



Appeal Decisions

Site visit made on 21 February 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 April 2023

Appeal A: APP/N4720/C/22/3304528

The Old Telephone Exchange, Coal Road, Leeds, LS14 2SA

- 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 Act").
- The appeal is made by Mr Michael Hooton against an enforcement issued by the Leeds City Council.
- The enforcement notice was issued on 6 July 2022.
- The breach of planning control alleged in the notice is without planning permission the change of use of the land for the purposes of the stationing of a static caravan for human habitation, a touring caravan, a metal outbuilding, the storage of building materials and equipment and the parking of private motor vehicles ancillary to the residential use of the land.
- The requirements of the enforcement notice are:
 - (1) Cease the use of the land for the stationing of caravans for human habitation and the parking of all motor vehicles in connection therewith and remove all such caravans and motor vehicles from the land.
 - (2) Remove the metal outbuilding, all materials including stone, fence panels, piping and any other equipment from the land along with waste or debris of any kind.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on grounds set out in section 174(2)(a) and (g) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

Appeal B: APP/N4720/W/22/3304530

The Old Telephone Exchange, Coal Road, Leeds, LS14 2SA

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr Michael Hooton against the decision of the Leeds City Council.
- The application Ref 22/02121/FU, dated 22 March 2022, was refused by notice dated 18 May 2022.
- The development proposed is siting of one static residential caravan and renovation of the old telephone exchange building into an amenity block with associated ground works and landscaping.

Summary of Decision: The appeal is dismissed.

Background and Procedural Matters

1. The appeal site is located within the Green Belt, positioned between Coal Road and the main A58 Wetherby Road, north of Leeds. The single access to the site is taken first from Wetherby Road and then from the remaining northern end of Coal Road.

2. Both parties acknowledge that an earlier time limited planning permission (17/03940/FU) permitting use of the site as a residential caravan site for one static residential caravan, and renovation of a former telephone exchange building, was not lawfully commenced and expired in 2021.
3. Appeal A, on ground (a), against the enforcement notice, includes a deemed application for planning permission for the development described in the breach of planning control at Section 3 of the notice. Since the development mirrors that proposed in Appeal B, I will deal with both appeals together.

Appeal A – ground (a), and Appeal B

Main Issues

4. The main issues are:
 - (i) Whether the development is inappropriate development in the Green Belt;
 - (ii) the effect on the openness and purposes of the Green Belt;
 - (iii) the effect on the living conditions of occupiers with regard to noise; and
 - (iv) whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

5. There is little information before me as to whether the appellant still currently travels in connection with work, or whether he has ceased travelling for any particular reason(s). However, there is no dispute between the parties as to the appellant's cultural status as a gypsy/traveller and I have no reason to come to a different view. As such, and in light of the Court's judgment in *Smith*¹, I consider the policies and provisions of PPTS² are a relevant material consideration in this appeal, in addition to the Council's Development Plan policies, against which the development should be assessed.
6. Paragraph 4 of the NPPF³ states that it should be read in conjunction with PPTS, and that regard should be had to the policies in the NPPF, where they are relevant. In particular, NPPF footnotes 27 and 38 make it clear that it is the PPTS document which is relevant for setting out how travellers' housing needs should be assessed, and that a 5-year supply of deliverable sites for travellers should be assessed separately, in line with PPTS.

Main Issue (i) - Whether inappropriate development

7. Policy N33 of the Leeds Unitary Development Plan Review 2006 is of some age and not wholly consistent with more recent national Green Belt policy. Nonetheless, amongst other matters, it supports changes of use for purposes which do not compromise Green Belt objectives, or development where very special circumstances exist. However, for reasons I set out later, I find that the appeal development is not supported in these regards by Policy N33.

¹ *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391

² Planning Policy for Traveller Sites, DCLG, (2015)

³ National Planning Policy Framework, MHCLG, (2021)

8. In any event I attach greater weight to PPTS paragraph 16. It makes it clear that traveller sites located in the Green Belt, whether temporary or permanent constitute inappropriate development. All of the proposed development taken together would result in a material change of use of the site to a traveller site. As such, the development constitutes inappropriate development, which is harmful by definition, and to which I attach substantial weight.

Main Issue (ii) - Effect on openness and purposes of the Green Belt

9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. In *Turner*⁴ the Court held that perceptions of openness can be visual as well as spatial. Additionally, in *Samuel Smith*⁵ the Court established that the matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law.
10. Other than the proposed flue, the restoration and conversion of the existing derelict building into an amenity block would not in itself be materially larger than previously existed. However, added to that would be the static caravan (3.9m x 12.2m), decking surround with hand railing, a tourer caravan, and parking of occupiers' vehicles.
11. The static caravan and decking would be permanent features while the touring caravan would be present on site for some, if not all, of the time. In addition to these a typical residential use of the site, including comings and goings of occupiers and visitors in vehicles, outside garden/amenity use, and the presence of associated domestic paraphernalia, would further reduce openness. In combination all of these features would significantly reduce the openness of the Green Belt in both spatial and visual terms, and would conflict with one of the Green Belt purposes that seeks to safeguard the countryside from encroachment.
12. I accept that some planting could be carried out on site. However, it would not adequately mitigate the reduction in openness in visual terms, particularly in the more elevated views from the south. Any such planting would not of course mitigate the reduction in openness in spatial terms.
13. To conclude on this issue, there would be further harm to the Green Belt resulting from a loss of openness, and which would conflict with the Green Belt purpose of safeguarding the countryside from encroachment and unrestricted sprawl. It would thus conflict with the requirements of Policy N33 and the provisions of the NPPF.

Main Issue (iii) – Noise

14. At the non-peak time of my visit to the appeal site and the surrounding area, traffic flows were fairly low on the A58. There would be some disturbance for occupiers, particularly when outside on the site. However occupiers would be aware of peak times and when noise disturbance would be at its highest and lowest. Internally, windows nearest the A58 could be closed while others

⁴ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 h

⁵ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3e

remain open. Overall, I find that noise disturbance would not be so great as to result in any significant harm to occupiers' living conditions.

Main Issue (iv) - Other considerations

Need and supply of pitches/whether alternative sites available

15. The Council's Site Allocations Plan (2019) (SAP) seeks to allocate pitches for traveller sites in order to meet need identified through the application of Policy H7. The appeal site, although brownfield, was discounted from the SAP due to its impact on the Green Belt and the character and appearance of the area. Nonetheless, there is no dispute that there has historically been a clear under-supply of small private pitches to meet the current and future general level of such need. Furthermore, the existing assessment of pitch need is quite old and a more up to date and comprehensive assessment is some way off from completion. The Council is also unaware of any suitable and currently available alternative site to which the appellant could relocate.
16. Some limited bus services are available along the A58 although, given the site's location, there would likely be greater reliance on use of the car to access a range of shops, facilities and services. However, the NPPF acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a higher degree of reliance on the private car, I consider the length and duration of journeys necessary to access essential services and facilities would be relatively moderate for this particular rural location.
17. In addition to my findings earlier in respect of likely continuing unmet need for pitches, no significant noise disturbance, and acceptable location in terms of access to facilities and services, I find there to be no material conflict with the criteria of Policy H7 (other than the site being located within the Green Belt). Overall, I attach great weight to the combination of all of these factors in support of allowing the appeal.

Personal circumstances

18. I am not informed of the appellant's daughter's precise age, but I understand she is above school age in full time tertiary education, staying some nights at the appeal site each week. I am not aware of where else she may reside. The appellant is the sole permanent resident on the site. No evidence of any particular medical, social or other circumstances have been submitted in respect of the appellant or his daughter.

Planning Balance and Conclusion

19. Dismissal of the appeals would result in the appellant losing his home. This would constitute an interference with his human rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest and well-being of the country, which has been held to include the protection of the environment and upholding planning policies.

20. As set out earlier I attach substantial weight to the harm to the Green Belt. I have also attached great weight to the other considerations that weigh in support of allowing the appeal.
21. However, in relation to the Green Belt PPTS states that traveller sites are inappropriate development and should not be approved, except in "very special circumstances". Also, 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. On balance, I find that to be the case here. The substantial weight I attach to the harm to the Green Belt is not "clearly outweighed" by other considerations so as to establish very special circumstances.
22. I have considered whether a further temporary permission would be appropriate. However, while there would be some reduction in harm due to the permission being time limited, it would nonetheless fail to clearly outweigh the harm so as to establish very special circumstances. Moreover, the PPG⁶ states that it will rarely be justifiable to grant a second temporary permission. Further permissions should normally be granted permanently or refused if there is clear justification for doing so.
23. For all these reasons, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission.

Appeal A - ground (g)

24. The ground of appeal is that the 3 month period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The appellant seeks 6 months.
25. I take no account of the period of time that has elapsed prior to this appeal Decision. This is because an appellant is entitled to await the outcome of an appeal, that might grant planning permission, before committing to works or scheduling contractors and associated expenditure. However, given that the appeals have failed I am mindful that the breach of planning control should be remedied as soon as reasonably possible.
26. Having regard to all of the circumstances I consider on balance that a period of 5 months would be more reasonable. The appeal on ground (g) therefore succeeds to this extent and I will vary the notice accordingly.

FORMAL DECISIONS

Appeal A

1. It is directed that the notice be varied in Section 6 by deleting "Three months" and substituting instead "Five months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

3. The appeal is dismissed.

⁶ Planning Practice Guidance: Paragraph: 014 Reference ID: 21a-014-20140306

Thomas Shields

INSPECTOR