



Appeal Decisions

Hearing held on 7 December 2021

Site visit made on 7 December 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal A Ref: APP/J1860/C/20/3261204

Appeal B Ref: APP/J1860/C/20/3261205

Mountain View Bastonford, Powick, Worcester, WR2 4SL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr E Smith and Appeal B is made by Mrs C Smith against an enforcement notice issued by Malvern Hills District Council.
 - The notice, numbered ENF/20/0324, was issued on 23 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of land for the stationing of caravans for residential purposes together with associated amenities, equipment including a day room, and the laying of hardstanding.
 - The requirements of the notice are to:
 - Permanently cease the use of the land for the stationing of caravans for residential purposes.
 - Permanently remove the caravans, hardstanding, day room, and associated amenities and equipment from the land.
 - Restore the land to its original condition before the breach took place (grassland).
 - The period for compliance with the requirements is within 9 calendar months.
 - Appeal A and Appeal B are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/J1860/W/20/3261202

Mountain View Bastonford, Powick, Worcester, WR2 4SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs E Smith against the decision of Malvern Hills District Council.
- The application Ref 19/01540/FUL, dated 11 October 2019, was refused by notice dated 10 September 2020.
- The application sought planning permission for continued use of land as Gypsy/Traveller accommodation for one extended family without complying with conditions attached to planning permission Ref 15/00380/FUL, granted on appeal, and dated 17 November 2016.
- The conditions in dispute are Nos 1, 2 and 5 which state that:
Condition 1 – The use hereby permitted shall be carried on only by the following: Mr Edward Smith, Mrs Christine Smith, Mr Patrick Smith and Mrs Anne Marie Smith and their resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

Condition 2 – When the premises cease to be occupied by those named in condition 1 above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials, and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.

Condition 5 – Notwithstanding the 5 touring caravans shown on the submitted drawing No. MH/10/PL/03 C, no more than 4 caravans, (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed on the site at any time. Any caravans positioned on the site shall be touring caravans and for the purposes of this decision a touring caravan is defined as one capable of being lawfully towed on the public highway without division into separate parts.

- The reasons given for the conditions are set out by the Inspector and relate to the personal needs and circumstances of the site occupants in relation to Conditions 1 and 2 and to reflect the terms of the original planning permission in respect of Condition 5.

Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:

In paragraph 1 the deletion of 'under section 171A(1)(a) of the above Act' and the substitution of the words 'under section 171A(1)(b) of the above Act'.

The deletion of paragraph 3 and its substitution with the words:

'Failure to comply with conditions 1 and 2 of planning permission reference 15/00380/FUL which was granted, at appeal, subject to conditions, on 17 November 2016 for the continued use of land as Gypsy/Traveller accommodation for one extended family at Mountain View, Bastonford, Powick, Worcester WR2 4SL.

Condition 1 stated 'The use hereby permitted shall be carried on only by the following: Mr Edward Smith, Mrs Christine Smith, Mr Patrick Smith and Mrs Anne Marie Smith and their resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.'

Condition 2 stated 'When the land ceases to be occupied by those named in condition 1 above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials, and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.'

It appears that conditions 1 and 2 have not been complied with in that (a) the use of land as Gypsy/Traveller accommodation did not cease on or before 17 November 2019 but has continued thereafter, (b) the caravans, buildings, structures, materials and equipment brought onto the land and works undertaken to it in connection with the use have not been removed and (c) the land has not been restored to its condition before the development took place.

2. Subject to the corrections, Appeals A and B are allowed, the enforcement notice is quashed. In accordance with section 177(1)(a) and section 177(5) of the 1990 Act as amended, planning permission is granted for the continued use of land as Gypsy/Traveller accommodation for one extended family at Mountain

View, Bastonford, Powick, Worcester WR2 4SL subject to conditions as set out in Annex 1.

Appeal C

3. The appeal is allowed, and planning permission is granted for the continued use of land as Gypsy/Traveller accommodation for one extended family at Mountain View, Bastonford, Powick, Worcester WR2 4SL, effective from 17 November 2019, subject to conditions set out in Annex 2.

Procedural Matters

4. A Statement of Common Ground (SOCG) was submitted to the Hearing, but it was acknowledged by both parties that the suggested conditions contained within it were not agreed. Subsequently a list of suggested conditions was submitted which had been agreed by the parties.
5. The appellants submitted a copy of an email from Mr and Mrs Maxwell who previously lived in Bastonford and who supported the appellants but were unable to attend the Hearing due to poor health. The appellants also provided a footpath map and an aerial photograph showing the Ridgeway Farm site which they wished to refer to. Neither the Council nor the Interested Parties raised any objections to the submission of these documents, and I do not consider that any prejudice would arise were they to form part of my consideration of the appeals.
6. In reference to the status of Powick & Collett's Green as a Category 2 settlement the Council referred to Annex D of the South Worcestershire Development Plan 2016 (the Development Plan) and to the Wychavon DC/Malvern Hills DC/Worcester City Council – Village Facilities and Rural Transport Study (2019) (the Village Facilities and Transport Study). These documents had not previously been provided to me but as the Village Facilities and Transport Study has not altered the status of Powick and Collett's Green, the appellants had no objection to reference being made to them. Both documents have subsequently been provided to me. I also do not consider that any prejudice would arise were I to have regard to these documents in the determination of the appeals.
7. I was provided with a copy of the Appeal Hearing Statement by the Bastonford Residents Association as it was unclear whether this had been previously submitted. I took a short adjournment to read the document and I agreed with the Bastonford RA that it did not raise any issues which were not already capable of being addressed in the draft Agenda which I had circulated. The Council was already aware of the document and the appellants also had the chance to read it. On that basis I accepted the document as part of the submissions by interested parties.
8. Both parties agree that the site would be occupied by people who meet the definition of gypsies and travellers as set out in the Planning Policy for Traveller Sites (PPTS) and that the PPTS is material to the determination of the appeals. Matters relating to human rights, the public sector equality duty (PSED) and the best interests of children are integral to my decisions.

The Notice (Appeals A and B)

9. In advance of the Hearing, I issued a Pre-Hearing note in which I raised the question of whether the notice which was issued under section 171A(1)(a) of the Town and Country Planning Act 1990 (the Act), should have been served under section 171A(1)(b) of the Act which relates to the failure to comply with any condition or limitation subject to which planning permission has been granted. This was because temporary planning permission (the 2016 permission) had been granted on a personal basis (conditions 1 and 2) and for a particular number and type of caravans (condition 5). Therefore, it seemed to me that the occupation of the site after the expiry of the temporary consent, by different individuals and the accommodation of different types of caravan would have been in breach of conditions 1, 2 and 5 attached to the 2016 permission.
10. In response to my query regarding the notice the Council advised that it had served the notice because the temporary planning permission had expired and because an additional person was living on the site. These matters were in breach of conditions 1 and 2. However, the number and type of caravans on the site were within the restrictions imposed by condition 5 of the 2016 permission.
11. The appeals have been brought on ground (a) and an application for planning permission is deemed to have been made (the DPA). The terms of the DPA are derived from the allegation whether or not it is corrected. In this case I consider that the allegation set out in the notice should be corrected to relate to a breach of conditions 1 and 2 of the 2016 permission. This change would more accurately reflect the breach of those conditions through the continuation of use of land as Gypsy/Traveller accommodation for one extended family.
12. The correction of the notice and consequential correction of the relevant section of the Act do not change the requirements of the notice or affect the reasons for issuing the notice. The appellants and the Council's submissions remain relevant and the SOCG confirms that the notice can be amended without causing any injustice to main parties. Similarly, as the correction does not alter the main issues which arise in the appeals, the interested parties would not be prejudiced by me making the necessary corrections to the notice.
13. I will correct the notice to refer to the relevant section of the Act and to reference the alleged failure to comply with conditions 1 and 2 of planning permission reference 15/00380/FUL.

Appeals A and B – Ground (a)

Background

14. An Enforcement Notice was served by the Council in June 2011 following the occupation of the land by the appellants and their extended family. This notice and a planning application for change of use of the land and the stationing of five touring caravans which was refused, were the subject of planning appeals which were considered at a Hearing in January/February 2012. The Inspector allowed the planning appeal and granted planning permission for a temporary period of 3 years (until 20 March 2015) and extended the compliance period of the enforcement notice to one year.
15. The appellants submitted a planning application for continued use of the land dated 17 March 2015 which was refused in November 2015. The Council

subsequently served an enforcement notice in January 2016. Both the refusal of planning permission and the enforcement notice were the subject of appeals which were considered at a Hearing in September 2016. The Inspector in that case allowed the enforcement notice appeal and granted planning permission on the deemed application and also allowed the planning appeal and granted permission on a time limited basis. Appeals A and B relate to conditions 1 and 2 attached to the 2016 planning permission arising from the appeal against the refusal of planning permission.

16. The reasons for the imposition of conditions 1 and 2 were set out by the Inspector in her decision letter. In essence having identified harm arising from the development the Inspector imposed conditions 1 and 2 to reflect her view that the personal needs and circumstances of the site occupants weighed in favour of the grant of planning permission.

Main Issue

17. Following my correction of the notice the main issue in respect of Appeals A and B on the basis of a breach of conditions 1 and 2 is whether planning permission should be granted for the continued use of land as Gypsy/Traveller accommodation for one extended family subject to conditions which are necessary and reasonable to allow that continued use.
18. The reasons for serving the notice relate to the location of the site relative to the nearest urban area and facilities and services and the effect of the development on views towards the Malvern Hills Area of Outstanding Natural Beauty (AONB) and the character and appearance of the surrounding area. These reasons align with the harm identified by the Inspector when she granted temporary consent.

Reasons

The location of the site relative to the nearest urban area and facilities and services

19. The Council confirmed at the Hearing that the relevant planning policies for the consideration of this issue were contained within the Development Plan. Policy SWDP 1 sets out overarching sustainable development principles and Policy SWDP 2 establishes the development strategy and settlement hierarchy for the District. Of particular relevance to these appeals is Policy SWDP 17 which relates to Travellers and Travelling showpeople. The Council considers that the use of the land for Gypsy/Traveller accommodation is contrary to part (i) of Policy SWDP 17C which relates to whether or not the site is within or on the edge of a town or Category 1, 2, or 3 settlement.
20. The Council considers that the Development Plan is in accordance with the National Planning Policy Framework (the Framework) and Planning Policy for Travellers Sites (PPTS). The appellants pointed out that the PPTS does not specify any particular category of settlement. I concur with the appellants in this regard.
21. Bastonford is a linear hamlet which runs parallel to and has been bypassed by the A449 Great Malvern-Worcester road. There are no services in Bastonford but there is a school and a petrol filling station/convenience store in nearby Powick and Collett's Green. There are bus stops on both sides of the A449 at either end of Bastonford with regular buses serving Worcester and Great

Malvern which are a short journey away and where shops and services are plentiful and varied.

22. The Village Facilities and Transport Study has confirmed Powick and Collett's Green as a Category 2 settlement. I was able to see during my site visit that new development has taken place in Powick and Collett's Green and was advised by the appellants that some of this has occurred since the grant of planning permission in 2016. However, the presence of the A449 creates a barrier between Bastonford and the northern part of the settlement and there are open fields between the site and the southern part. This arrangement is such that the site does not fall within or on the edge of the Category 2 settlement.
23. The PPTS states that local planning authorities should very strictly limit new Traveller site development in open countryside that is away from existing settlements. In this case the site is in open countryside based on the definition contained in Policy SWDP 2 of the Development Plan for land which falls beyond any development boundary.
24. The development does not fall within any of the exceptions set out in Policy SWDP 2 which limits development within the open countryside. However, the PPTS which is a material consideration does not totally preclude Gypsy and Traveller site development in such locations.
25. The Inspector who allowed the 2016 Appeals and granted the 2016 permission also concluded that the site did not fall within or on the edge of the Category 2 settlement. She also went on to consider the accessibility of the site and whether the proposed development would offer genuinely sustainable travel choices. This was in part because the Council argued that the development did not accord with its Policy SWDP 4. This policy has not been cited in the reasons for the notice in this case.
26. Neither of the main parties could identify any changes to the facilities and services in the area nor the means of access to them since the 2016 permission. On this basis it is reasonable to assume that the residents on the site would continue to be reliant on private vehicles to access facilities and services.
27. The PPTS does not refer to accessibility to services and facilities by foot and public transport as an aim of the PPTS. The more general aim in the PPTS is the provision of suitable accommodation from which Travellers can access education, welfare and employment infrastructure. I note that the Council does not cite any issues with the accessibility of the site to health services, schools and employment, which are referenced in criteria C (x) of Policy SWDP 17. This is the correct approach given that the same sustainability criteria that is applied to the settled population should not be applied to Gypsies and Travellers and in the light of the PPTS.
28. I conclude that the site does not fall within or on the edge of the Category 2 settlement of Powick and Collett's Green and does not therefore fulfil one of the criteria set out in Policy SWDP 17 of the Development Plan for the assessment of the suitability of sites for Gypsy and Traveller development. However, the development does not conflict with any of the other criteria most notably criterion C(x). Given the degree of compliance with Policy SWDP 17 and taking account of the PPTS, which is a material consideration, I do not find that the

limitations on the accessibility of facilities and services in this case render the site unsuitable as a Gypsy and Traveller site.

The effect on views towards the AONB and the character and appearance of the surrounding area

29. The Council confirmed that in terms of the planning policy context and the Malvern Hills AONB Management Plan (the AONB Management Plan) there has been no change since the 2016 permission.
30. The site is not within the AONB but the view of the Malvern Hills from the road leading into Bastonford from the A449 incorporates the appeal site in the foreground. Policy BDP4 of the AONB Management Plan requires that development proposals that may affect the setting of the AONB should protect and/or enhance key views and landscape character.
31. The Council has produced guidance on identifying and grading views and viewpoints. Whilst there is no dispute between the parties that the view which incorporates the site is not one of the key views of the AONB, the Council pointed out that the views which were shown on the project map provided by the appellants are not a definitive list.
32. The parties confirmed that the policies relating to the impact of development on views of the AONB and the methodology for identifying and grading views has not changed since the 2016 permission. They were also agreed that the impact of the development on the AONB was best appreciated by a site visit.
33. In terms of the impact on the character and appearance of the surrounding area, the policy context is also unchanged since the 2016 permission. The SOCG identifies the site as within the Principal Timbered Landscape area which covers a wide area and is characterised by features including hedgerow boundaries to fields and the brick and timber style of older properties.
34. The Principal Timbered Landscape Area description applied to the landscape character when permission was granted in 2016. The Inspector in that case compared the former condition of the site and the development which has taken place and noted the contrast between the appearance of the caravans and the predominant character of brick and timber architecture in the area. These changes to the character and appearance of the area apply equally to the development currently on the site and continue to have a harmful effect on the site and its surroundings.
35. Although it was accepted by the appellants that it was not visible from the appeal site, the appellants made reference to the Ridgeway Farm development. This was cited as an example of development which had been permitted by the Council in the countryside close to Bastonford. I agreed to visit the Ridgeway Farm development during the site visit.
36. I carried out the site visit before closing the Hearing which enabled me to ask questions and receive information throughout the visit. There had been some planting around the perimeter of the site such that the boundary had a predominately natural appearance save for around the access where there were high fences and timber gates. Whilst this planting had matured since the 2016 permission it does not screen the site from views towards Bastonford.
37. I also walked two public footpaths in the vicinity of the site. One is on roughly the same level as the site between the road through Bastonford and the A449.

As a result of the proximity of the caravans and day room and the limited height and volume of boundary planting, the site was very visible from this footpath.

38. The second public footpath follows an elevated route across fields on the opposite side of the road through Bastonford. The site is very prominent in views from this footpath. The contrast between the low lying development in Bastonford and the adverse visual impact of the tourers and the day room is particularly marked from this direction. I also noted that although the traffic using the A449 and the road itself has a significant visual impact as part of the wider area, when viewed from the footpath it is well screened and only appears in distant views.
39. In relation to views of the AONB from the area surrounding the site, the Malvern Hills are a significant distance from the site. However, in the same way as detracting from the immediate site context the development also interrupts and diminishes the quality of the views along the road into Bastonford towards the AONB. From the elevated public footpath, the views are more expansive but whilst small in comparison with the hinterland of the hills, the site remains visible in some views and is harmful to them.
40. The appellants have suggested that additional landscaping could mitigate the visual impact of the development on the surrounding area and that this could be secured by planning conditions. However, the baseline against which the visual impact of the site must be judged is as it was before any development was carried out. This was described by the residents at the Hearing as a grassed field or paddock.
41. In respect of Appeal A and Appeal B there is very limited information before me regarding how the site could be landscaped to reduce its impact. Some of the boundary planting which has been carried out has yet to fully mature to the scale of the hedges along the road into Bastonford. Even at that stage, given the topography, the site would continue to be very visible from the elevated public footpath and the presence of development where there previously was none would be very apparent.
42. In the absence of detailed landscaping proposals, the timescales for such planting to have a full effect and the mitigation which would arise from mature planting, it has not been demonstrated that the imposition of planning conditions would deliver a scheme which would overcome the harm which I have identified.
43. I visited the Ridgeway Farm site with the Council and the appellants' agent as part of my site visit. The site is being used for large scale caravan and container storage. It has a significant visual impact on the countryside.
44. The Council argues that the policy context applying to a commercial site such as Ridgeway Farm is not directly comparable to the development on the appeal site. Although I do not have all of the details of the planning application for Ridgeway Farm before me it is clear that it is a significant commercial enterprise. As such it is not the same type of development as at the appeal site and policies relating to the rural economy and employment development would be relevant. To that extent the Ridgeway Farm scheme neither supports nor weighs against the appeal development.

45. On the basis of the evidence before me and my observations during the site visit, I find that the development has an adverse impact on both views towards the AONB and the character and appearance of the surrounding area. The development is therefore contrary to Policies SWDP 17, SWDP 21, SWDP 23 and SWDP 25 of the Development Plan and Policy BDP4 of the AONB Management Plan. These policies require development to complement the character of the area and to be appropriate to and integrate with the character of the landscape setting and, to have regard to the AONB Management Plan which includes Policy BDP4 relating to the setting of the AONB and to whether any significant visual impact of Gypsy and Traveller development on the landscape can be mitigated.
46. For the same reasons the development is contrary to the Framework in as much as this recognises the intrinsic character and beauty of the countryside.

Other considerations

The need for and supply of Gypsy and Traveller sites

47. The South Worcestershire Gypsy and Traveller Accommodation Assessment (2019) (GTAA 2019) identifies a need for 15 PPTS traveller pitches in the district for the period January 2019 to December 2023. The Council says it proposes to meet this need through the South Worcestershire Traveller and Travelling Showpeople Site Allocations Development Plan Document (the DPD).
48. The Council updated its Local Development Scheme in September this year and this sets out a series of steps which the Council expect to result in the adoption of the DPD by July 2023. The Council confirmed that the DPD was intended to address the needs of Gypsies and Travellers who, like the occupiers of the appeal site, meet the PPTS definition.
49. The Council also plans to address the wider needs of Gypsies and Travellers through allocations of Traveller sites as part of new settlements in its emerging local plan. The adoption of the local plan is on a similar trajectory to the DPD and is not expected to be adopted until October 2023. In terms of the delivery of the new settlements, of the three proposed only one was in a position to be taken forward straight after the adoption of the local plan due to infrastructure requirements.
50. Commuted sums for off-site provision have been secured by the Council in respect of one urban extension site and are in the process of being agreed in respect of a second. However, the Council admitted that to date no site has been identified for the Council to use those funds and deliver new Gypsy and Traveller pitches.
51. Although the Council has a policy process by which it intends to deliver Gypsy and Traveller sites, there is no certainty that it will result in the delivery of sites as early as 2023. Given that it has been unable to identify a suitable site to make the provision which it is committed to in lieu of on-site provision, the actual delivery of sites could be problematic.
52. The Inspector who dealt with the 2016 Appeal also considered the general need for Gypsy/Traveller sites as of relevance to her decision. She also refers to the draft DPD being progressed at that time but, as set out above, the Council has been unable to bring the DPD forward to adoption. The 2016 appeal decision

also predates the GTAA 2019, and the Inspector appears to have been considering a lesser need for sites than exists now.

53. The previous Inspector attributed moderate weight to the issue of unmet need for sites in the district. However, the continuing and increasing need for and lack of supply of Gypsy and Traveller sites has endured throughout the duration of both of the previous planning permissions on the site.
54. There is not a five year supply of deliverable sites against the locally defined target as required by the PPTS. The need for and lack of supply of Gypsy and Traveller sites now weighs significantly in favour of the development.

The availability (or lack) of alternative accommodation

55. The appellants' extended family which was permitted to live on the site under the 2016 permission included four adults and their resident dependants. The appellants have been staying in Plymouth recently to care for a family member. However, they were on a roadside site which is not a suitable alternative to the appeal site. Neither the appellants nor the Council are aware of any alternative site which would be available, affordable, and in a suitable location.
56. The Local Councillor and local residents queried whether the appellants had any specific requirements to live in the area such that they should be based in Plymouth and whether they could be accommodated on another Gypsy and Traveller site in Bastonford. The PPTS says that applications for sites from any Travellers must be determined and not just those with local connections. To that extent the appellants do not need to demonstrate specific requirements to live in this area as opposed to being closer to other family members.
57. With regard to capacity at the other Gypsy and Traveller site in Bastonford, the appellants referred to this site being a private site occupied by one family. They likened the concept of site sharing in this instance to a resident inviting a family to share their house. Such an arrangement would not be acceptable to them, even if there were vacant pitches there. For this reason, I do not find the prospect of site sharing a realistic one and it does not represent a suitable alternative to the appeal site.
58. Drawing these points together I find that the lack of alternative accommodation attracts significant weight in favour of the appellants in this case.

The personal circumstances of the appellants

59. The continued use of land as Gypsy/Traveller accommodation would allow the appellants and their extended family, including their son and his family, to continue to live together. This is acknowledged as being of importance to the Gypsy and Traveller community and enables mutual care and support.
60. The appellants confirmed at the Hearing that there are three children of school age and one baby living at the site. The children do not currently attend school but have done so in the past. The oldest child, who would attend secondary school, has missed so much formal education that it is unlikely that they will go to school.
61. One of the appellants has a medical condition for which they are receiving treatment which includes using electrical equipment regularly. I heard at the Hearing that this presents a problem because running the generator for long

time periods is unaffordable. Two of the children also have health issues, one of which requires regular appointments at a children's hospital.

62. The retention of a stable base which would be provided by the continued use of the site would be beneficial to the appellants in terms of access to necessary health care. It would also provide the opportunity for two of the children to attend school where that was compatible with their parents travelling lifestyle.
63. Bringing all of these points together I find that the personal circumstances of the appellants weigh significantly in favour of allowing the appeals, particularly in respect of the best interests of the children.

Matters raised by interested parties

64. Both the local councillor, parish councillors and members of the Bastonford Residents Association who were also represented were active participants in the Hearing. One resident accompanied me along the footpath, and another requested I visit her property as she was concerned about overlooking from the day room on the site.
65. I have already addressed some of the issues raised by the interested parties in terms of the effect of the continued use of land as Gypsy/Traveller accommodation for one extended family and the potential use of an alternative site in Bastonford. Non-compliance with conditions imposed on the earlier permissions is a matter for the Council.
66. In respect to overlooking from the day room, at the time when I carried out the site visit this was precluded because a touring caravan was between the building and the boundary. However, there are windows in the end elevation of the day room which face towards adjacent houses, albeit that those properties are a significant distance away.
67. I am satisfied that any potential overlooking or perception of overlooking issues could be dealt with through the submission to and approval of a site layout plan by the Council which could be secured by planning condition. As such I do not find that this matter attracts weight in favour or against the appeals being allowed.

Conclusion – the Planning Balance (Appeals A and B)

68. Policy H of the PPTS is a reminder that planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
69. The development has a harmful effect on views towards the AONB and the character and appearance of the surrounding area which is contrary to the development plan and attracts substantial weight against allowing the appeals. However, I have found the development to be in a suitable location in terms of access to facilities and services and to weigh against the harm which I have identified I attach significant weight to the unmet need for Gypsy and Traveller sites in the district, the lack of alternative accommodation available to the appellants and their personal circumstances.
70. The Inspector for the 2016 appeal attributed moderate weight to the unmet need for sites and the personal needs of the family, in the context of the lack of alternative sites. On that basis she considered that granting planning permission for a permanent site would not be appropriate. By contrast I have

attributed significant weight to the same factors, primarily as a consequence of the lack of progress in finding a permanent solution to the appellants' needs for a site.

71. As I have concluded that there would be ongoing harm arising from the use it is appropriate for me to consider whether or not a permanent permission is justified in this case on the basis of the overall planning balance. Drawing all of the relevant considerations together, I find that those matters which weigh in favour of the appeal, outweigh the scale of harm which I have identified. However, one of the points in favour of granting planning permission is the personal circumstances of the appellants and in this case, I find that this matter tips the balance in favour of the appellants.
72. Given my findings it would not be appropriate for me to grant planning permission on a permanent basis. This is because in the event that the appellants and their extended family moved off the site there is no certainty that the personal circumstances of new occupants would be such as to justify the continued use of the site leading to a continuation of the harm which I have found.
73. It is open to me to grant permission for a further 3 year period as the other Inspectors have done or for a longer period. However, as set out above there is no certainty regarding when an alternative site might become available, and I am not convinced that a further temporary consent would provide sufficient time to resolve the supply issue.
74. Given the circumstances in this case, a time limited permission tied to the occupation of the site by the appellants and their extended family is a reasonable and proportionate response to the harm which I have found, including the conflict with the development plan. It follows that the planning balance in relation to the development, justifies a decision other than in accordance with the development plan.
75. I conclude that planning permission should be granted for the continued use of land as Gypsy/Traveller accommodation for one extended family subject to conditions which are necessary and reasonable to allow that continued use.

Conditions

76. The Council and the appellants agreed a list of conditions at the Hearing which they considered necessary were I minded to allow the appeals. Any planning conditions which I impose must meet the tests set out in the Framework, which includes that they are necessary. I have made alterations to the suggested conditions to ensure that they meet those tests.
77. My decision has been made on the basis that the future occupiers of the site will be Gypsies and Travellers. Therefore, it is necessary to control the occupancy of the site to those people meeting the definition set out in the PPTS (Condition 1).
78. I have also placed weight on the personal circumstances of the appellants and their extended family, which includes an additional individual who was not on the site at the time of the 2016 permission. Therefore, it is necessary and reasonable to attach a 'personal' condition which also limits occupation of the site (Condition 2). Condition 3 is required to address the need to restore the site to its condition before the development took place if it ceases to be

occupied by those named in Condition 2. Conditions 2 and 3 also confirm that the consent is time-limited.

79. I have included the additional individual who is resident at the site in the named occupiers of the site (Condition 2). The additional resident does not result in an increase in the number of caravans on the site therefore the additional visual impact of his occupation is limited. My assessment of the location of the site relative to the nearest urban area and facilities and services is also unchanged as a result of an additional resident. Furthermore, the Council did not identify any particular reason why this individual should not be accommodated on the site.
80. My assessment has been made on the basis of the number and type of caravans which were permitted under the 2016 permission. I have addressed a different number and type of caravans in my consideration of Appeal C. Although I am not bound by the conditions attached to the 2016 permission, given that my assessment has been based on the number and type of caravans specified by that consent it is reasonable to impose the same restriction on the number and type of caravans when issuing a new planning permission (Condition 4). The reasonableness of expecting the family to live in touring caravans for the length of a personal permission is addressed by Appeal C.
81. Two conditions have been suggested relating to the submission and approval of a site development scheme and the maintenance of landscaping. These conditions are necessary to confirm and control the detailed layout of the site and to ensure proper maintenance of planting (Conditions 5 and 6).
82. The parties have also requested a condition relating to the onsite generator. I was able to experience the noise arising from the use of the generator during my site visit. It was perceptible at the site boundary therefore I consider it reasonable and necessary to impose a condition to secure the provision of sound insulating material. I have also included a requirement to remove the generator in the event that a permanent electricity supply is established to serve the site. (Condition 7)
83. There were a number of conditions attached to the 2016 permission which controlled the size of vehicles on the site and commercial activities. The main parties are agreed that these should be repeated on any further consent and I concur with that view in the interests of visual and residential amenity impacts (Conditions 8 and 9).
84. It has been suggested that conditions should be attached to restrict the provision of means of enclosure and external lighting. Given the potential visual impact of such features, such conditions are reasonable and necessary. However, I have amended the suggested wording of condition 10 to remove reference to the submission and approval of details in writing by the Council to ensure that the condition is precise. (Conditions 10 and 11).

Conclusion – Appeals A and B

85. For the reasons given above, I conclude that Appeals A and B should succeed on ground (a) and the enforcement notice (as corrected) should be quashed. I shall grant planning permission on the application deemed to have been made for the continued use of land as Gypsy/Traveller accommodation for one extended family at Mountain View, Bastonford, Powick, Worcester subject to the conditions as described above.

86. The appeals on ground (g) do not fall to be considered.

Appeal C

Background

87. The appellants have confirmed that the description of the proposal has changed from that which was set out in their application for removal or variation of a condition following grant of planning permission and which I have used in the banner above.

88. The revised description is as follows:

Continued use of land as Gypsy/Traveller accommodation for one extended family (Variation of conditions 1, 2 and 5 of planning permission 15/00380/FUL)

89. Appeal C arises as a result of the Council's refusal of the appellants' application to vary conditions 1, 2 and 5 of the 2016 permission. The Council referred to the variation of conditions in its decision notice but effectively dealt with the application on the basis of whether the continued use was acceptable in planning terms or not.

90. This is an appropriate approach to adopt when the permission is subject to a time-limited condition and the permission has expired, as is the case here. It is also reflected in the revised description which I shall adopt in my determination of the appeal. Any planning consent which is granted would run from the date of the expiry of the 2016 permission to reflect the continuous use of the land.

91. In respect of the number and type of caravans, the appellants confirmed during the course of the appeal and at the Hearing that, ideally, they would like permission for two static caravans and four touring caravans. This would enable the families of their son and daughter to occupy the static caravan and have a touring caravan each for travelling when seeking work, and a touring caravan each for the appellants and the additional resident.

Main Issue

92. The main issue is whether planning permission should be granted for the continued use of the land as Gypsy/Traveller accommodation for one extended family subject to conditions which are necessary and reasonable to allow that continued use.

93. With the exception of the addition of the appellants' daughter and her dependants as a resident of the site and the change in number and type of caravans Appeal C relates to the same development as Appeals A and B.

Reasons

The location of the site relative to the nearest urban area and facilities and services

94. There is no evidence before me to suggest that the additional residents on the site would not meet the definition of Gypsies and Travellers as set out in the PPTS and the continuation of the use does not affect the site location. Therefore, I shall adopt the same outcome in relation to the suitability of the site as I did in respect of Appeals A and B. Consequently, I conclude that while the development does not fulfil one of the criteria set out in Policy SWDP 17 of the Development Plan, given the compliance with other criteria in that policy and the PPTS, the limitations on the accessibility of facilities and services in this case do not render the site unsuitable as a Gypsy and Traveller site.

The effect on views towards the AONB and the character and appearance of the surrounding area

95. In common with the conclusion which I reached on Appeals A and B in visual terms additional occupiers do not necessarily equate to additional harmful effects. However, the addition of more caravans and particularly the introduction of static caravans will have an effect on the appearance of the site.
96. The Council confirmed at the Hearing that it objected to the introduction of static caravans onto the site. This was on the basis that static caravans are larger in terms of their floorspace and height and would thus be more visible in views into the site.
97. There are landscaping details on the plans which were submitted with the application to the Council. These relate to the provision of additional planting along the boundaries with the road into Bastonford and the paddock. Whilst these details could be secured by planning condition and further planting carried out, any caravans on the site including static caravans would remain visible particularly from the elevated footpath.
98. In common with Appeals A and B the baseline against which the visual impact of the development must be assessed is an undeveloped site. The harm which I have identified in my consideration of Appeals A and B would be evident in respect of the Appeal C development. It is reasonable to consider that the degree of harm would be increased if static caravans are permitted on the site as a consequence of their larger size.
99. The appellants say that they would be content to reduce the number of tourers on the site from four to three. However, given the limited size of the tourers already on site and that for some parts of the year the tourers would be off site whilst their occupants are travelling for work, it is reasonable to assume that having three as opposed to four tourers would have a very limited effect on the overall appearance of the site.
100. Drawing all of these points together the Appeal C scheme will be harmful to the views towards the AONB and the character and appearance of the surrounding area which is contrary to Development Plan policies, the AONB Management Plan and the Framework.

Other considerations

101. With the exception of the personal circumstances of the appellants, the other considerations which were before me in terms of my determination of Appeals A and B apply equally to my consideration of Appeal C. Consequently, I shall adopt the same approach and apply significant weight in favour of Appeal C to the continuing and increasing need for and lack of supply of Gypsy and Traveller sites and to the lack of alternative accommodation.
102. In respect of the personal circumstances of the appellants the change in type of caravan and increase in number would permit their daughter and her children to live on the site. At present she lives in a bricks and mortar house. Allowing the extended family to be located on one site would enable their mutual support network to operate more effectively and would make efficient use of the land.
103. The appellants also confirmed at the Hearing that if they were permitted to use the land on a permanent basis, they would be able to justify the expense of connecting to electricity services. Whilst this could apply in respect of permanent touring caravans on the site, the installation of static caravans would also allow showers to be used in the caravans and would generally provide a much better standard of accommodation at the site.
104. The appellants also say that the provision of static caravans would allow mothers and children to stay on the site while fathers travelled in the touring caravans for work. This would not only give the children a stable base from which to access education but also increase the likelihood that they would spend significant periods of the school year in attendance.
105. I find that the Appeal C scheme adds to the already significant weight to be attached to the personal circumstances of the appellants and their extended family, particularly in respect to the best interests of the children.

Conclusion – the Planning Balance (Appeal C)

106. The development has a harmful effect on views towards the AONB and the character and appearance of the surrounding area which would be further increased by the introduction of two static caravans on the site. As such the development is contrary to the development plan Policies SWDP 17, SWDP 21, SWDP 23 and SWDP 25 of the Development Plan and Policy BDP4 of the AONB Management Plan
107. However, I have found the development to be in a suitable location in terms of access to facilities and services and to weigh against the harm which I have identified I attach significant weight to the unmet need for Gypsy and Traveller sites in the district, the lack of alternative accommodation available to the appellants and to their personal circumstances which would be enhanced by the accommodation of children and their parents in static caravans.
108. In common with Appeals A and B I have concluded that there would be ongoing harm arising from the use and that the personal circumstances of the appellants and their extended family tip the balance in favour of granting planning permission. In recognition of this it is appropriate for me to make the consent time limited based on the duration of the occupation of the site by the appellants and their extended family. In this context, I find that those matters which weigh in favour of the appeal, outweigh the scale of harm which I have

identified, including conflict with the development plan and that the planning balance in relation to the development, justifies a decision other than in accordance with the development plan.

109. I conclude that planning permission should be granted for the continued use of land as Gypsy/Traveller accommodation for one extended family subject to conditions which are necessary and reasonable to allow that continued use beyond the expiry of the 2016 permission (17 November 2019).

Conditions

110. I have attached a condition (Condition 1) to limit the occupation of the site to the appellants and their extended family including the appellants' daughter and her dependants. I have also included the resident permitted under Appeal A and B for consistency. This condition is necessary to control the occupation of the site in the light of the conclusions which I have reached regarding the personal circumstances of those occupiers.

111. I have included a condition to ensure that in the event that the land ceases to be occupied by those named in Condition 1, the land is restored to its former appearance. This is necessary given the time-limited nature of the consent and the effect which the development has on the views towards the AONB and the character and appearance of the surrounding area. (Condition 2)

112. I have included conditions as follows, which are necessary and reasonable to address the visual and residential amenity impacts of the development and to confirm and control the detailed layout of the site:

- to limit the size of vehicles and preclude commercial activities (Conditions 3 and 4)
- to limit the number and type of caravans (Condition 5)
- to limit occupation of the site to Gypsies and Travellers (Condition 6)
- to secure a site development scheme and maintenance of planting (Conditions 7 and 8)
- to address the noise impact of the on-site generator and secure its removal if an electricity supply has been established (Condition 9)
- to restrict the provision of means of enclosure and external lighting (Conditions 10 and 11)

Conclusion – Appeal C

113. For the reasons given above, I conclude that Appeal C should succeed. I shall grant planning permission for the continued use of land as Gypsy/Traveller accommodation for one extended family at Mountain View, Bastonford, Powick, Worcester, effective from 17 November 2019, subject to conditions which are necessary and reasonable to allow that continued use.

Human Rights and the Public Sector Equality Duty (PSED)

114. The occupiers of the caravans are members of the Gypsy and Traveller community which is recognised as having special needs which are protected through positive obligations in terms of their human rights. Furthermore, the caravans are occupied as residential accommodation which are the homes of

the appellants and their extended family. However, as I am allowing Appeals A, B and C there will be no interference with the appellants' rights under the Human Rights Act 1998.

115. My determination provides the appellants and their extended family with the option of remaining on the site. This advances equality of opportunity and the potential for continuing to foster good relationships with the settled community, which addresses my duty to have regard to the PSED. In this respect I am also mindful that the Council has secured a 5 Year Housing Land Supply which addresses the needs of the settled population while the needs of Gypsies and Travellers remain unmet.

Sarah Dyer

Inspector

Annex 1 - Schedule of conditions – Appeals A and B

1 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).

2 The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Edward Smith (Senior) and Christine Smith; Patrick Smith and Annmarie Smith; and Steve Bromwell.

3 When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

4 No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time. Any caravans positioned on the site shall be touring caravans and for the purposes of this decision a touring caravan is defined as one capable of being lawfully towed on the public highway without division into separate parts.

5 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 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

i) Within 3 months of the date of this decision a scheme for

- the internal layout of the site, including the siting of the caravans, hardstanding, access road, parking, amenity areas and retained paddock area
- the siting, size and design of the dayroom
- soft and hard landscaping including indications of what existing landscaping is to be retained
- proposed tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities
- any external lighting
- all means of enclosure
- refuse and recycling facilities
- the restoration of the site to its condition before the development took place

(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 11 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 an appeal shall have been made to, and accepted as validly made by, 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 site development scheme shall have been carried out and completed in accordance with the approved timetable.

Following the carrying out and completion of the approved site management scheme, its terms shall thereafter continue to be adhered to.

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.

6 At the same time as the site development scheme required by condition 5 is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

7 Within 3 months from the date of this permission a scheme for the enclosure of the on-site generator with sound insulating material, including a timetable for its implementation, shall be submitted to, and approved in writing by the local planning authority. The measures implemented as approved shall be retained for the duration of use of the generator. The generator and any associated enclosure shall be removed within two months of a permanent electricity supply being established to serve the site.

8 No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

9 No commercial activities shall take place on the land, including the storage of materials.

10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure and no hardstanding other than those approved under condition 5 above shall be erected/constructed on the site.

11 No external lighting other than that approved under condition 5 above shall be erected on the site unless details of its size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out and retained in accordance with the approved details.

Annex 2 - Schedule of conditions – Appeal C

1 The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Edward Smith (Senior) and Christine Smith; Patrick Smith and Annmarie Smith; Charlene O'Neil and Steve Bromwell.

2 When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

3 No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

4 No commercial activities shall take place on the land, including the storage of materials.

5 No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 2 shall be static caravans shall be stationed on the site at any time. For the purposes of this decision any touring caravan positioned on the site is defined as one capable of being lawfully towed on the public highway without division into separate parts.

6 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).

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 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- i) Within 3 months of the date of this decision a scheme for
- the internal layout of the site, including the siting of the caravans, hardstanding, access road, parking, amenity areas and retained paddock area
 - the siting, size and design of the dayroom
 - soft and hard landscaping including indications of what existing landscaping is to be retained
 - proposed tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities
 - any external lighting
 - all means of enclosure
 - refuse and recycling facilities
 - the restoration of the site to its condition before the development took place (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 11 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 an appeal shall have been made to, and accepted as validly made by, 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 site development scheme shall have been carried out and completed in accordance with the approved timetable.

Following the carrying out and completion of the approved site management scheme, its terms shall thereafter continue to be adhered to.

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.

8 At the same time as the site development scheme required by condition 7 is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

9 Within 3 months from the date of this permission a scheme for the enclosure of the on-site generator with sound insulating material, including a timetable for its implementation, shall be submitted to, and approved in writing by the local planning authority. The measures implemented as approved shall be retained for the duration of use of the generator. The generator and any associated enclosure shall be removed within two months of a permanent electricity supply being established to serve the site.

10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure and no hardstanding other than those approved under condition 7 above shall be erected/constructed on the site.

11 No external lighting other than that approved under condition 7 above shall be erected on the site unless details of its size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out and retained in accordance with the approved details.

APPEARANCES

FOR THE APPELLANTS:

Mrs Alison Heine
Mr E Smith and Mrs C Smith (the appellants)

FOR THE LOCAL PLANNING AUTHORITY:

Mr Aaron Black	Planning Enforcement Officer
Mr Ciaran Power	Development Manager
Ms Denise Duggan	Senior Planning Officer (Policy), Wychavon District Council

INTERESTED PARTIES:

Councillor Tom Wells	District Councillor/Deputy Leader Malvern Hills District Council
Mr Andrew Lamb	Chair of Powick Parish Council
Mr Colin Phillips	Vice Chair of Powick Parish Council
Mr Anthony Warburton	Resident
Mr Hugh Richards	Barrister representing Bastonford Residents Association
Ms Lisa Louvaine	Resident/Bastonford RA
Ms Wendy McNally	Resident/Bastonford RA
Ms Josephine Wiggins	Resident/Bastonford RA

SUBMISSIONS BY THE APPELLANTS

DOCUMENTS

Email from Mr and Mrs Maxwell dated 7 December 2021

PLANS

Footpath map (Bastonford and surrounding area)

PHOTOGRAPHS

Aerial photograph showing Ridgeway Farm

SUBMISSIONS BY THE COUNCIL

DOCUMENTS

Agreed Statement of Common Ground (Conditions not agreed)

Suggested Conditions

South Worcestershire Development Plan (2016) Annex D: Hierarchy of Settlements

Wychavon DC/Malvern Hills DC/Worcester City Council – Village Facilities and Rural Transport Study (2019)

SUBMISSION BY BASTONFORD RA

Copy of Appeal Hearing Statement by the Bastonford Residents Association