The Planning Inspectorate

Appeal Decisions

Hearing Held on 18 June 2019

Site visit made on 18 June 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Land at Willow Farm, Jackets Lane, Harefield, Northwood UB9 6PZ
Appeal Ref: APP/R5510/C/18/3194580 (Appeal 1)

- 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 Cash against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, ref RH/ENF/200/14, was issued on 12 December 2017.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land to a residential use and associated operational development.
- The requirements of the notice are:
  - i. Cease the residential use of the Land (shown outlined in red);
  - ii. Remove from the Land all mobile homes/static caravans including (but not limited to) those shown for indicative purposes edged in blue on the Plan;
  - iii. Remove from the Land all sheds including (but not limited to) those shown for indicative purposes edged pink on the Plan;
  - iv. Remove from the Land all sheds including (but not limited to) those shown for indicative purposes edged in green on the Plan;
  - v. Remove all gravel/scalpings and hard surfaces from the Land shown hatched light pink on the Plan and restore the land to grassland;
  - vi. Remove from the Land all other fixtures and fittings that facilitate the residential use of the Land; and
  - vii. Remove from the Land all debris, items, building materials, plant and machinery resulting from compliance with points (i)-(vi) above.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 as amended.
- The appeal on ground (a) was not permitted under section 174(2A) of the Town and Country Panning Act 1990 (as amended).

Summary of Decision: The appeal succeeds in part on ground (g) and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal Ref: APP/R5510/W/19/3219599 (Appeal 2)

- 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 Joseph P Jones, Gypsy Council Thames Valley against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 57685/APP/2017/4374, dated 5 December 2017, was refused by notice dated 7 December 2018.
- The development proposed, as described on the planning application form, is a change of use of land to a Gypsy site for six Gypsy Traveller Families. The site is to contain six

static caravans, four touring caravans, parking for 12 cars with associated hardstanding and infrastructure. The application is part retrospective.

Summary of Decision: The appeal is dismissed as set out below in the Formal Decision.

BACKGROUND TO THE APPEALS

The Land

1. The appeals relate to the same site which is a triangular shaped area of land (approximately 0.25 hectares) in the Metropolitan Green Belt, about 700 metres from Harefield. At the time of the appeal site visit it was in use as a caravan site. The site is in the north west corner of a larger field that is used for keeping of horses. According to the Council, Land Registry documents show that the land was bought on 3 March 2017 by Mr John Cash, who is certified as the landowner in Appeal 2. The site is accessed via Jackets Lane, a single track lane, and is located at its junction with two public rights of way.

2. In the period leading up to the issue of the enforcement notice, the Council recorded 8 static caravans and 2 touring caravans as indicated on the plan attached to the notice (dated August 2017). On the appeal site visit the layout was not exactly the same as on the notice plan, in particular there was one less static caravan and two more buildings (a shrine and a dayroom) and an increase in the number of sheds. Hard surfacing extended across the site and two stable buildings were in the south west corner, as on the notice plan.

Planning History

3. The most relevant planning history dates back to 2003/2004. An appeal was made against an enforcement notice and planning permission was granted on 13 January 2004 for a mixed use comprising the stationing of mobile homes and caravans for residential purposes, the parking and storage of commercial vehicles and keeping of horses and associated operational development. The permission was personal to the appellant Mr M Connors and was time limited to a maximum of two years. The reasons for the conditions were to acknowledge the appellant's personal circumstances and to give sufficient time for him to look for alternative accommodation and for his son to complete his work placement. A planning condition also controlled the number of caravans to one mobile home and one touring caravan or caravanette/motor home[1].

4. 0n 20 June 2007 planning permission was granted on appeal for the use of the land for a mixed use comprising the stationing of mobile homes and caravans for residential purposes, the parking and storage of commercial vehicles and keeping of horses and associated operational development[2]. The inspector treated the proposal as an application for a new permission (not a removal/variation of conditions) because the previous permission had expired. Conditions were attached to the new permission making it personal to Mr M Connors (senior) and his resident dependants and Mr M Connors (junior) and or his wife and their resident dependants. The length of the permission was a

[1] Appeal ref APP/R5510/C/02/1107124 - the local planning authority no longer have copy of the decision but the above details are from accounts of the planning history of the site by the Council and Inspectors' Decisions.
[2] Appeal ref APP/R5510/A/06/2033271

maximum of four years and no more than three caravans (to include no more than 1 static caravan) were to be stationed on the site.

5. The reasons for the time limited permission were to allow for completion of a gypsy and traveller accommodation assessment, the adoption of the Core Strategy and for site specific allocations to be made, if required. An additional benefit was that it would enable one of the children to complete her education. The Inspector explained that the need for the occupation of the particular site arose primarily from the family's personal circumstances, closely linked to the appellant's health. Therefore occupation was restricted by a personal planning condition.

6. On 13 June 2011 an application was made for permanent permission for the use of the land as a gypsy and traveller caravan site. Planning permission was refused on 10 October 2012 and this decision was appealed. On 1 October 2013 the appeal was recovered for a decision by the Secretary of State because the appeal involved a proposal for a traveller's site within the Green Belt. Following an inquiry held in September 2013, the inspector's report was submitted to the Secretary of State on 9 December 2013, recommending that the appeal be allowed and planning permission be granted subject to conditions. The recommended conditions included a restriction on occupation to gypsies and travellers and also made the permission personal to the appellant Mr Michael Connors, his wife, son, daughter and their resident dependants[3]. No more than 3 caravans (but only 2 statics) were to be stationed on the land.

7. The Secretary of State dismissed the appeal and refused planning permission on 27 October 2014. The development was described in the decision as permanent use of the land as a gypsy and traveller caravan site and the keeping and breeding of horses with associated operational development, including the siting of two mobile homes and a touring caravan, retention of two stable blocks and the formation of a garden area with the erection of a garden shed, yard and paddock areas, parking spaces, landscaping and fencing.

Procedural matters

8. The decision by the Secretary of State in 2014 was challenged by way of an application made pursuant to section 288 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The application was stayed, pending the final determination of the joined cases of *Mulvenna and Smith*[4].

9. A hearing into the two current appeals was arranged for 29 January 2019. The Planning Inspectorate cancelled the hearing because at that time the Court of Appeal judgement was awaited on the *Mulvenna and Smith* cases. Subsequently the Planning Inspectorate decided that the appeals should proceed, they were rescheduled for a hearing in June 2019 and I was appointed as the Inspector.

10. At the hearing in June 2019 Mr Willers QC (who represented the appellant in the 2013 inquiry) gave an update on the pending court proceedings. At that time a decision was awaited on whether there would be a further appeal to the Supreme Court in *Mulvenna and Smith*. In his submissions, Mr Willers outlined

[3] The information in Inspector's report makes clear that the appellant was Mr Michael Connors (senior).
[4] *Mulvenna and Smith v Secretary of State for Communities and Local Government & Hyndburn Borough Council* [2017] EWCA Civ 1850

a scenario whereby the Secretary of State's decision on Jackets Lane would be quashed and planning permission would be granted for the residential use of the land as a caravan site, backdated to 2013, based on the Inspector's recommendation. In his view such an outcome would have implications for the current appeals. As to Appeal 1 the potential implications concerned the ability to put a ground (a) appeal, the length of the compliance period and the requirements. In respect of Appeal 2 the base position for assessing the harm to the Green Belt and the effect on character and appearance would be different. No formal request was made for an adjournment to the proceedings.

11. The Council considered that appeals were able to proceed, referring to the differences between the developments now at issue and the development proposed in 2013, and the progress on the Hillingdon Local Plan[5].

12. Having considered the submissions and new matters raised at the hearing, I concluded that to determine the appeals in advance of the outcome of the litigation in *Mulvenna and Smith* and the related stayed appeal could potentially cause injustice in view of the importance of the planning history of the site to the Green Belt balance and the requirements of the enforcement notice. The appellants and the Council were informed by email dated 5 August 2019 that the appeals would be held in abeyance and the position kept under review.

13. An update was requested from the main parties in October 2020. In June 2021 the parties were again asked to confirm their understanding of the position on the litigation. The responses showed that proceedings were concluded in the UK courts, although the appellants suggested that in respect of the appeal site the matter may be pursued to the European Court of Human Rights. In view of the updated information I concluded that there was no reason for the appeals to remain in abeyance and that they should proceed to determination.

14. In August 2021 the appellants and the Council were invited to submit additional representations to address changes in the planning policy context and any other changes in respect of need, availability of pitches at Colne Park or elsewhere, personal circumstances or any other new matter that should be included in the Green Belt balance. I made an unaccompanied site visit to the Jackets Lane area on 25 August 2021. This visit was partly in response to the request from the Council at the hearing and was in addition to the accompanied visit in June 2019 that concentrated on the site itself.

APPEAL 1

Enforcement notice

15. The description of the alleged breach of planning control is the material change of use of the Land to a residential use and associated operational development. In view of the requirements and the plan attached to the notice, I questioned whether the use should be described as a caravan site, the type of operational development and whether it facilitated the use.

16. It was agreed at the hearing that the description should be corrected to read: Without planning permission, the material change of use of the Land to a residential use, involving the stationing of caravans for residential purposes and associated operational development to facilitate the use, involving the

[5] Supplementary Statement submitted to support the statement of case on Appeal 2.

erection of sheds, the laying of hard standing and the erection of internal fencing.

17. I am satisfied that the correction will not cause injustice to either the appellant or the local planning authority.

Validity of the notice

18. The appellant claimed that steps (vi) and (vii) are too vague and open to interpretation.

19. The issue raised is whether the notice tells the recipient what he is required to do to remedy the breach of planning control.

20. Section 173(3) of the 1990 Act states that an enforcement notice shall specify the steps which the authority require to be taken or the activities which the authority require to cease in order to achieve wholly or partly any of the purposes set out in section 174. These purposes are remedying the breach or remedying any injury to amenity which has been caused by the breach.

21. The purpose of the notice is to remedy the breach of planning control. Therefore the requirement in step (i) is directed at securing the cessation of the unauthorised use. Steps (ii) to (vi) are directed at the removal from the site of all the caravans, works and items facilitating the use. In more detail, steps (ii) to (v) relate to the caravans, sheds and hard surfaces. Step (vi) refers to all residual fixtures and fittings. On the site visit it was clear that this latter requirement refers to residential paraphernalia (for example a swing, a slide and plant pots) and such features as steps to the static caravans, decking, covered enclosures for the wheelie bins and picket fences between the pitches. The precise detail and range of fixtures and fittings, because of their nature, would be likely to change over a short space of time. In my view it is reasonable to expect that the recipients of the notice, with a knowledge of the site, would understand what is required by step (vi).

22. Step (vii) requires the removal from the Land of all building materials, items, plant and machinery resulting from compliance with steps (i) to (vi). The meaning of the requirement is clear. It would be too onerous and unreasonable to expect the precise type and items of plant and machinery, materials and so on to be listed in advance.

23. In conclusion, the requirements are not vague but specify with sufficient clarity the steps required for compliance. No corrections or variations are necessary and the enforcement notice is not invalid by reason of uncertainty. No appeal was made on ground (f) and therefore the appellant made no case the requirements were excessive.

Appeal on ground (e)

24. Based on the information submitted as part of the grounds of appeal, it appeared to me that to succeed on this ground the agent for the appellant had to demonstrate his interest in the land and show how he had been substantially prejudiced by the failure of the Council to serve him with a copy of the notice.

25. At the hearing Mr Willers QC, on behalf of the appellant, confirmed that this ground of appeal was no longer being pursued. Therefore I will not consider the matter further and the appeal on ground (e) fails.

Appeal on ground (g)

26. The issue is whether the compliance period of three months is reasonable and proportionate.

27. The grounds of appeal suggested a compliance period of five years but at the hearing the appellant confirmed that the period sought was two years. The aim was to give the current occupiers the best possible chance to find an alternative site to avoid the hardship of living on the roadside. There were no additional or available pitches at Colne Park and a need for pitches existed not just in the Borough but in neighbouring boroughs and further afield.

28. The Council considered two years to be wholly unacceptable, given the harm caused to the Green Belt by the inappropriate development on the site. The need for pitches, over and above the requirement, was met through development plan policy.

29. With reference to national policy and guidance, effective enforcement is important to maintain public confidence in the planning system and to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area.

30. As a general rule, extending a period beyond 12 months requires some exceptional circumstances to justify doing so. It is in the public interest to ensure compliance with a notice expeditiously. The length of the compliance period should take into account what has to be done to carry out the remedial steps and the need to remedy the identified harms as soon as reasonably possible, bearing in mind the location of the site within the Metropolitan Green Belt. The impact on site residents is an important consideration to ensure a proportionate outcome with regard to their human rights.

31. A lack of success in Appeal 2 would leave residents at serious risk of losing their permanent base and experiencing serious disruption to home and family life. In order to fully comply with the requirements the caravans would have to be removed from the land before the end of the compliance period to allow time for the hard surfaces and other fixtures facilitating the residential use to be removed too. In other words, there would be even less time than three months to try and find an alternative site.

32. Site occupancy was not stable in the period leading up to the issue of the enforcement notice as indicated by the response to a planning contravention notice dated 5 June 2017 and information gathered on the Council's reported site visits during 2016 and 2017. At the hearing the appellant's representatives were unable to explain in any detail the up to date position and were unable to confirm who occupied the site. On the site visit the appellant thought there were 5 children living on the site, which he described as a 'rough and ready' response. However, notwithstanding the lack of information, it was clear that there were several families occupying the caravan site. The appellant's update in 2021 indicated that the same families were there as in 2019 but provided no further details, despite the opportunity to do so.

33. The evidence on personal circumstances of site residents is considered in Appeal 2. The health report dated September 2017 referred in particular to two residents on the site at that time who had serious health needs. The Council did not dispute this evidence or that these two residents continued to live on

the site. In the event they had to live by the roadside, they would no longer have the easy access to essential sanitary and hygiene facilities. Continuity of health care would be adversely affected. The specialist evidence is that they would suffer much distress and impact on their emotional wellbeing. This evidence strongly supports increasing the length of the compliance period to allow a reasonable time to explore options and look for an alternative site or accommodation. A roadside existence also would be likely to impact more acutely on children, potentially through disruption to education and the less secure and safe environment. No immediately available alternative site has been identified.

34. Weighing up all the various factors, three months is not reasonable and proportionate. A compliance period of twelve months strikes the right balance.

Conclusion

35. For the reasons given above a reasonable period for compliance would be twelve months and I will vary the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

APPEAL 2

36. The proposal is for the site to accommodate six static caravans, four touring caravans, with associated parking, hardstanding and infrastructure. The site layout plan shows five of the statics down the northern side of the site with the sixth static opposite. Hardstanding is shown to cover most of the area, with screen hedges along the boundaries and the site entrance in the northern corner. No stables are shown.

37. The proposed development is described as a caravan site for occupation by gypsies and travellers meeting the definition in Planning policy for traveller sites August 2015 (PPTS). I will assess the proposal primarily on that basis. The Council followed a similar approach when determining the application. A permanent planning permission is sought, although the appellant indicated that a temporary permission or a named consent would be acceptable. At the hearing the appellant considered a period of three years to be the right length, rather than the five years indicated originally.

38. The application was made retrospectively. By virtue of section 180 of the 1990 Act, 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 in so far as inconsistent with that permission.

Planning Policy

39. The development plan documents relevant to the appeal comprises The London Plan 2021 published in March 2021, the Hillingdon Local Plan: Part 1 Strategic Policies adopted in November 2012 (the HLP Part 1) and the Hillingdon Local Plan Part 2 (Development Management Policies) adopted on 16 January 2020 (HLP Part 2).[6]

40. The London Plan through Policy H14 requires Boroughs to plan to meet the identified need for permanent gypsy and traveller pitches and to include ten-

[6] The London Plan 2021 replaced The London Plan March 2016 and the HLP Part 2 replaced the Hillingdon Local Plan: Part 2 Saved UDP Policies (September 2007 and reaffirmed by the Council as applicable in November 2012).

year pitch targets in their Development Plan Documents. In the HLP Part 2, Policy DMH 9 sets out the criteria for assessing proposals for new gypsy and traveller sites and complements the high level principles in Policy H3 of the HLP Part 1. The aim is to ensure new sites are sustainable socially, economically and environmentally. The HLP Part 2 Site Allocations provides for an extension to the existing Council owned Colne Park gypsy and traveller site to meet the identified need for two additional pitches.

41. The Green Belt is protected from inappropriate development by Policy G2 of the London Plan, Policy EM2 of the HLP Part 1 and Policy DMEI 4 of the HLP Part 2.

42. National policy is contained in the Planning policy for traveller sites August 2015 (PPTS), which should be read in conjunction with the National Planning Policy Framework published in July 2021.

43. The Green Belt location of the site results in more rigorous policy restraint on development compared to a site in a rural location outside Green Belt.

Main issues

44. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt, the effect on the openness of the Green Belt and the purposes of including land within it.
- The effect on the character and appearance of the area;
- The performance of the site against criteria in Policy DMH 9 and Policy H3;
- The existing level of local provision and need for sites within the Borough and more widely;
- The availability (or lack) of alternative accommodation for the proposed site residents;
- Personal circumstances of the proposed site residents;
- If the proposal is inappropriate development, whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the development.

45. Exercising duties under the Human Rights Act 1998 and the Equality Act 2010 will be integral to my decision-making. A proportionality assessment may be required to be carried out. The appellant drew attention to the positive obligation under Article 8 to facilitate the gypsy way of life.

Reasons

Green Belt

46. The PPTS states that traveller sites (temporary or permanent) are inappropriate development in the Green Belt. The appellant confirmed at the hearing that the proposed residential caravan site for occupation by gypsies and travellers was considered to be inappropriate development. The appellant

also accepted that the proposal has an impact on openness and conflicts with one of the purposes of including land within Green Belt, namely to assist in safeguarding the countryside from encroachment. On these matters there is common ground with the Council and I have no reason to conclude differently.

47. As to the effect on openness, the aerial photographic images from the appellant indicated that the triangular shaped area was hard surfaced and in commercial use in 1999, although the image dated 2000 shows the land had returned to being largely open and covered in vegetation. Development, hard surfacing and use had returned in images dated 2005 and 2006. The planning history shows that the earlier permissions, which included a commercial use, were time expired and that a mixed use as a gypsy site and the keeping of horses was not granted planning permission in 2014. As to the current position, the enforcement notice does not require all the hardstanding to be removed, only the area away from the site entrance.

48. With this history in mind two possible base positions were identified at the hearing. The first, three caravans and associated development, relied on the Secretary of State's decision being quashed. Given that legal proceedings now appear to be at an end, I consider the second option of stables, an area of hardstanding and boundary fencing is the comparator to use.

49. The proposal would result in nearly all the land being hardsurfaced. The ten caravans would introduce a number of physical structures. Whilst the four tourers may not always be present, the six static caravans probably would not be moved except when being replaced and in effect would be present permanently. Additional loss of openness would result from residential paraphernalia and parked vehicles, as well as the activity associated with a residential use. The site would be intensively used. The site is prominent in both short and longer distance views when the negative and very harmful effect on openness, both in terms of the spatial and visual aspects, is clear. Undoubtedly the development would be a serious encroachment into the countryside.

50. Referring back to the Inspector's report in 2013, she found significant harm both through loss of openness and encroachment. The Secretary of State agreed with that conclusion. At that time the proposal was for a lesser form of development comprising two mobile homes, a touring caravan and a shed.

51. Applying national policy in the Framework I conclude that the proposal is inappropriate development, which is by definition harmful to the Green Belt. I attach substantial weight to this harm. Openness and permanence are essential characteristics of Green Belts. In this case, the effect of the loss of openness has considerable weight, taking account of the size of the site, the proposed number and type of caravans, the lack of green space and the planning history of the site. The conflict with a purpose of including land within the Green Belt adds a moderate element of weight against the development.

52. In determining weight to be attached to the harm in respect of a permanent permission I have taken account of the appellant's submission that new private Gypsy sites in the Borough will be located in the Green Belt. I accept the likelihood of constraints on finding suitable land for a traveller site within the urban and suburban areas. Nevertheless, the object of the Green Belt policy test is very relevant. Even if there is an inevitability that the need for private site(s) would have to be met in the Green Belt, this factor does not reduce the

actual harm that would be caused by the proposal. The impact of any proposal would require individual assessment. I attach very little positive weight to this point.

Character and appearance

53. The site is on lower ground within gently undulating countryside. More particularly the site and the surrounding area are within the Harefield Wooded Undulating Farmland Landscape Character Area (the LCA) as defined by the Hillingdon Landscape Character Assessment. With reference to the key characteristics described in the document, the LCA is a mosaic of farmland and woodland, where settlement mainly comprises scattered farmsteads and very limited linear development. The open rolling fields allow long views across the landscape and glimpses of distant urban settlement. Few roads cross the landscape, although a number of footpaths provide easy public access. In summary the uniform landscape with high woodland cover and low settlement density contributes to a sense of intimacy and tranquillity and a strong rural character, which would be vulnerable to further development.

54. Whilst recognising a generally dispersed pattern of properties the caravan site is not a characteristic form of settlement within the LCA. A group of six static caravans and four touring caravans would not be a small scale residential addition relative to its immediate context. The site is isolated from built development near the junction of Jackets Lane and White Hill, which does not help to integrate the development into the landscape. As positive factors, the larger field and wider field pattern would be maintained and no trees or hedgerows would be lost. In particular the mature hedgerow along the north western field boundary would provide a good degree of enclosure.

55. The development is not visible when approaching from the main access route along Jackets Lane until close to the site entrance. The caravan site is able to be glimpsed through the hedgerow from the public footpath running along the north western boundary and the associated activity detracts from the rural surroundings. From further west along the footpath the site becomes well screened by thick hedgerows.

56. However, the development is intrusive in views from the south east and from the public footpath at the far eastern end of Jackets Lane when looking across the valley from the higher ground. The Council considered the site prominent and particularly asked that I viewed the development from this location. My finding is consistent with that of the Council's landscape officer, as expressed in consultation comments on the application in 2018 and, significantly, with that of the Inspector in June 2007. The Inspector stated the site and the various structures were seen particularly readily across the valley and concluded the development would cause unacceptable harm to the character and appearance of the surrounding area[7]. I found the degree of visual intrusion in the wider landscape greater than described by the Inspector in 2013, possibly because of different viewing points and the increased level of development.

57. The site layout plan indicates additional landscaping to act as screening along the eastern boundary, which is currently largely open and lacking in enclosure. New planting would take time to mature and become effective. Whilst helping to mitigate short distance views, in my judgement the visual intrusion would

[7] Appeal decision ref APP/R5510/A/06/2033271 dated 20 June 2007 at paragraphs 18 and 21

remain in the longer distance views from higher ground across the valley. Changes to the site layout shown on the submitted plan would be constrained by the size and shape of the site and the proposed number of caravans. Referring back to the LCA, the development would be an interrupting feature, to the detriment of the visual unity of the landscape and the open views across rolling farmland. The development is unacceptable in terms of the impact on landscape character. The use of planning conditions, to control the proposed number and type of caravans and to secure an approved landscaping scheme linked to the site layout, would not reduce the harm to an acceptable level.

58. In conclusion, the proposal fails to demonstrate high quality design sensitive to local character and therefore fails to comply with criterion vii) of Policy DMH 9 of the HLP Part 2. The unacceptable harm to landscape character and appearance of the countryside has significant weight.

Policy DMH 9 and Policy H3 criteria

59. Policy DMH 9 raises other matters that require addressing in assessing the suitability of the development.

60. The site is suitable for residential occupation in so far as essential utilities are available (water and electricity) and it is not at risk from flooding or affected by noise or other forms of pollution. Confirmation and installation of suitable surface and foul water drainage for long term occupation could be secured by planning condition. Jackets Lane provides safe access to the highway network and the level of development would not adversely impact on the capacity and environment of the highway network.

61. The site is located in reasonable proximity to relevant services and facilities, including transport, education, healthcare and other community infrastructure provision. There is good separation distance between the site and the nearest residential development to protect the amenity of all residents and achieve neighbourliness. No site management plan has been submitted but there is nothing to suggest that with this privately owned traveller site such a plan is necessary or is required by the local planning authority.

62. I conclude that the proposed development complies with criteria iii), iv), v), vi) and viii) of Policy DMH 9 of the HLP: Part 2.

63. In addition, criterion ii) and criterion iii) of paragraph c of Policy H3 of the HLP: Part 1, regarding neighbours' amenity and access, are met. Criterion i) requires a site to be located in an area that is environmentally acceptable for residential occupation. This criterion too is satisfied on the basis that it is directed at the environmental quality of the location in terms of residents' health and well-being, not other environmental considerations such as a Green Belt location.

64. The absence of harm on a range of relevant planning matters does not result in positive weight in favour of the proposal and is neutral in the planning balance. However, compliance with policy criteria provides support to the proposal in the planning balance in so far as residents would be able to benefit socially in terms of their health, safety and cultural well-being.

Need

65. The consideration of need for additional pitches in Hillingdon Borough is set within the context of a generally accepted national and regional need for

additional traveller sites. Research and reports demonstrate that Gypsies and Travellers have a considerably lower life expectancy compared to the average within the general population and that accommodation insecurity negatively impacts on their physical and mental health.

66. A Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (Final Report November 2017) (the GTAA) was carried out to inform the HLP Part 2. The outcome of the study was intended to supersede the need figures of any previous assessments in the study area. The key findings drew a distinction between the need from households meeting the PPTS definition, households who may meet the definition and those households which do not. In summary the reported identified additional need for Gypsy and Traveller pitches in Hillingdon 2017-2032 is:

Status	Total 2017-26	Total 2027-32
Meet planning definition	2	1
Unknown	0-4 (10%=0)	0
Do not meet planning definition	33	7

67. The appellant considered the GTAA was not robust and argued that there was a significant unmet need in the district, up to 40 pitches plus accommodation for those on the appeal site. The GTAA masked the level need because it was based on the PPTS definition of gypsies and travellers. Need in the Borough is for Gypsies and Travellers who fall outside the definition but who have a traditional way of life living in caravans. Also, no allowance was made for children who in future potentially would travel, fall within the PPTS definition and need their own pitch. The appellant relied on a survey and assessment carried out at Colne Park in 2014 (by the appellant) to demonstrate the significant need due to doubling up and concealed households, a point that was re-emphasised in the 2021 update.

68. At the hearing the Council was satisfied that the allocation at Colne Park would meet the identified need for gypsies and travellers within the PPTS definition, as policy required. The needs of those travellers who had gypsy status and who were not captured by the GTAA, for example because of in-migration, would be met through the criteria based policy. Land at Colne Park was in a suitable location and available. Therefore a 5 years supply of sites was demonstrated. The Council's position was reaffirmed in the final comments made in 2021. The 2017 GTAA remains the latest evidence on need produced by the Council and the allocated land at Colne Park remains undeveloped.

69. The Framework expects that the housing needs for different groups in the community should be reflected in planning policies. PPTS sets out how travellers' housing needs should be provided for in plan-making for those covered by the definition in Annex 1. The proposal is for a travellers' site for occupants who meet the PPTS Annex 1 definition. There was agreement between the parties that should planning permission be granted a planning condition would be reasonable and necessary to restrict occupation to gypsies

and travellers as defined by Annex 1. The matters raised at the hearing were directed more at the immediate need for sites for caravan dwellers, who do not or may not fall within the scope of PPTS policy. That being so the proposal would not contribute to meeting any such need.

70. There is now a recently adopted development plan document that includes a criteria based Policy DMH 9 and an allocation for two additional pitches at Colne Park to meet the identified need until 2026. The land allocation at Colne Park, in response to the PPTS requirement, is derived from the 2017 GTAA. This provision was not challenged in the development plan process and is now incorporated within the adopted plan. Policy H14 B of the London Plan 2021 does not impose a more rigorous requirement. With these considerations in mind, the matters raised by the appellant on the GTAA methodology are insufficient to cause me to seriously question the findings and assessments of need within the GTAA. No evidence was produced to indicate the Colne Park allocation is not deliverable. Accordingly, the Council has complied with Policy B paragraph 10(b) in PPTS that requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Looking ahead, the London Plan 2021 states the Mayor will initiate and lead a London-wide gypsy and traveller accommodation needs assessment.

71. The appellant relies primarily on the needs exhibited at Colne Park to support the proposal, yet the supporting information about the proposed traveller site is directed at accommodating named residents unconnected with and who seek to distance themselves from Colne Park. In the absence of evidence, the proposed condition to restrict occupation to gypsies and travellers with PPTS status may not be compatible with accommodating existing families in need from Colne Park. The proposal would not address any existing need from Colne Park. The appellant described the site as affordable but there was no information provided on rents in comparison to a publicly provided site.

72. In conclusion, with reference to criterion i) of Policy DMH 9, the 2017 GTAA is the only available assessment of need based on a robust methodology. Land is identified in the development plan sufficient to provide a 5 year supply of pitches against the locally set target. In general terms the appeal site would provide additional pitches to those allocated at Colne Park. The land is available for occupation and probably would offer an acceptable alternative to members of the traveller community who would not wish to have a pitch at Colne Park. The proposal is for a site to respond to needs that have not been captured by the GTAA. In accordance with the development plan, its suitability is to be assessed against the criteria in Policy DMH 9. Taking account of the wider regional and national need for additional pitches, local need as a consideration has limited weight in this case.

Personal circumstances and alternative sites

73. Notwithstanding the generalised description of the proposal, the site is stated to be for occupation by a named extended family. The appellant had entered into an agreement with the owner of the land that enables members of the Connors family who have lived on the site for many years to keep their homes there and for other members of the extended family to live on site. The proposed site residents are Michael Connors, Luke Connors, Maggie Devlin, Eileen Small, Margaret Doran, Margaret Bird and their families. I was informed

that they are all related by marriage or birth and are all part of an extended family. At the hearing the appellant stated that residents would change in the future.

74. The appellant stated that the proposed residents are members of the Traveller community and have Gypsy status for planning purposes. At the hearing Mr Jones explained that they travel for work, including to fairs and asked that they be considered as a single household group, bearing in mind certain members' health. The Council did not dispute PPTS status of the proposed site residents.

75. The evidence is limited and lacks detail, as illustrated by a comparison with the Fakenham appeal decision[8] referred to by the appellant. Nonetheless, the indication is that Michael Connors and Luke Connors travel for an economic purpose but that probably other members of the extended family group no longer travel for health reasons and due to caring responsibilities. I am unable to conclude all the adult residents have PPTS status but recognise that residents are ethnic Gypsies and Travellers who are entitled to respect for their traditional way of life, an integral part of which involves living in caravans, and that certain residents rely on family members for care and support.

76. A professional report prepared by an experienced registered nurse in September 2017 focused on the two site residents with health needs. The detailed evidence leaves no doubt that one of the residents was frail and infirm with a number of serious health conditions. After moving to the Jackets Lane site (in about May 2017) her situation much improved because she was able to receive help from her granddaughter. The report also confirmed that a second resident, who had been hospitalised numerous times, suffered from serious medical conditions and required a carer. A settled base would greatly assist her health and wellbeing.

77. More generally and of relevance to all site residents, the author of the report highlighted the good accessibility of the site, noted that the ground was stable to walk upon and was accessible by car. Having access to water was a great benefit and there was the opportunity to build utility blocks with permanent toilet facilities. Mains electricity and the ability to have gas canisters facilitated heating, cooking and lighting. Access to such amenities greatly added to comfort over the winter months. Reference was also made to children on the site being enrolled in local primary and middle schools, considerably easing access to education when compared to roadside living. The difficulties of roadside living were highlighted, including no routine access to water and basic facilities and lack of continuity in health care. Eviction from the site would be traumatic, cause a great deal of distress and impact on residents' emotional wellbeing. The impacts would be acutely felt by the two residents with health needs.

78. At the hearing the appellant indicated that the named occupiers ideally would like to live together and that they are unable to afford to buy land themselves. If they had to move the current availability to health care would be interrupted. They would be unable to live by the roadside. A pitch at Colne Park would not be acceptable because as Irish travellers they would not be welcome there.

79. Apart from two residents, little information was forthcoming on the named occupiers, such as their existing/previous site, whether they had looked

[8] APP/V2635/W/17/3180116

elsewhere, proximity to family, necessary requirements of a site and so on. The Council's evidence indicated that some of the named residents were not residing on the site when site visits were made in 2016 and 2017. At the hearing the appellant's representatives were unable to confirm who was resident on the site in June 2019 and the particular needs of any children living there. Little was forthcoming to demonstrate that a permanent base at Jackets Lane was of particular benefit as opposed to another site.

80. Case law has confirmed that the appellant or the named occupiers do not have to prove that there are no other available sites. Finding a suitable, affordable, available land or alternative site would be constrained by the extent of the Metropolitan Green Belt and the wider unmet need. Any existing pitches that become vacant at Colne Park are advertised and only eligible bids are considered. The appellant was clear that the proposed site residents would not find the allocated land at Colne Park an acceptable alternative.

81. To conclude, the evidence shows that accommodation on a permanent base would improve the quality of life for all residents, is particularly important for the health and well-being of two site residents and would offer stability and security for the families' children. The personal need is for a permanent site or base, albeit not necessarily at Jackets Lane. Colne Park may not fulfil that personal need and at the present time no alternative option has been identified. Finding an alternative site for the extended family to act as a permanent base would be constrained by various factors. In the event the appeal is not successful camping by the roadside was not demonstrated to be an inevitable outcome for all, bearing in mind the unexplained inconsistencies in occupation of the site. In view of their inter-relationship, personal circumstances and the immediate lack of alternative sites for the site residents have significant weight.

Planning balances (permanent permission)

82. The first balance flows directly from the proposal and is in respect of a permanent permission for a caravan site for occupation by those with PPTS status.

83. On the negative side of the balance, the harm arising from the inappropriate development has substantial weight. The harm from the loss of openness has considerable weight and the conflict with a purpose of including land within the Green Belt adds a moderate element of weight. The harm to landscape character and appearance has significant weight.

84. The absence of harm in respect of accessibility, highway impact, residential amenity and site infrastructure (Policy H3 and Policy DMH 9 criteria) is neutral in the balance.

85. Turning to the considerations supporting the proposal, the wider general need for traveller sites has a small degree of weight. A need for sites for travellers with PPTS status within Hillingdon Borough has little weight, given the allocation and provision that has been made in the HLP Part 2 and the 5 year supply. However, the site is available to provide for members of the traveller community who would benefit from access to health care, education and basic facilities and a secure home environment, as illustrated by the information on the proposed site residents. This consideration has moderate weight. The personal need of the intended site residents has significant weight, taking into

account the vulnerable residents and children as part of the extended family group and the lack of an alternative site that could meet their accommodation needs in the immediate future.

86. I conclude the harm to the Green Belt by reason of inappropriateness and the other harm from the proposal are not clearly outweighed by other considerations, whether taken individually or together. Very special circumstances do not exist to justify the development on a permanent basis. Criterion (ii) of Policy DMH 9 is not met.

87. The proposal should not be permitted as directed by Policy G2 of the London Plan 2021 and Policy DMEI 4 of the HLP Part 2. The proposal therefore conflicts with Policy H3 of the HLP Part 1 (because the development is inconsistent with other relevant Local Plan policies) and is not supported by Policy DMH 9 of the HLP Part 2 and Policy EM2 of the HLP Part 1. The proposal is not in accordance with the development plan when read as a whole. The proposal fails to comply with the Framework and the PPTS.

Planning balance (temporary / personal permission)

88. Planning Practice Guidance advises on the circumstances where a temporary permission may be appropriate. One instance is where it is expected that the planning circumstances will change in a particular way at the end of that period. The Guidance states that it will rarely be justifiable to grant a second temporary permission, except in cases where changing circumstances provide a clear rationale. Furthermore, permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.

89. The appellant requested that if the proposal for a permanent site was unsuccessful, the fallbacks of a temporary permission or a personal permission be considered. At the hearing the appellant considered 3 years to be the right length of period taking into account the real level of need. The Council resisted a temporary permission, relying on Policy E in the PPTS regarding the harm to the Green Belt and bearing in mind that no progress was achieved previously.

90. In this case, given the description of the proposal and the evidence on site residents, there is more than one potential outcome for consideration. The first is a temporary permission for three years with a condition to restrict occupation to those with PPTS status. In addition there is the possibility of a permission personal to the extended Connor's family, either time limited solely by being specific to the named occupiers or a personal permission that is also limited to a specific period of time of three years. A form of time limited permission is based on the potential availability of additional pitches coming forward and recognition of the need to facilitate a gypsy way of life, in particular for the site residents.

91. In respect of a temporary permission, the harm to the Green Belt by reason of inappropriateness attracts substantial weight. The actual harms to openness, by reason of encroachment and to the landscape character and appearance of the rural area would remain the same but would have lesser degrees of weight by reason of being for a limited period of time with the prospect of restoration of the site. Nevertheless, the position remains that there is a very strong policy direction the site is not in an acceptable location.

92. On the other side of the balance the elements of need would have reduced weight, remembering that the local planning authority is able to demonstrate a five year supply of deliverable sites, the identified need for additional pitches in Hillingdon for travellers with PPTS status up to 2032 is very low and the proposal is directed to meeting the accommodation needs of the proposed site residents at least initially.

93. Accordingly the harm to the Green Belt by reason of inappropriateness and the other identified harms from the proposal are not clearly outweighed by other considerations, whether taken individually or together. Very special circumstances do not exist to justify the development on a temporary basis for three years.

94. Turning to an option of a permission personal to the proposed residents, elements of the planning history have particular relevance. By way of a brief recap, the temporary personal planning permission granted in 2004 was justified mainly on the health of Mr Michael Connors (senior), although other health issues in the family were recognised. The permission was limited to a maximum of two years. As regards the permission granted in 2007 the expectation was that at the end of the 4 year period circumstances would change through the completion of a GTAA and in respect of the development plan. The permission was for a maximum of four years.

95. In 2013 the Inspector recommended a personal permission with no other time restriction, in response to the health needs of members of the Connors family. Subsequently the Secretary of State decided against a grant of a personal/time-limited permission in the 2014 decision.

96. Mr Michael Connors (senior) died some time ago. The proposed site residents, although of the same extended family, appear not to be the same residents as named in the recommended condition of the Inspector in 2013. The planning history also shows that the scale of development found acceptable was smaller and initially was for a mixed use. The development plan position has also changed. Evidence on the personal circumstances of all but 2 of the site residents is thin. Nevertheless, it has been demonstrated that the known personal requirements, including access to health care, education and basic facilities and a secure home environment, would be fulfilled by the Jackets Lane site. Colne Park may be unable to fulfil these personal needs and at the present time no alternative option has been identified.

97. Within this context the harm to the Green Belt by reason of inappropriateness attracts substantial weight. In view of the uncertainty over the length of time the named residents would occupy the site, the weights attached to the other identified harms are only slightly reduced. On the other side of the balance general need and the need for sites for travellers within Hillingdon Borough have a little weight. The personal need of the intended site residents has significant weight, taking into account the vulnerable residents and children and the lack of an alternative site that could meet their accommodation needs in the immediate future.

98. I conclude that the harm to the Green Belt by reason of inappropriateness and the other identified harms from the proposal are not clearly outweighed by other considerations. Very special circumstances do not exist to justify the development in the form of a personal permission to members of the extended Connor's family. Criterion (ii) of Policy DMH 9 is not met.

99. A personal permission time limited to three years would enable more time for the residents to explore options with a view to securing an alternative site than would be the position through a compliance period on the enforcement notice. With a specific time period the weight to various harms and other considerations require adjustment. The harm to the Green Belt by reason of inappropriateness has substantial weight. The loss of openness and the encroachment into the countryside has significant weight. The harmful effect on landscape character and appearance has moderate weight.

100. In view of the personal nature of a permission, the elements of need have moderate weight in so far as there would be implications for finding an alternative site. The personal need and circumstances of the intended site residents, including lack of an alternative site, have very significant weight. Even so taking all matters into account, the totality of the identified harm is not clearly outweighed by other considerations, whether taken individually or together. Very special circumstances do not exist to justify the development on a personal temporary basis for three years. Criterion (ii) of Policy DMH 9 is not met.

101. The proposal, even on a temporary or personal basis, should not be permitted as directed by Policy G2 of the London Plan 2021 and Policy DMEI 4 of the HLP Part 2. The proposal therefore conflicts with Policy H3 of the HLP Part 1 (because the development is inconsistent with other relevant Local Plan policies) and is not supported by Policy DMH 9 of the HLP Part 2 and Policy EM2 of the HLP Part 1. The proposal is not in accordance with the development plan when read as a whole. The proposal fails to comply with the Framework and the PPTS.

Human Rights

102. All the initial planning balance conclusions are subject to applying the fair balance test to ensure dismissal of the appeal is necessary and proportionate and the human rights of the residents would not be violated.

103. The Convention right of Article 8 provides everyone has the right to respect for his private and family life, his home and his correspondence. It is a qualified right which requires a balance between the rights of an individual and the needs of the wider community or state interest. In the event the appeal is not successful, there would be the prospect of complying with the requirements of the enforcement notice to cease the residential use and remove the caravans and other facilitating structures. In the light of those potential consequences there would be an interference with the exercise of the residents' right to respect for their private and family life and the home and Article 8 is engaged.

104. The interference would be for a legitimate aim, namely the protection of the Green Belt in accordance with the domestic planning regime to regulate land use. The interference would be in accordance with the law, provided that planning policy was lawfully applied. The means used to impair individual's rights must be no more than necessary to accomplish the public interest objective of safeguarding the environment. The interference also has to be proportionate to the legitimate aim pursued.

105. In terms of relevant considerations, detailed evidence was provided on the two residents with health needs, which explained why a secure and stable home is so important to them for their physical and mental well-being. Little

information was forthcoming on considerations relating to other residents' enjoyment of private and family life and the home. The likelihood is that children live on the site and they too would be vulnerable to disruption in home life, which would affect their best interests, including education. The indication is that there is a high degree of mutual support within the extended family.

106. Turning to public and community interests, the Framework confirms that the purpose of the planning system is to contribute to the achievement of sustainable development by fulfilling social, economic and environmental roles. The regulation of land use is in accordance with the statutory framework and national and local planning policy attach great importance to protecting the Green Belt and its essential characteristic of openness. The strong policy restraint on inappropriate development is to safeguard the purposes and characteristics of the Green Belt. Traveller sites are inappropriate development for the purposes of applying planning policy.

107. Weighing up and balancing of all personal interests against those of the community, the probability is that the potential disruption to home and family life would be most acutely felt by the two most vulnerable residents and in turn by those family members involved most closely in caring for them. However, when weighed against the strong policy objections and community interests, whether over the long term or a temporary period, interference with their Article 8 convention right would be necessary and proportionate in the public interest. The same conclusion applies to the other site residents and the extended family unit as a whole remembering that the best interests of children is a primary consideration.

108. The relevant policy objectives could not be achieved by means which interfere less with the individuals' rights. The interference with the residents' human rights is necessary and proportionate to achieve the legitimate objective of protecting the environment in the public interest. Dismissal of the appeal would not violate the human rights of the occupiers of the site. The personal circumstances of the intended residents are fully taken into account in extending the compliance period of the enforcement notice.

Conclusion

109. For the reasons given above the development is not in accordance with the development plan and is not supported by national planning policy in the Framework and the PPTS. The development is not acceptable and the appeal should be dismissed.

DECISIONS

Appeal ref: APP/R5510/C/18/3194580

110. It is directed that the enforcement notice be corrected in paragraph 3 by the deletion of the wording of the description of the alleged breach of planning control and the substitution of the wording: Without planning permission, the material change of use of the Land to a residential use, involving the stationing of caravans for residential purposes and associated operational development to facilitate the use, involving the erection of sheds, the laying of hard standing and the erection of internal fencing.

111. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied in paragraph 6 by the deletion of three months and the

substitution of twelve months as the period for compliance. Subject to the correction and this variation the enforcement notice is upheld.

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112. The appeal is dismissed.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr Marc Willers QC	
Mr Joseph G Jones	Gypsy Council Thames Valley

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Volley MSc DipTP MRTPI	Planning Enforcement Officer
Mr Tom Campbell	Planning Policy Officer
Mr Daniel Lord MA	Planning Officer

INTERESTED PERSONS:

Ms A Collins	Local resident

DOCUMENTS submitted at the hearing

1 Letter of notification of the hearing
2 Submissions on behalf of the appellant
3 Enforcement and stop notice dated 29 May 2018
4 Local Plan Part 2 Revised Proposed Submission Version: October 2015 with Main Modifications Policy DMH 9 and text