



Appeal Decision

Hearing held on 16 May 2023

Site visit made on 16 May 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th June 2023

Appeal Ref: APP/R2330/W/20/3258301

Smithfield Stables, Moss Lane, Oswaldtwistle, BB1 2FE

- 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 Elias Smith against the decision of Hyndburn Borough Council.
 - The application Ref 11/19/0386, dated 30 October 2019, was refused by notice dated 27 February 2020.
 - The development proposed is the use of land for the stationing of caravans for residential purposes for 3 no. Gypsy pitches, together with the use of the existing stable building as a dayroom ancillary to that use.
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Decision

1. The appeal is allowed, and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 3 no. Gypsy pitches, together with the use of the existing stable building as a dayroom ancillary to that use at Smithfield Stables, Oswaldtwistle, BB1 2FE in accordance with the terms of the application, Ref 11/19/0386, dated 30 October 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal proposal is part retrospective as the use of the land has already taken place with the siting of two static and four touring caravans on the site. The conversion of the stable building has yet to take place. I have considered the appeal on this basis.

Main Issues

3. The parties agree that the proposal comprises inappropriate development in the Green Belt. With that in mind, the main issues in this case are:
 - the effect of the proposal on the openness of the Green Belt, and on the purposes of including land within it;
 - whether the 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 necessary to justify the development, including the need for and supply of Gypsy and Traveller sites and the personal circumstances of the occupiers.

Reasons

Background and planning history

4. Planning permission is sought for the change of use of the land for the stationing of 3 caravans for residential purposes for 3 gypsy pitches together with the use of part of the existing stable building as a dayroom ancillary to that use.
5. In the submitted Statement of Common Ground (SoCG), the parties agree that the appellant and his extended family met the definition of a Gypsy and Traveller set out in Annex 1: Glossary of Planning Policy for Traveller Sites (PPTS). I have no reason to disagree.
6. The appeal site was granted planning permission in 2014 for a stable yard, hay store and menage. This has been implemented with the exception of the menage. Three enforcement notices were issued with regard to the use of the site for the siting of caravans, erection of gates, hardstanding and other structures in August and October 2011. Appeals were made against each Notice and all were dismissed. The Notices remain extant.

Relevant Planning Policy

7. The development plan for the area comprises the Hyndburn Core Strategy (CS) adopted in 2012 and the Development Management Development Plan Document (DPD) adopted in 2018.
8. The Decision Notice refers to Policy BD1 of the CS, which sets out a 'Balanced Development Strategy' for the Borough. This is a high-level strategic policy which in the main seeks to maintain the existing settlement pattern and hierarchy of settlements, concentrating development within the urban area. With regard to the rural area, it seeks to limit development to that supporting farm diversification and promoting leisure and recreational facilities. The policy also seeks to maintain the Green Belt.
9. CS Policy H3 seeks to protect existing authorised Gypsy and Traveller sites and identifies land to meet future needs at Sankey House Farm. CS Policy DM15 of the Development Management DPD considers Gypsy and Traveller site provision and is in three parts. Part 1 states that the CS meets the needs of Gypsy and Travellers up to 2018 and that needs over the remainder of the plan period will be identified in the Council's Site Allocations DPD. However, this document has not been produced with the Council choosing to prepare a new Local Plan for the Borough as a whole.
10. Part 2 of the policy sets out a series of criteria against which applications for Gypsy and Traveller accommodation will be assessed. There is no dispute between the parties that the appeal site is located a reasonable distance from services, is in an accessible location, has access to public transport and the proposal causes no harm to highway safety, residential amenity, biodiversity or heritage assets. At the hearing the Council argued that the scheme would cause harm to visual amenity. However, the reasons for refusal only refer to conflict with Green Belt policy. It does not refer to this issue or to character and appearance matters. Visual amenity is raised only in the context of harm to the openness of the Green Belt. Looked at in the round, the appeal proposal complies with part 2 of Policy DM15.

11. Part 3 of the policy states that applications for Gypsy and Traveller pitches will not be supported if there are sufficient vacant pitches on allocated or existing sites. I address the issue of alternative accommodation later in my decision.
12. Policy DM34 of the DPD considers development in the Green Belt and in the countryside. It sets out criteria for considering new buildings, extensions, conversions and leisure and recreation uses. However, the appeal scheme is for the change of use of land, and the conversion of part of the stable building to a day room which is ancillary to that use. I do not therefore consider this policy to be relevant in this case. It would be more appropriate to apply national Green Belt policy.
13. The Council is in the process of preparing a new Local Plan for the Borough. The Plan has been the subject of consultation at Regulation 19 stage but has not yet been submitted for examination. I was advised at the hearing that this was likely to be in the Autumn. Emerging Policy SP12 seeks to provide Gypsy and Traveller accommodation to meet needs up to 2037 and proposes to allocate 5 sites in the Borough. Bearing in mind the stage at which the emerging plan has reached, I afford it limited weight in this appeal.

Green Belt

14. As set out above, the parties agree that the proposal forms inappropriate development in the Green Belt. This accords with the PPTS, which states that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Paragraph 147 of the National Planning Policy Framework (the Framework) confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I give substantial weight to this definitional harm.
15. The parties agree, and I concur, that the appeal site forms previously developed land. Paragraph 149 g) of the Framework advises that the construction of new buildings in the Green Belt forms inappropriate development, though exceptions apply, including the redevelopment of previously developed land. However, as the appeal proposal does not propose the construction of new buildings, paragraph 149 of the Framework is not relevant in this case. Nevertheless, the use of previously developed land is in general terms to be supported in line with the Framework objective of making effective use of land.
16. Paragraph 150 of the Framework outlines forms of development that are not inappropriate in the Green Belt provided that they preserve openness. These include the reuse of buildings that are of permanent and substantial construction, and the material change of use of land. Both criteria are applicable to the appeal case. I consider openness issues below.
17. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristic of Green Belts are their openness and their permanence. Openness has a spatial aspect and a visual dimension.
18. I acknowledge the existence of a stable building, hay store and hardstanding, field shelter and bund, all of which have planning permission. Together with horse vehicles and associated equipment, the site already impacts on the openness of the Green Belt. However, the proposed three pitches, would be

sited in a generally open area of hardstanding, and together with the additional parked vehicles and other domestic paraphernalia, would significantly reduce the spatial openness. The development would therefore not come within any of the exceptions stated in paragraph 150 of the Framework.

19. In relation to visual openness, I observed on my site visit, that the appellant has already provided landscaping around the site. A bund has been put in place (approved in application 11/14/0415) to the southern site boundary and planted with conifers. Conifers have also been planted along the road frontage of the site and along the northern boundary. These trees provide a very good screen to the site from external viewpoints.
20. The only point at which the site can readily be seen is from the bridge over the M65 motorway on Stanhill Road to the north due to its elevated position. Views from the public rights of way to the west of the site are restricted due to the level difference and existing tree and hedge cover. The effect on the visual dimension of openness is limited. In terms of safeguarding the countryside from encroachment, the use would have a limited effect due to the extent of existing built form and natural screening.
21. Overall, the definitional harm to the Green Belt, together with the harm to openness and to the Green Belt purpose of safeguarding the countryside from encroachment, are matters to which I give substantial weight.
22. As the proposals are part retrospective, intentional unauthorised development has taken place. A Written Ministerial Statement (WMS) published in December 2015 sets out that this is a material consideration that can be weighed in determining planning applications and appeals. This policy applies to all applications submitted after 31 August 2015. Whilst the appellant occupied the site in around 2011, before the publication of the WMS, it remains a consideration in this case. In this instance, the actual harm as a result of the siting of the caravans on the appeal site, is minimal, as they are removable structures. The harm as a result of intentional unauthorised development is limited.

Other Considerations

The Need and Supply of Gypsy Sites

23. The Council, jointly with Blackburn Borough Council, commissioned a Gypsy and Traveller Accommodation Assessment (GTAA) in 2019. This states that there is a cultural¹ need of 60 pitches over the period 2019/2020 to 2035/36, of which 49 pitches represent a PPTS² need.
24. Before the hearing, the Council provided an update paper regarding the need and supply of Gypsy and Traveller Accommodation in the Borough. As the emerging Local Plan has a slightly longer plan period than the GTAA, 2036/37, a further 4 pitches are added to the need calculation, making a cultural need of 64 and PPTS need of 53. On the supply side of the equation, the paper indicates a potential and actual supply of 66 pitches up to 2037, sufficient to meet the need over the emerging plan period. Whilst I acknowledge the efforts of the Council to address the supply issue in the emerging Local Plan, it is

¹ Includes the needs of Gypsies and Travellers who have stopped travelling on a permanent basis

² Those Gypsies and Travellers meeting the definition contained within the Planning Policy for Traveller Sites (PPTS) (DCLG, August 2015)

notable that the supply relies on draft allocations which may or may not proceed through the Local Plan examination.

25. The PPTS in paragraph 10 advises that Local Planning Authorities should identify and update annually a supply of specific deliverable sites to provide 5 years' worth of supply against their locally set targets. The GTAA identifies a five-year requirement to meet cultural need of 21 pitches for the period 2019/2024. I am advised that there are only 9 pitches that have been provided to contribute towards this requirement, having been granted planning permission or implemented since the base date of the GTAA. This represents a significant shortfall.
26. As the appeal is taking place in 2023, the appropriate five-year assessment period is 2023/2028. The Council were unable to provide a figure for the need over this period. The GTAA however identifies a cultural need of 12 pitches over the shorter period of 2024/2028. Irrespective of the actual need figure, the Council confirmed that they could not demonstrate a five-year supply of deliverable sites. Taking account of the shortfall outlined above and the lack of a current five-year supply, it is clear there is a significant unmet need in the Borough.
27. The appellant has challenged the robustness of the GTAA and its methodology, arguing that it underestimates the actual need. In particular, the appellant questions the accuracy of the base data and the assessment of doubled up households, concealed households, and the future need for those in bricks and mortar. I do not address these criticisms in detail in my decision. I have already determined that there is a significant unmet need and lack of supply in the Borough based on the evidence in the GTAA, and the possible shortfall may even be higher in practice. I give these matters significant weight in this appeal.

Failure of Policy

28. Despite the stated intention in DPD Policy DM15, the Council do not have an adopted Site Allocations DPD which identifies Gypsy and Traveller sites to meet the need in the Borough. Furthermore, the emerging Local Plan has been delayed. The 2018 Local Development Scheme envisaged the Plan being adopted in the summer of 2021. I am advised the Plan will be submitted for examination in the autumn of 2023. It is therefore likely that adoption would at the earliest, be towards the end of 2024 though more likely into 2025. In the interim, there are no site allocations to meet existing and future needs.
29. The appellant brought my attention to an appeal³ in the Borough, where the Inspector had concluded in 2016 that there were no measures in place to meet either the current identified need or any arising need beyond 2016. He concluded that due to the lack of a five-year supply, the lack of a robust GTAA and the reliance on a single site, that there had been a failure of policy. Whilst the GTAA has now been updated and there is no reliance on a single site, there continues to be a lack of a five-year supply.
30. Given the above, there has been a persistent and prolonged failure of planning policy to provide sites to meet the accommodation needs of the Gypsy and Traveller community. This is likely to continue for a further 18 months to 2

³ Appeal Ref APP/R2330/A/14/2212033 The Fir Trees, Sough Lane, Guide, Oswaldtwistle.

years until the adoption of the emerging Plan. This weighs significantly in favour of allowing the appeal.

Alternative accommodation

31. As confirmed in the submitted witness statements, there is a need for the appellant and his extended family to stay together. I shall return to this matter in my consideration of personal circumstances. Accordingly, the family require 3 pitches. As the appellant's main source of income comes from horse breeding, there is also a need for a site to have space for stabling and grazing or for the site to be located where such facilities are available close by. I was advised at the hearing that the appellant currently has around 30 horses. I shall discuss animal welfare issues later in my decision.
32. It is an accepted principle that sites should be suitable, available and affordable. At the hearing there was discussion about the Springvale site, which forms a potential allocation in the emerging Plan. I am advised this site used to be owned by an extended family member but is no longer. The evidence indicates it is no longer available. The Crossland Street site in Accrington, part of an extant housing allocation, provides 4 pitches and is also a draft allocation in the emerging Plan. Whilst it may be available, being largely owned by the Council and would be large enough for the family, it is in an urban location and would not provide grazing or stabling. Off-site facilities would have to be sought, which would likely be located in a rural area and too far away to be acceptable or suitable to the appellant.
33. I am content that on the basis of the evidence before me there are no suitable or available sites providing alternative accommodation for the appellant and his family. This matter attracts significant weight in favour of the proposal.

Animal Welfare

34. As I have stated, the family have around 30 horses. I was advised at the hearing that this includes one stallion and that most of the mares are in foal. I was advised that the appeal site provides stabling for 6 horses and grazing land. Additional grazing land is rented in the immediate locality and further stabling for 12 horses is owned by the appellant further up Moss Lane.
35. I acknowledge that there will be occasions when the appellant or his son need to be at close hand particularly when foaling. This does not in my view lend weight to the need for a permanent residential presence on the appeal site. At key times temporary accommodation could be provided which would ensure the horses are appropriately cared for. I note the evidence from the appellant's vet and his view that given the number of horses owned by the appellant it is vital that someone is present at the premises day and night in order to provide regular observation and checks. However not all the horses are kept at the appeal site, so travelling a short distance to the respective locations is required. This is no different than living off site and attending the horses at regular intervals.
36. I give limited weight to the need for a residential presence in order to care for the horses.

Personal Circumstances

37. The appeal site provides 3 pitches. The first pitch is occupied by the appellant and his wife. The second pitch provides accommodation for their son, his wife and 5 children. The third pitch is occupied by the appellant's two adult daughters, one of which has 3 young children.
38. In total there are 8 children living on the site. Two of the children are of pre school age, the three oldest are home schooled and the remaining 3 children attend a local primary school. I have been provided with evidence to demonstrate their regular attendance. A settled base would enable the children to continue their education.
39. I read and heard evidence that the appellant and particularly his wife have ongoing health needs. which require other family members to provide support and care. This is corroborated by a letter from the Local GP practice. I recognise that these care needs are likely to increase over time. A settled base would ensure continuing access to GP and hospital facilities. I therefore give significant weight to the health needs of the appellant and his wife. I understand that the remaining family members are in a good health and registered with a local doctor. I accept that a permanent base would provide accessible health care for the other family members. However as there are no particular needs in this regard, I attribute limited weight to this factor.
40. The Council does not dispute that the current occupants of the appeal site are part of an ethnic minority (Romany Gypsies) and thus have the protected characteristic of race under s149(7) of the Equality Act 2010. In such circumstances, s149(1) of the Act requires due regard to be had to the need to, amongst other matters, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. This includes minimising the disadvantages connected to that characteristic.
41. The nomadic habit of life of the appellant and his family is linked to their culture. However, without a settled base it is difficult for them to balance their traditional way of life with the practical realities of modern living. Facilitating this balance is an important part of achieving the social sustainability sought by Paragraph 13 of the PPTS. The unavailability of suitable vacant sites also indicates inequality in housing opportunities, as this is not generally something experienced to the same extent by non-travellers.
42. Thus, the equality implications weigh in favour of the proposal because dismissing the appeal would perpetuate the disadvantages currently being experienced by the appellant and his family in finding a settled base from which to live.

Best Interests of the children

43. As stated above, there would be eight children on site for whom Article 3 of the United Nations Convention on the Rights of the Child are engaged. This requires that the children's best interests are a primary consideration and caselaw has established that no other consideration in a subsequent assessment of individual circumstances, should be regarded as more important or be given greater weight.
44. The best interests of the children would be served by the family continuing to reside at their long-established home and business base. Their needs are being met presently at this base. Should the appeal be dismissed, and the family

required to vacate the site, they would be forced to either lead a roadside existence or double-up on pitches elsewhere. This would inevitably impact negatively on the children's education and wellbeing. The best interests of the children is a factor that attracts significant weight.

Other matters

45. In 2013 a planning application was submitted on the appeal site for the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one Gypsy family. This was refused by the Council. An appeal was made, which although recommended to be allowed by the Inspector in 2014, was recovered by the Secretary of State and then dismissed. Following that decision, the 'call in' of applications by travellers was later found to be unlawful in the Court of Appeal⁴. In light of this, the appellant sought to challenge the 2014 decision in respect to the appeal site. The Court of Appeal found that whilst the Secretary of State's decision to recover the appeal was unlawful, this did not nullify the appeal decision. Therefore, the decision still stands and forms a material consideration which I have taken into account.

Overall Planning Balance

46. The Framework attaches great importance to the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development in the Green Belt will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It is set out in PPTS paragraph 16 that 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.
47. I have given substantial weight to the harm caused by inappropriate development in the Green Belt, as well as the effect on openness and the encroachment into the countryside.
48. However, set against this, are several considerations which weigh in favour of the development, notably the current and pressing unmet need for traveller pitches and the current absence of a suitable alternative site for the occupants. Both matters attract significant weight. I am advised that two of the proposed five site allocations⁵ in the emerging Plan will involve the release of Green Belt land. This demonstrates the difficulties and limited prospects of accommodating Gypsies and Travellers in the Borough outside the Green Belt.
49. The proposal would ensure that the extended family can remain together, and the children can continue to provide support and care for their parents. It would provide stability for the dependent children in terms of educational needs along with healthcare access for the appellant and his wife. Furthermore, it would prevent the families having to lead a roadside existence and promote equality of opportunity. This carries significant weight.
50. Additionally, I have had regard to the persistent failure of planning policy to address the need for pitches in the Borough, to which I have attributed significant weight. Furthermore, the development meets the criteria stated in

⁴ Moore and Coates v SSCLG [2015] EWHC 44 (Admin)

⁵ Site 266 Enfield Road, Huncoat and Site 247 Sough Lane Extension

Policy DM15, being in an accessible location with access to public transport and services and facilities and causing no harm to residential amenity or biodiversity, with limited harm to visual amenity.

51. A further consideration in this case is that of animal welfare, however for the reasons I have given, this adds only limited weight in favour of the appeal.
52. The PPTS 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. I conclude that, for the reasons given above, allowing the appeal would be in the best interests of the children.
53. The harm to the Green Belt by reason of inappropriateness and other harm is clearly outweighed by the totality of other considerations in favour of the proposal. Very special circumstances therefore exist in this case. Based on the above balancing exercise, a personal permission would be justified. There is therefore no need for me to consider a temporary permission.
54. The appellant made representations regarding human rights and the effect of dismissing the appeal. However, as I am allowing the appeal, I do not need to deal with this matter.

Conditions

55. The Council provided draft conditions, and these were discussed at the event. I have amended some of them for clarity and in line with the discussions and to ensure that they meet the tests in the Framework and Planning Practice Guidance.
56. I impose condition 1 requiring the development takes place in accordance with the approved plans for clarity and the avoidance of doubt. The Council suggested a condition that would restrict the occupation of the site to Gypsies and Travellers as defined in Annex A of PPTS. However, the Court of Appeal in Smith held that the definition is discriminatory and has no legitimate aim. I therefore grant planning permission subject to condition 2 which restricts the occupation of the site to Gypsies and Travellers, not excluding those who have ceased to travel permanently.
57. The personal circumstances of the appellant and his extended family has also been a key consideration. Conditions 3 and 4, are therefore required to impose a personal permission.
58. Condition 5 is required in the interest of the character and appearance of the area, to control the number of pitches and caravans on the site. Condition 6 and 7 are necessary to prevent the site being used for commercial activity other than that associated with horse breeding and to limit the size of vehicles.
59. As the development has already commenced it is necessary to impose condition 8 to require the submission of a scheme of external lighting to safeguard the character and appearance of the area. There is a strict timetable for compliance because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met. Finally condition 9 is required to ensure the site is properly drained.

60. The Council suggested a condition to remove permitted development rights for sheds, other buildings or structures on the site. However, as the use of the land does not carry any permitted development rights, this condition is not necessary, and I do not impose it.

Conclusion

61. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Matthew Green	Green Planning Studio Ltd
Elias Smith	Appellant
Shaun Smith	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY

Simon Prideaux	Planning and Transportation Officer, Hyndburn Borough Council
Adam Birkett	Planning Manager, Hyndburn Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Updated Affidavit from the Appellant's daughter with letter demonstrating home schooling.
2. Letter from local Primary School Headteacher
3. Letter from local GP practice.
4. Updated letter from the appellant's vet.
5. Updated Witness Statement from the appellant
6. Updated Witness Statement from the appellant's son.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Drawing No. 18_924_003, Proposed Stables /Dayroom Drawing No. 18_924_006.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of a nomadic habit of life whatever their race origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of traveling show people or circus people travelling together as such.
- 3) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Elias Smith and his wife Mrs Amber Smith, Mr Shaun Smith and his wife Mrs Melissa Smith, Ms Amber Smith and Ms Charmain Smith.
- 4) When the land ceases to be occupied by those named in condition 3 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 5) No more than six caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than three shall be a static mobile home), shall be stationed on the site at any time.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, or within the buildings, including the storage of materials, other than that associated with the keeping and breeding of horses.
- 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought on to land for the purposes of such use, shall be removed within 3 months of the date of failure to meet any of the following requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for external lighting shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision, the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The Scheme shall be implemented in full in accordance with the approved details and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) Foul and surface water shall be drained on separate systems.