



Appeal Decisions

Hearing Held on 1 & 2 November 2022

Site visits made on 1 & 2 November 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Notice 1: Appeal Refs: APP/N2739/C/21/3280531, 3280532, 3280533, 3280534, 3280535, 3280536, 3280537, 3280538, 3280539, 3280540, 3280541, 3280542, 3280543, 3280544, 3280545, 3280546, 3280547, 3280548, 3280549, 3280550.

Land at A63 – A1 junction, Selby Road, Monk Fryston, North Yorkshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by the persons named in Appendix 1 against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 4 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of land from agricultural land to a residential caravan site, including the stationing of caravans for residential use; stationing of portable toilets; the creation/formation of access tracks, roads, footpaths and hardstandings; the stationing of plant machinery to facilitate the residential use; the stationing of vehicles associated with the residential use; the stationing of other items and residential paraphernalia associated with the residential use; and the erection of fencing around plots.
- The requirements of the notice are Step 1 Cease the use of the Land as a residential caravan site; Step 2 Cease the use of the Land for the stationing of caravans, plant machinery, vehicles, portable toilets, skips, items and other paraphernalia associated with the residential use; Step 3 Cease the importation of any further hardcore, hardstanding, brick, breezeblocks, stone, associated materials on the Land; Step 4 Cease any further works in relation to the creation of any further hardstandings or hard surfaces on the Land; Step 5 Cease the importation of any drainage and/or water system e.g septic tank on the Land; Step 6 Cease any further works in relation to the formation of paths, roadways or works including the provision of sewerage, water and electricity infrastructure on the Land; Step 7 Cease the importation of any portable toilets, skips and other items and residential paraphernalia; Step 8 Permanently remove from the Land all caravans, plant machinery, vehicles, portable toilets, skips and other items and residential paraphernalia, hardstandings, paths, roadways, fencing, and the provision of electricity, water and sewage for human habitation.
- The period for compliance with the requirements is 6 months.
- The appeals are made on the grounds set out in section 174(2)(a) (Appeal A), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appellants had no right of appeal and accordingly there are no appeals to be determined.

Notice 2: Appeal Refs: APP/N2739/C/21/3280507, 3280508, 3280509, 3280510, 3280511, 3280512, 3280513, 3280514, 3280515, 3280516, 3280517, 3280518, 3280519, 3280520, 3280521, 3280522, 3280526, 3280527, 3280528, 3280529.

Land at A63 – A1 junction, Selby Road, Monk Fryston, North Yorkshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by the persons named in Appendix 2 against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 4 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of land from agricultural land to a residential caravan site, including the stationing of caravans for residential use; stationing of portable toilets; the creation/formation of access tracks, roads, footpaths and hardstandings; the stationing of plant machinery to facilitate the residential use; the stationing of vehicles associated with the residential use; the stationing of other items and residential paraphernalia associated with the residential use; and the erection of fencing around plots.
- The requirements of the notice are Step 1 Cease the use of the Land as a residential caravan site; Step 2 Cease the use of the Land for the stationing of caravans, plant machinery, vehicles, portable toilets, skips, items and other paraphernalia associated with the residential use; Step 3 Cease the importation of any further hardcore, hardstanding, brick, breezeblocks, stone, associated materials on the Land; Step 4 Cease any further works in relation to the creation of any further hardstandings or hard surfaces on the Land; Step 5 Cease the importation of any drainage and/or water system e.g septic tank on the Land; Step 6 Cease any further works in relation to the formation of paths, roadways or works including the provision of sewerage, water and electricity infrastructure on the Land; Step 7 Cease the importation of any portable toilets, skips and other items and residential paraphernalia; Step 8 Permanently remove from the Land all caravans, plant machinery, vehicles, portable toilets, skips and other items and residential paraphernalia, hardstandings, paths, roadways, fencing, and the provision of electricity, water and sewage for human habitation.
- The period for compliance with the requirements is 6 months.
- The appeals are made on the grounds set out in section 174(2)(a) (Appeal Ai), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are 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 appeal sites the subject of the above notices are located to the immediate south-east of junction 42 of the A1(M) with the A63 road. The sites adjoin one another, with the strip of land the subject of Notice 1 immediately to the north of the land subject to Notice 2. It was evident from my visit that a majority of the alleged use is concentrated within the Notice 2 appeal site, with vehicular access facilitated to and from the A63 via the Notice 1 appeal site.
2. S174(1) of the Act provides that 'a person having an interest in the land' to which an enforcement notice relates, or a 'relevant occupier' may appeal to the Secretary of State, whether or not a copy of the notice has been served on them. With respect to Notice 1 it is undisputed that land registry documents identify the land as being in the ownership of Highways England Company

Limited¹ and another private individual. The Council's case is that the appellants are trespassers who have no legal interest in or legal occupation of that land. As such, the Council says, the appellants have no legal right of appeal in relation to that notice.

3. The appellants' agent at the Hearing confirmed that he considered there to be a right of access over the land for the appellants, though conceded that there was no formal written documentation confirming as much. There has been no evidence provided to persuade me, on the balance of probability, that the appellants have any legal interest in the land the subject of Notice 1. It is also undisputed that, despite not having sought to physically prevent access to the site to date, National Highways as one of the landowners has set out by way of consultation response to the Council that it is against the appeal proposals and that it may seek to stop the unauthorised use of its land².
4. Drawing the above considerations together I conclude that the appellants had no right of appeal in relation to Notice 1, and there are no appeals to be determined. I therefore take no further action in respect of those appeals.
5. On 12 August 2021 the Council secured a final injunction (Order) preventing any further development of the site than that which was specified in the Order. The appellants' case is that because the injunction is final it has the effect of granting planning permission for that development which was on the site and which was not required to be removed by virtue of the injunction Order.
6. However in this regard I concur with the Council that there is no provision within any part of the Act for planning permission to be granted by an injunction order. The granting of an injunction and the grant of planning permission are distinct and separate powers. As such the existence of the injunction is without prejudice to the use by the Council of its other powers and does not serve to prejudice the Council's defence against the ground (a) appeal. I have had regard to the Crown Court case referred to me by the appellants³, also the references made to the operation of the Council's constitution. However these matters do not alter my findings.
7. The appellants have confirmed that the appeals in relation to ground (e) are no longer pursued.

The Notice 2 appeals on grounds (b), (c) and (d)

8. The appellants' concerns are that tracks, hardstandings, roads and paths (also potentially water and electricity infrastructure) have existed on the site for many years, the site having been used for quarrying in the past. They argue that as such these developments are immune from enforcement action due to the passage of time, in accordance with s171B of the Act. This is a ground (d) argument, namely that it is too late for enforcement action to be taken. The appellants do not seek to argue that the developments have not occurred or do not require planning permission, and accordingly the appeals on ground (b) and ground (c) must fail.
9. The alleged residential use is concentrated within the area subject to Notice 2. The site is irregular in shape, and sub-divided with post and rail boundary

¹ Renamed National Highways in August 2021

² National Highways letters dated 23 December 2021 and 4 January 2022

³ Swale Borough Council v Robb dated 13 May 2021

fencing to form 10 pitches across its east – west orientation. Each of the pitches incorporate extensive hardstanding areas and are connected by an access road / track / path running adjacent to and parallel with the northern boundary of the site.

10. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'. In this regard the onus of proof rests with the appellants and the standard of proof is the balance of probability. It would therefore be necessary to demonstrate that the various access ways and hardstandings were substantially completed by 4 August 2017, that being the date four years before the enforcement notice was issued; also that any such development had not been the subject of successful enforcement action during that period.
11. I have given careful consideration to the environmental information and various chronological plans and aerial photographs submitted by the appellants in support of the appeals. It suggests that historically quarrying may have occurred at the site during parts of the 19th and / or 20th centuries, although I do not find the information to be definitive in this regard. The aerial images indicate that in 1999 the site appeared as an undeveloped parcel of land, possibly having been restored for agricultural use, and in 2002 as very substantially undeveloped, with the exception of a structure adjacent to the southern boundary.
12. In 2007 the site was shown to be substantially overgrown, with some evidence of a cleared informal track leading into the site and in 2008 there is evidence of further clearance and disturbance of the ground, on the eastern side, perhaps indicating the resurrection of some low-key quarrying on the site. By 2015 the site is shown to be substantially overgrown once again, with a similar, though clearer image, from 2018 indicating an apparent access being taken from the eastern side to a cleared area.
13. It is relevant that in 2018 the Council served an enforcement notice at the same site which sought to target unauthorised engineering works and associated materials such as hardcore and hardstanding. This notice, which is undisputed to be extant, required amongst other things, the return of the land to its original condition.
14. It is also undisputed that the present residential use of the site, and various facilitating ground works, commenced in July 2021. In terms of facilitating works the appellants explained during the Hearing that this included the introduction and application of loose surface stone. It was apparent from my visit that this material had been applied extensively so as to cover a substantial part of the site area.
15. I am not persuaded that the images provided demonstrate the present extent and arrangement of hardstandings and means of access throughout the appeal site have been in place for the requisite four-year period. Furthermore it seems to me that, without evidence to the contrary, the 2018 enforcement notice, requiring the return of land to its original condition would have interrupted or superseded the requisite immunity period in any event. In terms of what might constitute that 'original condition' there is no evidence to persuade me that this would mean hardstanding areas and access roads,

particularly when the appellants' own evidence suggests, on the balance of probability, that the site was undeveloped in 1999, with any potential historic mineral extraction on the site having been subject to restoration.

Notwithstanding this I am in no doubt that the loose stone applied to much of the site as ground covering, including hardstanding areas and the access road linking the various plots, was only introduced following the occupation of the site for residential purposes in 2021.

16. From the Hearing and my visit it was apparent that there is no formal supply of electricity and water to the site at present, with reliance being made on generators and plastic storage containers respectively. There is no evidence before me to suggest that any unused water and electricity infrastructure that may exist on the site would not be subject to enforcement action due to the passage of time. There is no suggestion that any of the other development cited in the present notice would have been immune from enforcement action. Drawing the above considerations together, I conclude that the ground (d) appeals must fail.

The Notice 2 appeal on ground (a)

Main Issues

17. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area;
- the effect of the development on highway safety;
- whether the appeal site is in a sustainable location;
- the question of the need for gypsy / traveller sites;
- the question of intentional unauthorised development;
- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

18. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful

to the Green Belt and should not be approved except in very special circumstances.

19. There is no dispute between the parties that the proposal would amount to inappropriate development, indeed the Government's Planning Policy for Traveller Sites (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

Openness

20. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
21. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect⁴.
22. That the pitches are being used to accommodate various caravans and paraphernalia associated with the residential use, which inevitably take up space is not controversial between the parties. I see no reason to take a contrary view.
23. In terms of the visual impact, the Council identified the key receptor to be users of the A63 road, adjacent to the northern boundary of the site. From here it seemed to me that visibility of the caravans, other structures and paraphernalia was either significantly screened or filtered by boundary vegetation. Furthermore visibility of the site is limited to fairly fleeting glimpses, although I accept that this might increase with seasonal leaf fall. Notwithstanding this, the lower ground level of the site in relation to the road and the consequent increased visibility of background features also serves to mitigate visual impact on openness from this perspective.
24. In terms of other potential receptors identified at the Hearing, from the national grid substation on Rawfield Lane, to the south-east, there is some limited visibility of the tops of a small number of caravans, but at distance. There is a similar impact, though only fleetingly, from the northbound slip road of the A1(M) junction, near the western boundary of the site. The road leading to Pollums House Farm is nearer than Rawfield Lane to the southern boundary of the site, and from here there is greater visibility of the upper parts of caravans at closer range. From the grounds of Lumby Garden Centre to the west I am not persuaded that there would be any significant visibility of the site due to heavy screening from vegetation. Whilst inevitably there would be a sense of visual impact of all the various caravans, post and rail fencing, paraphernalia and many vehicles on openness, when viewed within the site itself, the receptors of that impact would be largely restricted to the site occupiers.
25. Drawing the above considerations together, whilst I concur with the view that the development results in a degree of encroachment into the countryside, and as such is at odds with this Green Belt purpose as set out in the Framework, I conclude that the development results in only limited visual harm to openness.

⁴ *Turner v SSCLG & East Dorset Council* [2016]

Character and Appearance

26. The site is within a landscape of fields and intermittent tree belts. However despite its rural setting, the visual dominance of electricity pylons and the noise of traffic on the strategic road network serve to increase awareness of man-made engineering features in the landscape. It is undisputed that the appeal site is not part of an area specially protected for its landscape quality or character.
27. As set out above, the site is significantly screened or filtered from the A63 road. In addition, the ground level of the site is lower than the road, which serves to reduce the apparent bulk of development there from this perspective, whilst increasing the visibility of background natural landscaping features, thus helping to assimilate the development. Insofar as the site is visible from the aforementioned vantage points to the south, it is seen to a large degree against background landscape features, rather than as starkly encroaching above the skyline. In addition it would be possible to augment the existing northern and southern boundaries of the site with additional planting. I am also mindful that the PPTS contemplates the development of traveller sites in rural and semi-rural settings and there is nothing within that document to suggest that such sites must be completely obscured from view.
28. I also made an unaccompanied visit to the site location, along the A63 road, during hours of darkness. Although external lighting was evident on the site, it did not appear to be causing any significant spillage or glow in the sky. Travelling in a westerly direction I found that the eye tends to be drawn instead to the lighting infrastructure associated with the nearby motorway interchange junction.
29. Drawing these considerations together I am not persuaded that the development results in a sense of urbanisation and harm to the character and appearance of the area. Accordingly the development would comply with Policies SP18 and SP19 of the Selby Core Strategy 2013 (CS) and Saved Policies ENV1 and ENV15 of the Selby District Local Plan 2005 (LP) insofar as they seek high quality design that avoids harm to, and where possible enhances the landscape character.
30. At the Hearing the appellants alluded to certain potentially forthcoming developments including a quarry on the northern side of the A63 road opposite the site; a service station on the north-western side of the adjacent motorway interchange and extensive retail development. With the exception of the service station, no evidence was provided of any proposed retail development in the area. It is also uncertain at this stage whether the proposed quarry and service station will be granted planning permission. Accordingly these matters have not had a bearing on the above findings.

Highway Safety

31. It was agreed at the Hearing that the layout and orientation of the site means there are two potential points of access and egress in relation to the A63 road. The first access location is that which is currently being used, relatively central and necessitating the crossing of land not in the ownership of the appellants, as referred to earlier in this decision.

32. The enforcement notice reasoning refers to this point of access, claiming that it is not considered to meet the Highway Authority's standards, is unacceptable and may pose a risk to highway safety. Notwithstanding this it is notable that the Highway Authority has raised no objection to the development. Furthermore I have not been presented with any evidence of vehicle or pedestrian collisions in the vicinity of the site access during the relatively lengthy time that the site has so far been in use. It was also evident from my visit that visibility when egressing the site at this point, along the A63 both to the east and west appeared to be to a high standard.
33. I am mindful that there have been objections from third parties, including with regard to vehicles waiting to turn right into the site, potentially causing traffic to queue back towards the A1(M) slip road. However drawing the above considerations together, I am not persuaded that use of the present access would result in an adverse impact on highway safety. Notwithstanding this, because of the aforementioned legal constraints and trespass situation, I find that the appellants would not necessarily be able to rely on securing continued access and egress to and from the site at this location.
34. The second point of potential access / egress is located at the eastern end of the site immediately adjacent to the A63 road. It was reported at the Hearing that this location was used to access the site when it was first occupied by the travellers and prior to the discovery of the existing access. However I have not been provided with any evidence to persuade me that any access in this location, which is currently fenced off, would be lawful, or that it would not for any reason require planning permission.
35. From my observations at the site visit it appears that visibility for drivers, if exiting the site at this point, both in easterly and westerly directions, would be to a relatively high standard. Furthermore it seems to me that the apparent ownership of land up to the highway in this location means that it may be possible to keep the growth of potentially encroaching boundary vegetation under control. Notwithstanding this I am mindful that I have not been presented with any technical assessment or statement as to the suitability and viability of this 'eastern' location, in terms of providing access and egress for all traffic associated with the site. Had such an assessment been made, endorsing the design of practical and safe access and egress arrangements as being achievable at this location, I should place on record that it is likely I would have been able support such a finding.
36. However in the absence of such an assessment, and drawing the above considerations together, I am unable to conclude that both lawful and safe access and egress to and from the site can be achieved having regard to the alternative locations. I therefore find conflict with Policy ENV1 of the LP insofar as it seeks to secure satisfactory vehicular access arrangements.

Sustainable Location

37. Policy SP2 of the CS is concerned with the Council's spatial development strategy and in essence seeks a majority of new development to be directed to the towns and more sustainable villages, with strict control over development in the countryside. Policy SP11 of the CS sets out that traveller site development will be determined in accordance with national policy. The PPTS states that local planning authorities should very strictly limit new traveller site

development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan.

38. In terms of the nearest settlement, the village of Lumby is around one mile away from the site. I am not aware of any significant presence of services there. It would appear that the children of a number of families living on the appeal site attend local primary schools at Monk Fryston or South Milford, both around two miles away. However the parties agreed at the Hearing that it would be necessary for the appellants to travel to Sherburn in Elmet, around four miles away, in order to access a full range of day-to-day services and facilities.
39. With regard to physical separation I conclude that the site is in the open countryside away from existing settlements. I am mindful that the Framework states that the development of isolated homes in the countryside should, subject to certain limited exceptions, be avoided. However, Lumby Garden Centre is located a relatively short distance away to the west on the opposite side of the motorway interchange. The site is also a relatively short distance away from the buildings associated with Pollums House Farm to the south. Therefore, when considered in the round I do not regard the site as being in a physically isolated or remote location.
40. With regard to connectivity it would be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would need to be significant reliance on private vehicles in order to gain access to services and facilities. I have not been provided with any evidence to persuade me that the use of alternative means of sustainable travel would be likely and I am not persuaded that the appeal site could reasonably be described as being in a sustainable location.
41. Drawing the above considerations together I conclude that the development is inconsistent with the PPTS objective, in terms of being 'away from' existing settlements and also in conflict with the Council's spatial development strategy. However the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and I do consider that the length and duration of journeys necessary to access essential services and facilities, even if taken by car, would not in this case be excessive for a rural location. I consider the site has reasonable access to key services and facilities and this serves to limit the adverse weight that I give to this factor.

Need for Gypsy and Traveller sites

42. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2018. This identified a requirement for 8 additional pitches until 2033 for those gypsies and travellers meeting the PPTS definition. However the Council confirmed that in the meantime it accepted it needed to make a higher allowance for unknown households meeting the definition and was therefore working to a requirement for an additional 21 pitches.
43. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. Since publication of the

GTAA in 2018 the Council confirms that it has granted planning permission for 8 permanent pitches and 12 temporary pitches; also that it intends to make this 12-pitch site at South Milford a permanent allocation as part of the local plan process, removing the site from the Green Belt. From the information before me it appears that this five-year temporary permission was granted in June 2020. The Council said at the Hearing that it does not anticipate adopting its emerging Local Plan before 2024, but that to date there has not been opposition to making the temporary site a permanent allocation. Whilst the Council referred to negotiations it was having with North Yorkshire County Council regarding the possibility of increasing pitch provision at two existing sites, the outcome of these discussions is at present inconclusive. I do not therefore regard these negotiations as adding to the supply position.

44. The appellant's position is that the GTAA is out of date and that it underestimates the true level of need, although the aforementioned permissions are not disputed and the appellants have not sought to explain what they consider the true level of need to be. However at the Hearing, a recent appeal decision, involving an unsuccessful proposal for six gypsy / traveller pitches elsewhere in the District, was drawn to my attention⁵. In that decision the Inspector found that the true level of need for sites in the District is likely to have been underestimated due to factors including the GTAA methodology and insufficient allowance for unknown households, known unauthorised sites (including those occupying the present appeal site) and household growth levels.
45. I have assumed that the South Milford site, referred to above, may be counted towards the supply of pitches. However, even if, as set out below, there is doubt as to the PPTS status of the site occupants and they are excluded from the assessment of need, and in the absence of better information, I am not inclined to accept that the Council is able to demonstrate a five-year supply of deliverable sites, having regard to the aforementioned appeal decision.
46. Notwithstanding this it would appear that a recent Court of Appeal judgment has complicated the position further⁶. The thrust of this judgment is that the PPTS definition is unlawfully discriminatory against gypsies and travellers who have ceased to travel permanently on grounds of age or disability. The impact of including, in the assessment of need for sites in the District, gypsies and travellers falling within this category, who would previously have been excluded because of the PPTS definition is unknown. Accordingly, the Court of Appeal judgment casts further doubt over whether a 5-year supply of sites can be demonstrated, and therefore whether there would be compliance with Policy SP11 of the CS in this respect.
47. Notwithstanding the strategic supply of sites, a suitable and available alternative site for the ten families currently occupying the appeal site cannot be identified by the Council at this time. Having regard to paragraph 56 below, this is indicative of an immediate unmet need for sites in the District.
48. I am also mindful that the PPTS states that Councils should set criteria-based policies to provide a basis for decisions so as to facilitate the traditional and nomadic life of travellers, while respecting the interests of the settled community. Within the aforementioned appeal decision it was identified that

⁵ Appeal ref: APP/N2739/W/21/3280032 – dated 11 May 2022

⁶ *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

the Council had not produced such a locally specific criteria-based policy, albeit that there is reference to determining applications in accordance with national policy; that there was a long-standing absence of pitch allocations in subsequent development plan documents since publication of the CS; also that there are no existing development plan policies in relation to those travellers who do not meet the PPTS definition; furthermore that the Council's approach towards potentially allowing rural exception sites for travellers was inconsistent with national policy. Overall I concur with the view that this represents a failure of policy.

49. The aforementioned factors therefore weigh in favour of the development.

Personal Circumstances

50. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
51. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
52. The site is subdivided into pitches for ten separate households. Several of the site occupiers appeared at the Hearing. It was accepted by the appellants that whilst each of the families have members who work, a majority of those people do not travel away from the site in order to find work, but rather are based at the site throughout the year. As such, whilst the Council does not dispute the ethnic status of the site occupiers as Irish Travellers, it says they do not meet the status of travellers as defined in Annex 1 of the PPTS.
53. In terms of the aforementioned Court of Appeal decision⁷, the Council says that no evidence has been submitted to demonstrate that the appellants' decision to cease to travel, and to engage in a more settled lifestyle is due to reasons of ill health, disability or old age. The judgment, in its view, is not therefore material to the determination of this appeal.
54. The appellants confirm that they have not travelled since moving onto the appeal site, thus implying that each of their present circumstances do not accord with the PPTS definition of travellers. However they explain that this results from reluctance to travel far from the permanent base because they are unsettled by the ramifications of the injunction and previous experiences being

⁷ *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

moved on from unauthorised locations. It is possible that they may decide to resume a travelling lifestyle in the future, they say.

55. Notwithstanding PPTS status, the site occupiers explained at the Hearing and within other representations provided, that prior to obtaining and moving to the appeal site they had, over the last ten years or so, been stopping at a variety of unauthorised roadside locations in the Leeds area, including 'waste ground' and car parks. Attempts to identify a suitable site within the Leeds area were unsuccessful.
56. It seems to me that irrespective of PPTS status and the implications of the aforementioned Court of Appeal judgment, the appellants are undisputed to be Irish Travellers by ethnicity, who would be culturally averse to living in permanent 'bricks and mortar' accommodation. If the appeal is not successful, in the absence of an alternative site, the appellants are at risk of being made homeless, regardless of whether they meet the technical definition of travellers in the PPTS. Furthermore, I am not presented with a compelling reason to doubt that the appellants may resume a travelling lifestyle in the future.
57. Whilst there has been no official documentation presented in support, the appellants, in writing beforehand and verbally at the Hearing, set out background information regarding their personal circumstances. Between the households it is apparent that there are a significant number of children under the age of 18 present, around a third of whom are attending nearby schools. I find no compelling reason to doubt the reports given. It appears that a small number of the children may also have special needs.
58. There can be no doubt that if the appeal was unsuccessful, it would take away a settled base for these households, who may potentially need to resort to living on the roadside, which would very likely mean disruption to the children's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. In the context of the PSED I therefore find that to uphold the notice would be detrimental to the aims of advancing equality of opportunity and fostering good relations between persons with protected characteristics and persons without such characteristics. I also consider that the removal of a secure and settled base is likely to be harmful to the potential for play and interaction and therefore social development of those children.
59. In addition it appears, undisputed by the Council, that a number of the occupiers present on the site have medical conditions that require regular attendance at health centres for treatment and check-ups, albeit I acknowledge some of the centres are outside the District. In any event, the absence of a fixed address is likely to jeopardise access to health care.
60. The appellants' personal circumstances therefore weigh in favour of the development.

Other Matters

61. I have had regard to various criteria set out within Policy H of the PPTS which is concerned with determining planning applications for traveller sites. I have set out above that I consider the site was likely undeveloped and therefore with greenfield status in the late 1990s. I am not persuaded, from the information before me, that any authorised development has taken place on the site since

this time. Furthermore, the 2018 enforcement notice requires restoration of the site to its original condition. Therefore notwithstanding the appellants representations that quarrying has historically occurred there, the site should not be regarded as previously developed land. Consequently the fact that Policy H supports the effective use of previously developed land is not a factor which weighs in support of the development in this case.

62. At the Hearing reference was made to the site having been cleared of asbestos and to the provision of a receipt for such services by a relevant contractor. However it has not been professionally verified as to whether any residual or alternative contamination remains there and if so what a suitable remediation strategy should be to tackle it.
63. I am not provided with evidence that harm would have been caused to any protected species or important habitats. The effects of the development on any biodiversity interest within the site is unknown, although there is no information before me to suggest that significant harm would have been caused. I am nevertheless mindful that the Framework seeks development to minimise impacts on and provide net gains for biodiversity.
64. Therefore it is uncertain at this stage whether the development of the site could be regarded as an opportunity to positively enhance the environment or, having regard to paragraph 62 above, to promote healthy lifestyles. The development does not therefore attract positive weight in this regard.
65. The appellants have referred to the overall cost to the public purse of taking enforcement action, citing a comparative analysis in relation to a different site⁸. However the findings of that study are not applicable to the case before me and do not therefore attract weight in the planning balance.
66. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

Intentional Unauthorised Development

67. In accordance with government policy, 'Intentional unauthorised development' (IUD) is a material consideration to be weighed in the determination of planning applications. Part of the underlying rationale for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. I have set out above that the site may be contaminated and may also have had biodiversity interest. Inevitably opportunities to remediate the site in the interests of health and safety and to protect or enhance any biodiversity interests there ahead of development proceeding have been lost.
68. At the Hearing, the site occupiers in attendance were able to give a brief insight into their living circumstances prior to moving to the appeal site. As set out above, it appears the appellants were stopping at a variety of unauthorised roadside locations and as such the desire and urgency to settle at a more stable and secure location is understandable. I acknowledge that efforts have been made to secure planning permission retrospectively by the pleading of

⁸ A Sustainability Assessment of the Future Options for Dale Farm and Oak Lane Caravan Park 2020

ground (a) and making of the deemed planning application. Furthermore it would appear that the site occupiers have sought to comply with the terms of the final injunction served on them by the Council.

69. I am also mindful that the Act makes provision for a grant of retrospective planning permission and planning enforcement that is remedial rather than punitive. Balancing these considerations, whilst I concur with the view that intentional unauthorised development has occurred, I attach only moderate weight to this matter.

Green Belt Balance

70. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness to be limited in visual terms.
71. My absence of a finding that at present safe and lawful access can be secured to the site means that I attach significant adverse weight to the development in highway safety terms. The intentional unauthorised nature of the development and lack of sustainable location attract moderate and limited weight respectively.
72. I have found that the development would not result in harm to the character and appearance of the area. This 'absence of harm' is neutral in the planning balance and does not weigh in favour of the appeals.
73. There are considerations which support the appeals. I attach significant weight to the present unmet need for sites including the lack of any alternative site being available now to accommodate the extended group of site occupiers and to policy failure. Having regard to advice in the PPTS when considering applications for temporary planning permission in Green Belt locations, I attach moderate weight to the apparent lack of an up-to-date 5-year supply of deliverable sites. I also attach significant weight to the appellants' personal circumstances.
74. The PPTS states 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. I have balanced the harm to the Green Belt and the other harm identified against the other considerations referred to above. However for the reasons given, having regard to the PPTS, I find that they do not clearly outweigh the harm identified.
75. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the proposal conflicts with the Green Belt protection aims of the Framework and with Policies SP2, SP3 and SP11 of the CS insofar as they require that development accords with national Green Belt policy. The grant of a permanent planning permission, personal to the appellants, would not therefore be appropriate.

76. However I also need to consider, by way of alternative, the possibility of a temporary planning permission instead. I was invited, by the appellants, to consider a temporary permission for a period 3 years. In principle, a temporary permission (personal to the appellants) would serve to reduce the severity of harm identified. This must be the case, because the generation of harmful impacts and duration of exposure to harm would be less than in the case of permanent occupation.
77. However, whilst a temporary permission might assist the site occupiers in identifying an alternative site within the District or further afield, I am mindful that vehicular access to the site and the potential for contamination to exist there remains unresolved. Furthermore, in this context, it remains open to me to extend the compliance period, should I consider this to have merit. Given the circumstances, I conclude that this scenario still fails to clearly outweigh the harm identified and to justify quashing the notice. Therefore a personal planning permission, limited to a temporary period, would also not be an appropriate outcome.
78. It follows that a temporary planning permission, that was not personal to the appellants would also not be appropriate, as the grant of temporary permission cannot be justified even by the additional weight of the appellants' personal circumstances.
79. I have considered whether this outcome would be proportionate in the circumstances, having regard to the provisions of Article 8 of the Human Rights Act and the positive obligation, as set out within the PPTS, to facilitate the traditional and nomadic way of life of travellers; also the requirement to have regard to the best interests of the children. However I consider that the combined impact of the environmental concerns I have raised can only be safeguarded by dismissal. Having regard also to the PSED does not lead me to arrive at a different conclusion.
80. I should place on record however, had it been possible to resolve the highway and land contamination concerns in relation to the development, the planning balance could have been altered such that harm would have been clearly outweighed and thus very special circumstances demonstrated in favour of granting a permanent personal planning permission.
81. At the Hearing the appellants referred to the enforcement action offending Article 2 (Right to Life), Article 3 (Torture) and Article 14 (Discrimination) of the Human Rights Act. However, having regard to the aforementioned parts of my decision and to all other information presented I am not persuaded that my conclusions would lead to interference in these respects.
82. Finally, I have had regard to various other appeal decisions submitted by the appellants concerning other sites within and outside the District. However it seems to me that the circumstances of those cases are all sufficiently distinguishable not to lead me to conclude differently about the outcome of this case.

The Notice 2 appeals on ground (f)

83. The appeals are that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. Steps 3 through to 7 of the notice requirements are concerned with preventing various future facilitating

developments from taking place. However the requirements of the notice must focus on remedying the breach of planning control identified or any injury to amenity. It is not possible for the notice to prohibit possible future breaches of planning control. I therefore propose to delete the requirements in question, which I am satisfied may be done without resulting in injustice to the Council.

84. The appellants set out that the steps fail to tally with the requirements of the final injunction. However as set out earlier in my decision there is no requirement for this to be the case. It is also claimed that roads, hardstandings and pathways are lawful and that their removal would therefore be excessive. I have also set out earlier in my decision why I have not concluded this to be the case. The removal of material brought onto the site to form these areas would reasonably fall within the scope of the notice requirements.
85. In addition the appellants raise the concern that the requirement to remove the provision of electricity on the site would necessitate the removal of a substantial pylon. It was however clarified at the Hearing that the requirement relates to utilities facilitating the residential use of the site only, and I am satisfied that this may be clarified by minor amendments to the wording of the notice, without resulting in injustice to the appellants. This aside, I am satisfied that the various structures and items on the site serve to facilitate and are integral to the alleged unauthorised use. The requirement (Step 8) for these features to be removed would not therefore be excessive.
86. The ground (f) appeals therefore succeed to a limited extent.

The Notice 2 appeals on grounds (g)

87. The appeal is that the compliance period falls short of what should reasonably be allowed. A period of at least three years is requested. I need to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development. In this regard I am keen to ensure that the site occupiers are given the most reasonable opportunity to find an alternative solution, in the context of the harm identified.
88. I am also mindful that it might be possible for the appellants to overcome certain concerns raised in my decision. If so they may wish to explore the possibility of presenting a revised proposal to the Council with a view to gaining planning permission.
89. Taking these factors into account, I consider that extending the compliance period to twelve months would amount to the optimum position and would be proportionate having regard to Human Rights legislation.

Conclusion

90. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

91. It is directed that the enforcement notice is corrected in **Section 5** by:

Deleting Steps 3, 4, 5, 6 and 7 in their entirety; and

Deleting the wording of Step 8 in its entirety and substituting the following wording instead:

"Step 8 Permanently remove from the Land all caravans, plant machinery, vehicles, portable toilets, skips and other items, residential paraphernalia, hardstandings, paths, roadways, fencing, and electricity, water and sewage related equipment facilitating human habitation of the site."

92. It is directed that the enforcement notice is varied in **Section 6** by:

Deleting the words "6 calendar months" and substituting the words "12 calendar months" instead.

93. Subject to the corrections and variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Stuart Carruthers	Agent
Phien O' Reachtigan	Welfare Officer, Gypsy and Traveller Coalition
M Cleary	Site Occupier
Bernard Mongan	Site Occupier
Andrew Cawley	Site Occupier
John Cleary	Site Occupier
Patrick Dundan	Site Occupier
Dan Dundan	Site Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Neil Langley	Principal Planning Enforcement Officer
Rachel Robinson	Principal Planning Enforcement Officer
Clare Dickinson	Principal Planning Officer
Emmaline Lambert	Barrister
Clifford Thurlow	Planning Consultant (appeared virtually)

INTERESTED PERSONS:

Stuart Vendy	Planning Consultant representing local residents
Councillor John Mackman	Local Councillor
J.R. Ramskill	Local resident

Documents submitted at the Hearing:

1. Location Plan – North Yorkshire County Council.
2. Plan showing location of nearby planning applications.
3. Correspondence from National Highways.
4. Consultation response from City of York Council regarding contaminated land.

5. Extract from Enforcement Register – Selby District Council.
6. Selby District Council legal submissions.
7. Appeal decision reference APP/N2739/W/21/3280032.
8. Council's suggested conditions.
9. Selby District Council decision notice reference 2022/0057/CPE.

Documents submitted following the Hearing:

1. Comments regarding Court of Appeal case *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391.
2. Sustainability Assessment of the Future Options for Dale Farm and Oak Lane Caravan Park 2020.
3. Crown Court case Swale Borough Council v Robb dated 13 May 2021

Appendix 1

List of those who appealed against Notice 1

1	APP/N2739/C/21/3280531	Appeal A	Mr M Cleary
2	APP/N2739/C/21/3280532	Appeal B	Ms M Cleary
3	APP/N2739/C/21/3280533	Appeal C	Mr T Cleary
4	APP/N2739/C/21/3280534	Appeal D	Ms T Cleary
5	APP/N2739/C/21/3280535	Appeal E	Mr A Mongan
6	APP/N2739/C/21/3280536	Appeal F	Ms A Mongan
7	APP/N2739/C/21/3280537	Appeal G	Mr D Mongan
8	APP/N2739/C/21/3280538	Appeal H	Ms D Mongan
9	APP/N2739/C/21/3280539	Appeal I	Mr J Mongan
10	APP/N2739/C/21/3280540	Appeal J	Ms J Mongan
11	APP/N2739/C/21/3280541	Appeal K	Mr J Cawley
12	APP/N2739/C/21/3280542	Appeal L	Ms J Cawley
13	APP/N2739/C/21/3280543	Appeal M	Mr J Quinn
14	APP/N2739/C/21/3280544	Appeal N	Ms J Quinn
15	APP/N2739/C/21/3280545	Appeal O	Mr D Dundan
16	APP/N2739/C/21/3280546	Appeal P	Ms D Dundan
17	APP/N2739/C/21/3280547	Appeal Q	Mr J Dundan
18	APP/N2739/C/21/3280548	Appeal R	Ms J Dundan
19	APP/N2739/C/21/3280549	Appeal S	Mr P Collins
20	APP/N2739/C/21/3280550	Appeal T	Ms P Collins

Appendix 2

List of those who appealed against Notice 2

1	APP/N2739/C/21/3280507	Appeal Ai	Mr M Cleary
2	APP/N2739/C/21/3280508	Appeal Bi	Ms M Cleary
3	APP/N2739/C/21/3280509	Appeal Ci	Mr T Cleary
4	APP/N2739/C/21/3280510	Appeal Di	Ms T Cleary
5	APP/N2739/C/21/3280511	Appeal Ei	Mr A Mongan
6	APP/N2739/C/21/3280512	Appeal Fi	Ms A Mongan
7	APP/N2739/C/21/3280513	Appeal Gi	Mr D Mongan
8	APP/N2739/C/21/3280514	Appeal Hi	Ms D Mongan
9	APP/N2739/C/21/3280515	Appeal Ii	Mr J Mongan
10	APP/N2739/C/21/3280516	Appeal Ji	Ms J Mongan
11	APP/N2739/C/21/3280517	Appeal Ki	Mr J Cawley
12	APP/N2739/C/21/3280518	Appeal Li	Ms J Cawley
13	APP/N2739/C/21/3280519	Appeal Mi	Mr J Quinn
14	APP/N2739/C/21/3280520	Appeal Ni	Ms J Quinn
15	APP/N2739/C/21/3280521	Appeal Oi	Mr D Dundan
16	APP/N2739/C/21/3280522	Appeal Pi	Ms D Dundan
17	APP/N2739/C/21/3280526	Appeal Qi	Mr J Dundan
18	APP/N2739/C/21/3280527	Appeal Ri	Ms J Dundan
19	APP/N2739/C/21/3280528	Appeal Si	Mr P Collins
20	APP/N2739/C/21/3280529	Appeal Ti	Ms P Collins