the development into its surroundings. I therefore conclude that although the site at presents results in a limited degree of visual harm, subject to conditions the development would not result in harm to the character and appearance of the surrounding area. Accordingly it would accord with Policies HC6, S4, PD1 and PD5 of the LP insofar as they seek to promote high quality design that protects the character, appearance and distinctiveness of the landscape.

Living Conditions of Site Occupiers

21. The site lies immediately adjacent to the A50 road. The appellant has submitted a noise assessment in support of the development. Having regard to

guidance set out in BS 8233:2014 (Guidance on sound insulation and noise reduction for buildings), there is no dispute that traffic noise experienced within the site, without any mitigation measures, would exceed guidelines regarding acceptable daytime and night time levels inside a number of the residential structures.

22. In terms of mitigation, an acoustic bund and fence is proposed along the site boundary adjacent to the main road. It is also proposed that static caravans would be designed to achieve high levels of sound insulation, in accordance with BS 3632:2015 (Residential Park Homes Specification), to bring them in line with the aforementioned maximum noise level guidance. There is no dispute that with mitigation in place, the internal noise environment, in respect of both the mobile homes and day rooms can be made acceptable, being commensurate with the guidance in BS 8233:2014. I have no reason to take a contrary view.
23. The Council's concerns are limited to the impact of traffic noise on the external environment of the site. Guidance in BS 8233:2014 indicates that for external amenity spaces in noisier environments, noise levels should ideally not be above 55dB LAeq. It recognises however that this standard may not always be achievable and that a compromise with competing factors such as the need for the development may be appropriate. Accordingly the site should be designed to achieve the lowest practicable noise levels. In this regard the guidance states that consideration should be given to protecting areas used for relaxation.
24. The noise assessment finds that with mitigation in place, a significant proportion of the external part of the site would still exceed the ideal standard referred to above and to varying degrees. However it is undisputed that the layout could be designed such that the proposed day rooms provided on each of the pitches, with external doors open, would provide attenuation to below ideal noise levels. It seems to me that this would allow for an acceptable refuge area for quieter relaxation whilst also allowing for ventilation during warmer weather and serving to offset any potential significant adverse health impacts.
25. Whilst I acknowledge that this is not an ideal solution, and not one that is supported by the Council, when balanced against the acknowledged need for the development and the lack of identifiable alternative sites I find that the proposal would accord with guidance in the British Standard and under the circumstances would satisfactorily compensate for the effects on the external environment. It would also accord with Policies PD1 and HC6 of the LP insofar as they seek development to achieve a satisfactory relationship with adjacent development and to avoid nuisances to site occupiers; also with the Framework insofar as it seeks to avoid noise giving rise to significant adverse impacts on health and the quality of life. Drawing the above considerations together I find that the living conditions of site occupiers would not be harmed by way of noise.

Personal circumstances

26. 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.

27. 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.
28. 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.
29. It is apparent from the evidence given that the four households who would occupy the site are part of an extended gypsy family. Between the households there are a significant number of children present who are of school age.
30. There can be no doubt that if the appeal was unsuccessful it would take away a settled base for these households, who may potentially need to resort to living on the roadside, which would very likely mean disruption to the children'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.
31. The appellant's representative explained at the Hearing that the children continue to attend the school they were going to prior to relocating to the present site, on the basis of advice from the headteacher regarding the benefits of maintaining a familiar and stable learning environment. This is not disputed by the Council and I consider that because there would be a clear benefit to the children of remaining on site, as part of a settled base, that this should attract significant weight in the planning balance.

Other Matters

32. Somersal Herbert Parish Council has raised concerns about the proximity of the appeal site to the Somersal Herbert Conservation Area and to Somersal Herbert Hall, which is Grade I listed. Having visited the site it is clear that it is a significant distance away from both, with a lack of intervisibility between the site and these heritage features. I therefore find that the development would not result in harm in this regard. Having regard to guidance in the PPTS, I am not persuaded that the scale of development is such that it would dominate or unacceptably harm the nearest settled community or that it would be out of proportion to the surrounding area.
33. I have had regard to the findings of the aforementioned TN, including no record of accidents having occurred recently in the vicinity of the site which would encompass the time that the site has been in its current use. I have also considered the comments received from the Derbyshire Dales Ramblers in respect of the possible need for additional rights of way signage and speed restriction limits. However having regard to the limited flows of traffic and speeds in this location, from observations during my visit, and despite the single vehicle width nature of the lane I am not persuaded of the need for any additional signage or speed restriction. I conclude that the development does not result in harm to highway and pedestrian safety.

34. Reference has been made to the secretive nature of the development. I have not been provided with any further details in this regard. However I am mindful that the Act makes provision for the grant of retrospective permission and there is nothing in the evidence before me that leads me to conclude that this should be a factor that would count against the development.

Planning Balance

35. I have concluded that the site is in a location 'away from' a settlement however is not too remote from services and facilities. I therefore attach only moderate weight to the locational harm.
36. Subject to conditions, the development would cause no unacceptable harm to highway and pedestrian safety. Nor, subject to conditions, would the development result in harm to the character and appearance of the area or to the living conditions of residents by way of noise.
37. There are considerations which weigh positively in favour of the appeal. I attach significant weight to the need for and under-supply of gypsy sites in the District, including the lack of any available, suitable alternative site. I also attach significant weight to the personal circumstances of the site occupiers.
38. I consider that, because of the amount of weight attached to need, the balance is in favour of granting planning permission irrespective of the additional weight of personal circumstances.

Conditions

39. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. A condition confirming that planning permission is restricted for residential use by gypsies and travellers is required in order to safeguard the supply of the site for this purpose. A condition confirming the approved plans is necessary in the interests of certainty.
40. A condition limiting the number of pitches and caravans stationed is needed in order to protect the character and appearance of the area. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
41. A condition requiring the static caravans to be adequately insulated against traffic noise is required in the interest of the living conditions of the site occupiers. A condition requiring the retention of suitable visibility splays is required in the interests of highway safety.
42. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the appearance and siting of the utility buildings, the appearance of the mobile homes, soft landscaping works, external lighting and noise attenuation measures is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers.

Conclusion

Appeal A

43. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended.
44. The appeal on ground (g) does not therefore need to be considered.

Appeal B

45. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

46. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely Without planning permission the change of use of land for the stationing of caravans for the purposes of human habitation with associated building and engineering works comprising of the construction of amenity buildings, laying of hard surface and erection of fencing at Land east of Grove Lane, Somersal Herbert, Derbyshire as shown on the plan attached to the notice and subject to the conditions in the schedule below.

Appeal B

47. The appeal is allowed and planning permission is granted for Change of use of land to use as a residential gypsy caravan site, including the stationing of caravans, laying of hardstanding, erection of 4 No. amenity buildings and, construction of boundary fencing at Land east of Grove Lane, Somersal Herbert, Derbyshire in accordance with the terms of the application, 19/01005/FUL, dated 26 August 2019, subject to the conditions in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Subject to any restrictions imposed by other planning conditions the development hereby permitted shall be carried out in accordance with the following approved plans: 219-49.01 Existing Site Plan and Location Plan; 219-49.02 Proposed Site Plan; 219-49.03 Proposed Day Rooms.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 3) There shall be no more than four pitches on the site. Each pitch shall comprise no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, stationed on the site at any time (of which no more than one shall be a static caravan).
- 4) No commercial or industrial activities, including storage of vehicles, equipment and materials, shall take place on the land, and no vehicles above 3.5 tonnes in weight shall be parked on the site.
- 5) Any static caravan shall comply with BS 3632:2015 in relation to sound insulation and ventilation requirements.
- 6) Visibility splays providing clear visibility of the nearside carriageway edge 63 metres to the north and south, when measured 2.4 metres back from the carriageway at the centre of the access road shall be retained at the junction of the access road with the highway for the lifetime of the development.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within **two months** of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within **three months** of the date of this decision a scheme for the siting and external materials for the day room buildings; the appearance of and external materials for the static mobile homes; the 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; external lighting arrangements; noise attenuation measures (hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
 - ii) If within **eleven months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, 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 site development 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:

Philip Brown – Agent
Thomas Varey – Site occupier
William Varey – Site occupier
George Bowman – Site occupier

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Stock – Senior Planning Officer
Chris Whitmore – Principal Planning Officer

Documents submitted at the Hearing:

1. Appeal Decision APP/C3105/W/18/3219199