
Appeal Decision

Site visit made on 23 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 09 December 2021

Appeal Ref: APP/G1630/C/20/3259091

Part Parcel 1959, Cursey Lane, Elmstone Hardwicke, Cheltenham, GL51 9TF, known as 'Pecks Tan' - Land Registry title number GR125086 and land to the east of Bramble Cottage, Elmstone Hardwicke, Cheltenham (GL51 9TF) – Land Registry GR206078.

- 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 Eugene Ayres against an enforcement notice issued by Tewkesbury Borough Council.
- The enforcement notice was issued on 14 August 2020.
- The breach of planning control as alleged in the notice is the unauthorised material change of use of land from agriculture to use as a Gypsy/Traveller site including the siting of static caravan, portaloo, laying of hardstanding on the land and accessway and the unauthorised use of the accessway by motor vehicles.
- The requirements of the notice are:
 - i) Cease the unauthorised use of the land as a Gypsy/Traveller site and;
 - A. Remove the static caravan
 - B. Remove all residential paraphernalia associated with the use of the land as a Gypsy/Traveller site including, but not limited to:
 - Astro turf
 - Children's paddling pool
 - Pot plants
 - Bird baths
 - Water tanks
 - C. Remove the portaloo
 - D. Remove the hardstanding in the area shaded in blue on the plan attached to the notice.
 - E. Remove from the site all resultant materials from compliance with steps A to D.
 - F. Stop the use of the accessway for access to the Gypsy/Traveller site.
 - ii) Restore the land to its condition before the breach took place by levelling the ground and reseeding it with grass.
- The period for compliance with the requirements is 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. Following the issue of a Temporary Stop Notice, a Stop Notice was issued in conjunction with the enforcement notice on 14 August 2020. The Council advises that the appellant complied with the Stop Notice and moved from the land on 18 August. The static caravan referred to in the breach of planning control alleged in the notice was removed from the land a few days later.
3. At the date of my site visit, over a year later, the land remained unoccupied and largely cleared.

The hidden s174 appeal on ground (b)

4. Although no appeal has been made on ground (b), as a preliminary matter, the appellant notes that the breach of planning control alleged includes a non-planning matter, namely the unauthorised use of the accessway by motor vehicles. This needs to be resolved since the breach of planning control as described in the notice defines the terms of the deemed planning application.
5. When an appeal on this ground is under consideration, the burden of proof rests on the appellant.
6. Access to the appellant's land where the gypsy/traveller site was laid out is along a track leading from the main highway. This track is owned by another party who was served with the notice. Running along the track is a registered public bridleway (BW22) and a public footpath. It is not clear from the evidence whether or not the public footpath is also a designated public right of way or, indeed, whether BW22 covers the entire width of the track.
7. While there are numerous references to title deeds and to various clauses and to the rights conferred by same, none have been submitted in evidence.
8. The landowner of the track argues that the appellant's rights along the track are restricted to those of a public bridleway. Therefore, he may only access his land on foot, cycle or horseback unless he has sought prior permission from the landowners to take a motorised vehicle along the bridleway for the sole purpose of the agricultural use of his land.
9. The appellant's highway consultant gives an opinion on the matter although, in fairness, a number of assumptions are made in doing so. One is an assumption about the line of the bridleway. If the signage now placed on the gates that I saw on my site visit is accurate, that assumption was wrong.
10. Critically, his advice is qualified by several references to '...if lawful authority to access the land exists...' That appears to have been settled in the County Court at Gloucester and Cheltenham on 30 September 2021. The Deputy District Judge ordered and declared that the user (the appellant) of the way (the track) is limited to a right of access on foot, by bicycle, on horseback or with a single motorised vehicle (with or without a horsebox or similar) for agricultural purposes only.
11. To the extent that the reference to the unauthorised use of the accessway by motor vehicles should be construed as being in association with the breach of planning control alleged it is not an inaccurate statement. The hidden appeal on ground (b) therefore fails.

The s174 appeal on ground (a) and the deemed planning application

Procedural matters

12. The Council does not dispute that the appellant meets the definition of gypsy/traveller given in Annex 1 of Planning policy for traveller sites 2015 (PPTS).
13. The core breach of planning control alleged is the material change of use of the land from agriculture to use as a gypsy/traveller site. That defines the terms of the deemed planning application that arises from the appeal on ground (a). The notice refers to the use as including the siting of a static caravan. However, the appellant's evidence is that the site will be used by the extended family. An illustrative plan shows two mobile homes, a touring caravan and a relatively large amenity building. That is the basis on which I have assessed the deemed application against the main issues.

Main Issues

14. From my review of the evidence and my inspection of the site and surrounding area from the public domain, including public rights of way, I consider the main issues to be:
 - (a) The effect of the development on the safety of users, including the site residents, of the highway.
 - (b) The effect of the development on the character and appearance of the area; and
 - (c) The extent to which the site can be considered to be a sustainable location with regard to access to necessary services and amenities by means other than private vehicle.

Reasons

Highway safety

15. As explained above, all access to the highway is via a track which also accommodates a public bridleway and a public footpath. At the junction of the track and the main road, Cursey Lane is directly opposite, forming, in effect, a cross road junction.
16. The Highway Authority confirms that the main road is Stoke Road, a class C highway. It is subject to a posted speed limit of 50 mph with no street lighting and no pedestrian footways, only grass verges, to either side of the highway. Of note when considering the third main issue, vehicles accessing the services available in Stoke Orchard or, slightly further away, the larger settlement of Bishop's Cleeve would have to turn right out of the access thus needing to be aware of the traffic flow along both carriageways of Stoke Road.
17. The Highway Authority has assessed this issue with reference to 'Design Manual For Roads and Bridges CA-185' (DMRB). While the appellant considers Manual for Streets (MfS) and Manual for Streets 2 (MfS2) to be the applicable national guidance, the Highway Authority rejects that argument. It confirms that this section of the road is not a 'street' and has a posted speed limit of 50 mph. Therefore, as the relevant section of MfS says, in the circumstances of this road, the longer Stopping Site Distances in DMRB may be appropriate to use.

18. On this basis the required visibility splays to both the left and the right are 2.4m x 160m. From the required set-back of 2.4m the Highway Authority measured the achievable visibility distance to the left (south west) as 16m and, to the right (north east) as approximately 32m. This is very substantially below the required distance.
19. While the appellant disputes the visibility to the right, it is accepted that the maximum visibility achievable from the 2.4m set-back is some 27m. For the reasons set out above, the appellant does not control any of the land required to improve the visibility splay in either direction. The appellant's answer to this problem is to require or assume that others will act or behave in a certain way and thus avert any danger to highway users.
20. The appellant draws attention to the legal requirements of landowners and the Highway Authority to maintain vegetation that overhangs the highway verge. There is, however, no evidence that this is the issue to the left. As the appellant points out, it is the alignment of the road itself as it bends around the property adjoining the track that causes visibility to be severely restricted.
21. The appellant also suggests that as a vehicle emerging from the appeal site edges ever further into the highway, visibility to the left increases and the vehicle itself would become visible to oncoming traffic prompting that driver to react accordingly. The appellant argues that there would be no danger of then turning into an overtaking vehicle travelling from the south west. That may be true if the emerging vehicle is turning left from the track but not, as the majority of movements may be, if turning right to go to the north east.
22. The Highway Authority has dismissed this solution as being unacceptable in this location due to the high speed and high volume of vehicles on this section of the highway. Even MfS does not advocate a figure of less than 2m for the set-back and then only in lightly trafficked and slow-speed situations, which this is not.
23. Furthermore, during my site visit, I observed a more or less continuous flow of traffic, travelling at speed, particularly to the north east. As the appellant notes, the road is fairly straight until approaching the slight bend short of the track which so affects the visibility to the left. I walked along the highway verge towards the appeal site entrance and so on the part of the highway where the track would become visible earliest. It was not until I was about 50m from the track that I was aware of a change in the road surface indicating a possible layby or entrance. Moreover, in my view, drivers would be more likely to be concentrating on traffic that may be emerging from or turning into Cursey Lane having earlier passed the junction warning sign.
24. A further consideration is that the Highway Authority has assessed the appeal site on the basis that there would be one dwelling (equivalent) since, at the time, there was the single static caravan referred to in the breach of planning control alleged in the notice. However, as noted above, the appellant intends to station two mobile homes at the site. I do not know if that would affect the Highway Authority's assessment but, if it would, it seems that it could only add to its concern.
25. As explained above, it may be that the appellant is unable to use the access for vehicles in any event. Although the appellant has not indicated where, and it was not obvious to me during my inspection of the wider area, it may be that

vehicles could be parked somewhere in the near vicinity. While that might mitigate the danger arising from vehicles emerging from the site access, it would merely transfer those risks to pedestrians and cyclists.

26. As highlighted above, there is no street lighting and there are no footways, only the grass verges, and vehicles travel at speed. In my view, the development would maximise the scope for conflicts between pedestrians, cyclists (particularly children) and vehicles which is the very opposite of the objective of paragraph 112 (c) of the National Planning Policy Framework (Framework) issued in July 2021.
27. On the evidence and on the basis of my inspection of the area, I see no reason to disagree with the Council that the intensification of the existing access would be detrimental to highway safety and would increase highway dangers. It would fail to provide a safe and suitable access to all users. The development therefore conflicts with policy INF1 (1) and policy SD13 (2) (ii) of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS), adopted December 2017 and Framework paragraph 112.

Character and appearance

28. The appeal site lies within a block of countryside bounded by the southern outskirts of Tewkesbury to the north, the A38 to the west, the M5 motorway to the east and the A4019 to the south. While the character of the area is predominantly agricultural fields, there are a number of very large agricultural buildings and enterprises, the settlements of Tredington and Hardwicke, a number of groups of dwellings, isolated properties and a public gypsy site, which the appellant says has 19 pitches, to the west of the appeal site on Cursey Lane. The addition of a further single extended family gypsy/traveller site would be in keeping with the prevailing character of the area.
29. The appeal development would not conflict with JCS policy SD6 (1) in that regard.
30. The Council does not seek to argue that, locally, the area is anything other than a typically attractive agricultural landscape. My understanding is that, prior to the laying out of the appeal development, the appearance of the site was that of the surrounding area. Clearly, the introduction of the various elements of the appeal development changed the appearance from agricultural to a type of residential development. That would be even more pronounced once the amenity building and the additional mobile home are placed on the land as indicated on the illustrative plan.
31. There is a well-established block of trees and shrubs to the north west of the appeal site which would screen most of the built development and the mobile homes from view from Stoke Road. Additional planting is shown on the illustrative plan and could be secured by condition. This would largely screen views of the site and the amenity building especially from views from the north east. However, these views would be available mainly to fast moving vehicles on the M5 and those using the overbridge where Stoke Road crosses the motorway to the north of the appeal site.
32. In my judgement therefore, the development would only be truly apparent to users of the bridleway and the public footpath which pass directly past two sides of the site. It is not clear to me how well used either is since from the

maps provided in evidence, it appears that the bridleway has been truncated by the motorway and the routes of public paths extensively altered.

33. Paragraph 25 of PPTS recognises that sites will come forward in rural areas and sets out the factors to be taken into account. It is not the Council's case that the appeal development would dominate the nearest settled community. While the full development would have an unacceptable impact on the appearance of the landscape, the harm would be appreciated only by users of the public routes in the immediate vicinity. Furthermore, the appellant has proposed steps, which could be secured by condition, to mitigate the impact on the surroundings of the site.
34. Taking all these factors into account, the conflict with JCS policy SD13 (2) (i) is very limited in nature.

Sustainable development

35. It is common ground that the nearest day-to-day facilities are available in Stoke Orchard, about 0.8km from the appeal site. Both Tewkesbury and Bishop's Cleeve, where a full range of facilities are available, are not significant distances from the appeal site.
36. The nearest primary school is at Tredington. However, having regard to the road network, this would appear to be further away from the site than Stoke Orchard. In any event, at the date of the appeal, only some of the resident children were of primary school age with one of those close to leaving for secondary school. No evidence has been given as to which schools the children actually attend.
37. The parties have provided in evidence several appeal decisions relevant to this main issue. Factors such as distance from services and availability of alternative public transport vary as do the conclusions of the Inspectors. In my view on the evidence before me, I consider it likely that most, if not all, trips from the appeal site will be made by private vehicle to enable the residents to use the facilities that are required for day-to-day living.
38. Having regard to the precise wording of JCS policy SD13 (2) (iv) (unless "suitable" is interchangeable with "sustainable", the means by which access is achieved is not a consideration) it seems to me that the appeal proposal is not inconsistent with it. Nor do I consider the appeal site to be in a location that raises a significant conflict with PPTS paragraph 25 in this regard although I recognise that there is a tension in this respect with Framework paragraph 105 which aims to limit the need to travel generally although that is in the context of significant development.
39. On balance therefore I do not consider there to be a conflict with the development plan policies on this issue. I note that is consistent with the conclusion of the Inspector in the Cool Pool Lane appeal¹ at Appendix 4 of the Council's evidence where circumstance seem to be very similar.

¹ APP/G1630/W/17/3192162

Other matters

Need for and provision of sites and alternative sites

40. The Gloucestershire Gypsy and Traveller Accommodation Assessment (GTAA) (March 2017) was found to be robust as part of the JCS examination. Although this particular issue was not re-examined in the Cool Pool Lane appeal decision referred to above, the implications for 5-year supply were.
41. The Inspector concluded that moving the period on by two years and taking account of other factors such as planning permissions granted the Council was still able to comfortably show a 5-year supply of sites to meet the expectations of PPTS. To my mind, even moving matters along by a further period, the appellant has not explained why that situation has altered, even though the same appeal decision forms part of his evidence.
42. That said, the appellant's evidence that no alternative sites are available has not been challenged by the Council. In this respect, the position is also little different to that found by the Cool Pool Lane appeal Inspector. However, the Council does note that the appellant has given no information about where the family is now living since compliance with the Stop Notice in August 2020.
43. Nevertheless, that the appellant appears to have no other accommodation available is a matter to which I must attribute considerable weight.
44. The Tewkesbury Borough Plan 2011-2031 Pre-Submission Version (TBP) was submitted for examination in May 2020. It is a plan which is therefore capable of attracting weight by virtue of Framework paragraph 48. While the Council rightly notes that weight attributed is subject to the extent to which there are unresolved objections to a policy, it has given no information about this aspect. There is, however, no evidence of an unresolved objection by the appellant.
45. Policy GTTS1 makes provision for 30 pitches on three sites against a pitch target for 2016-2031 of 78. However, 25 of this requirement is from non-travelling households and it is assumed that only 25% of the 48 whose status is 'not known' will be from persons who meet the PPTS Annex 1 definition. The adjusted pitch target for those meeting the PPTS Annex 1 definition is therefore 17 over the period to 2031. The Council's position therefore is that it can meet the requirement for a 5-year supply of sites to meet the needs of those satisfying the PPTS Annex 1 definition although this contention may be subject to examination in due course.
46. I also note the assumption in TBP paragraph 3.82 that '...it would be reasonable to expect at least 2 pitches per annum to come forward as windfall...' through the operation of JCS policy SD13. The appeal site would make such a contribution and while not adding to the generally available sites, it would make specific provision for the appellant and contribute to the assessed need. This is also a matter to which I attribute some weight.

Personal circumstances.

47. Reference is made to the health of a family member although no supporting evidence of the condition has been provided. The resident children are named together with their ages as is their need to attend school and do so from a settled base.

Planning balance and conclusions

48. Some, if not all, of the extended family that will occupy the site are Romany gypsies. I have therefore had due regard to the Public Sector Equality Duty contained in the Equality Act 2010 and specifically s149 and the three aims set out within it. As there are several children within the extended family I have also had regard both to the best interests of the child and to the fact that this is a primary consideration that must be afforded an importance or weight as great as any other material consideration.
49. Nevertheless, the starting point for the planning balance must be s38(6) of the Act which requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
50. I have concluded that there would be a conflict with the development plan on both the highway safety and the character and appearance issues identified above. While I consider the latter would be apparent only to users of the public rights of way and, even then, only briefly, on highway safety, the conflict is significant and, I understand, influenced the decision to issue a Stop Notice in association with the notice.
51. The Council has argued that the unauthorised development is intentional and that this is a material consideration that weighs against the appeal succeeding, albeit that the weight should be moderate since compliance with the requirements of the notice would repair the damage caused to the appearance of the land.
52. The appellant has not responded to this point directly. However, I consider that the works undertaken were limited to those necessary to make the site habitable for part of the extended family. No works were carried out to provide the amenity building, for example. In addition, the Stop Notice has been complied with as has, or so it appeared to me, the County Court Order. I therefore believe very little weight should be attributed to this consideration.
53. Material considerations that weigh in favour of planning permission being granted are the fact that, while noting that no evidence about the whereabouts of the family on leaving the appeal site has been given, there do not appear to be any alternative sites available to the appellant. The personal circumstances of the appellant and his family and the fact that the development would represent a windfall site of the type assumed by the Council as making an annual contribution to the supply of sites also weigh in favour of permission.
54. However, returning to the best interests of the children, I am clear that it would be beneficial for access to schooling, health and other facilities to be available and that such provision would be likely to result from occupation of the site. Nevertheless, the court has held that the best interests of the child should be interpreted as the need to safeguard and promote their welfare. As I have found under the first main issue, the very means by which such facilities may be accessed from the site works directly against the best interests of the child as defined. In simple terms, the access to the site is not safe whether by vehicle, cycle or on foot and cannot be made so on land within the appellant's control.
55. For these reasons and, in particular having regard to the best interests of the child, I conclude that, in this case, material considerations do not outweigh the

conflict with the development plan that I have found. The appeal on ground (a) does not therefore succeed and the application for planning permission deemed to have been made fails.

The section 174 appeal on ground (f)

56. The appellant has given no further information to that supplied at initial appeal stage to support this ground of appeal. As I understand it, the appellant is arguing that the hard surfacing that has been laid has restored the pre-existing vehicular access which is needed for all-weather use of the land for grazing of horses.
57. The appellant has given no evidence as to the pre-existing surface of the track. Evidence from the landowner is that the height of the track has been raised significantly, that local drainage has been adversely affected and that the surface is now no longer safe for horse riders to use. Cumulatively, this suggests that the works carried out have resulted in conditions quite different to those before the hard surface materials were laid.
58. In all these circumstances the requirement to remove the hardstanding from the area shown on the notice plan seems wholly reasonable and proportionate.
59. The appeal on ground (f) therefore fails.

Overall Conclusion

60. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Brian Cook

Inspector