



Appeal Decisions

Hearing held on 16 November 2022

Site visits made on 14 and 15 November 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal A Ref: APP/E2205/C/19/3223506

Land known as Herwish, Martens Lane, High Halden, Ashford, Kent, TN26 3JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Carpenter against an enforcement notice issued by Ashford Borough Council.
- The enforcement notice, numbered EN/16/00219, was issued on 22 January 2019.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission granted on appeal on 14 January 2009 under the Planning Inspectorate's ref APP/E2205/A/08/2068379 (the 2009 permission) and on a planning permission granted by the Council on 24 July 2013 under ref 13/00081/AS (the 2013 permission).
- The development to which the 2009 permission relates is: "a residential caravan site for two gypsy families with three caravans" in the south-west corner of the Land. The development to which the 2013 permission relates is: "change of use of land for the stationing of 1 mobile home for residential agricultural occupation" in the south-west corner of the Land.
- The conditions in question are:

Nos 1 and 2 of the 2009 permission, which state that:

"1. The use hereby permitted shall be carried on only by Benjamin Louis Brazil, Minnie Brazil, Sarah Jane Carpenter, Robert Carpenter, Anthony John Carpenter and Cassie Hutton and their resident dependents and shall be for a limited period being the period of four years from the date of this decision, or the period during which the premises are occupied by them, whichever is shorter.

2. When the premises cease to be occupied by Benjamin Louis Brazil, Minnie Brazil, Sarah Jane Carpenter, Robert Carpenter, Anthony John Carpenter and Cassie Hutton and their resident dependents or at the end of four years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the premises in connection with the use shall be removed and the land restored to its former condition"; and

condition No 2 of the 2013 permission, which states that:

"2. The use of the site for the stationing of a single mobile home shall cease by 27 July 2016 or the cessation of the use of the adjacent land as a pig farm whichever shall occur first. All materials and equipment brought on to the site in connection with the use shall be removed and the land restored to grass."

- The notice alleges that the conditions have not been complied with in that:

in relation to the 2009 permission, (a) the use of the south-west corner of the Land as 'a residential caravan site for two gypsy families with three caravans' should have ceased by 14 January 2013, but is continuing; (b) the materials and equipment brought on to the south-west corner of the Land in connection with the use have not been removed; and (c) the south-west corner of the Land has not been restored to its former condition; and,

in relation to the 2013 permission, (a) the use of the southwest corner of the Land for the 'stationing a single mobile home and the occupation of the mobile home' by a person solely or mainly working or last working in the locality in agriculture (as defined in Section 336 of the Act) or forestry or a widow or widower of such a person and any resident dependents should have ceased by 27 July 2016, but is continuing; (b) the materials and equipment brought on to the south-west corner of the Land in connection with the use have not been removed; and (c) the south-west corner of the Land has not been restored to grass.

- The notice also alleges: "Furthermore, without planning permission, the residential use of the Land and the carrying out of facilitating operational development comprising the erection of a building ('the Building') used as a residential annex to a caravan/mobile home which remains on the Land in breach of conditions (1) and (2) contained in the 2009 Planning Permission and/or condition (2) contained in the 2013 Planning Permission; the laying of an area of hard standing; the erection of fencing; and the installation of a septic tank."
- The requirements of the notice are to:
 - (i) Cease permanently the residential use of the Land.
 - (ii) Cease permanently the use of the Building (shown located in the approximate position on the attached plan¹) as a residential annex.
 - (iii) Remove permanently from the Land the residential caravans/mobile homes (shown marked as 'The Caravans' located in the approximate positions on the attached plan).
 - (iv) Remove permanently from the Land materials and equipment brought onto the land in connection with the use of the south-west corner of the Land as a residential caravan site for two gypsy families with three caravans.
 - (v) Remove permanently from the Land the materials and equipment brought onto the land in connection with the use of the south-west corner the Land for the stationing and occupation of a single mobile home by a person solely or mainly working or last working in the locality in agriculture (as defined in section 336 of the Act) or forestry or a widow or widower of such a person or any resident dependants.
 - (vi) Demolish and remove permanently from the Land the Building (shown located in the approximate position on the attached plan).
 - (vii) Remove permanently from the Land the fencing (shown located in the approximate positions on the attached plan).
 - (viii) Excavate and remove permanently from the Land the area of hardstanding (shown hatched black on the attached plan).
 - (ix) Either excavate and remove permanently from the Land the septic tank and associated pipe work or break in the septic tank and fill completely with inert material to the level of the surrounding land.
 - (x) Following compliance with steps 5(i) to 5(ix)(above) restore the surface of the south-west corner of the Land to grass.
 - (xi) Remove permanently from the Land all materials, waste and debris resulting from compliance with steps 5(i) to 5(ix)(above).
- The periods for compliance with the requirements are: 9 months for steps (i) to (iii); 10 months for steps (iv) to (vii); 11 months for steps (viii) and (ix); 12 months for step (x); and 13 months for step (xi).

¹ References to "the attached plan" are to the plan attached to the enforcement notice.

- The appeal is proceeding on the grounds set out in section 174(2) (d), (f), (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.

Appeal B Ref: APP/E2205/C/19/3226544

Land known as Herwish, Martens Lane, High Halden, Ashford, Kent, TN26 3JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by Mrs Sarah Carpenter against the same enforcement notice and on the same grounds as per appeal A.

Appeal C Ref: APP/E2205/W/21/3285132

Herwish, Martens Lane, High Halden, Ashford, Kent, TN26 3JP

- 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 Robert Carpenter against the decision of Ashford Borough Council.
- The application Ref 21/00811/AS, dated 4 May 2021, was refused by notice dated 28 September 2021.
- The development proposed is described in the application as 2x mobile homes, 2x utility blocks, 2x caravans and parking for 4 cars.

Decision on appeals A and B

1. It is directed that the enforcement notice is corrected and varied by:
 - (a) the deletion of the final paragraph of section 3, which begins, "Furthermore, without planning permission..." and ends, "...and the installation of a septic tank";
 - (b) the deletion of requirement (ii) in section 5;
 - (c) the deletion of requirement (iii) in section 5 and substitution of the following requirement: "(iii) Permanently remove all residential caravans/mobile homes from the Land."; and
 - (d) the deletion of requirement (vi) in section 5.
2. Subject to this correction and these variations, the appeal is dismissed, and the enforcement notice is upheld.

Decision on appeal C

3. The appeal is allowed and planning permission is granted for the stationing of 2 mobile homes and 2 caravans for human habitation, the erection of 2 utility blocks, and the provision of parking for 4 cars (part retrospective) at Herwish, Martens Lane, Ashford, TN26 3JP in accordance with the terms of the application, Ref 21/00811/AS, dated 4 May 2021, and the plans submitted with it, subject to the conditions set out in the schedule hereto.

Preliminary Matters

4. Mr Carpenter also appealed against the Council's refusal of a lawful development certificate (LDC) application. I conducted a hearing of that appeal Ref APP/E2205/X/20/3249023 on 15 November 2022. The LDC appeal site is the same as that for appeal C above, which forms part of the larger area covered by the enforcement notice the subject of appeals A and B.

5. On 14 November 2022 I made an unaccompanied site inspection. I viewed the appeal site from the adjoining roads and public footpath and familiarised myself with the locality. During the LDC appeal hearing, I carried out an accompanied site inspection, when I went onto the appellant's land. In the circumstances, the parties agreed it was not necessary for me to conduct a further accompanied site visit in relation to these appeals A – C.
6. Appeals A and B were initially made on grounds (b) and (c) as well. However, those grounds were withdrawn at the start of the hearing, following consideration of my pre-hearing note dated 29 September 2022.
7. In relation to appeal C, the description of the proposed development, as set out in the heading of this decision is inadequate. The stationing of caravans could be for a variety of purposes, or even just for storage of the caravans themselves, so it is necessary to specify the associated use. The Council's decision notice referred to the "erection" of mobile homes, but that word is apt for building operations, and is inappropriate for the stationing of mobile homes, which constitutes a use of land. The parties agreed at the hearing that the proposal, which is part retrospective, because mobile homes and a caravan are already on the appeal site, should be described as:

"The stationing of 2 mobile homes and 2 caravans for human habitation, the erection of 2 utility blocks, and the provision of parking for 4 cars."
8. Appeals A and B do not include ground (a), so they cannot result in a grant of planning permission, or the consequent quashing of the notice on that basis. However, by virtue of s180 of the Town and Country Planning Act 1990 as amended (the 1990 Act), as I am granting planning permission on appeal C, the notice will cease to have effect so far as it is inconsistent with any such permission.

Appeals A and B – the enforcement notice

9. The final paragraph in section 3 of the enforcement notice includes an allegation of residential use of the land without planning permission, together with facilitating operational development, including the erection of a building, the laying of hardstanding, erection of fencing and installation of a septic tank. (The precise wording is set out in the heading of this decision).
10. In my pre-hearing note of 29 September 2022, I sought a response to the following preliminary views. The formulation, "the residential use of the Land", does not describe an act of development. The notice would need to allege the material change of use of the land to residential use. However, that change of use was authorised by the temporary planning permissions. On expiry of the periods specified in the conditions on the temporary planning permissions, there was no further change of use, such that enforcement action can only be taken in relation to the use in terms of a breach of condition. Furthermore, if the notice cannot allege an unauthorised material change of use of the land to residential use, then it cannot allege operational development facilitating an unauthorised change of use.
11. This was accepted by the Council, which invited me to delete the final paragraph of section 3 of the notice and confirmed that, consequently, requirement (ii) should also be deleted.

12. Pursuant to s176(1) of the 1990 Act, I may correct any defect, error or misdescription in the notice, or vary its terms, if I am satisfied this will not cause injustice to the appellant or the local planning authority. In his written note², the appellants' agent suggested that, if the notice is faulty, it should not be rectified, unless the proposed changes are no more significant and serious than the correction of typing errors. He repeated this at the hearing and suggested the notice should be quashed.
13. However, the power in s176(1) is much wider than a power to correct typing errors, and the appellant was unable to identify any clear injustice. Indeed, I am satisfied that, as the proposed correction reduces the allegation and requirements, it is favourable to the appellants. This is especially so, since there is no appeal on ground (a), such that the scope of a deemed application is not diminished. As no injustice would be caused to the Council either, I will correct the allegation accordingly and delete requirement (ii). I also explained before and during the hearing that this necessitates a further technical correction, in that paragraph 1 of the notice should only cite s171A(1)(b) of the 1990 Act, as this is the provision which concerns failure to comply with conditions.
14. Requirement (iii) seeks the removal of caravans/mobile homes "(shown marked as 'The Caravans' located in the approximate positions on the attached plan)." However, one of those mobile homes, previously occupied by the appellant, has been removed and a new, twin unit mobile home, now occupied by the appellant's mother-in-law, has been stationed nearer the site entrance. As the 2009 and 2013 permissions authorised residential caravan site use and the notice requires cessation of the residential use, it is obvious that all caravans should be removed and the reference to the approximate positions on the plan attached to the notice is unnecessary. I shall correct the notice by deleting that reference and simply substituting a requirement to permanently remove all residential caravans/mobile homes from the Land. I am satisfied this will not cause injustice to either party.
15. There was also a debate as to whether the deletion of part of the allegation would necessitate deletion of requirement (vi) to demolish and remove the building. However, I shall address that under ground (f).

Appeals A and B - ground (d)

16. Having regard to s171B(3) of 1990 Act, to succeed on ground (d), the appellants must prove on the balance of probability, that conditions 1 and 2 of the 2009 permission and condition 2 of the 2013 permission were breached, without significant interruption, for a period of 10 years prior to the issue of the enforcement notice.
17. Conditions 1 and 2 of the 2009 permission required the use to cease by 4 January 2013, and condition 2 of the 2013 permission required the use to cease by 27 July 2016. In either case, the breach cannot possibly have commenced 10 years before the enforcement notice was issued on 22 January 2019. Ground (d) must therefore fail.

² Hearing Document (HD)1.

Appeals A and B - ground (f)

18. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
19. To identify the scope of ground (f), it is necessary to consider the purpose of the notice. The allegation, as corrected, concerns breaches of conditions. The requirements are clearly aimed at securing compliance with those conditions and restoring the land to its prior condition. Accordingly, all parties are agreed the purpose of the notice is to remedy the breach of planning control.
20. During the hearing, the appellants were unable to suggest lesser steps sufficient to remedy the breach, save that the need for requirement (vi) was disputed. This concerns the building, namely the shed which was the subject of the LDC appeal concerning its use as a dwelling. That appeal has been dismissed and requirement (i) of the enforcement notice would prevent its use for residential purposes, even if it remains. (The Council has accepted that requirement (ii) should be deleted).
21. In a written response to my pre-hearing note³, the Council contended that the use of the shed as a residential annex was to "facilitate the primary residential use" of the land, which became unlawful on expiry of temporary permission, and that requirement (vi) should remain to avoid any "uncertainty or ambiguity." However, the evidence is that the shed was erected in 2011 and was used, until 2013, as an office in connection with the appellants' pig breeding and hog roast business. It was erected in plain sight. Though I have no power to make a binding certification of lawfulness in these appeals, the Council does not dispute that, under s171B(1) of the 1990 Act, the shed became immune from enforcement action, as operational development, 4 years after it was substantially completed.
22. As explained in my second pre-hearing note of 17 October 2022, the use of the word "facilitate" is consistent with an argument based on the line of cases starting with *Murfitt v SSE* [1980] JPL 598. Those judgments establish that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. However, this notice is not directed at a material change of use; it concerns breach of conditions.
23. Condition 2 of the 2009 permission requires that "all materials and equipment brought onto the premises in connection with the use shall be removed and the land restored to its former condition." Condition 2 of the 2013 permission requires that all "materials and equipment brought on to the site in connection with the use shall be removed and the land restored to grass." I am not persuaded that either of these conditions can be properly interpreted as requiring the removal of this building, which the Council does not dispute is immune from enforcement action as operational development. As indicated, requirement (i) would nevertheless prevent the residential use of the shed.
24. Ground (f) therefore succeeds to the extent that requirement (vi) should be deleted. This is in addition to the deletion of requirement (ii), consequent upon the correction of the allegation discussed above.

³ The Council's email of 13 October 2022.

Appeals A and B - ground (g)

25. This ground is that the period specified for compliance with the notice is unreasonably short. The notice specifies different periods for different steps, but cessation of the residential use is required within 9 months and the final step, namely removal of all materials and waste debris resulting from compliance with the other steps is required within 13 months.
26. Prior to the hearing, the appellant suggested that a compliance period of 18 to 24 months would be reasonable. This would be tantamount to the grant of a temporary planning permission but, at the hearing, the appellant suggested 12 months for removal of the caravans. However, he said this was “not a massive point” and articulated no clear reasons why the periods specified in the notice are inadequate. I am not persuaded that they are, and ground (g) therefore fails.

Conclusion on appeals A and B

27. For the reasons given above, I conclude that the appeals should not succeed, except to the extent indicated under ground (f). I shall uphold the enforcement notice subject to corrections and a variation.

Appeal C – the s78 appeal against the refusal of planning permission

Main issues

28. The main issues are:

- the effect of the development on the character and appearance of the countryside;
- whether the occupiers of the site are gypsies and travellers as properly defined;
- whether any harm to the character and appearance of the countryside is outweighed by other considerations including the personal circumstances of the occupiers, having regard to their Human Rights and the best interests of any children.

Reasons

The character and appearance of the area

29. The appeal site is in the open countryside, away from any existing settlement and in an area not allocated in the development plan. Accordingly, Planning Policy for Traveller Sites (PPTS) says new traveller site development should be very strictly limited.
30. However, the site is not within a nationally or locally designated landscape area. As acknowledged by the Inspector when granting the 2009 permission, it is part of the Biddenden and High Halden Farmlands Character Area, described in the Landscape Assessment of Kent. I noted the undulating landscape, characterised by mixed farmland, with small-scale, hedged field patterns, small woodlands, equestrian uses, and scattered farmsteads and dwellings. The latter include a house and agricultural buildings on the opposite side of the road, just to the east and north-east of the appeal site, and other dwellings and rural buildings further to the north. The roads in the vicinity of the site are minor,

with the much busier A28 being some distance to the north. Whilst there is caravan site development in the area, it is not characteristic of it.

31. There are permitted rural buildings on the appellant's land beyond this appeal site, within the area edged black on the enforcement notice plan. However, without the appeal scheme, this site would be consistent with and contribute to the prevailing character, which is that of an attractive, relatively undeveloped rural area. Nevertheless, the Council accepted that there is nothing to take it out of the ordinary; it is typical countryside. It is not therefore suggested this is a "valued landscape", in terms of paragraph 174(a) of the National Planning Policy Framework (the Framework). That says valued landscapes should be protected and enhanced in a manner commensurate with their statutory status or identified quality in the development plan.
32. There are views into the appeal site and the appellant's adjoining land from the road immediately to the west, both from the site access and through the deciduous boundary hedge and trees. Not all the leaves had dropped at the time of my visit, so views were filtered, but I have also had regard to photographs taken by the Council on 16 December 2021.
33. There are also glimpsed views from Plurenden Road to the south, for example from the gated access to the adjacent field, but these are more distant, and similarly filtered by trees and hedges. There are clearer views into the site from public footpath AT160 to the north, even with the hedges partially in leaf, and this is an important public vantage point. Coincidentally, the Inspector who granted the 2009 permission also visited on 14 November, albeit 14 years earlier. They referred to additional glimpses from the public footpath "well to the east", but I could not progress beyond the first field adjoining Plurenden Road and had no views from that section of footpath.
34. I note that the amount of tall, close-boarded fencing, which the previous Inspector said gave the site "an unfortunate, stockade-like appearance", has been mostly removed, save immediately around the site access. In addition, the appellant has undertaken planting on the site since 2009. He says the screening on the southern boundary was not there before, but is now some 3m tall and, in all, he has planted around 100 silver birch trees. It is likely that the appeal site was more visually intrusive at the time of the 2009 appeal.
35. What is currently on site is not precisely what is now proposed. However, it is seen, and the intended mobile homes, caravans and utility blocks would also be seen in the context of the agricultural buildings, sheds, stable block and remaining steel portal framework on the appellant's adjoining land edged black on the enforcement notice plan. Nevertheless, the existing mobile homes do constitute some domestic intrusion into the countryside. The appeal scheme would have a similar effect. It would cause harm to the character and appearance of the area, though it is likely that planting has lessened the impact in recent years, and there would be scope for a further reduction in harm through a sensitive layout and additional landscaping. Additional planting need not seriously conflict with the character of the area, which includes small-scale, hedged field patterns and small woodlands.
36. The Council's decision notice and evidence cited Policies SP1, SP6, ENV3a and HOU16 of the Ashford Local Plan 2010 (LP), adopted February 2019.

37. SP1 sets out the core principles that planning applications are expected to adhere to, including the objective, "to conserve and enhance the Borough's natural environment including designated and undesignated landscapes." That is equivalent in effect to the language the Framework uses in relation to "valued landscapes". However, SP1 is a strategic policy, and the Council indicated during the hearing that ENV3a and (subject to consideration of gypsy and traveller status in planning policy terms) HOU16 are the most relevant and important policies for the determination of this appeal. The Council also accepted that it was too much to expect a caravan site to "enhance" the landscape.
38. ENV3a requires all proposals to demonstrate particular regard to specified landscape characteristics, proportionately, according to the landscape significance of the site. These include (i) existing features that are important to and contribute to the definition of the local landscape character. HOU16 says new gypsy and traveller sites outside allocated sites will only be permitted if specified criteria are met. These include: (h), that proposals should incorporate a landscape strategy, where mitigation of the impact is necessary to protect the quality of the surrounding landscape; and (j), that the site should not cause significant visual harm to an area and its landscape. These are the criteria relevant to the Council's reason for refusal and the first main issue.
39. The domestic, visual intrusion would result in conflict with ENV3a. The visual harm would not be insignificant, so there is also conflict with HOU16. However, it is at the lower end of the spectrum of significant harm. There is scope for layout, landscaping, and boundary treatment to be controlled by condition. However, as it stands, the proposal also conflicts with LP Policy SP6, as well as HOU16(h), as the application did not demonstrate the required high quality design and careful consideration and a positive response to design criteria, including character, distinctiveness, and sense of place.
40. I have found that the proposal would harm the character and appearance of the countryside and I am satisfied that there is conflict with the development plan as a whole. Accordingly, planning permission should not be granted unless material considerations indicate otherwise.

Whether the occupiers of the site are gypsies and travellers as properly defined

41. It was not a reason for refusal of the planning application that the appellant or other site occupants are not gypsies and travellers, as defined in Annex 1 of PPTS. However, whilst the officer's report said gypsy status had been previously acknowledged, the Council's Statement of Case said the position was now unclear, so I need to address it.
42. When granting the 2009 permission, the previous Inspector found that the appellant's parents-in-law were English Romany Gypsies, and that they satisfied the planning definition of gypsies and travellers then set out in ODPM Circular 01/2006, namely:

"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*, (my emphasis) but excluding members of an organised group of travelling show people or circus people travelling together as such."

43. In 2015, that definition was changed to that set out in PPTS, but the only difference is the omission of, "or permanently." However, in *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391, to which I drew the parties' attention, the Court of Appeal held that the exclusion of people who had ceased to travel permanently was discriminatory. Furthermore, this discrimination had no legitimate aim, and was therefore unlawful.
44. Sadly, the appellant's father-in-law has passed away, but his mother-in-law still lives on the site. Whilst she has ceased traveling due to old age, she did have a nomadic habit of life, and I have no reason to doubt the appellant's evidence that the appeal site has been her base since 2008. The Inspector accepted in 2009 that the appellant's mother-in-law was a gypsy and traveller in planning policy terms. I am satisfied that, having regard to the judgment in *Smith*, she should still be considered a gypsy and traveller for planning policy purposes, notwithstanding the definition in PPTS.
45. In the 2009 appeal decision, the Inspector said it was "not disputed that Robert Carpenter is not a gypsy or traveller, either by definition or ethnicity." The definition which applied in 2009, is effectively the same as that which I must now apply, having regard to *Smith*. Despite some discussion of travel patterns during my hearing, the appellant ultimately accepted that he is not a gypsy or traveller, in terms of planning policy or ethnicity.
46. Mrs Carpenter is an English Romany Gypsy by birth. The Inspector explained in the 2009 appeal decision, why her travelling was insufficient to bring her within the planning policy definition at the time, even though, like many Gypsies, she has a cultural aversion to living in bricks and mortar. However, I heard evidence that, in recent years, Mrs Carpenter has travelled each year to buy and sell goods at fairs, including Appleby, Stow-on-the-Wold, Peterborough and the Midsummer Fair at Cambridge. The extent of travelling is limited both by caring responsibilities in relation to the appellant and her children, and her own health needs, but it has an economic purpose. Having heard further details from the appellant at the hearing, the Council did not wish to dispute gypsy and traveller status and I am satisfied that Mrs Carpenter's nomadism is sufficient to also make her a gypsy in planning policy terms.

Other considerations

47. The 2009 appeal Inspector concluded that there was a "moderate need" for gypsy and traveller sites in Ashford Borough and noted there was no suggestion by the Council that alternative sites were available for the occupants. At that time, the Council accepted the need to allocate gypsy and traveller sites and proposed to prepare a separate development plan document (DPD), with adoption anticipated by the end of 2010. The Inspector accepted this as a "firm intention", and so concluded there was likely to be a material change in circumstances, leading to a realistic likelihood of suitable, affordable, and acceptable accommodation becoming available. Allowing for slippage in the preparation of the proposed DPD, the Inspector considered a 4 year temporary planning permission appropriate.
48. I note from another appeal decision referred to by the Council concerning a site at Willow Paddock, Plurenden Road⁴, that by May 2017, adoption of the DPD was anticipated by about April 2019. However, more than 3 years after that

⁴ Appeal Ref APP/E2205/C/16/3161549, at the Council's appendix B.

anticipated adoption, and more than 13 years after the 2009 appeal decision, the Council still has not allocated any gypsy and traveller sites. It is acknowledged in the Statement of Common Ground (SOCG) that: (i) the Gypsy and Traveller Local Plan is behind schedule, and moreover, "there is no timescale for adoption"; and (ii) the Council does not have a 5 year supply of sites, to satisfy unmet need.

49. The SOCG refers to the acknowledgement in the officer's report of a "5-year need, for 37 pitches" and the fact that the "planned pitch supply increases do not meet all GTAA identified need." I do not know the precise extent of the current unmet need. However, no allocations have been made over many years and none will be made in the foreseeable future. There is no suggestion that there is any alternative, suitable accommodation for the appellant and his extended family, and the Council did not dispute the appellant's statement that they would have to resort to a roadside existence. Roadside camping can cause a range of problems, including environmental impacts and conflict with the settled community.
50. PPTS indicates that where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision, when considering applications for the grant of temporary planning permission. However, the Council agreed that whilst, as a matter of policy, the absence of a 5 year supply will be significant when considering temporary permission, that does not mean it cannot be significant when considering an application for permanent permission. Weight is a matter for the decision maker and, in the circumstances described above - a long-standing failure with no foreseeable resolution - I attach significant weight to the absence of a 5 year supply.
51. In 2009, the previous Inspector took account of the health needs of the appellant's wife and her parents. These supported the need for a settled base, from which to access local medical services.
52. I was provided with written information regarding the health of the current site occupiers, but will not include detailed, sensitive personal information in this decision. Though the appellant's father-in-law has passed away, his mother-in-law's health remains poor, and his wife still requires regular hospital treatment. Significant new issues have arisen since the 2009 appeal decision. The appellant's own health has seriously deteriorated, principally because of a traumatic accident suffered in 2013. Both the appellant's daughter and grandson (born since the previous appeal), also have serious health conditions, and the child requires close monitoring. This would exacerbate the dangers associated with a roadside existence, as well as making easy and consistent access to healthcare especially important. These health issues weigh in favour of the appeal.
53. At the time of the 2009 appeal, the family had no education needs. Now however, 2 of the appellant's grandchildren who live on site are settled in a local primary school and, in due course, they would be likely to attend a secondary school near to that. Forcing the family onto the roadside would clearly disrupt the children's education, which could be especially damaging for the child with serious health difficulties. These education needs also weigh in favour of the appeal.

Other Matters

54. I note the Willow Paddock appeal decision, referred to above. I accept that there are strong similarities to the appeal before me. The main concern in that case was harm to the character and appearance of the rural area, with factors weighing in favour of the appeal including: the occupants' need for a settled home; their personal circumstances; the lack of other available sites; the level of unmet need; and the best interests of children living on the site. However, the degree of harm was different. The Inspector stated that the "site directly abuts, to the east, a contiguous block of 3 authorised gypsy and traveller sites, Pilreed Cottage, Pilreed Lodge and Pilreed Wood", such that the Willow Paddock site appeared as "a discordant intrusion of the larger authorised caravan site."
55. Furthermore, the appellant in that case had moved from a lawful pitch at the Pilreed Cottage site next door, having fallen out with family members on that authorised site. Intentional unauthorised development was a consideration which weighed against that appeal. The circumstances of this case are somewhat different, the appellant having lived on the site for many years, with the benefit of temporary permission, for some of that time. It was not suggested that the issue of intentional unauthorised development should carry any weight against the appeal in this case.
56. In addition, since the Willow Paddock appeal, when adoption of a gypsy and traveller site allocation DPD was anticipated by April 2019, a further 5 ½ years have elapsed with no progress on allocation of gypsy and traveller sites. I now attach greater weight to that factor and the Willow Paddock decision can be distinguished, for all the reasons given.
57. Consistent with PPTS, LP Policy HOU16(j) states that new gypsy and traveller sites should not individually or cumulatively dominate the nearest settled community. Some local residents expressed the view that this point has been reached, and I acknowledge their concerns. However, whilst there are other gypsy and traveller sites in the area, most notably at Pilreed Cottage, Pilreed Lodge and Pilreed Wood referred to above, I am not persuaded that the nearest settled community will be dominated by these developments, and this was not a point argued by the Council.

The planning balance

58. In the 2009 appeal decision, the Inspector concluded that the degree of harm to the area's character and appearance from a permanent site in this location would be "finely balanced" by the need for gypsy sites and the health difficulties which would be caused to the family if the appellant had to resort to unauthorised sites. On that basis, they granted a 4 year temporary permission, but pointed out that the grant of a temporary permission should not be regarded as setting a precedent for the determination of any future application for full permanent permission.
59. The Planning Practice Guidance now reiterates that it will rarely be justifiable to grant a second temporary permission, except where changing circumstances provide a clear rational. It indicates that, further "permissions can normally be granted permanently or refused if there is clear justification for doing so." However, there is "no presumption that a temporary grant of planning permission will then be granted permanently."

60. Notwithstanding the conflict with the development plan arising from the harm to character and appearance, I have found that harm to be at the lower end of significant, and it has been reduced since the 2009 permission by tree planting and the removal of stockade-like fencing. Furthermore, the personal circumstances of the appellant and his family have become more compelling, because of the additional health considerations and new educational needs that have arisen since 2009.
61. Given the enforcement notice, refusal of the appeal would clearly result in an interference with the occupants' rights to respect for their private and family life and their home under Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998. The Article 8 rights of the children on the site must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child, which requires a child's best interests to be a primary consideration. Those interests are not necessarily determinative, but no other consideration is inherently more important. For the reasons given, remaining on site is clearly in the best interests of the children.
62. Safeguarding the character and appearance of the area is part of protecting the rights and freedoms of others and is an objective capable of justifying an interference with Article 8 rights. However, given the degree of harm identified and the scope for further reducing it through the imposition of conditions, dismissal of the appeal would result in a disproportionate and unjustified interference with the rights of the occupiers.
63. I conclude that, notwithstanding the identified harm to the character and appearance of the countryside and the consequent conflict with the development plan, other material considerations indicate that planning permission should be granted. Those considerations are the personal circumstances of the site occupants, including health and education needs; the lack of alternative accommodation and the likelihood of having to resort to a roadside existence; and the general need for gypsy and traveller accommodation, with no allocations likely in the foreseeable future. Those considerations together carry substantial weight, sufficient to outweigh the identified harm in this case.
64. No expected change in circumstances provide a rationale for a temporary permission. The fine balance identified in the 2009 appeal has been tipped, and the matters detailed above provide a clear justification for a permanent permission.

Conditions

65. The need for gypsy and traveller accommodation is part of the justification for the grant of planning permission. Therefore, a condition limiting occupation to gypsies and travellers, as properly defined having regard to the *Smith* judgment discussed above, is necessary, subject to the addition of the appellant. He is not a gypsy and traveller, but his personal circumstances also contribute to the justification for the grant of permission.
66. To safeguard the character and appearance of the area, given the requirement in PPTS to limit very strictly new traveller site development in open countryside areas like this, the number of caravans should be limited to those proposed. However, that part of the Council's suggested condition which

referred to the ability to move caravans on the highway without division into separate parts is unnecessary, as I will refer to the relevant statutory provisions.

67. Also, to safeguard the character and appearance of the area, I will impose a condition to ensure the proposed utility blocks are only constructed in accordance with details first submitted to and approved in writing by the local planning authority. As requested by the Council at the hearing, I shall also include a standard 3 year commencement provision in relation to that operational development.
68. Although the Council's list of suggested conditions included one preventing commercial activity on the site and the appellant raised no objection, this is not strictly necessary. The permission is effectively for a residential caravan site. A material change of use to include a primary commercial use would require planning permission, failing which enforcement action could be taken.
69. A condition preventing the parking or storage of vehicles over 3.5 tonnes is however necessary to safeguard the character and appearance of the area, along with neighbours' living conditions.
70. The Council's suggested conditions also included ones covering landscaping, and foul drainage. These are all necessary and reasonable in the interests of the character and appearance of the area and the living conditions of the site occupants and neighbours. However, as discussed during the hearing, these matters can all be covered in a condition requiring the submission of a site development scheme, which should also cover lighting.
71. As also discussed, the proposal is part retrospective, so a negatively worded condition cannot be imposed. To ensure that the site development scheme condition is enforceable, it needs to provide for cessation of the use if the specified steps are not taken. The 3 month period for cessation I have imposed is shorter than that specified in the enforcement notice, but that is because a further enforcement or breach of condition notice would need to be issued.
72. A separate condition is necessary to require the replacement of trees or other plants in the landscaping scheme if necessary.

Conclusion on appeal C

73. For the reasons given I conclude that the appeal should succeed and planning permission should be granted subject to conditions.

J A Murray

INSPECTOR

SCHEDULE OF CONDITIONS (Appeal C)

- 1) The site shall not be occupied by any persons other than Mr Robert Carpenter and his resident dependants and 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.
- 2) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be static caravans shall be stationed on the site at any time.
- 3) No works in relation to the development of the approved utility blocks shall commence until details of the utility blocks have been submitted to and approved in writing by the local planning authority and their development shall be carried out as approved.
- 4) The Development of the utility blocks hereby permitted shall begin not later than three years from the date of approval in accordance with condition 3 above.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked, or stored on this site.
- 6) The use hereby permitted shall cease and all caravans, structures (including utility buildings), equipment and materials brought onto the land or erected for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - (i) Within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; notwithstanding the details shown on the submitted plans, the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities, (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
 - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

(v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/E2205/C/19/3223506	Mr Robert Carpenter
Appeal B	APP/E2205/C/19/3226544	Mrs Sarah Carpenter
Appeal C	APP/E2205/W/21/3285132	Mr Robert Carpenter

APPEARANCES

FOR THE APPELLANT:

Joseph G Jones of BFSGC

Mr Robert Carpenter

Minnie Brazil, Gypsy Liaison Officer, Nottinghamshire (and Mr Carpenter's sister-in-law)

Joseph J Jones of The Gypsy Cooperative, Kent

FOR THE LOCAL PLANNING AUTHORITY:

Mark Campbell MA MRTPI of Evans Jones Planning Consultants, instructed by the Council

INTERESTED PARTIES:

Mrs Lee, local resident

Gregory Peters, local resident, and member of the Redbrook Street Neighbourhood Group

Mrs Peters, local resident

Councillor Alan Pickering, Ashford Borough Councillor

Alan Austen, local resident

DOCUMENTS SUBMITTED DURING THE HEARING

1. Joseph G Jones' response to pre-hearing note
2. List of suggested conditions
3. Travellers Advice Team News E-Bulletin November 2022 concerning the judgment in *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391