



Appeal Decisions

Inquiry Held on 28 February & 01, 02 & 03 March 2023

Site visit made on 03 March 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Appeal A Ref: APP/G2435/C/22/3292588

Appeal B Ref: APP/G2435/C/22/3292599

Land at Whitegate Stables, Coleorton Lane, Packington, Ashby-de-la-Zouch, Leicestershire LE65 1XJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr James Toogood and Appeal B by Mrs Jane Wilsher against an enforcement notice issued by North West Leicestershire District Council.
 - The enforcement notice was issued on 24 December 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to a residential Gypsy/ Traveller caravan site ("the Unauthorised Use").
 - The requirements of the notice are:
 1. Cease the use of the Land as a residential Gypsy/ Traveller caravan site;
 2. Remove all caravans, hardstanding/ hard surfacing, fencing, services, storage containers, sheds, porta-loos, animal enclosures, vehicles, machinery, trailers, waste, construction materials and any other items in each case associated with the Unauthorised Use from the Land;
 3. Restore the land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 6 months from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period in relation to Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed in relation to that appeal. Consequently, Appeal B will proceed on ground (g) alone.
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Appeal C Ref: APP/G2435/W/22/3292751

Land at Whitegate Stables, Coleorton Lane, Packington, Ashby-de-la-Zouch, Leicestershire LE65 1XJ

- 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 James Toogood against the decision of North West Leicestershire District Council.
 - The application Ref 21/01062/FULM, dated 28 May 2021, was refused by notice dated 23 December 2021.
 - The development proposed is described on the application form as: Twelve mobile homes for Gypsy families.
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Decision in Relation to Appeal A

1. 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 1990 Act as amended.

Decision in Relation to Appeal B

2. I take no further action in respect of this Appeal.

Decision in Relation to Appeal C

3. The appeal is allowed and planning permission is granted for the material change of use of land to a residential caravan site for gypsies including the stationing of 12 mobile homes, provision of access drive, parking spaces including for 12 touring caravans and bin stores, and retention/ installation of hardsurfacing and fencing at Whitegate Stables, Coleorton Lane, Packington, Ashby-de-la-Zouch, Leicestershire LE65 1XJ in accordance with the terms of the application, Ref 21/01062/FULM, dated 28 May 2021, and the plans submitted with it, subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

4. Three appeals are before me in relation to the same site. Appeals A and B are made against the decision of the Council to serve an enforcement notice in relation to the material change of use of the land and Appeal C is made against the refusal of the Council to grant planning permission for the same development.
5. As is often the case when multiple appeals are made against the service of an enforcement notice the requisite fee in respect of the ground (a) appeal has only been made in respect of one appeal; Appeal A. Thus, Appeal B proceeds on ground (g) alone.
6. The description of development given on the application form in relation to Appeal C is set out in the banner heading above. The Council amended that description in the course of the application to the form seen on the decision notice. That is a more comprehensive description which better describes the development for which permission was sought and I have used it within my decision in relation to Appeal C above.

Statement of Common Ground and other Preliminary Matters

7. Shortly before the opening of the event the parties submitted a signed Statement of Common Ground. It is worth briefly setting out the key agreed matters as they help to define the main issues in dispute at the appeal and include matters directly relevant to the planning balance.
8. The Council accepts that all of the residents occupying the site are ethnic Gypsies and Travellers and that they would meet the definition contained within the Government's Planning Policy for Traveller Sites (2015) (PPTS). Since the enforcement notice was served the definition within the PPTS has been found by the Courts to be discriminatory to those Gypsies and Travellers who have ceased to travel due to ill health or old age. The parties agree that the definition should not be applied to the residents of the site on account of its discriminatory effect.

9. In terms of personal circumstances, the appellants' proofs of evidence contain witness statements from the residents of each pitch within the site, including reference to childcare needs and medical information. All of the families have local connections to the area. A number of residents spoke to those statements and expanded on them at the event. I shall not repeat the details due to the sensitive nature of the information provided but the Council accepts that the information is factually accurate and that those personal circumstances are a material consideration in the determination of the appeals.
10. The Gypsy and Traveller Accommodation Assessment (2022) (the GTAA) was published in November 2022 and provides the most recent assessment of need. The parties agree that the GTAA is a robust evidence base upon which to assess need. The GTAA identifies a current need for 27 pitches over the five year period 2022 to 2027 and a need for 39 pitches between 2022 and 2040. However, in addition to that need, the GTAA identified a need for households that did not meet the definition of gypsies and travellers within the PPTS. In the light of the Smith judgment the Council accepts that need identified in the GTAA should be amalgamated with the needs of those households which would result in a need for 47 pitches over the period 2022 to 2040.
11. Both parties agree that the significant unmet need is a material consideration in favour of the appeals.
12. In terms of supply, the Local Plan review is ongoing but a timetable for that review will not be ready for consultation until later in 2023. The Council accepts that the lack of progress in identifying sites to meet the needs of gypsies and travellers in the district is a material consideration in favour of the appeals. The Council also accept that there are currently no other available alternative sites within the district and that the occupants cannot return to their previous site. In that context, the Council also acknowledge that the occupants would be likely to resort to roadside living if the enforcement notice is upheld and that such living would not be in the best interests of the residents, in particular the children living on site and those residents who are pregnant.
13. In planning policy terms the parties agree that the most important development plan policies are policies S3 (sites in the countryside) and H7 (provision for gypsies and travellers and travelling showpeople) of the North-West Leicestershire Local Plan (2017) (the Local Plan).
14. Policy H7 is a criteria based policy and the Council accepts that H7(1), (2) and (3) are all out of date due to the fact that the need is now significantly greater than identified in the policy, that no progress has been made on producing a Gypsy and Traveller Development Plan Document and that the Council cannot identify a five-year supply of sites. In terms of H7(4)(a), (b), (d), (e) and (g) the Council is satisfied that the development is proportionate to the scale of Packington, the nearest settlement; that adequate on-site parking and turning is available; that adequate utility services are provided; and that the use is compatible with the amenities of neighbouring land.
15. With regards to H7(6) and the related policies EN1 and EN2 the site falls within the catchment of the River Mease Special Area of Conservation (SAC)/ Site of Special Scientific Interest (SSSI). Subject to the imposition of a condition requiring the installation and ongoing maintenance of a suitable drainage scheme the parties and Natural England (NE) are satisfied that the development will not have an adverse effect on the integrity of the SAC/SSSI,

thereby complying with the aims of the Habitat Regulations 2017 (the Habitat Regulations)¹. However, under the terms of the Habitat Regulations it is incumbent upon the competent authority to carry out an Appropriate Assessment to establish whether there would be any likely effects on the integrity of an SAC and, if so, how these could be mitigated. As the decision maker I am the competent authority for the purposes of the Habitat Regulations and I shall address the matter later within my decision.

16. The effect of the development on highway safety is a key issue in dispute in relation to whether an appropriate visibility splay can be provided to the north-eastern side of the site. However, the parties agree that the geometry of the access and the degree of set-back of the gate are satisfactory and that there is sufficient space for vehicles to park and turn within the site. There is also no dispute in regards to the results of the speed survey undertaken by the appellants, as reported in the evidence of Mr Lennon.
17. During the Inquiry, I raised the possibility of the parties jointly measuring the available visibility splays to the north-eastern side of the site access on the basis that it would assist with my understanding and assessment of the respective cases. Whilst that was not possible at the accompanied site visit, the appellant and the County Highway Authority subsequently liaised with each other and have produced a joint 'Table of Available Visibility' (the Table of Visibility) along with two associated plans showing the available splays². I am grateful for the parties for providing that information and have taken it into account in reaching my decision.
18. The parties also agree that the impact of the development is acceptable in relation to ecology; that it complies with the requirements of the National Forest Planting Scheme; that there would be no impact on any heritage assets and no objection in terms of the loss of best and most valuable agricultural land.
19. The Council screened the proposal in relation to Appeal C at the application stage and was satisfied that it was not "EIA development" under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. On the information before me I see no reason to take a different position.

Main Issues

20. In view of the above, the main issues in dispute in relation to Appeal A on ground (a) and Appeal C are:
 - i) The effect of the development on highway safety;
 - ii) Whether the location of the site is suitable for the development, having regard to the accessibility of local shops and services and taking account of available options with regard to modes of travel;
 - iii) The effect of the proposal on the character and appearance of the area; and

¹ Natural England confirmed its view that "an adverse effect on the integrity of the SAC can be ruled out" in an email from Robbie Clarey to Jenny Davies of the Council, dated 23 February 2023.

² Drawing Nos. AS/0229/AD/504 Rev. B & AS/0229/AD/503 Rev. A

- iv) If any harm does arise in relation to the first three main issues, whether that harm is outweighed by other material considerations to an extent that would warrant the grant of planning permission.

i) Highway Safety

21. Coleorton Lane is a C-classified highway which runs from the village of Packington up to the crossroads with Alton Hill and Corkscrew Lane, adjacent to New Packington. It is rural in character, with hedgerows either side of the road, no segregated footways and is subject to the national speed limit.
22. As set out above, the main issue in dispute is whether the available visibility splay from the site access in a north-easterly direction is adequate to give drivers exiting the site sufficient warning of oncoming traffic and, vice versa, so that oncoming vehicles from that direction have adequate visibility of vehicles leaving the site entrance.
23. Oncoming vehicles travelling towards the entrance of the site from the north-east have more than adequate visibility of vehicles seeking to turn right into the site entrance from the north-easterly direction, as depicted in the agreed Table of Visibility. The available visibility to and from the site entrance is more restricted due to the alignment of Coleorton Lane which curves away to the left as one looks in a north-easterly direction from the site entrance, with the established hedgerow and two mature trees restricting views around the bend.
24. The Council's starting point was that visibility splays should be in line with those recommended within Table DG4 of the Leicestershire Highway Design Guide (2007) (the LHDG). That table uses splays calculated on the guidance contained within Manual for Streets (MfS) for vehicle speeds of up to 40mph and from the Design Manual for Roads and Bridges (DMRB) for speeds above 40mph.
25. Although the table sets out recommended visibility splays increasing in incremental steps within certain speed brackets footnote (f) identifies that calculated values for actual agreed 85th percentile speeds will be accepted and that is the approach the parties have adopted in this instance. Thus, whereas Table DG4 sets out that visibility of 160m should be achieved for speeds between 45 and 53mph, the calculated value for the 85th percentile measured speed of 49.8mph for vehicles approaching from the north-east is 148m if one applies deceleration rate of 2.45m/s² (0.25g) and a 2 second reaction time, based on the 'Desirable Minimum' standard set out within the DMRB³.
26. The key point in dispute is whether it is appropriate to apply a relaxation to that Desirable Minimum standard. MfS2 (first published in 2010), post-dates the LHDG. The original MfS concentrated on primarily residential streets in urban environments and MfS2 examines whether some of those principles can be applied to busier streets and non-trunk roads.
27. It is fair to say that it advocates a slightly less rigid approach than the DMRB, subject to an assessment of local context. Table 10.1 of MfS2 recommends two values for Stopping Sight Distance (SSD) where speeds are above 60kph; the Desirable Minimum, as described above, but also the Absolute Minimum (also referred to as 'One Step Below' in DMRB) which is based on a reaction time of 2 seconds and deceleration rate of 0.375g. There is no dispute that the

³ Table 2.10 of CD109 Highway Link Design Revision 1, appended to the DMRB.

available visibility splay of 131m when measured to a point 1m from the nearside carriageway edge to the NE is adequate if Absolute Minimum values are used. The issue in question is whether it is appropriate to apply that standard. Mr Whiteman for the Highway Authority and Mr Lennon for the appellant both accepted that the issue is one of judgement and that accords with advice in Table 1.1 of MfS2 which states that calculation of SSD on roads of 40mph and above will be subject to local context.

28. Before assessing the submissions in that respect it is worth noting that whichever standard is used, the visibility between a point 2.4m back from the site entrance and a driver positioned in the left hand lane travelling towards the site is sufficient to allow vehicles to stop safely whichever standard is used. Thus, in the vast majority of cases, sensible drivers heading towards the site entrance will have ample time to assess any activity at the site entrance and react accordingly.
29. The question of whether the Absolute Minimum standard is acceptable only arises in circumstances where oncoming cars are travelling towards the entrance on the right hand side of the road, for example if overtaking another road user. Having driven more than once and walked along the stretch of road in question I find the chances of such an overtaking manoeuvre being undertaken at high speed to be slim. When travelling towards the site the alignment of the highway results in a "blind bend" which would be a foolhardy place to overtake a vehicle, particularly at high speed with the threat of an oncoming vehicle approaching in the opposite direction.
30. I recognise that some drivers can be impatient around cyclists and other slow moving traffic. However, that scenario would be unlikely to result in a vehicle passing completely into the opposite lane in my view. Rule 72(1) of the Code recommends that cyclists on quiet roads or streets should ride in the centre of the lane but move to the left if a faster vehicle moves up behind to allow them to overtake if it is safe to do so. Rule 72(2) of the Code recommends that cyclists on busy roads with vehicles travelling faster than them should allow vehicles to overtake where it is safe to do so, keeping at least 0.5m from the edge of the kerb and further where it is safe to do so.
31. As described by the Highway Authority Coleorton Lane is a moderately busy rural road, subject to the national speed limit. Thus, cyclists using the road will be aware that vehicles are likely to approach them at some speed and are unlikely to hold a position in the middle of the lane. It is more likely that they would move over to a distance of approximately 0.5m from the edge of the carriageway, as recommended in the Highway Code. In that scenario overtaking cars would be likely to straddle the centre line rather than being completely on the wrong side of the road. A visibility splay of 148m is available to the centre line of the carriageway which would be sufficient for safe stopping when using the desirable minimum standard. A driver marginally straddling the centre line would have slightly less visibility but not substantially so.
32. Even then, most drivers can be expected to exercise a degree of caution and slow down when approaching a slow moving road user such as a cyclist, horse rider or pedestrian. It seems unlikely that someone would simply carry on at speed and overtake around the bend without adjusting their approach at all.

33. Thus, I find it unlikely that a vehicle would overtake completely on the wrong side of the carriageway on the approach to the site access. Even then, it should be noted that inter-visibility between the oncoming driver and the driver seeking to exit the access is a two-way thing. The driver of a vehicle overtaking in the right-hand lane would be close to the nearside edge where views would be restricted by the bend. However, the left hand side of the vehicle would be much closer to the centre line of the road such that the driver at the exit would be able to see the oncoming vehicle before the driver of that vehicle was able to see them. If faced with a scenario of a vehicle travelling at high speed on the wrong side of the carriageway most drivers would take the cautious approach and decide not to pull out until the vehicle had passed.
34. It would be impractical to design out every possible element of risk by designing highways based on reckless driving and it is reasonable to take the likelihood of such an event into account in making my decision. Consequently, my assessment is not quite the binary scenario presented by the Council whereby one applies either the Absolute Minimum or Desirable Minimum and makes a decision purely on that basis. Rather, it is reasonable to take into account the context, the alignment of the road and low level of probability of a vehicle overtaking at the specific point on the approach to the site.
35. From the evidence presented it is clear that the Highway Authority have been content to apply the Absolute Minimum criteria on other rural roads where the National Speed Limit is in place. When giving evidence in chief Mr Whiteman referred to factors such as the fast moving nature of the road, the rural character of the lane, lack of footways, limited frontage activity and local accident record as being reasons why the Desirable Minimum should be applied over the Absolute Minimum.
36. However, some of those factors would apply to many rural roads, particularly the character of the lane and the lack of segregated footways. Evidence has been presented of joggers, walkers, cyclists and horse riders using the road and Mr Whiteman accepted that he did not find that unusual having regard to the character of the highway which he described as moderately busy. Thus, it seems to me that drivers using the lane will be accustomed to the likelihood of other road users using the lane.
37. Whilst clearly rural in character it is quite a short stretch of highway linking Packington and New Packington and it is not devoid of activity or frontage activity. Public Rights of Way are accessed from the lane, there are farm accesses, the appeal site itself was formerly a stables and there are commercial buildings at the New Packington end and then the fringes of Packington a short distance to the south-west of the site.
38. The accident record for the lane is not decisive in my view. Three accidents have been recorded within the previous five years within 150m of the site access, two described as serious, but little detail of the nature of those accidents or what caused them has been provided. The accidents do not appear to be related to the access itself. Given the low number of incidents in proportion to the volume of traffic using the road, the accident record does not indicate an inherent problem with highway safety in my view.
39. Reference was also made to potential for snow and adverse weather. However, the same could be said of any road in the country; there is nothing to indicate that Leicestershire is more likely to receive such conditions than anywhere else.

If that was a decisive factor it would rule out the use of Absolute Minimum standards anywhere. Moreover, given the alignment of the highway it seems highly likely that vehicles approaching the site would slow down in such conditions to navigate the bend in the road and the approach speed would likely be far less than that recorded in good weather conditions. In addition, I note that the percentage of HGVs using the road is low, which is a relevant factor in assessing the nature of the road and the appropriate SSD standard.

40. Overall, for the reasons set out, I find it is reasonable to apply the Absolute Minimum standard when calculating the required SSD given the character of the road and the local context. The available splays are more than adequate to meet that standard. When added to my observations on the alignment of the road and the limited likelihood of overtaking vehicles travelling at speed on the approach to the site, I am satisfied that the available visibility splays are acceptable in order to achieve a satisfactory standard of highway safety.
41. For those reasons the development complies with the requirements of policies IF4(1) and H7(4)(c) of the Local Plan and paragraphs 110(c) and 111 of the Framework with regard to the need to provide safe and suitable access to proposed developments.

ii) Accessibility of Local Shops and Services

42. Policy H7(a) of the Local Plan requires that Gypsy and Traveller sites should be located with reasonable access to a range of services, such as shops, schools, welfare facilities or public transport. Policy IF4(2) also requires that new development proposals will be expected to maximise accessibility by sustainable modes of transport, having regard to the nature and location of the development site. Similarly, policy S3(vi) requires that proposed development is accessible by a range of sustainable transport modes. Those policies are consistent with the aims of section 9 of the Framework with regard to the promotion of sustainable modes of travel and the recognition at paragraph 105 of the Framework that opportunities to maximise sustainable transport solutions will vary between urban and rural locations.
43. The appeal site is located roughly 750m from the edge of Packington which is identified as a 'Sustainable Village' in the hierarchy set out within policy S2 of the Local Plan. Such settlements are described as having a limited range of services and facilities being one rung down from 'Local Service Centres' which are said to contain a wider range of services and facilities to meet day to day needs. Whilst Packington will not cater for all needs of the occupants it does have a shop, public house, primary school and church. I understand a number of children from the appeal site attend the school.
44. It is possible to walk along the lane from the site to the village and I did so myself. One needs to be aware of oncoming vehicles but it didn't feel inherently dangerous when exercising due care and attention. Cycling would also be a realistic alternative. Such trips are clearly less likely in hours of darkness due to the absence of street lighting and segregated pavements. Nonetheless, even if car travel was used, journeys would be short.
45. The closest bus stop is within the village around 1km from the site, being slightly but not substantially over the recommended 800m walking distance for

rural areas in the LHDG⁴. I understand an hourly daytime service runs from the village. Whether occupants would use that service is a matter of personal choice but it is not an unreasonable or unusual level of public transport provision given the rural location.

46. Moreover, the 'Key Service Centre' of Ashby de la Zouch is only a short distance from the site. The town centre is just over 2km away and the retail park and large supermarket on the eastern edge of the town is a similar distance. In fact, the distance from the site to the retail park isn't appreciably greater than it would be for a resident living on the western side of Ashby, within the settlement itself. So journeys to shops, medical facilities, secondary education and financial services will be short in nature.
47. For those inclined to do so cycling would be a realistic option, predominantly along rural lanes. I accept that the majority of trips are likely to be by car but that is not unusual in a rural area. I am also mindful of the acute need for additional Gypsy and Traveller sites within the district and the lack of progress in allocating such sites through the development plan process. Given associated land values it seems unlikely that many sites are likely to become available within the urban area itself. Accordingly, the reality of the situation is that sites close to existing settlements will need to be found in order to meet the defined need.
48. In that context, and in the context of the general thrust of local and national planning policy which recognises that options for sustainable travel will be different in rural and urban areas the site does provide 'reasonable' access to local shops and services, as required by policy H7(a) and does provide some alternative options to the private car such that I find no conflict with the aims of policy IF4(2) or policy S3(vi) when one takes into account the context of the location.

iii) Character and Appearance of the Area

49. The site is located outside of the defined settlement boundary, within the countryside to the north-east of Packington. The local topography is gently undulating with a patchwork of predominantly arable fields surrounded by hedgerows interspersed with large trees. A sizeable woodland is visible to the south of Coleorton Lane and the A42 bypass has quite a significant impact to the north, separating Packington and surrounding land from Ashby de la Zouch in a physical and visual sense.
50. The area falls within the National Forest which covers large parts of the district and policy En3 of the Local Plan identifies the aim of increasing forest cover across the area. However, the policy envisages that one of the main ways of increasing woodland cover will be through new development and tree planting provision on and off site. As such, new development is not excluded, nor is it purely a landscape designation, albeit that the increase in woodland cover is anticipated to bring benefits in terms of the physical appearance of the area. However, policy En3(4) does require that development is appropriately sited and scaled with regard to its setting, that it does not adversely effect the character of the National Forest and that the character is enhanced through the incorporation of National Forest or locally inspired identity.

⁴ Produced in Appendix 14 of Mr Whittaker's Proof of Evidence

51. With regard to the latter, 20% of the site area will be reserved for tree planting which could be secured by way of a planning condition, thereby complying with the requirements of policy En3 in respect of new planting. The majority of the woodland would be created at the rear of the site and that would also help to screen the site from mid-range views that are available from the road bridge over the bypass and the public right of way that runs adjacent to it. Having walked along the public right of way which leads from Coleorton Lane, to the south of the site, towards the bypass, views of the site are fleeting and screened due to the local topography and intervening hedgerows. Similarly, medium range views from the north-east are restricted due to the fact that the site sits just below the brow of a hill and due to a retained hedgerow along that boundary.
52. Consequently, views of the development are primarily from close range from the entrance and also on the approaches along Coleorton Lane. Impact on the wider countryside is limited. From those close vantage points there is no doubt that the timber fencing around the perimeter creates a harsh exterior which jars against the general sense of greenery and hedgerows which generally provide the means of enclosure elsewhere. The large area of hardstanding to the front of the site also presents a harsh and somewhat barren landscape when set against the surrounding fields.
53. By their nature, caravans tend to be white or light in colour and box-like in profile. All of those features make them stand out in the generally verdant landscape. However, I wouldn't go as far as the Council in describing caravans as 'alien' features in the rural locality⁵, particularly when one considers that Gypsy and Traveller sites are one of a range of development types considered suitable within the countryside under policy S3(j) of the Local Plan, and the fact that the Council acknowledges a substantial need for more sites, the majority of which will need to be located in the countryside.
54. The acceptance of sites within policy S3 is subject to a number of considerations, including subsection (i) which requires that the appearance and character of the landscape, including various associated features, is safeguarded and enhanced. There would be little point in the policy accepting sites in principle within the countryside if the nature and appearance of caravans was considered to be inherently unsuitable to such locations.
55. In my view it is the stark boundary treatment and site frontage that creates the majority of the harm in terms of the present condition of the site, particularly along the southern edge facing towards Packington and that facing towards the site frontage. With suitable screening in the form of a planting scheme to create hedgerows with native species interspersed with trees, in addition to the woodland planting to the rear a significant amount of the visual impact could be successfully ameliorated. Clearly, that planting would need to take place on the outer side of any fencing to create a boundary that is reflective of the local area and have the desired visual effect. That may require the existing fence to be removed or the appellants suggested at the Inquiry that they now owned the adjacent field such that planting could take place beyond the boundary of the site. The precise details could be secured through a condition requiring a landscaping/ planting scheme which would need to be submitted to and agreed by the Council and implemented within a defined

⁵ Paragraph 5.55 of Mr Whittaker's proof of evidence

timescale. But given the large size of the site and the amount of available space I am satisfied that a suitable scheme is achievable.

56. The caravans and associated parking areas are set well back from the highway. With a satisfactory planting scheme in place remaining views of the caravans and associated vehicles would be fleeting albeit that screening would be less in winter months. Nonetheless, the visual effect would be significantly softened compared to the present situation.
57. Consequently, whilst the present impact is harmful to the character and appearance of the area, the effect can be mitigated such that any adverse visual impact will be minor in nature. However, policy E3 requires the appearance and character of the landscape to be safeguarded and enhanced and similarly policy En3(4)(c) requires that development proposals enhance the character and identity of the National Forest. Even with mitigation in place it could not be said that the site will enhance the local landscape. That is a high bar for any development and there would remain a degree of policy conflict in that respect.
58. Policy H7(f) is less onerous and requires that Gypsy and Traveller sites are compatible with landscape, as well as the physical and visual character of the area. I am satisfied that the development will be compatible with the character of the vicinity and meet that requirement with suitable mitigation in place.

iv) Other Material Considerations

59. As set out above, all of the families have local connections to the area, a number of children attend the local primary school and various residents are enrolled with local medical practices. Those services would be far harder to access without a settled base which would be the likely outcome if the appeals were dismissed and the notice upheld, given the absence of alternative sites. Those personal circumstances carry significant weight, particularly having regard to the best interests of the children.
60. As identified in the GTAA there is a significant unmet need for additional Gypsy and Traveller pitches in the district. Given the number of pitches that would be provided by the site and the fact that the families living on the site are explicitly identified as being in need within the GTAA, the contribution the site would make is also a matter that attracts significant weight. The Council also accepts that the lack of progress in identifying sites to meet the needs of Gypsies and Travellers in the district is a material consideration in favour of the appeals.
61. Integral to my decision-making is exercising the duties under the Human Rights Act 1998. Article 8, a Convention Right affords a person the right to respect for their private and family life, their home and their correspondence. This qualified right requires a balance between the rights of the individual and the needs of the wider community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies and Travellers as a minority group means some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases.
62. Under the Equality Act 2010 public sector equality duty (PSED) I must have due regard to the three aims identified in the Act – to eliminate discrimination,

advance equality of opportunity and foster good relations. I am also aware from the evidence that there are persons on the site with the protected characteristics of age and disability. There is no doubt that the PSED is engaged in these appeals. The decisions must be proportionate to achieving the legitimate planning aims.

63. Overall, when considered in combination, the above matters attract substantial weight in favour of the grant of planning permission.
64. As noted above the site is within the catchment of the River Mease SAC, an internationally designated watercourse which is designated on account of the quality of the range of vegetation within the river and the associated species it supports⁶. A Water Quality Management Plan (June 2011) is in place which aims to reduce levels of phosphate in the river due to the adverse effect those contaminants are having on the conservation objectives of the SAC. Without mitigation, the development could have adverse upon the SAC and its conservation objectives through drainage discharge into the catchment which could increase phosphate levels. Consequently, significant adverse effects on the integrity of the SAC cannot be ruled out. As the competent authority, I must carry out an Appropriate Assessment under the Habitat Regulations.
65. The proposed means of foul drainage from the site is through connection to four package treatment works (PTPs) which would be sited in the field adjacent to the site. Further the initial consultation response of NE the appellant and the Council have assessed the ability of the drainage field to attenuate phosphates, against the criteria within NE's Standing Advice for Development Proposals Within the River Mease Catchment (January 2022) and subsequent advice letter dated 16 March 2022. Those assessments have identified that the drainage field meets all of the criteria set out within that advice and has suitable attenuation capability. As such, the risk of phosphates discharging into the River Mease catchment is low, subject to the imposition of a condition to secure an suitable drainage scheme and ongoing maintenance of it. On the basis of that assessment and the proposed drainage scheme NE has confirmed its view that an adverse effect on the integrity of the SAC/SSSI can be ruled out.
66. Having regard to the information presented I see no reason to reach a different conclusion. The proposed drainage scheme, and ongoing maintenance of it, can be secured by planning condition. Subject to the imposition of such a condition I am satisfied that adverse effects on the integrity of the designated area can be ruled out, having carried out the required Appropriate Assessment under the Habitat Regulations.
67. The Written Ministerial Statement (WMS) issued on 31 August 2015 identified that intentional unauthorised development is a material consideration that should be taken into consideration in the planning balance. The site was occupied intentionally at a point when no planning permission existed. That weighs against the appeals. Nonetheless, the weight I attach is tempered by the absence of any alternative sites, the local connections of the families who live at the site and the clear need for them to find a settled base.

Conditions

⁶ As described in the River Mease Special Area of Conservation Water Management Plan, Developer Contributions Scheme 2 (June 2016).

68. The Council submitted a list of suggested conditions in the event that the appeals were allowed. As agreed at the Inquiry, a number of the suggested conditions would need to be reworded to reflect the fact that the development has already occurred. Such 'site development scheme' conditions require details to be submitted to and agreed in writing by the Local Planning Authority on a strict timescale, before subsequently being implemented, along with the possibility of an appeal being made if the details cannot be agreed. It should be noted that those consequences are severe because the wording is such that the benefit of planning permission is essentially removed if the matters required by the site development scheme are not complied with. The basis for that is that the conditions are only imposed if necessary to make the development acceptable in planning terms.
69. In this case a site development scheme (SDS) condition would be necessary to address a number of matters in the interests of the character and appearance of the area, highway safety and to prevent flood risk and to preserve the integrity of the River Mease SAC/SSSI. The scheme will need to secure appropriate hard and soft landscaping, including the National Forest planting scheme; details of the layout of each plot; details of access, parking and turning areas including the method of surfacing and construction; details of the proposed package treatment plants (PTPs) and drainage fields; and details of fencing, bin storage and lighting. Details of soft landscaping will need to secure appropriate perimeter planting for the reason set out above.
70. Associated conditions are necessary to ensure the ongoing retention, management and maintenance of the matters covered in the SDS.
71. The Council have requested that details of existing and proposed ground levels are provided but that is unnecessary given that there is no proposal to materially alter existing ground levels as the site is reasonably level.
72. For the avoidance of doubt, to ensure that the development is consistent with that for which permission is sought and in the interests of protecting the character and appearance of the area, a condition is required to limit the number of caravans permitted on the site at any one time. The proposal is for 12 pitches each with space for a static caravan and a touring caravan and I shall impose a condition to limit the overall number and the split between each type of caravan.
73. The Council put forward a condition to limit occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal has held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. In this case, some of the occupiers have ceased to travel permanently and there is no foretelling whether any occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission. Imposing the suggested condition would be liable to result in unlawful discrimination, with members of the family being unable to live on this site. I shall therefore word the condition in a way which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
74. In the interests of the character and appearance of the area it is necessary to impose conditions to prevent the use of the site for any commercial activities or storage and to limit the size of vehicles that may be parked or stored at the site.

75. A condition is necessary in the interests of highway safety, to maintain visibility splays. The splays put forward in the suggested condition by the Council are based on the absolute minimum calculation and the measured vehicle speeds. The reality is that greater visibility is achievable and available but I am satisfied that the condition reflects what is necessary to make the development acceptable in planning terms given my conclusion on the main issue above.

S106 Agreement

76. An executed planning agreement under s106 of the Town and Country Planning Act 1990 was submitted prior to the close of the Inquiry. As set out within section 1.1 that agreement relates to "the appeal submitted to the Secretary of State by the Owner in respect of the refusal of the Planning Application and allocated reference number APP/G2435/C/22/3292588". Appeal C, which is made against the refusal of the planning application actually has the reference APP/G2435/W/22/3292751. The reference used in the s106 agreement is that allocated to Appeal A, which is made against the enforcement notice.
77. However, when the s106 agreement is read as a whole it is clear that it relates to the planning application and s78 appeal. The "Development" is defined as "the development authorised by, and as more particularly, described in, the Planning Application". And the "Planning Application" is defined as that submitted to the Council under reference number 21/01062/FULM. There is no reference within the agreement to the enforcement notice or the appeal made against it. In other words, notwithstanding the typographical error with regard to the appeal reference number, the agreement is clearly drafted to the effect that it will take effect in relation to the planning application which is the subject of Appeal C.
78. Conversely, the agreement is not worded to ensure that the obligations would take effect in relation to any planning permission granted in relation to the appeal on ground (a). At the Inquiry, I asked the parties whether that opened up a possibility of the requirements of the agreement being side stepped if someone was to argue that they had implemented the scheme approved under ground (a) and not in relation to Appeal C. Both parties suggested that it would be difficult to take that position given the similarities between the development that has taken place and that proposed under Appeal C.
79. However, those comments were somewhat off the cuff given that the completed agreement was not submitted until late in the event and no undertaking to that effect has been submitted in writing. In any event, having regard to the wording of the agreement the obligations are only put forward in relation to Appeal C and it is therefore difficult to see how I can take them into account when determining the deemed planning application in relation to Appeal A. I shall proceed on that basis.
80. In terms of detail, the agreement contains obligations to make financial contributions towards secondary and post-16 education provision and a civic amenity sites contribution which would be put towards increasing capacity at the Coalville Household Waste Recycling Centre.
81. The County Council provided a CIL Compliance Statement⁷ setting out the policy basis for the contributions based on policy IF1 of the Local Plan and the

⁷ Dated 05 April 2022

County Council's Planning Obligations Policy which was adopted as a Supplementary Planning Document in 2019. Based on that evidence I am satisfied that the contributions are necessary to offset the impact of the development on local service provision, that the obligations are directly related to the development and fairly and reasonably related in scale and kind, thereby complying with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The appellants did not dispute the Council's position in those respects or provide any evidence to the contrary.

82. In view of the above, I shall take account of the obligations when determining Appeal C. Having concluded that the financial obligations are necessary to make the development acceptable in planning terms, the absence of a s106 agreement relating to the ground (a) appeal is a matter that clearly weighs against the grant of planning permission in relation to Appeal A.

Planning Balance in Relation to Appeals A & C

83. For the reasons given, the development is not detrimental to highway safety and satisfactory visibility splays are achievable. I am also satisfied that the site provides reasonable access to local shops and services and that reasonable transport options are available given the context of the site in a rural area, close to the neighbouring village and a short distance from the town of Ashby de la Zouch. I find no conflict with the policies H7, S3 and IF4 of the development plan in those respects.
84. The development has resulted in localised harm to the character and appearance of the countryside and the National Forest. However, that harm could be mitigated to a substantial extent through the imposition of a condition to secure a landscaping scheme and through the substantial planting that is proposed across 20% of the site area to accord with the National Forest planting requirements. That mitigation would be enough to ensure that the development is compatible with the local landscape and environment in accordance with policy H7(4)(f).
85. However, whilst any residual impact would be limited the development can not be said to enhance the appearance and character of the landscape or the National Forest which results in a degree of conflict with the aims of policies S3 and En3(4) of the Local Plan. Nevertheless, that small degree of conflict does not necessarily entail that the development is contrary to the relevant policies of the development plan taken as a whole.
86. There is a degree of tension within the development plan between the acceptance in principle of Gypsy and Traveller sites within the countryside in policy S3 and the requirement in policies S3 and En3 that they also enhance the landscape. Given the outward appearance and form of caravans it would be difficult for any site to achieve positive enhancement. However, it is not unusual for various policies within a local plan to have competing objectives.
87. Subject to necessary conditions, the development will comply with all of the requirements of Policy H7 which specifically relates to Gypsy and Traveller site provision. Moreover, the overarching aim of policy H7 is that provision should be made to meet the needs of Gypsies and Travellers and that need is substantial and likely to require sites to come forward within the countryside. I find no conflict with relevant highway policies.

88. The s106 agreement in respect of the Ground C appeal will provide necessary mitigation for the impact of the development on local education provision and to off-set the impact on the local waste site, thereby complying with policy IF1 of the Local Plan.
89. Overall, when looked at in the round I find that the development in respect of Appeal C does comply with the relevant policies of the development plan when taken as a whole. There is no conflict with national guidance in the PPTS. It follows that appeal should succeed subject to the necessary conditions described out above. Given that the use is compatible with the development plan and that there is nothing to indicate that the need for Gypsy and Traveller accommodation within the area is of a temporary nature, a full planning permission is justified.
90. Given absence of an executed s106 agreement which relates to the ground (a), there is a clear policy conflict and an approval in that case would not be justified because it may allow development to proceed without the benefit of mitigation that is necessary to make it acceptable in planning terms. Consequently, the most appropriate course of action is to dismiss the appeal on ground (a) thereby avoiding any doubt as to which permission has been implemented and ensuring that the obligations within the s106 agreement are in force.
91. Whilst I have found that the development in relation to Appeal C complies with the development plan as a whole, it is worth noting that Mr Whittaker for the Council accepted that the balance of material considerations would point to a grant of planning permission if I found no harm in respect of highway safety. In his view, it was the highway safety issue that tipped the balance when the Council resolved to dismiss the planning application and issue the enforcement notice. In other words, even if there was conflict with the development plan in terms of the 'non-highway safety' matters, he accepted that would be outweighed by the material considerations in favour of the scheme, as outlined above. Given the substantial weight I attach to those considerations and the very limited harm identified in terms of the character and appearance of the area that would clearly have been the case and the outcome would be the same in any event.

The Appeals on Ground (g)

92. Given that planning permission will be granted in respect of the development under Ground (c) the terms of the enforcement notice will cease to have effect by virtue of the terms of s180 of the Town and Country Planning Act 1990 (the Act). Consequently, it is unnecessary for me to consider the appeals in relation to ground (g) and I shall take no further action in respect of those appeals.

Conclusions

93. For the reasons given, I shall allow Appeal C and grant planning permission, subject to necessary conditions, taking account of the s106 agreement. I shall dismiss Appeal A and uphold the enforcement notice in relation to that appeal. However, the contents of the notice will cease to have effect insofar as the notice is inconsistent with the permission granted in respect of Appeal C, having regard to s180 of the Act. It follows that I shall take no action in respect of Appeal B because it is not necessary to consider the ground (g) appeals.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Stephen Cottle of Counsel

He called:
Mr Matt Lennon Lennon Transport Planning Ltd.
Mr Philip Brown BA(Hons) Philip Brown Associates Ltd.
Urban & Regional Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Stemp of Counsel

He called:
Mr Adrian Whiteman Principal Transport Planner LCC
B.Eng(Hons) MCIHT
Mr Neil Whittaker Senior Planning Associate Ivy Legal Ltd.
BSc(Hons) MA MRTPI

INTERESTED PARTIES

Mr Caleb Smith	Resident of the site
Mr Jack Sturgeon	Resident of the site
Mrs Shannon Sturgeon	Resident of the site
Mrs Jane Wilsher	Resident of the site
Mrs Julia Lee	Resident of the site
Mr Alec Statham	Agent for the Planning Application

Documents Submitted to the Inquiry

- 1) Bundle of authorities (listed 1-13) submitted by the appellant
- 2) Authorities Bundle – Appellant Highway Safety
- 3) Article “Second Manual is further boost for streets”
- 4) North West Leicestershire District Council Authority Monitoring Report 2020/21
- 5) Signed and executed copies of s106 agreement

Schedule of Conditions in Relation to Appeal C:

- 1) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 4 months of the date of this decision schemes for (a) to (f) shall have been submitted for the written approval of the local planning authority and the said schemes shall include a timetable for their implementation:
 - a) The proposed site layout, including the position and size of each pitch, the siting of the approved caravans, details of proposed boundary treatments, bin storage areas and any external lighting that is to be installed. Any scheme submitted shall include the retention of a three metre gap to the hedgerow on the northern side of the site;
 - b) Details of the means of construction of the site access which shall shall be laid out as shown on drawing No. AS/0229/AD502 Revision A with a minimum width of 6m and surface bound material for a depth of at least 15 metres measured from the back edge of the highway;
 - c) Details of on-site turning and parking areas, including proposed surface materials which shall be comprised of loose bound and permeable material, other than the hard surfacing for the area of hard bound material at the entrance to the site as required by 1(i)(b) above;
 - d) A soft landscaping scheme, including details of species, plant sizes and proposed numbers and densities, which shall include details for planting hedgerows and/or trees around the perimeter of the site on the outward side of any internal fencing, including measures to preserve the existing hedgerow on the north-eastern perimeter of the site;
 - e) A National Forest Planting Scheme which shall provide for a minimum coverage of 20% of the site area, as shown on the revised site plan submitted to the Council on 17 November 2021 (as appended to the Statement of Common Ground). The scheme shall include details of the extent of planting, the species mix, protective measures for new planting, planting densities and replacement planting for any sections of missing boundary hedgerows, along with a management plan for future maintenance and setting out responsibility for such maintenance; and
 - f) A scheme showing the precise location of the proposed four Ensign package treatment plants (PTPs) and their associated drainage fields, including details and the specification of the PTPs and the means of connection to each of the mobile homes on the site, together with a management and maintenance plan for the PTPs and their associated drainage fields.
 - ii. If within 11 months of the date of this decision the local planning authority refuse to approve the schemes 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 schemes shall have been approved by the Secretary of State.
- iv. The approved schemes shall have been carried out and completed in accordance with the approved timetable.

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.

- 2) Following the implementation and installation of the scheme of PTPs, pursuant to condition 1(i)(f), the PTPs and their drainage fields shall be maintained in perpetuity in accordance with the approved management and maintenance plan for the lifetime of the development.
- 3) The soft landscaping scheme submitted pursuant to condition 1(i)(d) above shall include a schedule of maintenance for a period of 5 years following completion of the proposed planting. Within that time, any trees or shrubs that are uprooted, die or become seriously damaged or diseased shall be replaced with other plants of the same species and size as that originally planted in accordance with the approved scheme.
- 4) Once planted in accordance with condition 1(i)(e) above, the National Forest Planting Scheme shall be retained and managed in accordance with the approved management plan.
- 5) Once constructed, the site access required by condition 1(i)(b) above shall be retained in accordance with the approved details for the lifetime of the development and no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 15 metres from the back edge of the carriageway. Any gates erected beyond that point shall be hung to open away from the highway.
- 6) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 7) There shall be no more than 12 pitches and no more than 24 caravans stationed on the site. On each pitch there shall be stationed no more than 2 caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 1 shall be a static caravan or mobile home.
- 8) No vehicles kept on the site shall exceed 3.5 tonnes in weight.
- 9) No commercial activities shall take place on the land, including the storage of materials.
- 10) Vehicular visibility splays of 2.4 metres by 114.3 metres to the north-east and 2.4 metres by 108.95 metres to the south-west, measured from the centre of the site access to a point 1m from the edge of the nearside carriageway in either direction shall be maintained for the lifetime of the development with

nothing within those splays higher than 0.6 metres above the level of the adjacent verge/ highway.