



## Appeal Decisions

Hearing held on 13 and 14 September 2022

Site visit made 14 September 2022

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 December 2022**

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### **Appeal A Ref: APP/R3705/W/20/3250244**

**Land south of Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Jonathan Delaney against the decision of North Warwickshire Borough Council.
  - The application Ref PAP/2019/0256, dated 30 April 2019, was refused by notice dated 5 November 2019.
  - The development proposed is change of use of land to use as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings.
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### **Appeal B Ref: APP/R3705/C/20/3264553 (Plot 6)**

**Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Dennis Torrens against an enforcement notice issued by North Warwickshire Borough Council.
  - The notice was issued on 4 November 2020.
  - The breach of planning control as alleged in the notice is without planning permission, the importation of materials to create hard surfaced areas.
  - The requirements of the notice are to:
    1. Cease using any part of "the land" as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the 'land'.
    2. Remove all ancillary structures, vehicles and equipment from the land, including mobile washroom/toilets, outbuildings trailers electric hook ups and septic tanks.
    3. Remove any means of enclosure over two metres in height from 'the land'. Alternatively, reduce the means of any enclosure to a height not exceeding one metre in height
    4. Remove from the land all materials, equipment and debris associated with compliance of 5. (1) to 5. (5) above. Leave the land in a clear state.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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**Appeal C Ref: APP/R3705/C/20/3264555 (Plot 7)**

**Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Thomas Delaney against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use
  2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan).
- The requirements of the notice are to:
  1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
  2. Remove all structures, vehicles and equipment from the Land.
  3. Remove the whole of the hard standing from the Land, including any new access tracks.
  4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

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**Appeal D Ref: APP/R3705/C/20/3264556 (Plot 8)**

**Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by William Delaney against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
  2. Without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
  1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
  2. Remove all structures, vehicles and equipment from the Land including sheds, buildings.
  3. Remove the whole of the hard standing from the Land, including any new access tracks.
  4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

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### **Appeal E Ref: APP/R3705/C/20/3264557 (Plot 9)**

#### **Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by William McCarthy against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
  2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan).
- The requirements of the notice are to:
  1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
  2. Remove all structures, vehicles and equipment from the Land including: the stables; sheds, buildings and day rooms; and, any associated electrical hook ups, septic tanks, calor gas tanks or similar apparatus – delete as applicable.
  3. Remove the whole of the hard standing from the Land, including any new access tracks.
  4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

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## **Decisions**

### **Appeal A**

1. Appeal A is allowed, and planning permission is granted for a change of use of land to use as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings at Land south of Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB in accordance with the terms of the application, Ref PAP/2019/0256, dated 30 April 2019 and the plans submitted with it, subject to the planning conditions set out in Annex 1.

### **Appeal B**

2. The enforcement notice relating to Plot 6 is quashed.

### **Appeal C**

3. It is directed that the enforcement notice relating to Plot 7 is corrected by:
  - the addition of the words 'to a use' after the word 'Land' in the first allegation

- the removal of '(shown hatched black on the attached plan)' and substitution of the words 'covering the whole site' in the second allegation
  - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
4. It is also directed that the enforcement notice relating to Plot 7 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
5. Subject to the correction and variation, the enforcement notice is upheld.

### **Appeal D**

6. It is directed that the enforcement notice relating to Plot 8 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
  - the addition of the words 'covering the whole site' to the second allegation
  - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
7. It is also directed that the enforcement notice relating to Plot 8 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
8. Subject to the correction and variation, the enforcement notice is upheld.

### **Appeal E**

9. It is directed that the enforcement notice relating to Plot 9 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
  - the removal of '(shown hatched black on the attached plan)' and substitution of the words 'covering the whole site' in the second allegation
  - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
  - the removal of the phrase 'delete as applicable' from the second requirement.
10. It is also directed that the enforcement notice relating to Plot 9 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
11. Subject to the corrections and variation, the enforcement notice is upheld.

## **Preliminary Matters**

12. I am also dealing with appeals relating to the change of use of land to use as a residential caravan site for 7 gypsy families and in respect of enforcement notices served on Plots 10 to 17 (inclusive) at Kirby Glebe. Those appeals are the subject of separate decisions.<sup>1</sup>
13. The Council confirmed that since the planning application (Appeal A) was determined, and the enforcement notices were issued the North Warwickshire Local Plan 2021 (the Local Plan) has been adopted. Consequently, for these appeals the Development Plan comprises the Local Plan and the Mancetter Neighbourhood Plan 2017.
14. Ms MacDonald confirmed that she is no longer employed by the Council but that she was attending the hearing as she had been the enforcement officer responsible for the appeal sites when she was employed at the Council. She is now employed by Cannock Chase District Council.
15. There is no dispute between the parties that the residents of the development are gypsies and that they fall into the definition of gypsies and travellers as set out in the Planning Policy for Travellers Sites (PPTS). It was agreed that the PPTS was a relevant consideration for the appeals.
16. In respect of Appeal A, the site is already in use as a residential caravan site and to that extent the proposed development has been implemented.
17. The Court of Appeal issued the Smith v SSLUHC & Ors [2022] EWCA Civ 1391 judgment (the Lisa Smith judgement) after the hearings were closed. The judgment regards the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The appellants and the Council were invited to make comments on the relevance of this judgement to the appeals.
18. The appellants' view is that in the light of the judgement the Council's Gypsy and Traveller Accommodation Assessment (GTAA) can no longer be relied upon as a means of deciding who does and who does not satisfy the PPTS definition. They consider that it is the total need (including 100% of unknowns) which provides the only reliable indicator of need and, of the five year pitch requirement.
19. The Council initially considered that the judgement did not affect its case and confirmed that that remains the case in the light of the response of the appellants.

## **The Notices (Appeals B, C, D and E) (Plots 6 to 9)**

20. The Council requested that it be permitted to update its statement given the passage of time between its submission and the date which had been set for the hearing, a period in excess of 12 months. This was permitted by the Planning Inspectorate and the Council sought to make a number of changes to the notices which it describes as variations to reflect the position at the time of the submission of its supplementary statement. This statement was submitted

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<sup>1</sup> Appeal Decisions APP/R3705/C/20/3264614, APP/R3705/C/20/3264616, APP/R3705/C/20/3264625, APP/R3705/C/20/3264626, APP/R3705/C/20/3264627, APP/R3705/C/20/3264628, APP/R3705/W/20/3251490, APP/R3705/C/20/3264636, APP/R3705/C/20/3264639

in June 2022 (the Supplementary Statement). The majority of the changes relate to the allegations and requirements of the notices with the exception being a request to make the site larger in the case of plot 6.

21. In general, the appellants consider that the changes which the Council wished to make to the allegations would be prejudicial to them on the basis that they increased the scope of the notice. They also considered that it was not permitted to enlarge the site which is the subject of the notice.

#### *All notices*

22. As set out in its Supplementary Statement, the Council seeks to extend its reference to the creation of hard surfaced areas to the creation of a hard surfaced area across the whole of the site in each notice. The appellant had no objection to this change, and no injustice would arise were I to correct all of the notices to refer to a 'hard surfaced area covering the whole of the site'.
23. The requirements of the notices as served and as set out in the Supplementary Statement include the phrase 'Leave the Land in a clear, clean and tidy state'. This phrase lacks clarity and the parties agreed that an amendment to substitute the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development' would be appropriate. I consider that the revised phrase is sufficiently clear and unambiguous, and I shall make this correction to all of the notices.

#### *Notices in respect of Plots 7, 8 and 9*

24. The material change of use can be more precisely worded as 'a material change of use of the Land to a use for the stationing of caravans for a residential use'. I can make this change without resulting in injustice to either of the parties.

#### *Notice in respect of Plot 6*

25. There is an inconsistency between the allegation and the header, the immunity period, the reasons for serving the notice and the requirements. I could correct the notice to remove all references to the material change of use (MCU) of the land without causing injustice. However, the requirements do not refer to the removal of materials/hard surfaced areas which is the specified breach of planning control in this case and to expand the requirements in this case would make the notice more onerous to comply with. Similarly, I could not amend the allegation to include the MCU on the same basis.
26. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
27. In these circumstances, the appeal on the ground set out in section 174(2)(g) of the 1990 Act as amended does not fall to be considered.
28. As I intend to quash the notice, it is unnecessary for me to consider the Council's requests as set out in the Supplementary Statement including the expansion of the size of the site to which the notice relates.

### *Notice in respect of Plot 7*

29. The allegation refers to a MCU and operational development in the form of the importation of materials to create a hard surfaced area. The requirements refer to cessation of the MCU and removal of the hardstanding, but they also refer to the removal of structures and outbuildings.
30. An enforcement notice may require the removal of works integral to the unauthorised use. In this case I regard the structures and outbuildings as integral to the use, however it is not necessary for the allegation to refer to such works. The notice does not require any correction in this regard. On the same basis the notice does not need to be corrected to include reference to electric hook-up points as suggested by the Council in its Supplementary Statement.
31. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. The Council has not demonstrated that the erection of means of enclosure form part and parcel of the MCU. Furthermore, I find that the addition of reference to means of enclosure would broaden the extent of the allegation to the point that the appellant would be prejudiced by not having the opportunity to make an appeal under ground (a) for those works. For those reasons I shall not make the corrections referred to by the Council.

### *Notices in respect of Plot 8 and Plot 9*

32. For the same reasons as set out above in relation to the notice in respect of Plot 7, the notices in respect of Plot 8 and Plot 9 do not require correction. An exception is the removal of the words 'delete as applicable' from the second requirement on the notice for Plot 9 as this is a typographical error.

## **Appeal A**

### **Main Issues**

33. The main issues are
- The effect of the development on the character and appearance of the surrounding area and the landscape with particular reference to the cumulative effects of the development of the site together with development on adjacent land.
  - The effect of the development on the safety and convenience of users of the access road, including at the junction with Atherstone Road.

### **Reasons**

#### **Character and appearance**

34. The appeal site is to the south of the access road running through the wider caravan site. The layout plan which was submitted to the Council shows four pitches subdivided by post and rail fencing, each with an amenity building on the southern edge and accommodating two caravans in the form of one mobile home and one touring caravan. The pitches would rely to some degree on the screening effect of an established hedge, but new hedge planting is shown adjacent to the access road.

35. To the north of the access road and the appeal site are Plots 10 to 17 which are currently unauthorised and the subject of separate appeals. To the east on both sides of the access road are 18 authorised gypsy and traveller pitches which benefit from planning permission. The access road continues beyond the appeal site and serves Barn Fishery.
36. In terms of the immediate vicinity of the appeal site the development would be a continuation of the appearance and characteristics of the gypsy and traveller site, which I shall refer to as Kirby Glebe Farm. Kirby Glebe Farm does not front Atherstone Road where the access road to it commences. Instead, the access road runs some distance beside a field used for grazing and other undeveloped land before opening up into the area covered by caravan pitches. From this perspective the development has no visual impact on the street scene.
37. From further afield the appeal site is seen as part of Kirby Glebe Farm, albeit as a result of its location it leads to an expansion of the established gypsy and traveller site. Thus, the cumulative effect of the appeal scheme and the existing development of Kirby Glebe Farm needs to be considered.
38. The landscape character of the countryside immediately surrounding Kirby Glebe Farm is comparatively flat with field hedges which constrain views for instance from the path alongside the canal. However, where the land rises such as towards residential development on the edge of Hartshill there are wider views. Then, the views from Hartshill Hayes Country Park are expansive panoramas extending well beyond the railway line and the A5 Watling Street. From this higher ground Kirby Glebe Farm is visible but it is read against the embankment of the railway line and the appeal site itself coalesces into the established caravan pitch area.
39. There are public footpaths closer to the appeal site and from those locations the expansion of Kirby Glebe Farm as a consequence of the appeal scheme and the plots which are the subject of other appeals is evident. However, even in those locations the views of caravans, amenity buildings and fences would be limited by field edge trees and hedges and would not be out of context with the surrounding area, which although predominately rural in character has clusters of residential and other development screened by roadside vegetation.
40. Kirby Glebe Farm lies adjacent to a railway line, and it would be viewable from the elevated position of the trains. However, this view would be transitory and in any case the presence of the railway and the regularity of trains which appear to use it also contributes to the character of the area. The railway line also provides a visual barrier such that the presence of Kirby Glebe Farm and the appeal site is not evident from the roads to the north or the road junction of Atherstone Road with Woodford Lane and the B4111.
41. The Council referred to the Mancetter Neighbourhood Plan and the importance which it places on longer views of the landscape of the Anker Valley. However, it confirmed at the hearing that the countryside surrounding the appeal site does not benefit from any statutory designation for example as Green Belt or an Area of Outstanding Natural Beauty. Therefore, whilst I accept that for local residents the countryside and facilities such as Hartshill Hayes Country Park are valued local environments, the landscape surrounding the site is not of such value that it benefits from any statutory protection.

42. Comments were also made at the hearing that when hedges and trees were not in leaf the appeal site would be more visible. It is reasonable to conclude that this would be the case and that during the winter months the previous glimpsed views of the appeal site would be more open. However, the PPTS makes it clear that in terms of landscaping it is not beneficial for occupiers of gypsy and traveller sites to be deliberately isolated from the rest of the community.
43. The Council made the argument during the hearing that granting consent for pitches on Kirby Glebe Farm does not necessarily mean that continuous growth and expansion is appropriate. I accept that point, however the presence of Kirby Glebe Farm inevitably changes the site context.
44. The appellant also considered that the development was following field boundaries which provided a natural containment for the wider site. However, this was not immediately apparent on the ground. Consequently, I anticipate that in the absence of natural containment Kirby Glebe Farm has the capacity to become overly dominant in terms of its impact on the character and appearance of the surrounding area. However, I do not consider that this point has already been reached such that the development on the appeal site should be resisted on the basis of harm to the character and appearance of surrounding area and landscape.
45. I am also dealing with the appeals relating to Plots 10 to 17 which have a similar relationship with Kirby Glebe Farm and which if approved would also increase the scale of the authorised development. In that case there is a defined edge to the development in the form of established planting around ponds off site. Also, these plots are closer to the railway line.
46. Taking these matters into account, together with my assessment of the impact of the development on the appeal site, the cumulative effect of allowing all of the appeals would not have a harmful effect on the surrounding countryside.
47. I conclude that the development would not have a harmful effect on the character and appearance of the surrounding area and the landscape, either singly or cumulatively with existing and proposed lawful development on adjacent land. The use of land as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings would accord with Policies LP1 and LP10 of the Local Plan and Policy BE2 of the Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character and specifically in relation to gypsy and traveller sites require that the site can be assimilated into the surroundings and landscape without any significant adverse effect.

### **Access, highway safety and convenience**

48. The access road serving the appeal site has a junction with Atherstone Road. At the times of my site visits I noted that Atherstone Road carries a constant flow of traffic of all types. There is a bus stop adjacent to the junction which indicates that buses also use the road.

49. In the direction of Mancetter village and Atherstone there is a complex junction under the railway line and towards Hartshill there are traffic lights which control access across a bridge over the canal. There are also a number of private driveways close to the entrance to the access road. Given the conditions on the highway, it is reasonable to expect that drivers would have a heightened sense of awareness of the potential for other traffic to join the road and of buses and the need to slow down at junctions and traffic lights.
50. The Highway Authority has a number of concerns regarding the use of the access and their advice led to the Council refusing the planning application in part on the grounds that the access was not appropriate to cater for increased use.
51. It was agreed by the Council at the hearing that its concern is in respect of the increased number of vehicles and not any change in the type or size of vehicles. Notwithstanding this position, the appellant expressed a willingness to restrict the size of vehicles on the pitches to 3.5 tonnes.
52. The appellant has carried out works to the access and its junction with Atherstone Road comparatively recently in response to a planning condition which was attached to a consent granted on an application made in 2019. These works which include works within the public highway, were not agreed in advance by the Highway Authority or by the Council in order to discharge the condition.
53. The works which have been carried out have resulted in an improvement of the junction of the access road with Atherstone Road in comparison with what is shown on the photographs of the previous access provided by the Highways Authority. Kerbs have been inserted at the bellmouth and hard surfacing has been installed. To that extent the potential for vehicles to block Atherstone Road whilst manoeuvring into the access road has reduced, and the conditions for highway safety and convenience have been improved.
54. There are a number of aspects of the works which have been carried out which are unacceptable to the Highway Authority, and I discussed these with the parties at the site visit. These matters include kerbs which stand proud of the surrounding surface, damage resulting from incorrect kerbs being used, the substructure of the access being unknown, lack of drainage and definition of the extent of the highway. The Highway Authority has suggested two planning conditions which have the potential to resolve these matters in the event that the appeal is allowed.
55. In terms of the works to the access, on the basis of my observations on site and the evidence before me I am persuaded that the remedial works are required but that they are comparatively straightforward. The works could be secured through the submission and approval of detailed drawings and the implementation of an approved scheme, which is what should have happened before the works were carried out.
56. On this basis the improvement of the access at its junction with Atherstone Road is capable of being addressed by a planning condition and a safe and efficient access arrangement can be delivered.

57. Although not within the control of the Highway Authority concern was also expressed about the suitability of the access road in terms of its use by pedestrians. There is a bus stop at the junction with Atherstone Road and I acknowledge that it is important for residents to be able to access this facility safely. Access beyond this point by pedestrians is impractical given the absence of footways on Atherstone Road and the volume of traffic.
58. The access road has no lighting and is effectively a shared space having no defined footways or carriageway. It is also unsurfaced for most of its length. Improvements to the access would be desirable however it was explained at the hearing that the access is not in the ownership of the appellant. This makes it problematic to secure any improvements through the planning process particularly in the absence of any tacit agreement from the owner.
59. My experience of using the access leads me to consider that drivers of vehicles, who would mostly be only accessing the caravan pitches, would have a heightened sense of awareness of pedestrians on the access road. The access is also wide enough to provide space for vehicles to pass pedestrians if they are being driven safely. On this basis it is reasonable for me to conclude that whilst beneficial it is not essential to secure improvements to the access road in order to make the development acceptable.
60. Hartshill Parish Council (HPC) highlighted concerns about the size of vehicles already using Atherstone Road, the increase in traffic arising from new development and the capacity of the road network to accommodate additional traffic. However, there is no substantive evidence before me to suggest that the day to day use of the site will result in an increase in larger vehicles or result in capacity problems on the network.
61. HPC also referred to a development of 350 new homes in Hartshill and the potential for increased traffic. However, I have no detailed information about that development and in any event, it will have to address its own effects on the road network. This would also apply as part of any consideration of whether any other unauthorised uses served by the access road should be made lawful.
62. A local resident raised concern about the effect which the recent works to the access have on his ability to access and egress his property and on an adjacent ditch. The condition suggested by the Highways Authority should address the issues relating to the residents access where they relate to highway land. Effective kerb edging and drainage would reduce the likelihood of water run-off into the residents garden which would enable improved access to his house over the current situation. With regard to works which effect drainage ditches off the public highway, this would be a civil matter between the owners of the land.
63. The Highway Authority referred me to two appeal decisions and requested that I take them into consideration. One appeal decision relates to a development of nine houses to the rear of 6 to 20 Spon Lane, Grendon<sup>2</sup> (the Spon Lane appeal) and the other to a single dwelling at 5 Willows Lane, Grendon<sup>3</sup> (the Willows Lane appeal).

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<sup>2</sup> Appeal Ref. APP/R3705/W/19/3229569

<sup>3</sup> Appeal Ref. APP/R3705/W/19/3233095

64. Both of these appeals relate to the introduction of new houses into an area where there was already established residential development served by driveways and where the opportunities for conflict between non-motorised users and vehicles were high. This access environment is not directly comparable with the appeal scheme in this case. Furthermore, there is no indication in the appeal decisions that a practical solution to address the Council's concerns was possible and could be secured by planning condition.
65. I have had regard to the appeal decisions for the Spon Lane appeal and the Willows Lane appeal. However, these have not dissuaded me from the view that subject to compliance with a planning condition, the change of use of the appeal site would not have a harmful impact on highway safety or convenience.
66. I conclude that, subject to a planning condition to secure the works recommended by the Highway Authority, the development would not have a harmful effect on the safety and convenience of users of the access road, including at the junction with Atherstone Road. The development is in accordance with Policies LP10 and LP29 of the Local Plan which require that safe and suitable access be provided for all users and that new gypsy and traveller sites can be assimilated into their surroundings and the National Planning Policy Framework which promotes safe and suitable access for all users.

### **Other Matters**

67. Policy LP10 of the Local Plan sets out criteria against which proposals for gypsy and traveller sites need to be assessed. I have found that the development accords with the criteria relating to the assimilation of the site into the surrounding area and landscape.
68. The other criteria in Policy LP10 concern the relationship of the development to the nearest settlement, access to services, environmental hazards and utilities. The site is served by public transport which provides access to a wide range of shops and services. There is no evidence before me to indicate that there are any environmental hazards on the sites or that essential utilities are not available to residents. On this basis I conclude that the development accords with all of the criteria set out in Policy LP10.
69. The need for and supply of gypsy and traveller sites, the availability or lack of alternative accommodation and the personal circumstances of the appellants were addressed at the hearing. However, as I have found that the development accords with the relevant policies in the Development Plan, it is not necessary for me to consider these matters in any detail, including any implications of the Lisa Smith judgement.
70. Local residents, the Parish Councils and the local Member of Parliament have all made comments regarding the actions of the appellants in advance of receiving planning permission. Notwithstanding any lack of alternative accommodation being available, I agree that such actions do not foster good relationships with local people from the outset. However, intentional unauthorised development is not a determining factor in this case and the appellants have sought planning permission to allow the use of the land as a gypsy and traveller site.

71. Interested parties have also observed that there are far greater numbers of caravans on that part of Kirby Glebe Farm which benefits from planning permission than have been permitted. However, this is a planning enforcement matter between the Council and the occupiers of those pitches and has no bearing on the pitches which are the subject of this appeal.
72. In respect of capacity of local services such as schools and doctors, residents say that these are over-subscribed. However, there is no substantive evidence to support this or to demonstrate that adults or children on the site will be unable to access these services. In contrast I have been provided with letters from local schools and the County Council which confirm that some of the children have settled in well and both adults and children have access to healthcare.
73. The prospects of the appellants and their families developing a close, cohesive relationship with the settled population were discussed at the hearing in the light of comments made by the parish councillors. There was some reference to business activities on Kirby Glebe Farm and issues associated with fly-tipping and anti-social behaviour. However, it was accepted that these problems were not necessarily associated with the occupation of the appeal site by the appellants. Furthermore, the appellants expressed a willingness to participate in community life locally and connections were made with Hartshill Parish Council at the site visit.
74. A peaceful and integrated co-existence between the any gypsy and traveller site and the local settled community is a matter which is highlighted in the PPTS. From the evidence before me and the discussions at the hearing, there is nothing to suggest that the occupiers of the appeal site could not be successfully integrated into village life in Hartshill or Mancetter. On the same basis there is nothing to suggest that the expansion of the Kirby Glebe Farm development which would arise from the additional pitches would undermine that process of community cohesion.
75. The interested parties also raised concerns regarding the impact of the development on archaeological remains and the potential for contamination of the water environment in the light of the way in which foul water discharge was being dealt with on the site. There is no substantive evidence of such impacts and I have not been made aware that the Council's consultation process gave rise to any comments from statutory consultees in this regard. Consequently, they carry no weight in my consideration of the appeal.
76. Mancetter Parish Council also referred to the proximity of the development to the railway line and the necessity for consultation with Network Rail. It was agreed by the parties that this issue could be addressed by an informative. However, appeal decisions do not ordinarily include informatives. Thus, by raising the issue in my decision letter I am alerting the appellant to the need to follow this up. It does not have any bearing on my decision.
77. A local resident who lives adjacent to the access road is also concerned about the increase in the volume of traffic using the access. It is reasonable to assume that an increase in the number of pitches on Kirby Glebe Farm would result in the additional traffic, which the resident has experienced. However, the Council has not argued that this change would have a detrimental impact on the living conditions of occupiers of neighbouring properties. Having seen

the relationship between the access and the boundary with the neighbour, which is densely planted, I do not consider that the traffic associated with the development would have a significantly harmful effect on the neighbour in this regard.

78. Drawing these points together, the material considerations in this case do not indicate that my decision should be otherwise than in accordance with the Development Plan.

### **Conditions**

79. The Council provided a list of conditions which it invited me to consider appending to the planning permission in the event that the appeal is allowed.
80. It is necessary to attach a condition to secure compliance with the plans submitted with the planning application both for certainty and to control the site layout and design of day rooms (Condition 1).
81. My decision has been made on the basis that the occupiers of the site are gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 2).
82. The Council has suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
83. In this case there is no foretelling as to whether any occupiers of the site might be forced to cease travelling permanently in the future. Consequently, imposing the suggested condition would be liable to result in unlawful discrimination, because those occupiers would be unable to continue to live on this site. I shall therefore amend the wording of the condition suggested by the Council to ensure that it restricts occupation to Gypsies and Travellers but does not exclude those who have ceased travelling permanently.
84. Since the grant of planning permission is for use of land as a residential caravan site it is necessary to condition the maximum number of pitches, caravans and types of caravans on the site (Condition 3). This condition is also necessary to safeguard the amenity of residents and in the interests of the appearance of the site.
85. In the light of concerns about the effect of larger vehicles using the access road and the agreement of the appellant to restrict the size of vehicles to 3.5 tonnes I have included a condition to limit the size of vehicles kept on the land (Condition 4). This will not prevent large vehicles accessing the site to deliver mobile homes, but it would be unreasonable given the nature of the use to restrict such vehicles. I have removed reference to 'no commercial activities including storage of materials' from the wording of the condition suggested by the Council because such activities would require express planning permission if they were a primary use and resulted in a change in the character of the development.
86. In order to assimilate the individual pitches into the surrounding area and the rest of Kirby Glebe Farm it is reasonable and necessary to secure new and

additional planting on the boundaries of each pitch (Condition 5). I have added a requirement to secure replacement planting as necessary.

87. I have attached the condition recommended by the Council and the Highways Authority to secure the improvements to the junction of the access road with Atherstone Road. This is necessary to ensure that the works already carried out are brought up to an appropriate standard in the interests of highway safety and convenience. (Condition 6)
88. It was agreed at the hearing that a condition to control the details of external lighting within the individual pitches is necessary to ensure that lighting levels are controlled given the site's rural context. I concur with that view (Condition 7)
89. The development has already commenced and conditions 5, 6 and 7 are imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the planting, improvements to the access road and external lighting before the development takes place.
90. The conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

### **Conclusion (Appeal A)**

91. For the reasons set out above the development accords with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons set out above, I conclude that Appeal A should succeed, and planning permission should be granted, subject to conditions.

### **Ground (g) (Appeals B, C, D and E)**

92. An appeal on ground (g) is on the basis that the period specified for compliance with the notice falls short of what should reasonably be allowed. As I have quashed the notice which relates to Plot 6 (Appeal B), the appeal under ground (g) does not fall to be considered.
93. With regard to the notices relating to Plots 7, 8 and 9 the compliance periods are 3 months. The Council argues that this is sufficient time to remove caravans, structures and hard standings and that given the length of time since the notices were served, the appellants should have been giving consideration to alternative accommodation. The appellants consider that they have no other alternatives available and seek the longest period of compliance possible.
94. In these cases, there is no appeal under ground (a) or ground (f) or under any legal ground. Consequently, the appellants could not assume that they would be successful in their appeals on the basis of success on other grounds. However, Appeal A is running alongside Appeals B, C and D and in allowing Appeal A the appellants now have an option for alternative accommodation.

95. Given that I have imposed a number of conditions on the planning permission which arises from Appeal A, and those conditions will take time to be discharged, it seems to me to be reasonable to extend the compliance period to nine months. This will allow time for changes to be made on the individual pitches and for works within the highway to be commenced, in accordance with those conditions.
96. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

*Sarah Dyer*

Inspector

## **Annex 1 - Schedule of conditions – Appeal A**

1. The development hereby permitted shall be carried out in accordance with the following approved plans:  
PAP/2019/0256 Location Plan  
PAP/2019/0256 Site Layout Plan  
PAP/2019/0256 Proposed Day Room (Floor Plan)  
PAP/2019/0256 Proposed Day Room (Front Elevation)  
PAP/2019/0256 Proposed Day Room (Rear Elevation)  
PAP/2019/0256 Proposed Day Room (Side Elevation)  
Proposed Day Room (Side Elevation)  
PAP/2019/0256 Drawing No. PBA 5 Post and Rail Fence
2. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as 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 showpeople or circus people travelling together as such.
3. There shall not be more than four pitches on the site and on each of the four pitches hereby approved, no more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended and the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
5. Unless within three months of the date of this decision a scheme for planting along the boundaries of each pitch hereby approved, including proposals for the removal of hard standing to accommodate planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within the next available planting season following the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved planting scheme specified in this condition, that scheme shall thereafter be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track, and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7. Unless within three months of the date of this decision a scheme for the erection of external lighting, including the retention of any existing external lighting to be erected on the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

## **APPEARANCES**

### **FOR THE APPELLANTS:**

|                        |                             |
|------------------------|-----------------------------|
| Mr Philip Brown        | Representing the appellants |
| Mr T and Mrs M Delaney | Appellants                  |
| Mr W and Mrs A Delaney | Appellants                  |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                   |                                                             |
|-------------------|-------------------------------------------------------------|
| Mr Jack Smyth     | Barrister appointed by Annie Ryan Solicitor for the Council |
| Mr Jeff Brown     | North Warwickshire Borough Council                          |
| Mr Mike Pitman    | North Warwickshire Borough Council                          |
| Ms Lucy MacDonald | North Warwickshire Borough Council                          |
| Mr David Pilcher  | Warwickshire County Council                                 |

### **INTERESTED PARTIES**

|                        |                                    |
|------------------------|------------------------------------|
| Mr Trevor Hopkins      | Mancetter Parish Council           |
| Mr Harold Blackburn    | Mancetter Parish Council           |
| Ms Glenys Roberts      | Hartshill Parish Council           |
| Councillor Denise Clew | North Warwickshire Borough Council |

## **DOCUMENTS**

### *Submitted to the Hearing by the Appellants:*

Appeal Decision – Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE – Appeal ref. APP/R3705/W/20/3255527

Letters from People’s Directorate Warwickshire County Council dated 12 September 2022

Letter from Red Roofs Surgery dated 25 July 2022

Letter from Nursery Hill Primary School dated 12 September 2022

Letters from Hertshill Academy dated 24 May 2022 and 12 September 2022

Letters from St Benedict’s Catholic Academy dated 18 May 2022 and undated