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## Appeal Decisions

Hearing held on 13 December 2022

Site visit made on 13 December 2022

**by Sarah Dyer BA BTP MRTPI MCMI**

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

**Decision date: 17 January 2023**

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**Appeal A Ref: APP/E3715/C/21/3267184**

**Appeal B Ref: APP/E3715/C/21/3267185**

**The land adjacent to Millers Lane, Fosse Way, Monks Kirby CV23 0RT  
OS Reference 445326, 283466**

- Appeal A and Appeal B are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Bradley Ayres and Appeal B by Mr Teddy Jones against an enforcement notice issued by Rugby Borough Council.
  - The notice, numbered 2020/08, was issued on 22 December 2020.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use from forestry to a mixed use as a forestry and the siting of static caravan/mobile home, a storage unit and a portaloo.
  - The requirements of the notice are to:
    - i) Cease the unauthorised use of the land
    - ii) Remove from the land the static caravan (the definition of caravan is as defined by the Caravan Sites and Control of Development Act 1960 as amended by Section 13 of the Caravan Sites Act 1968) not associated with the agricultural use of the land
    - iii) Remove from the land the storage unit
    - iv) Remove from the land the portaloo
    - v) Reinstatement the land with uncontaminated topsoil of a depth of 15cm, reseed with native grass and restore the land to use as a paddock.
  - The periods for compliance with the requirements are:  
Requirements i, ii, iii and iv – twenty eight days  
Requirement v – three months
  - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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**Appeal C Ref: APP/E3715/C/21/3267187**

**Appeal D Ref: APP/E3715/C/21/3267188**

**The land adjacent to Millers Lane, Fosse Way, Monks Kirby CV23 0RT  
OS Reference 445326, 283466**

- Appeal C and Appeal D are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal C is made by Mr Bradley Ayres and Appeal D by Mr Teddy Jones against an enforcement notice issued by Rugby Borough Council.
  - The notice, numbered 2020/08, was issued on 22 December 2020.
  - The breach of planning control as alleged in the notice is:
    - i) Laying down of hardcore/tarmacadam to form a hard surface
    - ii) Erection of fencing.
  - The requirements of the notice are to:
    - (i) Remove the fencing
    - (ii) Remove the hardcore/tarmacadam and other surfaces from the land
    - (iii) Remove from the land any materials resulting in compliance with (i) and (ii) above
    - (iv) Reinstatement the land with uncontaminated top soil to a depth of 15cm, reseed with native grass
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- (v) Restore the land to its previous authorised use.
  - The periods for compliance with the requirements are:  
Requirements i, ii and iii – twenty eight days  
Requirement iv and v – three months
  - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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**Appeal E Ref: APP/E3715/W/21/3278838**

**Land south-west of Foxons Corner, Fosse Way, Monks Kirby, Rugby, Warwickshire CV23 0RL**

- 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 Bradley Ayres and Mr Teddy Jones against the decision of Rugby Borough Council.
  - The application Ref R20/1062, dated 6 December 2020, was refused by notice dated 23 June 2021.
  - The development proposed is change of use of land to use as a residential caravan site for 2 No. Gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 2 No. stable/utility buildings.
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**Decisions**

**Appeals A and B**

1. It is directed that the notice is corrected by:

- The deletion of the description of the breach of planning control alleged in section 3 and the substitution with the words:

Without planning permission, the material change of use from agriculture to a mixed use as agriculture and the siting of static caravan/mobile homes, storage units and portaloos for residential purposes.

- The deletion of section 5 and its substitution as follows:

**WHAT YOU ARE REQUIRED TO DO:**

- i) Cease the mixed use of the land for agriculture and for the stationing of caravans for residential purposes.
- ii) Remove from the land any caravans, storage units, portaloos and any other domestic paraphernalia related to the unauthorised mixed use of the land.
- iii) Restore the land to its condition before the breach took place.

2. It is also directed that the notice is varied by

- The insertion of revised section 6 as follows:

**TIME FOR COMPLIANCE**

12 months after the date this notice takes effect.

- The consequent re-numbering of section 6 as section 7.

3. Subject to the corrections and variations, Appeals A and B are dismissed, and the enforcement notice is upheld.

### **Appeals C and D**

4. It is directed that the notice is corrected by:
- The insertion of the phrase 'Without planning permission' in section 3, before the description of the breach of planning control alleged.
  - The deletion of the phrase 'and other surfaces' from section 5 (ii).
  - The deletion of the times for compliance and sections (iv) and (v) from section 5 and the substitution with section (iv) Restore the land to its condition before the breach took place.
5. It is also directed that the notice is varied by
- The insertion of new section 6 as follows:  
TIME FOR COMPLIANCE  
12 months after the date this notice takes effect.
  - The re-numbering of section 6 as section 7.
6. Subject to the corrections and variations, Appeals C and D are dismissed, and the enforcement notice is upheld.

### **Appeal E**

7. Appeal E is dismissed.

### **Preliminary Matters**

8. The appeal site identified in respect of the enforcement notices has a different address to that set out on the application for planning permission. However, there is no dispute between the parties that all five appeals relate to the same land, and this is confirmed by the site plans for the notices and the planning application which are identical.

#### *The Notice (Appeals A and B)*

9. The notice relates to a material change of use to a mixed use from a forestry use. The site has been the subject of an application for a lawful development certificate (LDC) which was refused and subsequently allowed at appeal (Appeal Ref. APP/E3715/X/19/3236796). Although the application for the LDC did not relate to the use of the land this was a relevant consideration for the Inspector in that case and she took the view that the land was in an agricultural use given that it was osier land.
10. The appellants considered that there was a degree of manufacturing taking place on the osier land. However, there is no evidence that this amounted to change of use from agriculture. On the basis of the evidence, I find that the land was previously in use for agriculture. I shall correct the notice accordingly and I can do so without causing injustice to the appellant or the local planning authority.

11. Section 3 of the notice relates to the alleged breach. It does not set out the use to which the caravan would be put. Neither party has any objection to the use of the caravan being specified as being for residential purposes and I shall correct the notice accordingly. This would not result in any injustice to the parties.
12. The allegation refers to a static caravan/mobile home, a storage unit and a portaloo and the requirements refer to the removal of these items. In each case the item is given in the singular not the plural and the appellants argued that this could result in the requirements of the notice being met through the removal of one but not all of the caravans etc. In response the Council clarified that it is concerned about the change of use and that the items which have been brought onto the land enabled that use, whether they be singular or plural.
13. In any case the appellants' argument would not enable them to remain living on the site even if some of the caravans remained because the notice is clear in requiring the unauthorised use to cease, irrespective of the number of caravans, storage units and portalooes. Accordingly, I shall amend the notice to refer to caravans, storage units and portalooes.
14. Requirement (v) of the notice requires the restoration of the land by the addition of topsoil to a depth of 15cm, re-seeding with native grass and its use as a paddock. The allegation as set out in the notice refers to a change of use from forestry use. To this extent the requirement to restore the land to a paddock is inconsistent with the allegation and I shall correct this by changing the requirement to restoration of the land to its condition prior to the breach taking place.
15. Drawing all of these strands together I shall correct the notice so that the allegation is:

Without planning permission, the material change of use from agriculture to a mixed use as agriculture and a residential caravan site with related storage units and portalooes for agriculture and for residential purposes by the stationing of caravans together with related storage units and portalooes

And I shall correct the requirements as follows:

  - i) Cease the mixed use of the land for agriculture and for the stationing of caravans for residential purposes.
  - ii) Remove from the land any caravans, storage units, portalooes and any other domestic paraphernalia related to the unauthorised mixed use of the land.
  - iii) Restore the land to its condition before the breach took place.
16. These corrections would not cause injustice the parties to the appeal because they do not alter the terms of the notice such that different arguments could be made or the potential for other grounds of appeal could arise.

### *The Notice (Appeals C and D)*

17. The allegation in the notice does not refer to the works having been carried out without planning permission. Neither party had any objection to this phrase being inserted.
18. The requirements of the notice include a requirement to remove 'other surfaces' from the land. It was agreed by the parties that this phrase lacked the necessary clarity, therefore I shall correct the notice by removing these words.
19. In common with the notice in respect of Appeals A and B, a requirement to restore the land to its condition before the breach took place would be sufficient and would remove the requirement to return the land to its previous use which is unnecessary and excessive.
20. The corrections which I propose to make to the notice would not cause injustice to the parties, for the same reasons as I have set out above.

### *Appeal E*

21. Planning permission was sought for change of use of the land on a permanent basis. However, during the course of consideration of the application the appellants confirmed to the Council that they were content for permission to be sought for a temporary period of 3 years. Therefore, I shall deal with Appeal E on the basis that it relates to planning permission for a limited period.
22. The layout plan was amended during the course of the Council's consideration of the application. Both parties agreed that the layout plan which should be subject of the appeal was that which included areas of tree and shrub planting around the access.

## **Appeal E**

### **Main Issues**

23. The Council confirmed that it did not wish to submit evidence to defend its third reason for refusal relating to drainage and localised flooding. Therefore, the main issues are:
  - Whether the change of use to a gypsy and traveller site is inappropriate development in the Green Belt having regard to the Planning Policy for Travellers Sites (PPTS), the National Planning Policy Framework (the Framework) and any relevant development plan policies.
  - The effect of the development on the openness of the Green Belt.
  - The effect of the development on the character and appearance of the site and the surrounding area.
  - Whether the location is suitable for a gypsy and traveller site, having regard to the proximity of services and the suitability of the highway network.
  - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Inappropriate development in the Green Belt?*

24. There is no dispute between the parties that the site is within the Green Belt and that the occupiers of the site are gypsies. Therefore, under Policy E of the PPTS the development is inappropriate development in the Green Belt.
25. The Council confirmed in the Hearing that the relevant development plan policy in respect of development in the Green Belt is Policy GP2 of the Rugby Borough Council Local Plan 2011-2031 (2019) (the Local Plan). Policy GP2 establishes that development in the Green Belt will only be permitted in accordance with national policy. This policy is therefore in accordance with the Framework.
26. On the basis of the PPTS and in the light of the Framework and the relevant development plan policy I conclude that the use of the site constitutes inappropriate development in the Green Belt. As such it is development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

### *Effect on openness*

27. The Framework identifies the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt can have a visual as well as a spatial aspect. The relevant purpose of the Green Belt in this appeal is to safeguard the countryside from encroachment.
28. The appeal site comprises land between the highway, Fosse Way, and Withybrook Spinney, which is an area of woodland. Both the site and the woodland have limited depth but are extensive in length such that both features are visible along a considerable stretch of Fosse Way.
29. Photographs provided by the appellants which were submitted in support of the application for the lawful development certificate (LDC) show the site before the caravans were brought onto it. These show the site as open land with no fencing; features such as the cottage on the opposite side of Bow Lane are visible through the hedges. A structure is shown in the photographs as having been erected and subsequently removed, the two mobile structures which were the subject of LDC are present and there is a van shown parked on the site.
30. Whilst the appellants photographs only show a snapshot in time it is reasonable to assume that they are indicative of the degree of activity on the site and the lack of development in the form of hardstanding, fencing and buildings.
31. The use of the site for the stationing of caravans has commenced and in broad terms the amount of hardstanding which has already been carried out on the site correlates with that shown on the proposed layout plan. The appellants also confirmed that two of the buildings which are on the site are in the positions shown on the plan as a stable and stable/day room. The works which have been carried out on the site result in a loss of the Green Belt in spatial terms, which was acknowledged by the appellants at the Hearing.

32. During my site visit I observed that three touring caravans have been brought onto the site. They are not of the same size as the proposed static caravans. The stable and stable/day room buildings are of the size shown on the plan, albeit that both were in use as day rooms. Both the stables and the caravans are visible from the roadside either above the fence which has been erected around the site or from the access.
33. The introduction of the caravans, buildings and fencing demonstrates that the existing development has a significant visual impact on the site in comparison with its largely open appearance when in agricultural use. The static caravans which are proposed are substantial in size and it is reasonable to assume that they would have a greater visual impact than the caravans which are currently on the site.
34. The appellants' have sought planning permission on a temporary basis for three years. The impact of the development would be moderated by the fact that it would be of limited duration, nevertheless the spatial and visual effects would prevail, and they would have a harmful effect on openness for three years.
35. I conclude that the development would have a harmful effect on openness and would fail to safeguard the countryside from encroachment.

#### *Character and appearance*

36. Policy DS2 of the Local Plan sets out criteria against which proposals for gypsy, travellers and travelling showpeople will be judged. These include that the development complies with Policy SDC1 of the Local Plan which addresses the consideration of design and impact on the surrounding area and the amenity of residents. The Council confirmed at the Hearing that its concern was in respect of impact on character and appearance only.
37. The appeal site is located in the open countryside where existing development is sporadic and typical of that found in rural areas. As I have set out above the site is bounded by Fosse Way and it is on a staggered junction where Fosse Way meets Bow Lane and Millers Lane. This arrangement, together with the extensive roadside boundary result in the site being visually prominent in its immediate context.
38. There are no footpaths on Fosse Way and traffic runs rapidly past the site, thus it is not a location where the site would be readily visible to walkers or cyclists. However, from vehicles using the junction, the fence in particular is an alien feature in the area and the use of the site as a caravan site is very evident.
39. Given the site context, it is reasonable to assume that the fence is necessary to provide a satisfactory domestic environment in terms of noise and privacy. Although there is a hedge along the roadside it is made up of native plants which are mainly deciduous and the fence is clearly visible through the hedge in winter, as I observed at the site visit.
40. The appellants say that they could thicken the hedge using plants which would retain their leaves and I could impose a planning condition to require the fence to be stained to a darker colour. Both of these actions have the potential to reduce the visual impact of the fence, however by virtue of its close boarded

design, height and extent along the roadside the fence is likely to remain a dominant feature at the road junction in any event.

41. Residential caravan sites are not currently part of the character of the site context and, whilst the location of caravan sites in the countryside is not prohibited by planning policy, they are not typical features of the surrounding area. The buildings on the site are designed to appear as stables and such buildings are common in rural areas. However, they are visually associated with the caravans as opposed to being located in open paddocks, thus in this case they do not have a comparable impact on the countryside.
42. The appellants have sought planning permission for a temporary period of three years which means that the effects of the development may be of a limited duration. However, the harmful impacts which I have identified would endure for three years.
43. I conclude that the development is harmful to the character and appearance of the surrounding area. The development is contrary to Policy SDC1 of the Local Plan which among other things requires that the design of new development responds to the character of the area within which it is situated.

#### *Access to services*

44. The first criteria of Policy DS2 of the Local Plan requires that gypsy and traveller sites afford good access to services such as schools and health facilities. At the Hearing the Council confirmed in its view access refers both to the availability of services and modes of transport to reach them.
45. The site is located beyond the settlements of Monks Kirby and Withybrook, which are the nearest villages. There are a limited range of facilities and services in these settlements and residents would need to travel further afield to meet day to day needs and to access healthcare and some schools.
46. As I have noted above Fosse Lane is a busy road, without footways. Millers Lane and Bow Lane which link the site to Monks Kirby and Withybrook respectively are quieter country lanes, but they are both narrow and have no footpaths. The use of the surrounding road network for walking and cycling would not be attractive particularly during inclement weather and in the hours of darkness.
47. There are no bus stops on Fosse Way, and it was confirmed at the Hearing that the bus service runs through Monks Kirby and Withybrook thus necessitating a journey by other means to access public transport from those villages.
48. Drawing all of these points together the appellants only practical way of accessing services including health care and education is by private car. This is generally considered to be the least sustainable mode of transport.
49. There is no definition of what amounts to good access in Policy DS2 of the Local Plan and no specific reference to access by car only as being unacceptable. The Framework sets out that significant development should be focussed on locations which are or can be made sustainable in terms of transport choices. It also accepts that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The PPTS reference to enabling gypsies and travellers to access education, health,

welfare and employment infrastructure, also does not refer to access by sustainable modes of transport only.

50. There is no dispute between the parties that services are available in the area and the appellants are already accessing them in the form of a school and doctor's surgeries. The appellants are accessing these facilities by car and the Council is correct in its view that personal preferences should not be a determining factor. Similarly, I do not accept the appellants' argument that some consideration should be given to the fact that the appellants are travellers and that should be taken as a justification for using cars.
51. The appellants' view is that gypsy and traveller sites can be located in rural areas, in accordance with planning policies, where the Framework accepts that access to sustainable modes of transport will vary. However, that does not prevent access by a range of modes being a relevant consideration as it is for the Council.
52. The location of the appeal site relative to services and facilities in this case offers no practical alternative to use of the private car. This would be the case for any residential use of the site and, it is reasonable to assume, residential properties in the vicinity of the site.
53. On balance, in the absence of any specific requirement for gypsy and traveller sites to be accessible by a range of transport modes in local or national planning policy, I conclude that the location is suitable for a gypsy and traveller site, having regard to the proximity of services and the suitability of the highway network.

### **Other considerations**

#### *Local Plan Policy DS2 – other criteria*

54. Policy DS2 of the Local Plan includes criteria against which proposals for gypsy and traveller sites will be assessed. I have found that the development would not accord with the criteria relating to compliance with Policy SDC1 and the mitigation of visual impacts only. In other respects, the use as a gypsy and traveller site would accord with other criteria in Policy DS2. This conformity indicates that to some extent the site is a good location for a gypsy and traveller site.

#### *Intentional Unauthorised Development*

55. There is no dispute between the parties that the change of use of the land and operational development which is the subject of the appeal was carried out in advance of planning permission being granted.
56. At the Hearing it was established that the appellants thought they could put sheds on the site because there had previously been structures there. They were aware that they needed planning permission to bring the caravans onto the site and were in contact with their agent regarding this. The appellants submitted the planning application which is the subject of this appeal in December 2020. For a variety of reasons, the application was not determined until June 2021. The Council allowed the appellants to amend the layout plan, provide information about their personal circumstances and confirm that the application was for temporary planning permission during this period.

57. Caravans were brought onto the site by 22 December 2020 when the enforcement notices were served. This was before the planning application had been determined, therefore the use and associated works which have been commenced amount to Intentional Unauthorised Development (IUD).
58. A Written Ministerial Statement (WMS) dating from August 2015 establishes that IUD is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just that relating to gypsy and traveller sites and places particular emphasis on IUD in the Green Belt.
59. The appellants were clearly aware of the need for planning permission as they had submitted a planning application. Both of the appellants say that there were no alternative sites available to them, although part of one family occupied bricks and mortar accommodation. The appellants have constructed the buildings which are to be used in the future for, in one case, stables, and in the other, stables/dayroom.
60. The only element of the scheme for which planning permission has been sought which the appellants have not implemented are the bringing on of the two static caravans.
61. Bringing all of these points together I find that IUD has occurred but the weight which I attach to this is reduced by the fact that the appellants had no alternative site and in one case it meant that a family could remain together. Consequently, IUD attracts moderate weight against the appellants' case that planning permission should be granted.

*The need for and supply of gypsy and traveller sites*

62. The Council is not disputing that there is a need for gypsy and traveller sites in the borough. Policy DS2 of the Local Plan sets out a need for 61 pitches over the period 2017 to 2032 based on a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2017. Policy DS2 and the GTAA 2017 were considered by the Local Plan Inspector prior to the publication of the Local Plan in 2019.
63. A GTAA has recently been published by the Council. This identifies the current need for 79 pitches to be provided over the period 2022 to 2037, with 48 pitches to be provided in the first, current, 5 year period.
64. The GTAA 2022 has not been the subject of the same degree of scrutiny as the GTAA 2017 and it was published before the Lisa Smith judgement<sup>1</sup> was issued. For these reasons the appellants consider that the GTAA 2022 cannot be relied upon as providing an accurate figure for the current need for pitches. I concur with the appellants in this regard, nevertheless these latest figures demonstrate a significant demand for sites in the borough.
65. In terms of the supply of pitches, the Council confirmed that it is going to prepare a Gypsy and Traveller Development Plan Document (DPD) which will be based on the GTAA 2022, and which is included in its updated Local Development Scheme. However, the DPD is not due to be published as a final document until 2024 and the Council confirmed, at the Hearing, that it is too

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<sup>1</sup> Lisa Smith v SSLUHC [2022] EWCA Civ 1391

early to say whether any sites will be allocated for new pitches as part of that process.

66. Taking all of these points together, it has been shown that there is a need for gypsy and traveller sites in the Council's area and that this need is not being matched by a 5 year supply of deliverable sites. These factors, taken separately, weigh significantly in favour of the development.

*Availability (or lack) of alternative accommodation*

67. The appellants says that there are no suitable, affordable and acceptable sites available to them as an alternative to the appeal site. They are unable to return to the sites which they previously occupied because those pitches are now occupied by other gypsies. The Council does not dispute the information provided by the appellants and is not aware of any sites which may provide alternative accommodation.
68. Interested parties had referred to the availability of pitches on a site at Mere Lane. In response to a question from me the appellants advised that they knew the site and that it is not within Rugby Borough Council's area. Nevertheless, they confirmed that there were not vacant pitches there.
69. On this basis there is no evidence of any alternative accommodation being available and this weighs significantly in favour of the development.

*Personal circumstances of the appellants and their families*

70. The development allows two families to live together enabling them to provide support for each other, which is acknowledged as of importance to the gypsy and traveller community. The site also provides a stable base from which the residents can access essential services such as education and healthcare.
71. There are two families on the site each comprising two adults and three children. When the caravans were first brought onto the site one of the adults lived with her parents in bricks and mortar accommodation to enable the children to continue to access school. However, this arrangement was counter to the gypsy and traveller way of life and meant the family were not together, thus it was not a satisfactory solution in the long term.
72. In the case of one family, two of the children have left school and are working with their father and the third child is being home schooled. Thus, in terms of access to education this family is not dependent on remaining residents of this particular site.
73. Two children from the second family attend school locally and it is reasonable to conclude that they would benefit from being able to stay on the site to fulfil any current and future education needs for the 3 years requested in the application. The youngest child of this family has not yet reached school age. He has a disability and in principle he would benefit from a stable base from which to access therapeutic treatment. However, there is no substantive evidence before me of any particular requirements he has which are fulfilled by facilities on the appeal site or that his treatment is dependent on him living at this address.

74. The appellants confirmed that all family members are registered with local doctor's surgeries but none of them have health problems which necessitate regular treatment.
75. The Council did not dispute any of the information provided by the appellants but noted that the up-to-date situation was presented orally and there were no documents to support what was said.
76. In general terms it would be beneficial for the residents to be able to access healthcare from a settled base. On the basis of the lack of any identified available, alternative accommodation there is at least a possibility that the families would have to resort to life on the road in the event that they were unable to stay on the site. Such an existence in itself presents challenges in terms of maintaining a good standard of health and wellbeing and is not in the best interests of the children.
77. Taking account of these factors, the personal circumstances of the future occupiers of the site, including the best interests of children, weigh significantly in favour of the development.

*Effect on biodiversity*

78. The Council argue that prior to the development taking place the site was poor, semi-improved neutral grassland. As a result of the development the Council say that there has been a loss of this habitat through the introduction of hardstanding/gravel. The Council is seeking to offset the consequent impact on biodiversity through either a compensatory scheme for off-site biodiversity provision or the submission of a Habitat Management Plan to demonstrate how the loss could be mitigated on site.
79. The effect of the development on the biodiversity of the site is a relevant consideration and the Council has confirmed that Policy NE1 of the Local Plan applies to all development and not just that which affects designated areas. Policy NE1 requires effects on biodiversity to be avoided, mitigated or compensated for applied as a hierarchy.
80. It has been established that the previous use of the land was agriculture in the form of coppicing. The photographs provided by the appellants indicate that the existing grassland was at least retained in part when the willows were planted. It is reasonable to conclude that the willow planting did not introduce a monoculture habitat and would not have had a significant impact on the biodiversity of the site. The photographs also do not show any large areas of hardstanding present on the site at that time.
81. There is limited evidence before me to justify the sum which the Council has sought in terms of compensation for loss of habitat and a legal agreement has not been produced to secure that payment. Neither a Habitat Management Plan nor details of mitigations measures which could be carried out on site have been provided.
82. I have given consideration as to whether a planning condition could be attached to require the submission and approval of such information. However, given the amount of space given over to hardstanding I am not convinced that sufficient green space could be provided to compensate for the loss of habitat on the site. In such circumstances a partial compensation payment may be

necessary but since the full amount requested by the Council has not been justified, this approach lacks clarity.

83. This calls into question whether a planning condition to secure such mitigation measures would pass the test of being reasonable or would deliver the improvements required.
84. Drawing all of these points together, the development which has taken place has had a negative impact on the biodiversity of the site and these effects have not been shown to be avoided, mitigated or compensated for contrary to Policy NE1 of the Local Plan. This attracts moderate weight against the appellants' case that planning permission should be granted.

### **Green Belt balance**

85. I have found significant harm to the Green Belt in relation to openness and that the development would have a harmful effect on the character and appearance of the surrounding area contrary to Policies GP2 and SDC1 of the Local Plan. I am mindful that, by virtue of paragraph 148 of the Framework substantial weight should be given to any harm to the Green Belt. The substantial weight to be attached to any harm to the Green Belt is the same for a temporary as for a permanent permission.
86. In accordance with the WMS, I have also found that intentional unauthorised development (IUD) has taken place and I have concluded that in this case the IUD factor attracts moderate weight against allowing the appeal. Furthermore, I have found that the development has had an adverse effect on biodiversity, which also attracts moderate weight against allowing the appeal.
87. In favour of allowing the appeal, I attach significant weight individually to the need for gypsy and traveller sites, the lack of supply of sites particularly given the timescale of the publication of the DPD, the lack of available alternative accommodation for the appellants and their families and the personal circumstances of the appellants and their families.
88. The best interests of the children are a primary consideration, and no other consideration is inherently more important, however, they are not a determinative factor. In this case the best interests of the children who reside on the site weigh significantly in favour of allowing the appeal.
89. My conclusion that the location is suitable for a gypsy and traveller site, having regard to the proximity of services and the suitability of the highway network has a neutral effect in the Green Belt balance.
90. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS states that, subject to the best interests of the child, unmet need and personal circumstances, are unlikely to clearly outweigh harm to the Green Belt and any other harm.
91. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case I find that although there are some

matters which weigh in favour of the appellants, the cumulative weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt in combination with the harm to the character and appearance of the surrounding area, the IUD and effect on biodiversity.

92. Consequently, my initial conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case. Accordingly, the development is contrary to Policy GP2 of the Local Plan.

### **Interested parties**

93. Three Parish Councils and a number of local residents made representations in respect of the planning application/appeal. Most of the issues they raised coincided with the reasons for refusal or the other considerations which I have identified as weighing against the grant of planning permission.
94. Representatives of Monks Kirby Parish Council attended the Hearing and were able to make comments. In particular parish councillors were concerned about the issue of flooding and drainage which the Council had included as a reason for refusal but which it subsequently decided not to defend.
95. The parish councillors referred to road and property flooding which had arisen in recent months which they asserted was as a result of the development on the site which includes hardstanding. However, there was no evidence to substantiate this assertion and the appellants' said that the flooding has arisen because a pond has been filled in on a neighbouring field.
96. Even if it could have been demonstrated that changes in the drainage of surface water in the area have taken place as a consequence of the development, this finding would not have made any difference to the initial conclusion which I have reached in respect of Appeal E.

### **Human Rights including the Best Interests of the Children**

97. I have considered the rights of the appellants under the Human Rights Act 1998. This affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. Dismissing the appeal will interfere with the rights of the unauthorised occupants of the site since the consequence would be that they could be rendered homeless. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the Green Belt.
98. I have also had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. At least one of the current residents of the site is a Romany Gypsy, and they are therefore persons who share a protected characteristic for the purposes of the PSED.
99. There is no information before me regarding how the occupiers of the site have become integrated into the community and this is constrained in any event by

the location of the site outside any established settlement. To that extent the development does not provide an opportunity to further the aims of the PSED. On that basis, I find that dismissing the appeal is a proportionate response given the identified harm and that this discharges my obligations under the PSED.

## **Conclusion**

100. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed. This action would not unacceptably violate the family's human rights and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

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

101. Ground (g) is that the period specified for compliance with the notices falls short of what should reasonably be allowed. The issue of proportionality is also of relevance in this case given the consideration of human rights.

102. In the notices as served the Council requires the use of the site to cease, caravans etc to be removed from the land and fencing and hard standings to be removed within 28 days and the land restored within 3 months. The appellants consider that the compliance period is too short because it provides insufficient time for them to find alternative accommodation.

103. In their submissions the appellants refer to the Covid 19 pandemic, but it was accepted at the Hearing that that particular reason was no longer as relevant. They initially requested the compliance period be extended to 18 months, but at the Hearing they confirmed 12 months as an alternative.

104. It will be seen from my consideration of Appeal E that it will be some months before the Council will be in a position to address the current lack of supply of gypsy and traveller site through its DPD and that currently there are no alternative sites available to the appellants. Furthermore, compliance with the notice would result in the loss of the appellants' homes which as I have set out above would interfere with the rights of the appellants under the Human Rights Act 1998.

105. In that context, 28 days is an entirely impractical and unreasonable compliance period for them to move off the site and it is a disproportionate response in terms of the appellants' human rights. However, the Council now proposes an extension of the compliance periods for both notices to 6 months to include all of the requirements including the restoration of the land.

106. In the light of my finding that the development has a harmful effect on the Green Belt and given the emphasis placed in the Framework on such harm I find that extending the compliance period to 18 months would not be appropriate. However, an extension to 12 months would be a reasonable compromise. This would allow the school age children to complete the current academic year which would be less disruptive to them and is a proportionate response in terms of the appellants' human rights. It would also provide a suitable period for the restoration of the site.

107. For the reasons given above, I conclude that the periods for compliance with the notices falls short of what is reasonable and proportionate. I shall vary the enforcement notices prior to upholding them. The appeals on ground (g) succeed to that extent.

*Sarah Dyer*

Inspector

## **APPEARANCES**

For the appellant:

Philip Brown

Bradley Ayres (appellant)

Teddy Jones (appellant)

For the Council:

|                  |                              |
|------------------|------------------------------|
| Christian Hawley | Counsel appointed by:        |
| Sarah Chapman    | Legal and Governance Manager |
| Lucy Davison     | Principal Planning Officer   |
| Chris Davies     | Senior Planning Officer      |
| Sarah McGuire    | Legal Team (Observer)        |

Interested parties:

|                  |                            |
|------------------|----------------------------|
| J W Woolliscroft | Monks Kirby Parish Council |
| Barbara Dent     | Monks Kirby Parish Council |

## **DOCUMENTS SUBMITTED TO THE HEARING**

By the appellant:

None

By the local planning authority:

Email exchange of 9 June 2021