



Appeal Decisions

Site visit made on 8 November 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal A Ref: APP/A0665/C/22/3295962

Land off Norley Lane, Crowton, Northwich, Cheshire CW8 2RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. ("the Act")
- The appeal is made by Mr Alan Sharpe against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 8 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of wooden entrance gates across the site access and the siting of a concrete slab adjacent to the south east boundary of the field ("the unauthorised development").
- The requirements of the notice are to:
 - (i) Remove the wooden entrance gates from the Land.
 - (ii) Remove the concrete slab and associated materials from the Land and restore the Land to its previous condition.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Act. 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/A0665/W/22/3299705

Land off Norley Lane, Crowton, Northwich, Cheshire CW8 2RR

- The appeal is made under section 78 of the Act.
- The appeal is made by Mr Alan Sharpe against the decision of Cheshire West and Chester Council.
- The application Ref 21/03502/FUL, dated 20 August 2021, was refused by notice dated 3 December 2021.
- The development proposed is change of use of land to a Gypsy/Traveller pitch including replacement building to be used as a dwelling and retrospective application for gateway entrance and engineering works of concrete slab for touring caravan.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Appeal A on ground (f), against the enforcement notice, includes wooden gates and the siting of a concrete slab. The concrete slab is sited on the land and is proposed to be retained in the appeal against the Council's refusal of planning permission in Appeal B. As such, I will deal with Appeal A, and Appeal B together.

2. The description of the proposed development in the banner heading above for Appeal B, is the revised description which was agreed between both main parties¹ at the planning application stage. Therefore, the proposal was determined on this agreed revised description. The Council dealt with the proposal on this basis and so shall I.
3. The appellant asserts that the notice was served in error as no planning fee was attached to enable the ground (a) appeal on Appeal A. The Council served the notice, with an accompanying cover letter specifying the prescribed fee, as required by s173(10) of the Act and the Regulations². As such, Appeal A complies with the requirements of s173. The fee was not paid within the specified period and ground (a) has lapsed. Ground (a) therefore, fails to be considered in accordance with s177(5A) of the Act, in Appeal A.
4. I have also had regard, and in accordance with Paragraph 30 of the National Planning Policy Framework, 2021 (the Framework) in this appeal decision to the Norley Neighbourhood Plan (NNP), made 3 February 2016, which the Council provided as part of their Appeal B submission.
5. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.
6. In light of the recent *Smith*³ judgement, and in the interests of natural justice, the main parties have had the opportunity to make representation in regard to the definition of "Gypsies and Travellers" as set out in Annex 1 of the Planning Policy for Traveller Sites 2015 (PPTS). I have taken those representations in to account in this decision.

Appeal A – Ground (f)

7. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. The purposes of an enforcement notice are set out in section 173 (4)(a) or (4)(b) of the Act.
8. Requiring the unauthorised development to be removed would do no more than to remedy the breach that has occurred. Consequently, it cannot be an excessive requirement.
9. At Section 3 of the notice, the alleged breach of planning control relates to *'the erection of wooden entrance gates across the site access and the siting of a concrete slab adjacent to the south east boundary of the field ('the unauthorised development')*.
10. The appellant asserts that the wooden gates the subject of the notice have been removed and now replaced. However, when the notice was issued the wooden gates which are the subject of the notice comprised of a set of close boarded timber gates with black railings on top. It is clear therefore that

¹ Email correspondence dated 2 November 2021.

² The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

³ *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

anything less than their permanent removal would not remedy the breach, and the purpose of the notice is to fully *remedy the breach of planning control*.

11. I consider that the requirements at Section 5(i) are entirely reasonable and do not exceed what is necessary in order to satisfy the purposes of the notice under s173(4)(a). Furthermore, s181(1) of the Act provides that compliance with any requirements does not discharge a notice. A notice has an enduring effect against subsequent development, in that any later re-breach of requirement can be enforced against.
12. In respect of the requirement at Section 5(ii) of the notice, the appellant argues that this is excessive, as the concrete slab has now been topsoiled and grassed over. There are no associated materials on the land, and the concrete slab is to be retained for agriculture under permitted development rights.
13. The concrete slab is located to the south-eastern side of the field, and I saw this had been grassed over. However, the purpose of the notice is to remedy the breach, and even with leaving the slab under the grass, it would not fully remedy the breach of planning control. The requirement at Section 5(ii) is clearly to remove the concrete slab from the land. I consider that this requirement is entirely reasonable and does not exceed what is necessary in order to satisfy the purposes of the notice under s173(4)(a).
14. As I saw during my visit to the appeal site there is no agricultural function taking place on the land where the concrete slab is sited. Furthermore, I have no evidence before me that it would meet the limitations in Part 6(A) of the GPDO⁴, or any evidence why it was designed for the purposes of Part 6. Moreover, there is no ground (a) for me to consider and the arguments are not relevant to a ground (f) which is only concerned with whether the requirements exceed what is necessary in order to remedy the breach. In any event, had an appeal on ground (b) been made (that the matters alleged had not occurred) it would have failed for these reasons.
15. Nevertheless, there is nothing from the Council's evidence which clarifies what the reference to "associated materials" might be and so it is unclear what precisely should be removed. Moreover, the breach would be fully remedied by the removal of the concrete slab as required in the first part of the wording of 5(ii). For these reasons, I will vary the requirement by deleting the reference to "and associated materials" from the notice.
16. For the above reasons, I conclude that the appeal on ground (f) succeeds only to the extent set out above, and I shall vary the requirements of the notice accordingly.

APPEAL B

Main Issues

17. The main issues in this case are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- Whether the proposal would be in an accessible location;

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

- Whether the proposal would constitute an acceptable form of development, in respect of the countryside location;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the openness of the Green Belt; and
- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development

18. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The PPTS, Policy E, sets out that traveller sites in the Green Belt are inappropriate development.
19. Policy STRAT 9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (adopted January 2015) (LP1), seeks to protect the Green Belt and countryside by restricting certain forms of development. In settlements and areas of the countryside that are within the Green Belt, additional restrictions will apply to development in line with the Framework.
20. The appellant refers to the exceptions to being inappropriate development in relation to buildings and material changes of use listed at paragraphs 149 and 150 of the Framework respectively.
21. The appeal site lies within open countryside and the designated North Cheshire Green Belt. The proposal is for a change of use of land to a gypsy and traveller site, retain the concrete slab, gates and the provision of a new dwelling. This would introduce a new substantial sized building within the site for residential purposes, a touring caravan to be sited on the existing concrete slab, hardstanding, the wooden entrance gates and pillars, and domestic paraphernalia.
22. As I saw during my site visit, there are immediate views of the site from along Norley Lane, including at the point of access to the site. The existing roadside hedgerow and vegetation located to the south and southeast positioned along Norley Lane was sparse in parts, and did little to prevent longer range views into the site with significant unrestricted views from the adjoining field gate access. The appeal site was clearly discernible in those views.
23. I acknowledge there are existing buildings on the site already, which have a considerable physical presence. However, one of these buildings would be removed and the proposed residential dwelling would exacerbate this situation by the introduction of a notably larger residential building resulting in increases in volume and footprint. Furthermore, the proposal would also introduce a touring caravan on the concrete slab, that further adds to a physical presence.
24. The proposal would therefore reduce openness both visually and spatially, thereby resulting in harm to the Green Belt. Its occupation, new building,

operational development and associated coming and goings, including vehicles for residential use further reduces openness.

25. As such, it also conflicts with one of the purposes of the Green Belt in seeking to safeguard the countryside from encroachment. Since the change of use does not preserve openness and conflicts with one of the Green Belt purposes it does not constitute an exception within paragraph 150(e) of the Framework.
26. With regard to paragraph 149 of the Framework, the erection and use of the building as residential accommodation is not one of the appropriate facilities listed at 149(b); it does not replace a building that was in the same use listed at 149(d); and does not constitute the redevelopment of 'previously developed land'⁵ in 149(g). In relation to (b) and (d) it would also fail to preserve openness and would conflict with one of the Green Belt purposes as I have set out earlier.
27. As the appeal proposal would not meet any of the exceptions in paragraphs 149 or 150 of the Framework, it would constitute inappropriate development in the Green Belt, which is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The development is contrary to Policy STRAT 9 of the LP1, which seeks to protect the Green Belt from inappropriate development.

Openness and purpose

28. As set out in paragraph 137 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence.
29. For the reasons set out previously, I conclude that the development fails to preserve the openness of the Green Belt and would not assist in safeguarding the countryside from encroachment.

Accessibility

30. Policy SOC 4 of LP1 permits proposals for private and public gypsy and traveller sites where they meet certain criteria. Amongst other matters, proposals should be well located in relation to the highway network with adequate vehicular and pedestrian access, and be accessible to local services and facilities by walking and/or public transport.
31. There is an absence of formal footways linking the appeal site with the wider area along Norley Lane, and the highway is devoid of any street lighting. As such, the opportunities to use sustainable modes of transport are restricted, and I consider that most journeys to and from the appeal site would be made by private motor vehicles, whether to the village of Norley, Kingsley or Crowton. However, these journeys to reach facilities and services within the nearby towns would not be unduly long and these villages offer a range of facilities including shops, GP services and schools.
32. Moreover, paragraph 105 of the Framework explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In any event, the provision of a settled base for 1 gypsy household

⁵ Framework Annex 2 excludes from the definition of 'previously developed land' land that is or last occupied by agricultural buildings

would facilitate access to local facilities, services and schooling, and reduce the likely extent of long-distance travelling, in line with paragraph 13 of PPTS.

33. The appeal site is not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS, and it would enable reasonable and satisfactory access to local schools and other amenities.
34. For the reasons given above, I conclude that the appeal site is an accessible location for gypsy and traveller accommodation, with particular regard to accessibility to local services and facilities. The proposal would therefore on balance, not be in conflict with policy SOC 4 of the LP1, in locational terms as I have set out.

Suitable Location

35. The appeal site is located outside of any settlement boundary and is wholly within the open countryside for planning policy purposes. LP1 Policies STRAT 1 and STRAT 2, set out the Council's strategic approach to locate new housing within identified settlements, with Policy STRAT 8 directing new housing development to within Local Service Centres. This is further supported by Policy DM19 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (adopted July 2019) (LP2) where proposals for new residential development outside of identified settlements requires to meet the criteria in STRAT 1 and STRAT 9 of the LP1.
36. LP1 Policy STRAT 9 restricts development which requires a countryside location and cannot be accommodated within identified settlements, which excludes gypsy and traveller sites. Certain developments are permitted, including agricultural or forestry operations, replacement buildings, rural/farm diversification, the reuse of existing rural buildings for economic purposes where they are of permanent construction without the need for major reconstruction, and the expansion of existing buildings to facilitate business growth.
37. In this case, the proposal would introduce a new substantial residential dwelling, which would not meet any of the criteria which is set out in both STRAT 9 and DM 19. Furthermore, the NNP Policy HOU1 only supports new housing where it accords with Policy STRAT 9 or that very special circumstances justify housing in the Green Belt.
38. Even if I were to consider that the building was not a new dwelling, as the appellant asserts, from the evidence before me it would still not meet the strategic housing policy criteria, or be one of the developments permitted in respect of residential accommodation outside of the existing settlement hierarchy. Furthermore, I do not consider that STRAT 9 or DM 19 are overly restrictive, as they allow for new residential development where it meets the stated purposes, and the overall aims are to restrict and protect the countryside from inappropriate forms of development.
39. My attention has been drawn to the previous appeal decision⁶ at the site. I do not have the precise details of that case, and whether the proposal before me is directly comparable or that evidence had been misunderstood. However, in that decision, Appeal A was dismissed for a certificate of lawful use or development relating to an existing building and its curtilage as residential use,

⁶ APP/A0665/X/15/3137652, APP/A0665/X/15/3136751

and Appeal B was dismissed for the re-use of a building on the site, unlike the proposal before me which is for a change of use of the land including the erection of a new building (dwelling).

40. I have also had regard to the appeal decision⁷ the Council refer too, however this relates to a different proposal and not gypsy and traveller accommodation. I have already set out above why the proposal would not amount to previously developed land. Moreover, I have dealt with the appeal on the basis of the evidence before me, and my own observations.
41. For the reasons given above, I conclude that the appeal proposal would not constitute an acceptable form of development with particular regard to its countryside location. It would be in conflict with Policies STRAT 1, STRAT 2, STRAT 8 and STRAT 9 of the LP1, Policy DM 19 of the LP2 and Policy HOU1 of the NPP, as I have already set out.

Character & Appearance

42. The appeal site is located within distinctly rural surroundings, within the open countryside. In this regard, Policy SOC 4 of the LP1 requires gypsy and traveller accommodation to be well related to existing settlements, and Policy STRAT 9 seeks to protect the intrinsic character and beauty of the countryside. It requires that development must be of an appropriate scale and design to not harm the character of the countryside.
43. Policy DM 3 of the LP2 expects development to achieve a high standard of design that respects the character and protects the visual amenity of the local area, and, in line with LP1 Policy ENV 6 which promotes sustainable, high-quality design and construction to development, amongst other criteria it includes respecting local character. LP1 Policy ENV 2 protects landscape character and local distinctiveness. These policies are supported by Policy LC1 of the NNP.
44. The appeal site is set back from Norley Lane, and the site is generally flat and identified as an agricultural field. There is tree, vegetation, and hedge coverage along the boundaries of the field, although this is sparse to some degree to the south. The immediate area is characterised by vast amounts of undeveloped low lying agricultural fields, of open nature, and mainly with low hedgerows that run alongside the highway boundary. There is very little built development in close proximity to the appeal site along Norley Lane, although nearby Kingsley Road is scattered with residential dwellings.
45. I acknowledge that there are nearby villages, and these are a relatively short distance away for the purposes of accessibility. However, given the vast amount of open countryside, intervening fields, and the lack of the immediate and wider built form the development would not be well related to any dispersed settlement pattern or its surroundings, which would not be in line with Policy SOC 4.
46. The proposal would be for a new dwelling and 1 touring caravan. There would be associated parking, hardstanding, a building erected, and domestic paraphernalia associated with the household. In contrast to the existing situation, the proposal would introduce modest residential use, on land which is relatively open and currently has limited built form. The dwelling and touring

⁷ APP/A0665/W/20/3261183

caravan would not be screened well. Whilst there are trees and vegetation, the southern boundary is intermittent resulting in the appeal site being highly visible when stood and viewed from upon Norley Lane looking towards, and directly at the site.

47. Furthermore, the wooden gates I saw, combined with the existing extensive fencing boundary treatment within the site would be out of character with the open nature and prevailing natural boundary treatments in the area to the detriment of the character and appearance of the street scene.
48. Therefore, given the flat nature of the land, the dwelling, structures, vehicles, and associated domestic paraphernalia would lead to a notable intrusion. The proposal would appear as an alien and urbanising feature within the landscape setting. It would be at odds with the open, verdant character of the immediate countryside the site falls within, and would fail to integrate into the landscape character of the area. Although landscaping is proposed, based on what is before me I am not satisfied it would adequately mitigate the development in this regard. Moreover, the concrete slab would be retained to facilitate the siting of the touring caravan as indicated on the plans, adding to the visual and urbanising harm.
49. Accordingly, I conclude that the proposal would cause adverse harm to the character and appearance of the area. This would be in conflict with Policies STRAT 9, SOC 4, ENV2, ENV 6, of the LP1, Policy DM 3 of the LP2 and Policy LP1 of the NNP, as I have already set out. It would also be at odds with the principles of the Framework to recognise the intrinsic character and beauty of the countryside, and valued landscapes.

Other Considerations

50. Policy SOC 4 of the LP1 seeks to ensure appropriate provision for gypsies, travellers and travelling showpersons accommodation needs. This policy criterion is used to guide the site allocation process. It sets the overall need for site provision identified from 2013-2028, in line with the Cheshire Gypsy, Traveller and Showpeople Accommodation Assessment (March 2014), (GTAA). An updated GTAA, which serves the Local Authorities of Cheshire East, Cheshire West and Chester, Halton and Warrington were completed in July 2018.
51. In the Borough, for the period of 2017-2030/32 it identified a need of 21 pitches by 2030, and 2 pitches 2030-32 to meet the need of those with PPTS status. The Council assert that a total of 20 pitches had been delivered in the Borough, resulting in a supply of 6.5 years and a residual requirement for 1 pitch to be delivered by 2030.
52. The appellant has sought to raise issue that the Council have a lack of 5-year supply of sites. However, I have no substantive evidence to the contrary, and the GTAA forms the most-up-to-date assessment of need in the Borough. Nevertheless, the proposal would contribute to the supply of gypsy and traveller pitches, which I attach weight to in support of allowing the appeal.
53. The appellant has set out that there are no other suitable and available sites accessible to meet the needs of his family. On the basis of the evidence before me, there does not appear to be any reasonable alternative accommodation for the appellant and his family to move and have a settled base together. Thus, I

consider that having a settled base at the appeal site would result in a number of benefits to the appellant and his family that weigh in favour of the proposal.

Personal Circumstances

54. The appellant and his family are Romany Gypsy's and are living temporarily on an existing site in Cheshire. He travels for work purposes, and has a personal need for a settled base at the appeal site. He has four children, two who attend a school (although it is unclear from the evidence before me whether the school is locally based). A number of the proposed occupants have significant health issues. The care of these issues would benefit from a settled base where the family could permanently reside, and GP registration could take place. The Council has also not disputed the appellant's Gypsy status.
55. The personal occupancy of the site could be controlled by condition. Any future intensification of the site would be a matter for the Council. In light of the above, the personal circumstances put forward by the appellant, the need for culturally appropriate accommodation, and the needs of the family, these matters add considerable weight in support of the proposal. However, I have no substantive evidence that future occupants of the site are currently living in harmful conditions, and it has not been demonstrated that if the appeal were dismissed it would result in a realistic prospect of roadside existence, so I give this consideration only limited weight.

The best interests of the children

56. The best interests of children are a primary consideration in this appeal. No other consideration is inherently more important than their best interests in safeguarding and promoting their welfare. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment, and in all of the circumstances of the case. Nonetheless, I have kept the best interests of the children at the forefront of my mind in reaching my decision.
57. Children would live at the site, and I acknowledge that not all but most have health issues, and a settled base would provide suitable access to GP, and hospital facilities. The children are of school age, and the family would like a settled base in the future for access to education, and that it is important for their emotional wellbeing and independence. Therefore, I afford substantial weight to the best interest of the children.

Other Matters

58. The proposed development would not cause any harm in respect of the living conditions of nearby occupiers, highway safety, contamination, flooding and biodiversity. There is no evidence that it would result in noise disturbance or anti-social behaviour. Unauthorised works or use at the appeal site would be future matters for the Council. Suitably worded conditions could address lighting, drainage, and biodiversity.

Planning Balance and Conclusion on Appeal B

59. PPTS paragraph 16 states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special

circumstances. PPTS paragraph 24 sets out a range of relevant matters to consider when considering proposals for traveller sites.

60. The proposal would cause harm to the character and appearance of the area, and would not constitute an acceptable form of development with particular regard to its countryside location, and I afford this moderate weight. It would be inappropriate development in the Green Belt. This is harmful by definition and to which I attach substantial weight. The development would reduce the Green Belt's openness, which gives rise to additional harm, and it does not assist in safeguarding the countryside from encroachment. The substantial harm renders the development contrary to the requirements of the Council's Development Plan policies and in conflict with the Framework.
61. Against the substantial harm I have identified, the other considerations advanced by the appellant are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
62. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellant and his family, who intend to occupy the site have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to the Green Belt can only be adequately addressed by dismissal of the appeal. Any interference with the human rights of the appellants, their family and potential occupants of the site is therefore necessary and proportionate.
63. The development would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations that would indicate that the development should be determined other than in accordance with the development plan.
64. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

Appeal A

65. It is directed that the enforcement notice is corrected and varied by:

- in Section 5(ii) deleting the words "and associated materials".

50. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Appeal B

51. The appeal is dismissed.

K A Taylor

INSPECTOR