



Appeal Decisions

Hearing Held on 11 July 2023

Site visit made on 11 July 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal A Ref: APP/P0240/C/22/3301312

Green Gables, Paradise Farm Gypsy & Traveller site, The Causeway, Clophill, Bedfordshire MK45 4BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Betsy Stanley against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice, numbered CB/EN/18/303, was issued on 23 May 2022.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of the Land from Agricultural use to use as a residential Gypsy and Traveller site with the stationing of a mobile home shown marked with an X on the attached plan, touring caravans for residential use and a stable block shown marked on the attached plan.
 - The requirements of the notice are:
 1. Cease the use of the Land as a Residential Gypsy and Traveller site.
 2. Remove from the Land all touring caravans associated with the residential use.
 3. Remove the Mobile Home from the Land
 4. Remove the Stable block from the Land
 5. Remove from the Land all equipment and domestic paraphernalia associated with the residential use of the Land.
 - 6. Remove from the Land all building materials and rubble arising from compliance with requirements 2, 3, 4 and 5 above, and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/P0240/C/22/3301503

Green Gables, Paradise Farm Gypsy & Traveller site, The Causeway, Clophill, Bedfordshire MK45 4BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Betsy Stanley against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice, numbered CB/EN/18/303, was issued on 23 May 2022.
- The breach of planning control as alleged in the notice is the unauthorised operational development of the Land, including the laying of hard standing within the area edged red on the attached plan and the installation of electrical wiring and underground sewage provision.
- The requirements of the notice are:

1. Remove all the gravel hard standing from the Land.
 2. Remove the electrical wiring and underground sewage system from the Land.
 3. Remove from the land all building materials and rubble arising from compliance with requirements 1 and 2 above and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
 - The period for compliance with the requirements is 13 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by substituting the plan agreed at the Hearing and attached to this decision.
2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. It is directed that the enforcement notice is corrected by substituting the plan agreed at the Hearing and attached to this decision.
4. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

5. Green Gables forms part of Paradise Farm, which has been the subject of several planning applications since the 1990's and now has planning permission for the siting of a number of residential caravans. Three additional pitches were granted in 2016, (CB/15/02482/FULL). In summary, this was for three additional pitches, parking and associated hardstanding.
6. At the time of the Hearing only two of these pitches had been occupied. On the appeal site there were two mobile homes, one touring caravan, stables comprising two loose boxes and a tack room, a field shelter on skids and various other outbuildings and play equipment. It is understood that one of the mobile homes is waiting to be removed and I acknowledge that it did not appear to be connected to services.
7. There are two enforcement notices. In summary the first targets the material change of use of the land and the stable building; and the second, the operational development, including the hardstanding, the installation of electrical wiring and underground sewerage. At the Hearing the Council confirmed that because the stable block was understood to be mobile, they included this in the change of use notice (Appeal A).
8. From my observations, the stable block was sited on a concrete base and was partially enclosed by fencing and other small buildings. It was not sited on skids, nor did it have any wheels. All of these giving it a degree of permanence.

However, I have no evidence before me to suggest that there is a separate equestrian use on the site, or that the keeping of horses is anything other than ancillary to the residential use of the site. I therefore do not need to make any corrections to the notice in this regard.

9. I have nothing before me to suggest that the operational development, including the electrical wiring and the drainage, does not form part of the residential use of the appeal site. Accordingly, I shall consider both notices together in my decision, except where otherwise indicated.
10. A single annotated plan relates to both notices. However, whilst the breach at Paragraph 3 (Appeal A), refers to the stationing of the mobile home shown marked with an 'x', the plan itself, refers to the position of the mobile home within an area of land edged green. The Council agreed that the plan was incorrectly drafted. Nonetheless, it is clear from the appellant's evidence that she is aware of what is being targeted by the notices. It was agreed that a corrected plan could be substituted, without causing injustice to either party. A corrected and agreed plan was provided during the Hearing and I shall substitute this plan to correct both notices.
11. The matters put forward in support of the appellant's ground (e) appeal were primarily set out in her Appeal Form. Following discussion, the appellant agreed that the notice had been correctly served, but she had issues regarding various errors and the above inconsistencies in the plan. On this basis the appeal on ground (e) was withdrawn and I shall proceed on this basis.
12. The gypsy status of the appellant and her family is not in dispute.

Appeal B ground (d)

13. An appeal on this ground seeks to demonstrate that on the balance of probability, at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters, (i.e. the matters alleged in the notice). This ground of appeal is that there has been a breach of planning control, but it is immune from enforcement, having subsisted for the four-year period laid down by s171B for operational development. The burden of proof lies on the appellant.
14. The notice was issued on 23 May 2022. The parties agreed that the date for determining immunity, is 23 May 2018. I have nothing before me to suggest that the works were carried out other than, in a single operation.
15. It is the appellant's case that the hard standing had been substantially completed, during the first half of 2018. They confirmed at the Hearing that the top dressing was laid around July 2018. In support of their submissions a number of unsworn documents have been provided from third parties. These third parties did not attend the Hearing.
16. The Google Earth aerial photograph at Appendix 6 of the Council's Statement, dated March 2017, appears to show the appeal site to be mainly laid to rough grass, with some piles of unidentified material. Another image dated May 2018, appears to show that clearance and some groundworks had taken place. I am mindful that I have not been provided with verification of the precise dates that these images were taken.

17. The phrase 'substantially completed' must be taken as having the meaning established by Lord Hobhouse in *Sage v SSETR & Maidstone BC* [2003] UKHL, in the case of building operations, what is required is 'a fully detailed building of a certain character'. It is always a matter of fact and degree, so it is necessary to take a holistic approach and have regard to the totality of the operations which the person originally contemplated and has carried out.
18. Looking firstly at the third party evidence, for the sake of brevity I have summarised these. The evidence of Mr Harris is that he was moving soil from the paddock to surround hard standing in July 2017. He gives no evidence about the location of this hard standing. Similarly, Mr Matthews confirms that he is familiar with the site, having made deliveries of hay and straw. He states that the hard standing was laid late 2016 to early 2017, but again gives no exact location for this.
19. The evidence of Mr Tutt of Wilton Haulage Lorries (WHL) dated 1/6/22, states that he delivered crushed concrete between 15 and 20 years ago, on the site where the appellant's husband now lives. Corn Plant Hire Ltd confirm that plant machinery was provided to Paradise Farm between 17 and 19 May 2017. It cannot be determined from this document exactly where on site the machinery was used.
20. The evidence of Mr Davies confirms that he witnessed WHL, passing his property in April 2017, delivering material to Paradise Farm. Mr Watts states that it is his 'understanding' (my emphasis) that the hard standing was created prior to 2017, although it is not clear from this whether he actually has first-hand evidence of this by witnessing it himself.
21. I do not doubt the authenticity of the evidence from the third parties, or that it has been provided in good faith. However, the wider site at Paradise Farm has been developed over a number of years, with planning permission granted in 2016. There is a common lack of clarity throughout all of the witness's evidence, to pinpoint exactly where on the site the works they witnessed, were taking place. Additionally, there are no plans attached to any of the witness's evidence to give sufficient clarity on this point.
22. The evidence of Mr Downing, is that following the grant of planning permission for two plots, he was hired by the appellant's husband in April 2017 to level some existing hardcore. This introduces further uncertainty as the appeal site has never been the subject of a grant of planning permission. Furthermore, I cannot be certain where the 'bottom of Paradise Farm' that he refers to would have been at that time.
23. Moreover, a series of eight photographs have been provided at Appendix 5 of the Council's statement (August 2022). These are dated 11 July 2018 and were taken during the enforcement investigation and prior to the issue of the notice. The date for these is not in dispute and it can be seen, that the works had commenced, so it is a matter of fact and degree, whether they could reasonably be described as substantially complete at this point.
24. On 11 July 2018, close boarded fencing had been erected around the site which had been cleared of vegetation, groundworks had been carried out, kerb stones on concrete foundations had been set around an area, where material to create a sub-base had been laid. A raised drain cover is located within the base.

25. There is however, a significant quantity of hardcore and stones remaining throughout the site, but also on the surface of the base. Moreover, the drain cover shown in the first photograph appears to be higher than the base, rather than flush with it, suggesting the levels of the surface were to be raised further.
26. From these photographs, it is reasonable to conclude that it was the appellant's intention to complete the hardstanding by the addition of a top dressing to provide a level surface, as indicated by the setting of the kerbing and drain cover. The remainder of the site would then be cleared and landscaped. This assertion seems to be supported by my observations of the hard standing at my site visit. The appellant has provided no evidence to the contrary, or that the development of the hard standing was carried out other than in a single operation.
27. For the above reasons, given the context of the earlier permission, I am not satisfied that the evidence provided by the third parties, on behalf of the appellant, are sufficiently precise and unambiguous about the location of the works. Consequently, they fall short of discharging the burden of proof. Moreover, the Council has provided photographic evidence to contradict this evidence. Accordingly, I find that on the facts before me, the hard standing was not substantially completed on 11 July 2018, which is after the date for determining immunity on 23 May 2018.
28. Consequently, I find that the appellant's evidence is not sufficient to demonstrate, on the balance of probability, that the hard standing had been substantially complete for the necessary period. The appeal on ground (d) therefore fails.

Appeal A and Appeal B

Main issues for ground (a)

29. The appeals have been lodged against the issue of two notices by the Council for the developments described above.
30. I consider that the main issues are:
- The effect of the developments on the character and appearance of the area;
 - The effect of the developments on flooding and flood risk; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Character and appearance

31. Paradise Farm lies to the east of The Causeway, outside any defined settlement boundary, but close to the village of Clophill. To the north there are a number of residential properties, leading into the High Street of the village. The larger development of Shefford lies some distance to the east.
32. The Causeway with its rural bridge, narrow carriageway flanked by wide grass verges and hedgerows, retains a generally open rural character that is

- consistent with this part of the Flit Valley. The River Flit runs close to the northern boundary, with an un-named tributary a short distance to the south.
33. The appeal site lies at the end of the access road and forms a large irregular parcel of former agricultural land, that is set back from The Causeway and flanked by generally flat open countryside. Access to the appeal site is from the shared main entrance and the single main internal road.
34. From my observations at the site visit, the permitted pitches have generally been sited along the internal access road and are shallow in depth. In contrast, the appeal site extends across the end of the internal access over a much wider area. The area to the centre of the site has been hard surfaced, now occupying a large area of this former agricultural paddock. It was surrounded by a newly landscaped grass border, with urban style close boarded fencing beyond and with substantial children's climbing frames, swings and other play equipment.
35. The mobile home is clearly visible across the fields from those using The Causeway in either direction, increasing the perception of built development in this rural location. If allowed the development, would result in the permanent siting of a large static caravan, very extensive hardstanding, a touring caravan and other associated domestic paraphernalia, into this predominantly rural location. The hard standing, has been finished in light coloured chippings, which reflects the rest of the site, but further emphasises its overly intrusive appearance in the landscape.
36. I am mindful that traveller sites are often found in rural locations. Nonetheless, the location of the appeal site to the rear of the original development, the mobile home, touring caravan, stables, the scale and appearance of the hard surfacing, together with the associated residential paraphernalia and domestic buildings, have introduced significant development into a previously undeveloped paddock. In my judgment, it results in an incongruous form of development that is at odds with this rural location, causing some harm to the character and appearance of the area. The development is therefore contrary to Policies SP7, SP8, H7, HQ1, EE5 and EE8 of the Central Bedfordshire Local Plan 2015 – 2035 (2021) (LP). In combination these policies seek that developments respect, retain and enhance the intrinsic character and beauty of the local landscape setting.

Flooding and drainage

37. One area of concern for the Council, relates to a lack of information, to demonstrate that surface water drainage can be adequately addressed. The appellant's statement suggests that, in the event that the appeals were to be allowed and planning permission granted, these details could be secured through the use of a suitably worded condition. I have no reason to come to a different view.
38. Turning to flood risk, it is not in dispute that the majority of the appeal site lies within Flood Zone 3 with the remainder in Flood Zone 2. The parties agreed that residential caravans are considered to be a highly vulnerable form of development that should not generally be permitted in these areas.
39. I recognise that the appellant has not witnessed any flooding on the site and has supplied several letters from other local residents, who also have not been affected by flooding issues at their properties. Nonetheless, I am mindful of the

highly vulnerable nature of the development, the generally flat nature of the site and surrounding fields, together with the close proximity of the River Flit and the other watercourses to the residential mobile home. From my site visit I could see that both of these watercourses were overgrown and narrow, with steep banks. The water levels were some 2 metres below that of the adjoining land. However, I have little evidence to evaluate how quickly water levels might rise in the event of very heavy rainfall.

40. Following the issue of the notices, a site-specific Flood Risk Assessment (FRA) based on a desk study of information has since been submitted by the appellant. The Environment Agency has not responded to this. However, the Council had the opportunity to review the report prior to the Hearing.
41. It is the appellant's case that the submitted sequential test is satisfied, as the availability of alternative land within a reasonable distance and outside the Flood Zones, is almost non-existent in Central Bedfordshire. The exemption test is also satisfied as the FRA provides suggestions for mitigation that would make the site acceptable, subject to appropriate conditions.
42. Paragraph 159 of the National Planning Policy Framework (the Framework) allows for development that is necessary in areas at the highest risk of flooding, so long as it is made safe for its lifetime without increasing flood risk elsewhere. Paragraph 167 advises that development should only be allowed in areas at risk of flooding, where specified mitigation measures can be demonstrated following a site-specific flood risk assessment and the sequential and exception tests, as applicable are satisfied. Where a site is in Flood Zone 3a or 3b, Planning Policy Guidance advises that 'highly vulnerable development' should not be permitted, even if the sequential test is passed.
43. The FRA, which has made appropriate allowances for climate change, recognises that there would be some flooding of the site from rivers in the vicinity of the mobile home. It confirms that the floor levels of the mobile home would be higher than the flood waters in a 1 in 100 year event. However, safe access and egress routes, may be restricted by shallow flood water. The risk of pluvial flooding is low, but that there is a high risk of groundwater flooding.
44. The report recommends mitigation measures and suggests two alternatives: The first is to adopt a Flood Warning and Evacuation Plan (FWEP). The second option is to raise the ground levels on site to provide a safe access and egress in the event of flooding. Both options should include the suggested additional strategies to include the construction of local bunds, sustainable drainage systems to intercept flood water, boundary fence/walls and other landscaped water diversion measures.
45. The appellant has not advanced details of a FWEP or any 'worked out scheme' that adequately demonstrates whether any of these measures could be applied to the confines of this site, either alone or in combination, whilst ensuring that there would be no increased off-site flood risk.
46. Consequently, for the above reasons and on the evidence I have before me, I am not satisfied that the development is, or can be made acceptable and safe for its lifetime. In the interests of the appellant and her family's personal safety, I give this consideration substantial weight. Furthermore, given the serious nature of my concerns, I do not consider that it would be appropriate to

require additional Flood Risk and mitigation information to be secured by condition.

47. The development is therefore contrary to Policies CC3, CC5 and H7 of the LP. Together these policies, broadly seek to ensure that development is directed towards areas at lowest risk of flooding, that conserve, and where possible, enhance the ecological and flood storage. Proposals should demonstrate that the surface water drainage is compliant with local requirements and design guidance set out in the Council's Sustainable Drainage Guidance (2015), National Standards and industry best practice.

Other considerations

Personal circumstances

48. As with all those who travel, a settled base would enable the family to have access to medical care and education and this undoubtedly weighs in favour of the scheme. The appellant was unwell on the day of the Hearing and was represented by her husband. He confirmed that he lives on the appeal site with the appellant. Their extended family, including grandchildren together with a second family, live on the remainder of Paradise Farm.
49. It is pertinent that the adjacent plot is owned by the appellant and has planning permission for three pitches, of which only two are occupied. It is not clear from the appellant's written evidence, why the appeal site was developed, when there was still a permitted vacant pitch. The Council clearly sought to encourage them to re-site the mobile home into the approved area, to remedy this part of the breach.
50. At the Hearing the appellant's husband submitted, that his father, who has been in a nursing home for the last two months, is now hoping to move from St Albans to occupy the third pitch. I have no further information about his father's health, or his circumstances or the timescales involved. I fully appreciate the benefits of caring for family members at home. However, I have no evidence to suggest that this was the reason why the appeal site was developed in the first place, or that the site would be appropriate for his father, given my serious concerns about flooding.
51. For the above reasons, I give limited weight to the appellant's and the extended family's personal circumstances.

The need for sites for gypsies and travellers

52. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was carried out in 2016. However, the LP was adopted in July 2021 and the examining Inspector accepted the GTAA and policy position. I have no reason to come to a different view and accordingly give the LP Policies full weight.
53. The Council submits that it has a healthy supply of pitches, with a surplus of 14 pitches. Nonetheless, they confirmed at the Hearing that there were currently no suitable, affordable and available sites for the family to move to, and with long waiting lists, vacancies would be unlikely to become available in the foreseeable future. However, the weight I give to this is tempered by the availability of the adjacent vacant pitch.

54. Turning to Policy H7 of the LP which sets out a number of criteria for assessing Gypsy and Traveller sites, I have already found some harm to the character and appearance of the area and substantial harm arising from flooding. However, I have no evidence to suggest that the development dominates the nearest settled community, or results in poor living conditions for either those living on the site, or nearby. There is sufficient space within the site for parking and manoeuvring vehicles and I note that no objection has been raised by the Highway Authority in terms of highway safety, or on the operation of the highway network.
55. I acknowledge the site's proximity to Clophill, which is within easy walking or cycling distance. However, there are only a limited range of local facilities. Shefford and Ampthill both lie some 6 km away and have a more extensive range of facilities and services. Whilst I accept that accessibility in rural areas is not normally as good as that of urban areas, to my mind to reach Shefford, due to the distances involved, this would make walking and cycling, especially in the winter months or after dark, a less attractive alternative to the private car, although there is a bus service from Clophill.
56. Intentional unauthorised development has been a material consideration since 2015. From the evidence, the site was developed when there was already a vacant plot on the adjacent site. A regularising planning application for resurfacing works was submitted (CB 18/02892), but later withdrawn. Accordingly, I have attached some weight to this in my considerations.

Overall balance

57. I have attributed limited weight, to the overall personal circumstances of the appellant and her extended family. I also accept that there are other considerations that weigh in favour of the development, including limited further social and economic benefits and the benefit provided by one additional Gypsy and Traveller pitch, contributing towards the Council's targets. These all weigh in favour of allowing the appeal.
58. However, weighed against these benefits are the substantial weight attributed to the risk from flooding, the identified harm to the character and appearance of the area and that caused by intentional unauthorised development.
59. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have in dismissing this appeal. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
60. As set out in paragraph 50 above, the appellant's evidence makes a reference to the extended family's medical conditions. I have therefore had due regard to the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.
61. Accordingly, I find that the harm I have identified, is not outweighed by matters in support of the proposal.

62. It follows that it is still necessary to consider whether a temporary grant of planning permission would be appropriate for these appeals. The Planning Practice Guidance advises that temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. In the absence of fully worked out mitigation proposals for flooding and the serious concerns I have in respect of flooding, I do not consider that a temporary grant of planning permission would be justified in this instance.

Conclusions

Appeal A

63. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Vikki Wood	Agent GT Planning
Mr Michael Gumble	Appellant's husband

FOR THE LOCAL PLANNING AUTHORITY:

Philip Hughes	Consultant for the Council
Steve Jarman	Consultant Opinion Research Services Ltd