



Appeal Decisions

Hearing held and site visit made on 5 July 2022

by Thomas Shields MA DipURP MRTPI

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

Decision date: 24 October 2022

Appeal A: APP/P3040/C/21/3277889

Land known as Harmony Park, Stragglethorpe Road, Nottinghamshire

- 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 Johnny Doherty against an enforcement issued by the Rushcliffe Borough Council.
- The enforcement notice was issued on 3 June 2021.
- The breach of planning control alleged in the notice is, without planning permission the erection of a brick built structure and the siting of a metal (shipping) container.
- The requirements of the enforcement notice are:
 - (1) Demolish the brick built structure and its foundations.
 - (2) Remove all materials arising from requirement (1) from the land.
 - (3) Remove the metal shipping container.
 - (4) Make good any damage caused to the land by requirements (1), (2) and (3) and reinstate the land to a temporary hard standing.
- The period for compliance is 2 months for requirement (1), 1 month for requirement (3), and 3 months for requirements (2) and (4).
- The appeal is proceeding on grounds set out in section 174(2)(a), (b), (f) and (g) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

Appeal B: APP/P3040/C/21/3277894

Land known as Harmony Park, Stragglethorpe Road, Nottinghamshire

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr Johnny Doherty against the decision of the Rushcliffe Borough Council.
- The application Ref 20/01722/FUL, dated 10 July 2020, was refused by notice dated 27 May 2021.
- The development proposed is change of use of land to use as a residential caravan site for one gypsy family, including stationing of two caravans erection of dayroom, laying of hardstanding, construction of new access, and erection of boundary walls.

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

PROCEDURAL MATTERS

1. Appeal A on ground (a), against the enforcement notice, includes a deemed application for planning permission for the unfinished dayroom building on site. The dayroom, as proposed, is also included within the appeal against the

Council's refusal of planning permission in Appeal B. As such, I will deal with ground (a) in Appeal A, and Appeal B together.

APPEAL A - GROUND (b)

2. For an appeal on ground (b) to succeed the onus is on an appellant to demonstrate, on the balance of probabilities, that the matters said to have occurred in the alleged breach of planning control have not occurred as a matter of fact. The appellant's case on this ground relates solely to the alleged siting of a metal shipping container.
3. It is common ground between the parties that the metal shipping container is outside of the land affected by the enforcement notice, indicated by the red line on the notice plan. As a matter of fact, therefore, the alleged siting of a shipping container on the land subject of the notice has not occurred.
4. Consequently, the alleged breach at Section 3 of the notice is inaccurate and should be corrected by removing reference to the shipping container. I am satisfied that such a correction would not prejudice either party's cases on the other grounds of appeal and related arguments. I will therefore correct the alleged breach accordingly using powers available to me under s176(1) of the Act. The appeal on ground (b) therefore succeeds to this extent.

APPEAL A - GROUND (a) and APPEAL B

Main Issues

5. The main issues are:
 - (i) Whether the development is inappropriate development in the Green Belt;
 - (ii) the effect on the openness and purposes of the Green Belt;
 - (iii) the effect on the character and appearance of the area; and
 - (iv) whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Planning policy background

6. The NPPF¹ echoes the requirement in law that applications for planning permission are to be determined in accordance with the Council's Development Plan unless material considerations indicate otherwise.
7. In this regard Policy 21 of the Rushcliffe Local Plan (2019) (LP) states that applications for development in the Green Belt will be determined in accordance with the NPPF.
8. Turning to the NPPF, with particular regard to proposed Gypsy and Traveller sites, footnotes 27 and 38 of the NPPF state that it is PPTS² which sets out how travellers' housing needs (for those covered by the definition in Annex 1

¹ National Planning Policy Framework, MHCLG, (2021)

² Planning Policy for Traveller Sites, DCLG, (2015)

of PPTS) should be assessed, and that a 5 year supply of deliverable sites for travellers should be assessed separately in line with the policy in PPTS.

9. In this regard, there is no dispute between the parties that the appellant and his family meet the definition of 'Gypsies and Travellers', as set out in PPTS, and based on the information before me I have no reason to disagree. As such, PPTS is a relevant material consideration, in addition to the Council's Development Plan policies, against which the development should be assessed.
10. Policy 9 of the Council's Local Plan Part 1: Core Strategy (2014) (CS) is broadly reflective of the approach set out in PPTS. It aims to ensure that sufficient sites for Gypsies and Travellers are identified in line with a robust evidence base, and subsequently allocated within a Development Plan Document (DPD). Although since 2014 a DPD has not come forward, two allocated strategic housing sites³ are required to make appropriate provision for Gypsy and Traveller sites. Where identified need cannot be met or in the case of speculative proposals, CS Policy 9 states that planning permission will be granted where all of the criteria listed at 3(a) to (e) below are met:
 - (a) the site and its proposed use should not conflict with other policies relating to issues such as Green Belt, flood risk, contamination, landscape character, protection of the natural, built and historic environment or agricultural land quality;
 - (b) the site should be located within reasonable travelling distance of a settlement which offers local services and community facilities, including a primary school;
 - (c) the site should enable safe and convenient pedestrian and vehicle access to and from the public highway, and adequate space for vehicle parking, turning and servicing;
 - (d) the site should be served, or be capable of being served, by adequate mains water and sewerage connections; and
 - (e) the site should enable development and subsequent use which would not have any unacceptable adverse impact on the amenities of occupiers of nearby properties or the appearance or character of the area in which it would be situated.
11. The Council considers that the proposed development conflicts with criteria (a) and (e) above with regard to the effect on the Green Belt and the character and appearance of the area.

Main Issue (i) – Whether inappropriate development

12. The appeal site lies within the Nottingham-Derby Green Belt. Use of the appeal site as a residential Gypsy site was granted temporary planning permission on appeal⁴ in 2017, expiring on 18 October 2021.
13. Although the current use of the site is unlawful by virtue of being in breach of the time limit condition (condition 1) of the temporary permission, the continued use of the site does not represent a change from one use to another, and so does not constitute a material change of use as defined by the Act. The proposed use does not therefore fall within any of the exceptions listed at NPPF paragraph 150. Additionally, for the avoidance of any doubt,

³ CS Policies 24 and 25: South of Clifton and East of Gamston/North of Tollerton

⁴ Appeal Ref: APP/P3040/W/17/3167953, Council Ref:16/01353/FUL

PPTS makes clear that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.

14. Consequently, despite the use as a traveller site having existed for some years, also benefitting from temporary planning permission, these factors do not alter the status of the existing and proposed use of the site as being inappropriate development in the Green Belt.
15. With regard to the appellant's arguments in respect of the dayroom, taken in isolation as operational development, I note that the building it is said to replace was required to be removed⁵ and no longer exists. The proposed dayroom is also materially larger than the previous building. As such, its construction does not fall within any of the exceptions at NPPF paragraph 149. Furthermore, its proposed use would be an integral element of the overall primary use of the whole site. Consequently, its construction and use would be inappropriate development in the Green Belt.
16. To conclude on this issue, the development is inappropriate development, which is harmful by definition, and to which I attach substantial weight.

Main Issue (ii) - Effect on openness and purposes of the Green Belt

17. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. In *Turner*⁶ the Court held that perceptions of openness can be visual as well as spatial. Additionally, in *Samuel Smith*⁷ the Court established that the matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law. It also highlighted that openness is the counterpart of urban sprawl and that it does not imply freedom from *any* form of development.
18. The appeal site is a small triangular corner of a larger field, enclosed on its north-eastern side by trees and the tall embankment of a former elevated railway line, now used as a cycleway/footpath. The western boundary is enclosed by close boarded timber fencing, while the boundary along Stragglethorpe Road comprises fencing, brick wall, and gates, much of which lies inside mature hedgerow.
19. While the site lies within the countryside there is other development nearby, including the Thornton's Holt caravan and camping site, solar farms, a public house and the golf and country club. Planning permission has also been granted for a crematorium nearby. The appeal site occupies a generally central position within these surrounding developments.
20. The 0.12Ha area of the appeal site is a small scale single pitch site. Taking account of the hard-surfacing, enclosure from fencing, wall and gates, two caravans and dayroom as a whole, the development reduces spatial and visual openness within the site. However, in the wider context it is seen within the cluster of nearby developments I have previously described. As such, the loss of spatial and visual openness would be fairly limited. The degree of encroachment and sprawl into the countryside would also be limited.

⁵ By condition 1 of the temporary permission

⁶ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 h

⁷ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3e

21. To conclude on this issue, there would be a limited level of harm resulting from a loss of openness, together with a minor adverse impact on Green Belt purposes which seek to safeguard the countryside from encroachment and unrestricted sprawl.

Main Issue (iii) - Effect on character and appearance of the area

22. The surrounding context in terms of appearance and character has changed over recent years. As previously described it comprises a small cluster of developments in the countryside. The proposed development lies within and would form part of that cluster. The nature of the appeal development, as a Gypsy and Traveller site, does not of itself confer an adverse effect on the character and appearance of the area. Indeed, PPTS and CS Policy 9 do not prohibit the location of such sites in the countryside. Also, given the location of the adjacent caravan and camping site, I note that the appearance of caravans in the landscape is already an existing feature of the wider character and appearance of the area.
23. The scale of the proposed dayroom is larger in footprint and height than I would normally expect for a small scale Gypsy and Traveller site (the reasons for which I turn to later) and the upper part of it can be seen in some views from outside of the site. However, the existing site boundaries already provide appropriate screening to soften the appearance of the building, and the appeal site as a whole, and thereby help assimilate the site with its surroundings. Also, an appropriately worded planning condition could control use of external lighting in order to limit the impact of the development during hours of darkness.
24. To conclude on this issue, I find overall that there would be no significant harm to the appearance and character of the area, and hence no material conflict in this regard with criteria 3.(a) and (e) of CS Policy 9, CS Policy 10 and LP Policy 1.

Main Issue (iv) - Other considerations

Need and supply of pitches/whether alternative sites available

25. The Council refers to the GTAA⁸ data to calculate the current need and supply position for pitches, identifying a current need for at least 7 pitches to 2025. Including the appellant and his family this increases the current need figure to at least 8 pitches.
26. Although work on a new GTAA has been undertaken it had not been published or submitted in evidence. However, the Council confirmed that the new GTAA was unlikely to establish any improved need and supply position. Overall therefore, I conclude on the evidence before me that there is currently an under supply of pitches to meet the current and future general level of need.
27. I heard that 6 additional pitches had been provided at the Cedar Lodge site and that 4 pitches were likely to come forward at the South of Clifton site. However, the appellant's undisputed evidence was that the Cedar Lodge site was already full and that the 4 pitches coming forward at the South of Clifton site were not currently available. Moreover, for reasons set out later relating to personal circumstances, I am satisfied that neither of these sites would

⁸ South Nottinghamshire Gypsy and Traveller Accommodation Assessment (2016)

provide a pitch that would be suitable for the particular needs of the appellant and his family.

28. On the balance of the evidence I find that there are currently no available suitable alternative sites which would facilitate the appellant and his family living together.

Personal circumstances

29. The site is occupied by the appellant, his wife and five children. As Romany Gypsies, they have a protected characteristic for the purposes of the Public Sector Equality Duty (PSED) as set out in the Equality Act 2010. As such, I must have due regard to the need, among other things, to advance equality of opportunity between the site occupants and those who do not share that protected characteristic.
30. Dismissal of the appeals would result in the site occupants losing their home. This would constitute an interference with their human rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest.
31. In the context of Article 8, Article 3 of the United Nations Convention on the Rights of the Child obliges me to treat the best interests of the children as my primary consideration, in terms of the need to safeguard and promote their welfare. In balancing and weighing this consideration, along with all others in this case, no other single consideration can inherently be more important.
32. Three of the children are of school age and attend a local school, in addition to some home schooling. The children are doing reasonably well in terms of their education. Given the length of time they have lived on the site already, with local school attendance, a settled base would facilitate the children's continued access to consistent and stable education. A settled base would also generally be in the wider family's best interests in terms of continuation of a consistent and stable access to healthcare and social provisions.
33. One of the younger children has a very serious and life-threatening medical condition requiring 24 hour healthcare needs from carers working shifts, including an overnight 'waking watch'. The full details of all of these factors are set out in the various medical reports and home care plan submitted in evidence. It has taken some considerable time for the complex health and care plan to be established to enable the child to live with her family, involving different health and social care agencies. As such, having regard to her medical conditions, I have no reason to doubt the appellant's statement that being forced to leave the site would very likely result in the child's immediate admittance to full time hospital care, until a stable health environment can once again be established.
34. It is this child's ongoing medical condition and well-being needs that have shaped the design of the dayroom in terms of its rooms, layout and overall size. Internally it would provide 3 rooms off a central hallway; a kitchen/diner (5m x 5.4m), bathroom (3m x 3m) and a bedroom (3.6m x 5.4m). The

bedroom would provide a large enough space for the child and her various items of medical equipment together with sitting space for carers. The roof height has taken account of the internal height needed for installation of overhead hoists in the future if required. The kitchen/diner room would provide a space for use by all of the family together.

35. As I set out previously, the building is larger than one might expect in terms of a typical dayroom for a single-pitch site. However, notwithstanding I have already found that it would not result in any significant harm to the character and appearance of the area, it would be proportionate and appropriate in relation to the child's, and the family's, overall needs.

Planning Balance and Conclusion on Appeal A, ground (a) and Appeal B

36. PPTS, reflecting the provisions of the Human Rights Act, states that the Government's overarching aim is to ensure fair and equal treatment for Gypsies and Travellers in a way that facilitates their traditional and nomadic way of life, while respecting the interests of the settled community. It also states that Traveller sites are inappropriate development and should not be approved, except in very special circumstances. Also, that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. In this regard the Council acknowledges, and I agree, that "unlikely" does not mean "never".
37. The proposed development is inappropriate development and is therefore harmful by definition. I attach substantial weight to that harm. I have also previously identified a limited level of harm resulting from loss of openness and a minor adverse impact on Green Belt purposes which seek to safeguard the countryside from encroachment and unrestricted sprawl, attracting further weight against allowing the appeal.
38. The Council refer to the WMS⁹ which updated national planning policy by making intentional unauthorised development a material consideration. However, the application to regularise development of the site was submitted well in advance of the expiry date of the 4 year temporary planning permission granted in 2016, and as I have found earlier there are currently no suitable alternative sites for them to relocate. It seems to me on balance that it was the appellant's intention to regularise the development rather than for it be unauthorised. Accordingly, this matter does not weigh against allowing the appeal.
39. Although I have found no significant harm to the character and appearance of the area this does not weigh in support of allowing the appeal; it is neutral in the balance.
40. Against the totality of the harm I have found there are factors which weigh in support of allowing the appeals. With regard to health, education and establishing a stable and secure family life, the best interests of the children are a primary consideration. In this regard a permanent base would result in significant benefits for the wellbeing and healthcare of the family as a whole, and particularly so for one of the younger children discussed in detail earlier. As such, I attach very substantial weight to the family's personal

⁹ Written Ministerial Statement: Green Belt protection and intentional unauthorised development, 17 December 2015

circumstances. Given that there is an unmet need for pitches in the area and currently no suitable alternative site to which the family could relocate, these factors are attributed a degree of further weight.

41. While PPTS sets out that personal circumstances are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances, I find on balance in this case that the totality of the harm to the Green Belt and any other harm is clearly outweighed by the combined weight I attribute to the family's personal circumstances, compounded with an unmet need for sites in the Council's area and with no suitable alternative site to relocate. Together these considerations amount to the very special circumstances necessary to justify the development.
42. For all these reasons I conclude that the ground (a)/deemed application in Appeal A, and Appeal B should succeed. Consequently, there is no need for me to consider the appeals on ground (f) and (g) in Appeal A.

Conditions

43. A condition (1) would be necessary to ensure the development is carried out in compliance with approved plans. Given the exceptional justification for this development in the Green Belt relates to the family's personal circumstances, conditions (2) and (3) are required to reserve occupation of the site solely to the appellant, his wife and their dependent family. With regard to the requirement in condition (3) to demolish buildings if occupation ceases in accordance with condition (1), I consider the particular circumstances of this case exceptionally justify such a requirement. Conditions (3), (4) and (5) are necessary in the interests of strictly limiting the effect on the openness of the Green Belt and to safeguard the character and appearance of the area.

FORMAL DECISIONS

Appeal A

44. It is directed that the enforcement notice is corrected in Section 3 by deleting all of the words after the word "structure". Subject to the correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a brick-built structure.

Appeal B

45. The appeal is allowed and planning permission is granted for use of the land as a residential caravan site for one gypsy family, including stationing of two caravans erection of dayroom, laying of hardstanding, construction of new access, and erection of boundary walls, at land known as Harmony Park, Stragglethorpe Road, Stragglethorpe, Nottinghamshire, in accordance with the terms of the application, Ref: 20/01722/FUL, dated 10 July 2020, and subject to the conditions set out in Annex A to this Decision.

Thomas Shields

INSPECTOR

ANNEX A - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the plans and details submitted to the Council with application Ref 20/01722/FUL.
- 2) The use hereby permitted shall be carried on only by Johnny Doherty, Charlene Doherty and their resident dependents.
- 3) When the appeal site ceases to be occupied by those named in condition No.2 above, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, including the buildings hereby approved, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 4) The site shall only be used for residential purposes, and shall not be used for any business, industrial or commercial use. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority

End of Conditions.

APPEARANCES

FOR THE APPELLANT:

Johnny Doherty	Appellant
Anthony Northcote, DipTP, PgDip URP, MA, MRTPI	TOWN-PLANNING.CO.UK, Executive Director,
Pamela Clark	Local resident, family friend

FOR THE LOCAL PLANNING AUTHORITY:

Emily Temple, BSC (Hons) MSc MRTPI	ET Planning, Director
James Bate	Planning Officer, Rushcliffe Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1	Update on appellant family circumstances
DOC 2	Annual caravan count 15 June 2022
DOC 3	Council communication regarding "waiver"
DOC 4	Council's draft response to Appellant's costs application
DOC 5	Note on medical conditions
DOC 6	2014 enforcement notice (1)
DOC 7	2014 enforcement notice (2)