
Appeal Decisions

Hearing Held on 8 March 2023

Site visit made on 8 March 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/R1038/C/21/3286819 ('Appeal A')

Land South of Fishing Pond, Boiley Lane, Killamarsh, Sheffield S21 1AG

- 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 Mr D Piggott against an enforcement notice issued by North East Derbyshire District Council.
- The enforcement notice was issued on 12 October 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the Land to use for the siting of caravans for purposes of human habitation*.
- The requirements of the notice are to (1) cease the use of the Land for the siting of caravans for purposes of human habitation; and (2) remove all caravans from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with variations as set out below in the Formal Decision.

Appeal Ref: APP/R1038/W/21/3287101 ('Appeal B')

Land South of Fishing Pond, Boiley Lane, Killamarsh, Sheffield S21 1AG

- 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 D Piggott against the decision of North East Derbyshire District Council.
- The application Ref 21/00384/FL, dated 19 March 2021, was refused by notice dated 30 July 2021.
- The development proposed is a single pitch Traveller site.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. The hearing is now closed; this is explained further below.
2. It was agreed at the hearing that, if I were to grant planning permission on Appeal B, the description could be amended so as to describe the use only, with the number of pitches and/or caravans to be made the subject of relevant conditions.
3. I accepted some new documents at the hearing. They were copies of the representations made on the planning application; and copies of correspondence from clinicians concerning the health of a family member of the appellant.

Main Issues

4. The Council's sole reason for refusing planning permission and for issuing the notice was that the development is inappropriate in the Green Belt, having a negative effect on openness. The use was also said to be harmful to the character and appearance of the countryside, said by the Council to 'add to' the Green Belt harm. Policies were then cited in both documents that appeared to bear no relation to the Green Belt but to other matters.
5. Having queried this in my pre-hearing note, the parties helpfully produced a Statement of Common Ground, agreeing that the development is inappropriate in the Green Belt and revealing the main issues in dispute to be:
 - The effects on the openness and purposes of the Green Belt;
 - The effects on the character and appearance of the countryside, to include the relevance of policy ID8, seeking to protect Greenways and public rights of way;
 - The degree of compliance with policy LC9, the criteria-based policy applicable to applications for Traveller sites; and
 - Whether the harm to the Green Belt and other harm is clearly outweighed by other considerations such that very special circumstances exist to justify the development.
6. I agree that these are the main issues in the appeal; the 'other considerations' to include the appellant's personal circumstances and considerations of his Human Rights and the best interests of any children living on the site.

Reasons

Green Belt

7. Some previous development exists on the site, and time was spent at the hearing considering the extent to which that pre-existing development is appropriate to the Green Belt, in order that the present appeals may be set in context. Permission for a stable block was granted in 2009, restricted to housing the family horses of the owners of the relevant field. Reasons were given for the permission, which did not raise any reference to the Green Belt. However, as a facility for outdoor recreation it appears to me likely that (assuming the land was comprised in the Green Belt at that point) the development would not have been inappropriate in the Green Belt.
8. A later permission was granted for an area of hardstanding, restricted to association with the permitted stables and requiring removal upon cessation of the stabling use. No reasons were given for the grant of permission, but it appears to me that, as an engineering operation consistent with the stabling use, the hardstanding would not have been inappropriate development.
9. Thus there are developments on the site with an obvious spatial and visual presence but which do not, if put to their permitted uses, affect the openness of the Green Belt or conflict with the purposes of including land within it.
10. There are other developments on the site without the benefit (if it is required) of express planning permission, including several 'lean-to' sheds and conspicuous fencing surrounding the site. None of these are the subject of either of the present appeals, which are limited to considering the use of the land for residential purposes, and the notice requiring only that use to cease and requiring the removal of caravans from the site. There is no question of

'underenforcement' because of the limited allegation in the current notice, but the extent to which the additional development on the site is subject to planning control is a matter of some uncertainty on the information before me.

11. That said, the use of the land as a caravan site is plainly inappropriate in the Green Belt, as stipulated by Planning Policy for Traveller Sites 2015 ('PPTS') and as agreed by the parties in this case. The visible ramifications of the use here are the two caravans on the site, an associated lorry next to the more 'permanent' of the two caravans, the appellant's vehicles and much of the contents of the lean-to sheds. With or without the additional developments on the site, the residential use of the site clearly encroaches into the countryside and conflicts with the Green Belt purpose of safeguarding against such encroachment.
12. The site lies in close proximity to several rights of way, with one path running adjacent to the site's boundary down to the Transpennine Trail from the road passing it above. The urbanisation of the site by the residential use and associated paraphernalia affects the openness of the Green Belt and is harmful.
13. By definition, inappropriate development is harmful to the Green Belt. Additionally there is harm to openness and to purposes. Together these matters carry substantial weight against the development.

Countryside

14. There was some dispute at the hearing about whether the North East Derbyshire Local Plan 2014 - 2034 ('the Local Plan') policy ID8: Greenways and Public Rights of Way is applicable to the appeal proposals. The policy seeks to secure the integrity of rights of way and to avoid deterioration in their quality. I agree with the appellant that the policy appears directed at the quality and integrity of the right of way itself, and here there are no changes to the surface quality or accessibility of any paths resulting from the development; nonetheless the parties agreed that the quality of the user experience is a relevant matter to considering the extent of compliance with countryside protection policies generally.
15. Those policies are SS1 and SS9 of the Local Plan; the former relating to sustainable development and the latter to development in the countryside. It was agreed that there was visual harm to the countryside arising from the development; however, the extent to which this results from the additional residential use of the site rather than its pre-existing use for stabling was not agreed.
16. Criterion (1)(i) of policy SS1 requires development proposals to protect or enhance the character, quality and diversity of the district's green infrastructure and local landscapes and the countryside. Policy SS9 allows for certain countryside developments, including Traveller sites where in accordance with policy LC9, although in all cases development will be required to respect the form, scale and character of the landscape.
17. The site is in a particularly sensitive location, being located beyond the settlement edge across the old railway line and in the midst of a significant rights of way network linking to the Transpennine Trail and the Chesterfield Canal. The bridleway adjoins the site to the north leading from Boiley Lane to the Cuckoo Way, a level surfaced route suitable for all abilities between

Staveley and Chesterfield. The routes are evidently well-used; I encountered a few users during my site visit, although carried out on a weekday in particularly inclement weather.

18. Ascending the hill on the bridleway, the fenced site is highly visible although with some tree cover. Beyond the bright yellow and green fence, caravans and lean-to sheds sit atop the hill. Approaching the site, further residential paraphernalia becomes apparent. Although appreciating there is some quite extensive pre-existing development at the site, and that the boundary treatment would likely be retained, I do not consider that, without the residential use, the visual impacts of the site would be as apparent. Although caravans may be encountered in the countryside for various reasons, the ones here are plainly evidence of a residential use.
19. Although agreeing with the appellant that policy ID8 is not strictly relevant, in that there is no direct effect on the right of way, I agree with the Council that the user experience of the network is diminished as a result of the development, and that the harmful effects on the local landscape character mean that the development is contrary to policy SS(1)(i).
20. As to compliance with policy SS9, although the development comprises a Traveller site which may in principle be acceptable, the policy defers to policy SS10 for developments in the Green Belt. To the extent that policy SS9 is engaged, however, it requires development to respect the character of the landscape. I am unable to conclude that that is the case here, because the additional residential use has introduced various vehicles and paraphernalia on the site resulting in visual clutter and detracting from the countryside experience. I am unable to find that it respects the character of the landscape and so is contrary to the Council's policies of countryside protection. I attribute moderate weight to this conflict.

Policy LC9

21. Nonetheless, policy LC9 positively envisages that new Traveller sites might be in countryside locations. Stipulations include that such sites should be reasonable in scale in relation to the 'nearest' settled community, and that they should be 'reasonably accessible' to local amenities and services. If only urban locations were anticipated, these stipulations would be otiose. Hence I attribute only moderate weight to the harm to the countryside, because the use is, depending on its compliance with policy LC9, acceptable in principle in the countryside (excepting the Green Belt policy conflict for the moment).
22. As to the particular stipulations of policy LC9, the Council say that criterion (a) is offended because of the site's considerable distance from local services and amenities. The parties helpfully agreed the relevant distances in their Statement of Common Ground. The site lies around 500m from the settlement limit of Killamarsh, and half a mile from a bus stop. Primary needs are met within one and a half miles of the site, with shops, GP surgery, leisure centre and primary school all within that distance. Other educational institutions within the County lie further afield, although the appellant confirmed that his teenaged daughter also living on the site is neither in education nor economically active, and so insofar as a personal permission is sought by the present occupiers, the distance to educational facilities is not important.

23. Although not walkable, or realistically to be obtained by public transport, in the context of a Traveller site I do not find these distances to be unusually long or unreasonable. The appellant pointed out at the hearing that the adjoining authority's 'call for sites' exercise has sought sites within a radius of up to five miles of settlements; and that such distances are envisaged by the PPTS.
24. The Council point out, however, that reasonable accessibility is not only a question of distance. The narrow road leading to the site is partly unmade and lacks lighting or a footway. The road is however nowhere near impassable. Although accepting that most journeys will be by private vehicle, the site is not so remote as to say that facilities and services are not reasonably accessible. Therefore I find no conflict with policy LC9 (or, by extension, with policy SS9 save as identified above).

Other considerations

Need and supply of Traveller sites

25. The latest available Gypsy and Traveller Accommodation Assessment ('GTAA') for the area dates from 2015, informing the Local Plan which, although covering the period from 2014 for 20 years, was adopted in November 2021. The Council explained at the hearing that the 2015 GTAA identified a need for 15 plots in the plan period to 2034, arising from a baseline of 23 unauthorised pitches therefore 38 in total were needed to 2034.
26. Presently, it was explained that of those 15 additional pitches needed, the Local Plan allocates a total of five pitches and permissions have been granted for a further seven pitches. Thus the shortfall for the entire plan period is presently three pitches, with one pending application and another tolerated site with an application having been invited.
27. An updated GTAA was said to be 'imminent' at the time of the hearing; hence I have closed the hearing only when issuing this decision: the hearing has stood adjourned to allow for the possibility of receiving the updated GTAA in the interim. It was agreed that the appellant's own needs are unlikely to have been captured by the 2015 GTAA.
28. On behalf of the appellant it was contended that I should consider the wider picture of accommodation shortfalls in other boroughs. It was also said that the allocations have been made to accommodate specific needs, with pitches earmarked for particular individuals who do not include the appellant. Thus even if the general picture in the borough is one of sufficient provision, the needs of the appellant are nevertheless not captured by the GTAA or policy allocations. It was also contended that there are difficulties in delivering some of the allocated or permitted sites, so are not a short-term option whether or not for the appellant.
29. As the Council point out, the policy has only recently been adopted following scrutiny by the Local Plan Inspector. The position as to the allocations and other permissions mean I am unable to find, on present information, that the Council lacks an up to date five year supply of sites.
30. It was acknowledged on behalf of the appellant that policy LC9 is a flexible one; and neither party could provide examples of any applications refused permission where it was applied. Considering that the Green Belt covers less than half of the Council's land area, the prospects of achieving permissions

elsewhere, albeit some way away from Killamarsh, appear reasonable. I do not find that the general supply position adds more than moderate weight to the appellant's case on the appeal, because there does not appear to be any shortfall in supply, notwithstanding the position in other nearby districts, and there is a flexible policy supportive of additional Traveller sites beyond those allocated by the Local Plan.

Personal Circumstances, Human Rights and Children

31. The appellant's teenaged daughter resides with him on the site. She is shortly approaching adulthood. No particular interests of hers, beyond being able to live with the appellant (whether here or elsewhere) were identified.
32. The appellant has very close and strong family ties with the area. His ailing father lives a few hundred yards away, and the appellant provides daily assistance to him. His mother is buried nearby. He grew up in the area and has strong local links. The Council say that to their knowledge the appellant, until recently moving back onto the site, has lived with his sister at a site in Sheffield; however, this was disputed by the appellant who says the Sheffield site was used merely as a postbox, and that he has never moved away from the area. A previous planning application was refused a few years ago for a similar development to that now proposed. The balance of the information before me, which includes third party representations in the case, is that the appellant has spent some time living away from the site in the intervening period, although there is no information before me as to the continuing availability of that accommodation. The appellant says his sister has now moved from the Sheffield site, and so I accept that it is unlikely to continue to be available. No information about any search for alternative sites was given, and hence I give moderate weight to the lack of an identified alternative site.
33. Having to move away from the area of one's upbringing, or familial places of rest, is an unfortunate fact of life for many, and I am unable to attribute significant weight to these matters in themselves. I am however persuaded that it is desirable for the appellant to be able to continue to provide care and assistance to his father, and attribute considerable weight to this matter.
34. My attention is also drawn to human rights considerations arising from the European Convention requiring the protection of property (A1P1) and respect for the home and private life (article 8). To dismiss the appeals would be to interfere with these qualified rights. This is justifiable where there is a clear legal basis for the interference, which in this case would relate to the regulation of land use in the exercise of development control measures, and the interference is necessary in a democratic society. I consider below whether this is the case. I am also mindful of my duties to facilitate the way of life of gypsies and travellers, and to eliminate discrimination, promote equality of opportunity and foster good relations where relevant protected characteristics arising under the Equality Act 2010 are concerned. I am mindful of all these matters in reaching my conclusions.

Other Green Belt decisions

35. Reference was made by the appellant to nearby planning permissions for residential development, and it was suggested that the Council's approach to the application of Green Belt policy is inconsistent. I do not have the details of any other applications before me, or the particular aspects of Green Belt policy

which may have been applicable to them. I therefore attach other decisions made by the Council only limited weight.

Planning Balance and Conclusions

36. Drawing all these points together, I give considerable weight to the interests of the appellant in being able to attend to the continuing needs of his father, who lives locally. The contribution of the site to meeting the accommodation needs of Gypsies and Travellers in the area attracts moderate weight, and I also attach moderate weight to the lack of any identified suitable and available alternative. Additionally, if the appeals were to be allowed then any interference with the established home and family life of the site's occupants would be avoided. An authorised settled home would potentially assist the family's integration into the local community and foster good relations. I do not find there to be any conflict with policy LC9, and give this compliance moderate weight in favour of the development.
37. The question then arises whether these factors in favour of allowing the appeals are considerations of such sufficient weight as to clearly outweigh the harm to the Green Belt and other harm arising from the development, such that the necessary very special circumstances exist to justify allowing the appeals. I have concluded that they do not.
38. I have found the development to be inappropriate in the Green Belt and that it does not preserve openness and is inconsistent with the Green Belt purpose of safeguarding the countryside from encroachment. I give substantial weight to this harm. Harm arises not only to the Green Belt but to the character and appearance of the countryside, including to the user experience of the adjoining public rights of way.
39. On balance, and conscious of the disruption to the family's living arrangements that my decision is likely to cause, I conclude that there are no material considerations of sufficient weight to overcome the conflict with the development plan or as to amount to very special circumstances justifying the grant of permission. The matters in favour of the development are insufficient to clearly outweigh the harm to the Green Belt and other harm identified. I find that the inevitable interference with the occupiers' qualified rights to private life and their home is a justified and proportionate response that is necessary to give credence to the restrictive planning policies that apply to the site. Accordingly, very special circumstances to justify a grant of planning permission do not exist.
40. I am asked to consider granting a temporary permission if a permanent permission is not forthcoming. Allowing a temporary permission would avoid (or at least postpone) the identified interference with the occupiers' human rights. It would also potentially, by its temporary nature, limit the harm caused by the development. However, although I have attributed moderate weight to the contribution of the site to the accommodation needs of Gypsies and Travellers, I have not found there to be any significant shortfall in supply and I have attached only moderate weight to the absence of identified alternatives.
41. Although the anticipated GTAA update may result in the identification of a greater level of need in the area, potentially requiring additional allocations, it would not appear likely to alter the ability of sites to come forward that are

consistent with the policy criteria of policy LC9, recognised to be a flexible policy and one that applies in a district that is mostly outwith the Green Belt.

42. Therefore, given the substantial policy objections to the development that exist at this site, I do not consider this a suitable case for allowing a temporary permission. It is still necessary to attribute substantial weight to any Green Belt harm, even if limited in time, and I do not consider that this and the other identified harm is clearly outweighed by the remaining factors in favour of the development, and consider that the interference with the occupiers' human rights would still be a justified and proportionate response. Very special circumstances justifying a temporary grant of planning permission do not exist.

The Appeal A appeal on ground (f)

43. The appellant contends that it is excessive to require the removal of the caravans, because it is appropriate that a caravan should be retained as required incidentally to the otherwise agricultural land use.
44. Whether or not the land is in an underlying lawful agricultural or equestrian use, the purpose of the notice is to remedy the alleged breach of planning control. The use of the land as a residential caravan site is clearly facilitated by the presence of the caravans on the site, so it is commensurate with the requirements of the notice that they be removed. I am not satisfied that the retention of one or more caravans would be an incidental requirement of the underlying lawful land use. There is no suggestion that caravans were previously used in connection with the lawful use of the land; the existing stables appear sufficient to provide shelter; and the Council have yet to take any decision about the remaining operational development on the land in the form of the lean-to sheds.
45. Therefore the appeal on ground (f) fails.

The Appeal A appeal on ground (g)

46. Here it is contended that the appellant and his daughter have nowhere else to live; and that sufficient time is needed to find an alternative site. It appeared at the hearing and from the documents then supplied that the appellant's need to attend to his father had not arisen, or was not known to the Council, at the time the notice was issued.
47. Although a new package of care from a care company is awaited, I accept that there are cultural sensitivities that result in care provision by a (male) family member being particularly desirable. The period for which this provision will be required is unknown. Although I do not consider the prospects of obtaining permission for a Traveller site elsewhere in the district to be poor, it is the case that any such site, if beyond the Green Belt, would also be likely to lie beyond a reasonable travelling distance from the appellant's father's house. In the light of these factors, I accept that the time presently stipulated for compliance with the notice is unreasonably short. I shall extend the time for compliance to 12 months, to give time for a clearer prognosis and alternative arrangements to be made.

Conclusions and Formal Decisions

48. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant

planning permission on the deemed application under Appeal A and shall dismiss the appeal under Appeal B.

Appeal A

49. It is directed that the enforcement notice be varied by deleting "6" from paragraph 6 of the notice and replacing it with "12". Subject to that variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

50. The appeal is dismissed.

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Roger Yarwood DipTP MRTPI
Deano Piggott

FOR THE LOCAL PLANNING AUTHORITY:

Susan Wraith DipUrbP MRTPI
Fiona Todd
Joanne Edwards