



Appeal Decision

Hearing held on 6 January 2022

Site visit made on 6 January 2022

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/T2405/C/19/3233663

The Old Coal Yard (also known as The Stables), Kirk Lane, Enderby, Leicestershire, LE19 4AS

- 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 Act").
- The appeal is made by Mr Brian Rogers against an enforcement notice issued by the Blaby District Council.
- The enforcement notice was issued on 26 June 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from a Gypsy/Traveller caravan site to a mixed use site comprising a Gypsy/Traveller caravan site and a mobile home park for permanent residential use by non Gypsy/Travellers (The Settled Community).
- The requirements of the notice are:
 - 5.1 Cease the use of the land for the stationing of caravans/mobile homes for residential use by non Gypsy/Travellers.
 - 5.2 Ensure that no non-Gypsy/Travellers shall occupy any part of the Land for residential accommodation.
 - 5.3 Remove from the Land all mobile homes/caravans and buildings other than those authorised by planning permission.
 - 5.4 Make good the parts of the Land on which the mobile homes/caravans and buildings are removed pursuant to Paragraph 5.3.
- The period for compliance with the requirements is 6 months.
- The appeal proceeds on the grounds set out in section 174(2)(b), (c) and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The alleged breach of planning control in the notice refers to a "mixed use site comprising a gypsy/traveller caravan site and a mobile home park for permanent residential use by non gypsy/travellers".
2. It was clarified at the Hearing that the alleged use relates to occupation of the whole existing caravan site (as shown on the notice plan) by a mix of people comprising gypsies and travellers (hereafter "G&T") and non-gypsies and travellers (hereafter "non-G&T"). The appellant had not interpreted the alleged breach any differently. As such, it was agreed that "mobile home park" in the breach is a superfluous descriptor and that the alleged change of use would be more clearly expressed as "*..from a residential caravan site for occupation by gypsies and travellers, to a mixed use as a residential caravan site for occupation by gypsies and travellers and non-gypsies and travellers*".

3. It was also agreed that since all units on the land were caravans as defined¹, the requirements at Section 5 of the notice need not refer interchangeably to "mobile homes". It was also clarified that the notice does not allege construction of unauthorised buildings such that the requirement in Section 5.3 to remove buildings, and the reference to "buildings" in Section 5.4 should be deleted.
4. The requirement at Section 5.2 to ensure that no non-G&T occupies any part of the land is unnecessary since the breach would be fully remedied by the other requirements; those being to secure the cessation of the unauthorised use (5.1), removal of all related caravans (5.3), and restoration of land (5.4). Accordingly, both parties agreed that requirement 5.2 could also be deleted.
5. I am satisfied that I can make these corrections to the notice, using powers available to me under s176(1) of the Act, without injustice to any party. I will therefore do so.

Appeal site and background

6. The appeal site is indicated by the red line on the plan attached to the notice. It is located on the northern edge of the settlement of Enderby, within an area defined as a Green Wedge in the Council's Development Plan. G&T caravan sites are located either side to the east and west, with employment and residential uses to the south, some fields also to the south and to the north.
7. There is no dispute between the parties that the extant planning permission for the site is that granted on appeal in 2009 (Ref: APP/T2405/A/08/2085028). It granted planning permission for use of the site as a "...residential gypsy caravan site for seven families with 11 caravans"... subject to a number of planning conditions. Condition 2 states: *"The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006"*.
8. The Government's policy definition of G&T in ODPM Circular 01/2006² has since been replaced in 2015 by a revised version³. However, the Circular 1/2006 definition is the one which should be relied upon for proper interpretation of the planning permission given the restriction of use imposed by condition 2.
9. The definition of a G&T set out in Circular 1/2006 is as follows:
"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such."

Appeal on ground (b)

10. An appeal made on ground (b) is a claim that the "matters" (being the matters which may give rise to a breach of planning control) stated in the notice allegation, as corrected, have not occurred as a matter of fact. If however those matters have occurred, the question of whether they amount to a

¹ 'Caravan' – as defined by s29 of the Caravan Sites and Control of Development Act 1960 and s13 of the Caravan Sites Act 1968

² Circular 1/2006: Planning for Gypsy and Traveller Caravan Sites, Office of the Deputy prime Minister

³ Planning Policy for Traveller Sites, Annex 1 (2015)

material change of use, thereby constituting development⁴ in breach of planning control, then falls to be considered under ground (c). At the Hearing Mr Brown, representing the appellant, acknowledged that the appellant's case properly fell within ground (c) and the appeal on ground (b) was withdrawn.

Appeal on ground (c)

11. The ground of appeal is that the matters alleged in the (corrected) notice do not constitute a breach of planning control. The burden of proof falls to the appellant, with the test of the evidence being on the balance of probabilities. The appellant therefore needs to show that use of the land "*as a residential caravan site for occupation by gypsies and travellers and by non-gypsies and travellers*" does not constitute a breach of planning control.
12. I interpret the appellant's case as being based upon two alternative arguments. The first is that the description of development in the extant planning permission (*residential gypsy caravan site*) does not impose a continuing limitation on the use of the land so as to prohibit occupation by non-G&T. The second alternative is that the mixed use, as alleged, does not result in a "material" change of use of the land and so does not amount to development requiring planning permission. I deal with these alternative arguments below.

Whether the permission imposes a continuing limitation

13. The appellant refers to case law in *I'm Your Man*⁵ to underpin his contention that the description of development allowed on appeal in 2009 as a "*residential gypsy caravan site*" cannot act to limit the use beyond simply a 'caravan site'.
14. However, in *Norfolk Caravan Park*⁶ referring to a planning permission for a development described as a '*holiday caravan park*', the Court held that the word '*holiday*' clearly qualified the term '*caravan park*' and was as much a component of the use permitted as was the word '*caravan*'. As such, the permitted '*holiday*' use could not be widened to include a broader general residential use. This judgment referred to and followed the earlier Court of Appeal judgment in *Wall & Ors*⁷.
15. In *Wall & Ors* the Court held that a grant of planning permission for use of land as '*a travelling showpeoples' site*' was a distinct and narrower use than a use simply as a residential caravan site. The limitation of the use to a site for travelling showpeople was just as much a functional limitation on the permission as were the limitations to '*agricultural cottage*' or '*site for caravans occupied by gypsies*' or '*depot for cattle transport lorries*'. As such, the use for which planning permission is granted must be ascertained from the ordinary meaning of the words in the planning permission itself. In this regard the Court found that the principle established in *I'm Your Man* was not applicable because the relevant restriction in *I'm Your Man* related to the manner in which the use could be exercised, rather than the extent of the use itself.
16. In light of these judgments I conclude that the description of development in the extant planning permission in this case likewise defines the permitted use. Hence, it imposes a continuing limitation on the use of the appeal site such that

⁴ Development at s55 of the Act includes the carrying out of a material change of use.

⁵ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107

⁶ *Norfolk Caravan Park Ltd v SSHCLG & Broadland DC* [2021] EWHC 2114 (Admin)

⁷ *Wall & Ors v Winchester CC* [2015] EWCA Civ 563

occupation of caravans on the site is limited to gypsies, and by condition 2 of the permission limited to G&T as defined in withdrawn Circular 1/2006.

Whether there has been a material change of use

17. The definition of 'development' at s55(1) of the Act includes the making of a material change in the use of any buildings or other land. However, the concept of a 'material change of use' is not defined in statute or in any statutory instrument, it is a question of fact and degree in each individual case. For a material change of use to occur there must be a significant difference in the character of the activity from what has taken place previously.
18. I disagree with the contention that off-site impacts, planning policies and recognised planning purposes are not relevant in deciding whether or not a change in use is a material change of use. In this regard I outline some of the relevant case law.
19. The Courts in *Richmond*⁸ and in *Kensington*⁹ held that the extent to which a use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. In *Hertfordshire*¹⁰ the Court held that any off-site impacts of new activity may be relevant material considerations in making such a judgment, although they are not determinative by themselves and should not be considered in isolation.
20. It was also held in *Kensington* that whether the loss of an existing use would have significant planning consequences, even where there would be no amenity or environmental impact, was relevant to assessing whether a change from that use would represent a material change of use. Whether a planning policy addressed a planning consequence of the loss of an existing use was also relevant to, but not determinative of, that issue.
21. Turning to the appellant's evidence¹¹ it refers to a site visit undertaken by his consultant when some of the site occupiers were interviewed. It concluded that at least 5 or 6 of the households on site fell within the 2015 definition of G&T, with additionally others who would meet the Circular 1/2006 definition.
22. However, the evidence is based on a single site visit when not all site occupiers were interviewed. The summarised information is considerably short in detail of how particular individuals met either the 2006 or 2015 G&T definition. Moreover, no detailed records of any interviews have been provided, no direct written evidence from any occupier was submitted, and no occupiers gave oral evidence at the Hearing. In contrast against that, the Council's evidence¹² taken as a whole strongly supports their case that from 2015 onwards up to 10 caravans were not occupied by gypsies (of any definition), but by people from the settled community who would otherwise be homeless. (Had the appeal on ground (b) not been withdrawn it would have failed for these reasons).
23. Following on from above, I find that the additional number of non-G&T occupiers on the site to be significant and materially relevant to the question of whether there has been a material change of use.

⁸ *Richmond upon Thames LBC v SSETR & Richmond upon Thames Churches Housing Trust* [2001] JPL 84

⁹ *R(oao) Royal Borough of Kensington and Chelsea v SSCLG and David Reis and Gianna Tong* [2016] EWHC 1785

¹⁰ *Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited* [2012] EWCA Civ 1473

¹¹ Appeal Statement, Phillip Brown, (paras. 4.12 – 4.15)

¹² Council's Appeal Statement Appendices 7,10,11,12,13, 14

24. Also significant and material to that question is the fact that the provision of sites specifically for G&T is a recognised planning purpose, achieved through the operation of the Council's Development Plan policies. Making and maintaining such provision to meet the need for G&T pitches in the area is a significantly important objective of those policies. As such, failure to meet those needs, including through the loss of pitches as is the case here, results in significant planning consequences for the G&T community and for the operation and integrity of the planning system.
25. Additionally, residential accommodation for the wider non-G&T community at this location in the defined Green Wedge area would not normally be permitted. Hence, occupation by non-G&T at his location undermines the objectives and purposes of Policy CS16 of the Council's Core Strategy.
26. Having regard to all of these factors together, I find that the change of use to a mixed use as a residential caravan site for occupation by G&T and non-G&T is significantly and materially different from the previous lawful use. As such, it results in a material change of use constituting 'development' as defined at s55(1) of the Act.
27. Since no planning permission has been granted for the development it amounts to a breach of planning control.
28. Consequently, the appeal on ground (c) fails.

Appeal on ground (g)

29. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 6 months. The appellant sought a period of 12 months.
30. Shortly before the date of the Hearing the site had been cleared of caravans and levelled. Given these circumstances I see no reason to extend the period of time for full compliance with the notice requirements.
31. The appeal on ground (g) therefore fails.

Formal Decision

32. It is directed that the enforcement notice is corrected and varied by:
 - in Section 3 the deletion of all of the words after the word "Land" and their substitution with the words: "from a residential caravan site for occupation by gypsies and travellers to a mixed use as a residential caravan site for occupation by gypsies and travellers and by non-gypsies and travellers";
 - in Section 5.1 the deletion of the words "mobile homes";
 - deleting all of Section 5.2;
 - in Section 5.3 deleting the words "mobile homes" and "and buildings", then re-number Section 5.3 to become "5.2";
 - in Section 5.4 the deletion of the words "mobile homes", "and buildings". and for "paragraph 5.3" substitute instead "section 5.2", then re-number Section 5.4 to become Section 5.3;

33. Subject to the corrections the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown BA (Hons) MRTPI Phillip Brown Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Hodge Senior Enforcement Officer

Gemma Dennis Solicitor for the Council