



Appeal Decision

Inquiry Held on 12, 13, 14 October 2021 and 3, 4, 5 and 9 May-2022

Site visit made on 14 October 2021

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2023

Appeal Ref: APP/R2330/C/19/3237832

The land situated at Smithacres, Back Lane, Baxenden, Accrington, Lancashire BB5 2RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by James Smith against an enforcement notice issued by Hyndburn Borough Council.
 - The enforcement notice was issued on 22 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission a material change in the use of the Land from agricultural use to use for residential purposes by the siting of 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles to provide Gypsy and Traveller family accommodation ("the Unauthorised Development").
 - The requirements of the notice are to:
 - i) Discontinue the use of the Land for residential purposes;
 - ii) Remove from the Land all residential caravans;
 - iii) Demolish any day rooms that have been constructed or are under construction;
 - iv) Remove any concrete bases that have been laid on the site;
 - v) Remove any machinery, tyres or equipment that is not required for the agricultural operations on this land;
 - vi) Remove the timber fencing from around the site;
 - vii) Remove any other materials, containers and other paraphernalia which are not related to any agricultural use of this land;
 - viii) Return the land to its previous condition;
 - ix) Remove all resultant rubble and materials from the site.
 - The period for compliance with the requirements is 5 (five) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Preliminary Matters

1. The appeal was also proceeding under ground (d). However, at the Inquiry¹ the appellant confirmed that ground (d) was no longer being pursued.
2. At the outset of the Inquiry there was some discussion about the Notice and whether corrections were necessary. Some of the corrections sought fall to be considered under the various grounds of appeal. However, for clarity, some are more appropriately dealt with here for clarity.

¹ During the cross-examination of the appellant's planning witness at the re-convened Inquiry on 3 May 2022 it was accepted that a mixed use that included a primary residential element, had not occurred for a continuous period of 10 years or more prior to the issue of the notice such that ground (d) could not succeed.

3. There is agreement between the main parties that the residential use is only taking place on a part of the land identified but nevertheless is part of a mixed use on the wider planning unit. The land is not only being used for the grazing of sheep but also the keeping and breeding of horses. The description of the alleged breach should include all primary uses that were taking place within the area identified when the notice was issued. I agree that the primary uses taking place are part of a mixed use.
4. To this end the Council suggested that the description of the alleged breach be corrected to read:

Without planning permission, the material change of use of the land from a mixed use comprising agriculture, horse keeping and horse breeding to a mixed use comprising agriculture, horse keeping and horse breeding and use as a Gypsy and Traveller caravan site providing 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles.
5. Consequential corrections to the requirements of the notice flow from these changes. These are that only machinery, tyres or equipment (requirement v) and materials, containers and other paraphernalia (requirement vii) not required for the keeping and breeding of horses as well as agriculture, need to be removed. In addition, the parties agreed that only concrete bases which have been laid to accommodate the stationing of caravans and day rooms are to be removed (requirement (iv)). I consider that these corrections can all be made without causing injustice to the main parties and I intend to proceed on this basis.
6. The appellant argues that other primary uses, in particular, the storage of containers, were also lawfully taking place, but I shall consider this under ground (b). If necessary, I shall consider whether the notice is excessive in so much as it requires the containers to be removed (requirement (vii)) under ground (f) since this remains an area of dispute between the parties.
7. Since the Inquiry closed and prior to issuing the decision, the main parties were invited to comment on the implications, if any, for the appeal of the judgement of *Lisa Smith v SSLUHC [2022] EWCA Civ 1391*. I have had regard to these responses in reaching my decision.

Decision

8. It is directed that the enforcement notice be corrected by:
 - the deletion of the description of the alleged breach of planning control and the substitution of the following description:

“Without planning permission, the material change of use of the land from a mixed use comprising agriculture, horse keeping and horse breeding and the storage of 4 containers to a mixed use comprising agriculture, horse keeping and horse breeding and the storage of 4 containers and use as a Gypsy and Traveller caravan site providing 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles.”
 - The deletion of the wording of requirements (iv), (v) and (vii) and the substitution of the words:

“(iv) Remove the concrete bases that have been laid on the site to accommodate the stationing of caravans and day rooms.

“(v) Remove any materials, machinery, tyres or equipment and other paraphernalia that are not required for the mixed use of the land for agriculture, or the keeping and breeding of horses on this land;” and

“(vii) Cease the use of the land for the storage of any more than 4 containers and remove all containers from the land except 4;”

9. Subject to these corrections, the appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out with the exception of the storage of 4 containers, namely “the material change of use of the land from a mixed use comprising agriculture, horse keeping and horse breeding and storage of 4 containers to a mixed use comprising agriculture, horse keeping and horse breeding and use as a Gypsy and Traveller caravan site providing 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles on the land”, subject to the conditions attached in Schedule 1.

Reasons

10. The site comprises a rectangular area of land incorporating land used for the grazing of sheep and turnout for horses kept on the site. It is located in open countryside south east of the built up area of Baxenden. The part of the site where existing areas of hardstanding have been increased and caravans are stationed, extends no further east than the poultry sheds situated immediately to the south of the site and Baxenden Cricket ground to the north. The appeal site is close to the built up area of Baxenden. A public right of way runs along the northern edge of the site from Back Lane and connects with a wider network of public rights of way to the east, one of which traverses the appeal site.
11. It was suggested at the Inquiry, that one of the pitches may be occupied by a building used for residential purposes rather than a caravan. The notice that is the subject of this appeal is not against the erection of a dwellinghouse. I have therefore considered the appeal on the basis of the change of use alleged and reach no view on whether the structure referred to is a building (dwelling) or not.

Ground (b)

12. For this ground of appeal to succeed, the onus is upon the appellant to demonstrate that, on the balance of probability, the matters alleged have not occurred. The appellant argues that additional uses were taking place within the area identified on the plan attached to the notice such that it should refer to the keeping and breeding of horses, storage of 4 containers, storage of a caravan and its use for residential purposes and car parking. Some of these uses are now included in the notice as corrected, described above.
13. I established at the Inquiry that carparking was likely to be ancillary to other uses, particularly the sheep dog trials and training that were run by the previous owner. From the evidence before me, it appeared that the sheep dog trials had ceased sometime prior to the purchase of the land by the appellant

and have not continued thereafter. This use and associated car parking need not therefore be referred to in the description of the alleged breach.

14. The Council's position is that any occasional use of a caravan for overnight stays, for example, associated with lambing, is of a different character to the residential use to which the notice is directed. This was not contested in the closing submissions made for the appellant. From the evidence before me, I am of the view, that on the balance of probability, the caravan was used for purposes ancillary to the various uses taking place in any event, rather than a primary residential use. It need not be referred to in the description of the alleged breach.
15. The Council's witness accepted that the evidence appeared to demonstrate, that it was more likely than not that 4 shipping containers had been lawfully stored on the land and this continued to be the case at the time the notice was issued. I agree. I also saw that a number of shipping containers remained during my visit.
16. Based on the evidence before me, and what I observed on site, I consider a further primary use comprising the storage of 4 shipping containers was also occurring as a matter of fact when the notice was issued and should be included in the description of the alleged breach of planning control. It would be necessary to correct the notice and make consequential corrections to the notice which presently requires all containers to be removed. At the Inquiry it was suggested that appropriate wording would need to require the use of the land for the storage of any more than 4 shipping containers to cease and all other shipping containers to be removed that are not ancillary to the mixed use of the site. I consider no injustice would be caused if I correct the notice in these terms.
17. Ground (b) succeeds to this extent.

Ground (a)

18. As a result of the corrections referred to above, the deemed planning application is for the material change of use of the land from a mixed use comprising agriculture, horse keeping and horse breeding and storage of 4 containers to a mixed use comprising agriculture, horse keeping and horse breeding, storage of 4 containers and use as a Gypsy and Traveller caravan site providing 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles.
19. As set out in the National Planning Policy Framework (NPPF), the material change of use of land is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it. There is no dispute between the parties that the mixed use of the site to include a gypsy and traveller caravan site providing 4 no pitches and 4 no day rooms and associated residential paraphernalia and vehicles is inappropriate development in the Green Belt. I agree that it would not preserve openness. This is also consistent with the Planning Policy for Traveller Sites (PPTS) which confirms the change of use of land to traveller sites is inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

20. The main issues are therefore:

- (a) The effect of the development on the visual amenities and purposes of including land in the Green Belt;
- (b) The effect of the development on the character and appearance of the surrounding area; and
- (c) Whether other considerations would clearly outweigh the harm to the Green Belt and any other harm, such that very special circumstances may exist.

Policy Framework

- 21. The development plan includes the Hyndburn Core Strategy (CS) (adopted January 2012) and Development Management Development Plan Document (DPD) (adopted January 2018).
- 22. The reasons for issuing the Notice refer to CS Policy BD 1 'The Balanced Development Strategy' which sets out the overarching principles that underpin the framework for Hyndburn and what individual proposals should adhere to.
- 23. Policies DM15 and DM34 of the DPD are also referred to. Policy DM15 of the DPD is of particular relevance to this appeal. It clarifies that the CS identifies sufficient land to meet the needs of gypsies and travellers until at least 2018 and that sufficient land would be identified in suitable locations, to meet the needs for the remainder of the Plan period in the Council's Site Allocations Development Plan Document (SADPD)². It stipulates that development proposals will be assessed in accordance with PPTS and will be expected to meet a number of criteria. There is no dispute between the parties that the criteria are met, the only exception being in respect of harm to visual amenity which should not be unacceptable. I agree that the appeal site is in a sustainable location being close to Baxendale and not away from a settlement such that PPTS requires development in the countryside to be strictly controlled.
- 24. Policy DM34 'Development in the Green Belt and Countryside Area' sets out the criteria new buildings, extensions, conversion and leisure and recreation proposals should meet. I do not therefore consider it to be relevance to this development involving primarily the material change of use of land other than in respect of day rooms required to facilitate that use. Policy H3 seeks to protect existing sites.
- 25. The Council is in the process of developing a Local Plan containing both Strategic Policies and Site Allocations for Hyndburn. It will, once adopted, replace the 2012 CS. The draft submission version (regulation 19) had yet to be published for consultation at the time of the Inquiry. Whilst Committee members had resolved to proceed to this stage on the basis of 5 traveller site allocations, these had not been subject to any public consultation prior and not all the private sites proposed to be allocated came forward following the call for gypsy and traveller sites – these would therefore be the subject of first consultation at the regulation 19 stage, although various papers have been considered by Members in relation to the site options. I have only afforded the emerging plan limited weight at this stage. Emerging Policy CS11 sets out the

² No Site Allocations Plan has since been adopted.

- requirements to 2036. Proposals for new gypsy and traveller sites would continue to be considered against Policy DM15.
26. A Gypsy and Traveller and Travelling Showperson Accommodation Assessment (GTAA) was undertaken as a joint study on behalf of Hyndburn and Blackburn with Darwen Councils to inform the preparation of their respective plans. The GTAA is dated July 2019. Whilst the GTAA establishes a 'cultural need' for pitches which accords with the overall need for the travelling community, it then applies a PPTS 'policy filter' to determine from that overall need, the households that would also meet the definition contained in Annex 1 (as amended in 2015). For the purposes of the LP, it is the need assessed against the amended definition that is planned for through allocations, not the higher cultural figure.
27. On the basis of the recent *Smith* judgement, that found the 2015 amendment to the definition of Gypsies and Travellers in Annex 1 to be discriminatory to those that ceased to travel due to health or disability and thus unlawful, the Council's approach to meeting the assessed need will need to be carefully considered and may be deemed to be discriminatory and unlawful. In such circumstances the need for pitches to be planned for in the emerging plan, may actually be greater. In any event, notwithstanding the judgement, those with a cultural need, but not meeting the 2015 definition, will still have a need for appropriate accommodation to facilitate their traditional way of life. Windfall proposals would, I was told, be assessed against the criteria in Policy DM15 as is the case with this appeal.
28. The site is currently occupied by the appellant and other family members, who are gypsies and travellers. The occupiers, with potentially the exception of the appellant's mother, would currently meet the 2015 definition contained in Annex 1 of the PPTS. Bearing in mind the recent *Smith* Judgement, I am mindful that the appellant's mother would meet the definition as it was in 2012, prior to the 2015 amendment. In any event, I am nevertheless satisfied that the family group, taken as a whole, would meet the definition, notwithstanding the 2015 amendment and that the appeal should be approached on this basis. PPTS is a material consideration in the determination of this appeal as well as the NPPF.

Green Belt

29. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The key additional component of the mixed use is the residential use comprising 4 pitches. The introduction of caravans and associated development and residential paraphernalia has reduced openness such that I have found it to be inappropriate development. The Council also considers that it results in encroachment into the countryside and thus offends one of the purposes of including land in the Green Belt.
30. The residential use is generally contained within that part of the site that already contains agricultural buildings and areas of hardstanding. There are existing poultry buildings to the south and properties within the settlement of Baxendale close by both to the north and west. So, whilst a large part of the linear shaped appeal site is open grazing land, to my mind encroachment into the countryside is limited as the caravans are not stationed so as to encroach

further to the east, into the open fields, than any existing built development on the site.

31. Some of the mobile homes stationed on the site at the time of my visit, are nevertheless clearly visible in distant views looking west from the public footpath that crosses the site. Appropriate landscaping to the east of the area where the buildings and pitches are situated, together with consideration of where individual caravans should be stationed would help minimise their prominence in this view. I accept the appellants' proposition that the removal of the four storage containers that could lawfully remain and which themselves have an impact on openness would offer some further mitigation of harm to openness and the visual amenities of the Green Belt. This can be secured through appropriately worded conditions.
32. To conclude I find harm to openness is minimal and I do not consider the harm to the visual amenity of the Green Belt is unacceptable. I find no conflict with Policy DM15 in this regard.

Character and appearance

33. As previously set out, the appeal site, in so far as where the mobile homes are stationed, is viewed in the context of the row of large poultry sheds almost immediately adjacent to the site. Notwithstanding those policies tend to be supportive of agricultural buildings in the countryside, it is nevertheless notable that when granting planning permission for the two relatively high agricultural buildings on the appeal site, that the Council did not consider that the harm to the character and appearance of the area was unacceptable.
34. Users of the footpath running adjacent to the northern boundary are, for part of it, confronted by a tall close boarded fence which is clearly of detriment to the character and appearance of the area. The Council's landscape witness conceded that this harm was limited in so far as the harm is contained, but that in any event, could be addressed by a condition requiring the removal of the fence and replanting of trees and erection of a stock proof fence. I agree this would be far more in keeping with the rural character of the immediate area where there is a transition from the built form of Baxendale to the open countryside beyond and ensure removal of the uncharacteristic fencing.
35. Whilst I consider the residential use will cause some harm to the character and appearance of the area, those impacts are very localised. The removal of the four storage containers that could lawfully remain and which themselves have an impact on character and appearance mitigates at least to some extent, that localised harm. The replacement of the close boarded fence and additional planting, as described above, would further mitigate the visual harm. The harm to the character and appearance of the area would not therefore be unacceptable.
36. To conclude, I find no conflict with policy DM15 in this regard.

Other considerations

37. A number of 'other considerations' are advanced by the appellant, in support of the appeal, which I shall address below.

General need for accommodation for gypsies and travellers

38. The GTAA identifies that for the Local Plan Period (to 2036) there is a cultural need for 60 additional pitches of which 49 are needed to accommodate those meeting the PPTS (as amended in 2015) definition. Site allocations are only proposed in the emerging plan to address the needs of those meeting the 2015 definition.
39. An estimated turnover of 7 pitches on a public site known as Whinney Hill would, it is expected, reduce the PPTS status need to a requirement of 42 pitches. However, this site is, I heard, unlikely to remain in public ownership since the County Council wish to sell it and the Borough Council do not intend to purchase it. If the site were to be privately owned in the future, no turnover rate would be applied based on the methodology used in the GTAA. Given this uncertainty, for the purposes of this appeal, I consider it appropriate to discount any allowance for turnover. That said, even taking the lower assessment figure of 42, the need is still considerable.
40. Milton Street is a mobile home park with planning permission for 5 pitches. Although included in the supply because it is currently occupied as a gypsy and traveller site, its occupation by gypsies and travellers is not restricted in any way. The Council's policy seeks to protect existing sites for occupation by gypsies and travellers and this is similarly proposed in the emerging plan. However, I fail to see how that policy protection could be achieved on this particular site. There would be no breach of condition if it were occupied as a general park home and I do not envisage any reason for an application to be submitted other than to develop the site for something other than a caravan site. It seems to me, on the evidence before this Inquiry, that there is no mechanism to protect this site. This greatly undermines whether the site can be relied upon as part of future supply. I therefore consider the need for pitches in the future may actually be greater.
41. To conclude, the general need for sites over the plan period is considerable. Some of that need is immediate. Depending on the outcome of the sale of Whinney Hill, and how Milton Street may be secured as part of future supply, the need for those meeting the PPTS definition (2015) could be greater. The GTAA that underpins the assessment of need carried forward in the LP and the site allocations proposed in the emerging plan to address that need have not yet been subject to any public scrutiny or examination. In any event, the adoption of the plan is still some way off and so remains of limited weight.
42. Questions of how wider cultural need will be met remain, even more so in light of the recent *Smith* judgement. Windfall proposals to meet cultural need would also be addressed against Policy DM15, as is the case here. I afford the general, immediate and considerable need for additional pitches for both those with PPTS status as defined in the GTAA and cultural need substantial weight.

Failure of policy

43. The appellants referred me to another appeal decision, in which the Inspector reasoned in 2016, that Policy H3 had failed to deliver pitches, due inter alia to the absence of a 5 year supply of pitches at that time and the reliance of one single site to meet need. Whilst the context of the current situation can be distinguished from some of the criticisms of the Inspector at that time, the CS indicated the need for a Site Allocation Plan to identify sites to address need

beyond 2018. Despite the identification of that need beyond 2018 and the lack of a 5 year supply in 2016, little has been achieved on the ground some years on. In fact, I was informed by the appellants' witness that planning permission has been granted to develop a site, previously used as a gypsy and traveller site, for other development rather than safeguarding it³. This further undermines the commitment of the authority to ensure appropriate provision is made.

44. The work done on the emerging LP in so far as it relates to the provision of sites for gypsies and travellers is noted. The GTAA that underpins the assessment and the justification for the allocations is still to be considered as part of the LP examination. Whilst it is anticipated to be adopted before 2024, there has nevertheless been a persistent failure of the Council for some time to make necessary provision and no 5 year supply achieved. I therefore give this failure great weight.

Other matters

45. No substantive evidence is before me to demonstrate that the use of Back Lane to provide access in association with the mixed use would be of detriment to highway safety. The number of traveller sites in Hyndburn borough would not be a reason to withhold planning permission – there is clearly an assessed need for more pitches to be provided.

Planning Balance

46. The NPPF confirms that the Government attaches great importance to Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
47. In this instance the harm to openness is minimal and I do not consider the mixed use results in encroachment into the countryside to any greater extent that was happening already. Subject to the removal of the 4 containers, the harm to the visual amenity of the Green Belt and to the character and appearance of the area is also minimal.
48. Weighing in favour of the development is the immediate and general need for further pitches that exists and to which this development would contribute. Whilst Policy E of the PPTS states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances, in this case, the unmet need is considerable and should be afforded substantial weight.
49. Added to this is the persistent failure of this Council to address the need for pitches to meet the needs of the gypsy and traveller community which stems back to before 2016 and to which I afford great weight. The site is very well located in terms of its proximity to Baxendale. The harm arising is not unacceptable such that there is no conflict with Policy DM15, the policy of most relevance in this appeal and against which all proposals for cultural need and

³ Loss of pitches from the site known as the Greens

the filtered PPTS status need will be addressed. This, in my view, is of great significance and important to recognise; I afford this significant weight.

50. In this instance, I consider these other considerations do therefore clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm. I need not therefore go on to consider the personal circumstances of the site occupiers or the best interests of the children occupying the site.

Conditions

51. The Council have 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 1 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. It would be necessary to ensure that the occupancy of the pitches is restricted in a way that the site would continue to be available for and contribute to the accommodation needs of the gypsy and traveller community as it is the general need for additional pitches together with the compliance with Policy DM15 that justifies the development. Policy DM15 relates to both those referred to as having a cultural need and those with PPTS status having regard to the amendment; the overall cultural need arising is significant. I shall therefore limit occupancy to gypsies and travellers having regard to the PPTS definition prior to the amendment. An occupancy condition need not be personal since personal circumstances were not considered.
52. The permission should be restricted to the 4 pitches proposed with no more than 2 caravans (of which one may be a static) and a day room. Details of the internal site layout, day rooms, means of enclosures, foul and surface water drainage, proposed external lighting on the boundary of the site, and landscaping will all need to be agreed in the interests of the visual amenities of the area. As the residential use has already commenced, such details should be secured and implemented within specific timescales, otherwise the residential use should cease. Landscaping should thereafter be maintained.
53. Since the removal of the containers is considered necessary to mitigate the visual harm, a condition requiring the removal of all the containers will also be required. Whilst the four containers form part of the deemed planning application following success on ground (b), it would not be appropriate to grant planning permission for the mixed use alleged that would include them only for a condition to then be imposed to remove them. Nor would a split decision granting planning permission in part only (i.e., the mixed use without the containers) be appropriate since that would require planning permission to be refused for the storage of 4 containers, found to be lawful, and against which no enforcement action could be taken. I shall therefore adopt a pragmatic approach and grant planning permission for the mixed use excluding the storage of 4 containers and impose a condition requiring their removal.
54. I also agree that any permitted development rights should be removed to ensure approval is first required in order to protect the character and appearance of the area.

Conclusion on ground (a)

55. Subject to the imposition of these conditions, the appeal on ground (a) succeeds in so far as it relates to the mixed use excluding the storage of 4 containers.

Overall Conclusions

56. For the reasons given above I conclude that the appeal should succeed in respect of ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation but exclude the storage of 4 containers. The notice shall be quashed.

C. Sherratt

Inspector

Schedule 1 – Conditions

- 1) 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.
- 2) There shall be no more than 4 pitches on the site and on each of the 4 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan. There shall be no more than one day room provided on each pitch.
- 3) Unless within 2 months of the date of this decision the use of the land for the storage of containers has ceased and all stored containers are removed, and the close boarded fence immediately adjacent to the public footpath along the northern boundary of the site is removed, the residential use of the land shall cease, and all caravans brought onto the land for the purposes of such residential use shall be removed. The residential use shall not re-commence until such time as the containers and fence are removed.

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.

- 4) The residential use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days 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;
 - the internal layout of the site, including the siting of caravans, pitches, day-rooms, hardstanding, access roads, parking and amenity areas;
 - details of each day-room including dimensions, design and materials;
 - any proposed means of enclosure(s),
 - proposed and existing tree, hedge and shrub planting 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, an appeal shall have been made to, and accepted as validly made by, 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.

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.

- 5) At the same time as the site development scheme required by condition 4 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.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those approved under condition 4 above shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No external lighting, other than that approved under Condition 4 shall be provided without the prior written permission of the Local Planning Authority.

APPEARANCES

FOR THE APPELLANT:

Mr A Masters	instructed by Mr Carr
He called	
Mr Rhodri Crandon	Of Tirlun Design Associates (Landscape Witness)
Mr Jim Smith	Appellant
Mr Edward Smith	Appellant
Mr Michael Carr	Appellants' agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Easton	instructed by The Council's solicitor
He called	
Miss P Bennett	Of Penny Bennett Landscape Architects (Landscape Witness)
Dr Michael Bullock	Managing Director of ARC4
Ms Christine Whittle	Planning Policy Witness for the LPA
Mr Martin Hindle	Enforcement Officer for the LPA
Mr Simon Prideaux	Chief Planning and Transportation Officer for Hyndburn Borough Council

INTERESTED PERSONS:

Mayoress Cllr Mrs K Pratt – Baxendale Ward Councillor
Cllr Mr Hurn - Ward Councillor
Mr I Binney - Local resident

DOCUMENTS SUBMITTED AT INQUIRY

- 1 Letter from the appellant's Vet.
- 2 Letter relating to 'Area of Growth' near Whinney Hill gypsy and traveller site.
- 3 Letter from James West, owner of The Greens site.
- 4 Article from Lancashire Evening Telegraph.
- 5 Email from Lancashire County Council setting out position in relation to Whinney Hill Traveller Site.
- 6 Google Earth image of Sough Lane site.
- 7 Statutory Declarations (x3)
- 8 Petition produced by the appellant.
- 9 Amended version of Enforcement Notice.
- 10 Opening Statement on behalf of the Council.
- 11 Council's response to letter re: Whinney Hill site
 - (a) Land registry extract
 - (b) Sales particulars.
- 12 Signed Statement of Common Ground in relation to extent of hardstanding.

- 13 Viewpoints from which asked to view site.
- 14 Update on the emerging Hyndburn Local Plan