



Appeal Decision

Hearing held on 1 August 2023

Site visit made on 2 August 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4/10/2023

Appeal Ref: APP/F4410/C/21/3287452

Land on the West Side of Peastack Lane, Tickhill, Doncaster DN11 9LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr C McDonagh against an enforcement notice issued by City of Doncaster Council.
 - The notice was issued on 28 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission a material change of use of the Land from agriculture to use as a residential gypsy and traveller caravan site by the excavation of topsoil, construction of a hardstanding compound and the siting of caravans, motorhomes and structures, on the Land.
 - The requirements of the notice are:
 - (i) Permanently cease the use of the Land as a residential gypsy and traveller site;
 - (ii) Permanently remove from the Land all mobile homes and caravans, structures and hardcore and any materials associated with the unauthorised use;
 - (iii) Following compliance with step (i) and (ii) above, remove the resultant materials from the Land;
 - (iv) Reinstatement of the Land to its previous condition by reseedling with native grass seed.
 - The periods for compliance with the requirements are:
 - Step (i) three months;
 - Steps (ii) and (iii) six months;
 - Step (iv) the next available planting season (a planting season is October to March of the calendar year) following compliance with steps (i), (ii) and (iii) but in any event not more than 18 months.
 - The appeal 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 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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Decision

1. 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.

Preliminary matters

2. While Mr C McDonagh was professionally represented at the Hearing, neither he nor anyone else in a position to talk to their personal circumstances was in attendance. I have therefore relied upon the written submissions in this regard and what limited information Mr B Wood could provide.
3. The Hearing was formally closed on 4 August 2023, following written submissions in respect of the suggested conditions.

4. A High Court injunction, dated 20 October 2021 (the injunction), forbids the use of the land for *"the siting of any further caravans and/or motorhomes, other than the four caravans and one motorhome currently on the site and/or using any further caravans and/or motorhomes for residential development including the occupation of such caravans and/or motorhomes for residential purposes without the express grant of planning permission"*, and *"undertaking any further operational development...without the express grant of planning permission"*. The injunction does not therefore prohibit all use as a residential gypsy and traveller caravan site. At the time of the Hearing and site visit, the land was not in use as a residential gypsy and traveller caravan site.
5. Since the Hearing took place, a revised version of the National Planning Policy Framework has been published. The sections relevant to this appeal have not been amended. It was not necessary to seek further submissions in this regard.

Appeal on ground (a) and the deemed application for planning permission

6. The **main issues** are:

- whether the development is inappropriate development in the Green Belt and its effect on openness and the purposes of including land in the Green Belt;
- whether the development would harm the character and appearance of the area;
- whether the development would give rise to other harms; and
- Whether any harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Policy

7. The Doncaster Local Plan 2015 – 2035 was adopted in September 2021 (the DLP) and is therefore up to date. The relevant planning policies were agreed as being policy 11: Gypsies, Travellers and Travelling Show People, policy 29: Ecological Networks, policy 30: Valuing Biodiversity and Geodiversity, and policy 60: Protecting and Enhancing Doncaster's Soil and Water Resources. I have had regard to these policies and policies and guidance set out in the National Planning Policy Framework (the Framework) and the Planning Policy for Traveller Sites (the PPTS) in formulating my decision.

Green Belt

8. Paragraph 150e of the Framework provides that a material change in the use of land is not inappropriate development in Green Belt, subject to the caveat that it preserves openness and does not conflict with the purpose of including land within it. However, Policy E of the PPTS states that *'Traveller sites (temporary or permanent) in the Green Belt are inappropriate development'*, a position confirmed in *Kingston Upon Thames (RB) c SSLUHC & (IP) Mrs Laura Williams* [2023] EWHC 2055 (Admin).
9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belt is its openness and its permanence. The site lies within the Doncaster Green Belt, which I am told covers approximately half of the district's administrative area.

10. While Tickhill lies a little way to the southeast of the appeal site, the site is located within a rural landscape, which has a large arable field pattern broken up by native species hedgerows and hedgerow trees. Built development in the surrounding landscape comprises roads, railway lines and sporadic groups of farm or other essentially rural buildings, such as stables and glasshouses.
11. The construction of a hard standing compound and the siting of caravans, motorhomes and structures spatially reduces openness. The size of the site (0.45 ha) in comparison to the extent of the Green Belt could be considered small, however the number of caravans, motorhomes and structures, in addition to other vehicles and domestic paraphernalia that could be accommodated on the land is not. The loss of spatial openness is therefore significant.
12. The site is devoid of any boundary hedgerows or trees and those along the adjacent Wilsic and Peastack Lanes are located on the opposite side of the carriageways to the site. The land and its use as a gypsy and traveller caravan site is visually dominant in views from the surrounding road and public right of way network. While the number of caravans, vehicles and residential paraphernalia may fluctuate, the visual loss of openness would nonetheless be significant. The provision of landscaping, subject to an acceptable scheme being agreed, could moderate the visual prominence of the development in the landscape, but some loss of visual openness would remain.
13. In addition to the principle of this development being inappropriate, the development causes some visual and significant spatial harm to the openness of Green Belt. It also encroaches into the countryside, in conflict with one of the five purposes of including land in Green Belt. For these reasons, the development is inappropriate development in the Green Belt.

Character and Appearance

14. The appeal site is in an open rural landscape, sporadically interspersed with clusters of buildings and transport infrastructure. The lack of hedgerow and tree planting around the periphery of the site and use of post and rail fencing and wire fencing is indicative of the arable field delineations close to the site. It is a matter of common ground that the site is not situated within a valued landscape as defined by paragraph 144 of the Framework.
15. The white or pale coloured exteriors of caravans can be visually obtrusive, particularly where there is an absence of landscaping. However, they can be a relatively common feature in rural landscapes. The development introduces fluctuating levels of activity and associated paraphernalia into a landscape that is otherwise largely devoid of development. Where development does exist, it has permanence and, with the exception of the adjacent equestrian development, is largely screened by mature hedgerows and tree planting.
16. Policy 11(D)6 requires new traveller sites to be within or well-integrated into the local townscape. While the site is located within the countryside, expecting it to be well-integrated into this rural landscape instead would not be unreasonable. The construction of a hardstanding compound and siting of caravans, motorhomes, structures and associated paraphernalia for human habitation is out of keeping with the largely undeveloped character and appearance of the surrounding landscape.

17. Furthermore, the planting of boundary hedgerows and hedgerow trees around an area of land of this size, while not requiring planning permission, would also be out of keeping with the character and appearance of the surrounding landscape. While it would, in time, screen the development to a degree, it would not contribute positively to the site being well-integrated into this rural landscape. Even with landscape screening, the development would therefore cause moderate harm to character and appearance, contrary to policy 11(D)6 of the DLP which, amongst other things, seeks to deliver well integrated developments.

OTHER HARMS

Location

18. The economic, social and environmental objectives to achieve sustainable development should be delivered through the application of planning policy, which guides development towards sustainable solutions having regard to local circumstances, reflecting the character, needs and opportunities of each area. Policy 11(d) of the Doncaster Local Plan 2015-2035 (September 2021) (the DLP) requires new gypsy and traveller sites or pitches to demonstrate that they are close to, or have good access to, key services including schools, medical facilities and shops (this is not an exhaustive list).
19. The Gypsy and Traveller way of life is inherently nomadic, with a reliance on travel by means of private vehicles. Planning policies seek to ensure the settled community has good access to key services on foot, by cycle or public transport, whereas the PPTS seeks to ensure that having a settled base will reduce the need for long distance travel to key services for the traveller community.
20. Guidance within the South Yorkshire Residential Design Guide Supplementary Planning Document (2011) (the RDG) is primarily directed at developments providing for the settled community, but there is nothing to say it is not equally applicable to travelling community developments. The RDG does however predate the PPTS and does not therefore reflect the guidance contained therein. The site may not meet locational/proximity distances set out in the RDG applicable to developments for the settled community. However, there is a shop approximately 1 kilometre (km) away that can meet the site occupants' daily needs, the medical centre is approximately 1.1 km away and the nearest school is approximately 1 – 1.3 km away. Furthermore, it is generally accepted that, in rural locations, there will be a greater reliance on private transport and journey times may be longer. Given the relatively short distances to key services, the location of the site does reduce the need for residents to travel long distances to access key services, in compliance with national policy.
21. For these reasons, I find the development accords with policy 11(D)4 of the DLP, which amongst other things, seeks to deliver sustainably located developments.

Agricultural land

22. The appeal site is located within an area designated as being the best and most versatile agricultural land (BMV). Policy 60(A) of the DLP requires that proposals involving a significant loss of BMV demonstrate that there are no

other suitable alternative locations on lower quality land available or the land can be reinstated to its previous state.

23. The appellant has not demonstrated what other alternative sites were considered that did not involve loss of BMV or how the land could be reinstated. However, no definition of 'significant' is given in the explanatory text to policy 60. The Council argue the site, measuring some 0.45 hectares (ha), is significant because such a site elsewhere could accommodate approximately 14 dwellings, which would be major development. The appellant however argues that the threshold for consultation with DEFRA should be applied, which I am told is 20 ha. I find neither of these arguments compelling.
24. The explanatory text to policy 60 advises that agriculture is the main land use within the district, with approximately half its land area given over to arable farming. The loss of 0.45 ha of BMV is not significant when considered in the context of approximately half the land area of the district. While there has been a loss of BMV, that loss is small and therefore the harm arising is very limited. As such, I find there is no conflict with policy 60(A), which seeks to prevent any significant loss of the best and most versatile agricultural land.

Biodiversity

25. It is the appellant's contention that, like the land to the south, the site was used for horse grazing before the development occurred. In the appellant's opinion such grazing land would contribute little towards biodiversity and requiring any form of preliminary ecological assessment, to establish baseline data for the site, is not proportionate. They go on to argue that, should the appeal be allowed, the provision of landscaping and provision of bird and bat boxes would achieve the required 10% biodiversity net gain (BNG).
26. The site is not within any internationally, nationally or locally designated site of nature conservation or any recognised zone of influence. Given the rural, undeveloped nature of the surrounding landscape it does however have the potential to make a positive, if limited, contribution towards habitat provision. The stripping of topsoil and construction of a hardstanding compound will therefore have caused some harm to local wildlife and, by association, harm to biodiversity.
27. Policy 29 of the DLP requires proposals to deliver a net gain for biodiversity that protects, creates, maintains and enhances ecological networks, while policy 30 requires proposals that may harm non-designated sites or features of biodiversity interest to demonstrate a minimum delivery of a 10% net gain for biodiversity. The DEFRA biodiversity matrix can be applied where development has already been carried out. As such, I find that adequate provision could be made to address any loss of habitat resulting from the unauthorised development in addition to the required minimum 10% BNG through the imposition of a suitably worded condition.
28. For this reason, the development does not conflict with policies 29 or 30 of the DLP, which seek to protect and enhance ecological networks and biodiversity.

Intentional unauthorised development (IUD)

29. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, which should be

given significant adverse weight. It is the appellant's assertion that they were living a roadside existence and that an application for planning permission was made before moving on to the land.

30. The traveller status of the site occupiers is undisputed. The Council has demonstrated a surplus of available pitches within the district. The appellant is not on any waiting list for a pitch or pitches. In the absence of evidence to show what alternative sites the appellant considered before moving on to the land, or why any of the available pitches are unsuitable, I find it less than likely, that the unauthorised development of the appeal site was the only solution available to the appellant.
31. Part of the underlying rationale for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. Prior to issuing the Notice, an application had been made for planning permission to develop the site for 4 pitches. The appellant did not however allow that application to run its course before moving on to the land.
32. Planning permission was refused in advance of the Notice being issued. A section 78 appeal has not been lodged against the refusal of planning permission. However, in pleading ground (a), the opportunity to mitigate the impact of the development through the use of planning conditions remains available and was not therefore prejudiced. I am also mindful that the 1990 Act as amended makes provision for a grant of retrospective planning permission, and planning enforcement is remedial rather than punitive.
33. Considering the above, I attach only moderate weight to the intentional unauthorised development.

Highway and pedestrian safety

34. While there are claims that occupants of the appeal site represent an increased danger to other road users, particularly pedestrians, there is little evidence to substantiate these claims. However, the highway network surrounding the development consists of narrow lanes with limited passing places and the national speed limit is in effect. Traffic using the surrounding highway network includes large agricultural vehicles and machinery. Local villagers also use the lanes for exercise and leisure purposes.
35. While the road alignment and restricted width could be expected to generally keep vehicle speeds below the national speed limit, I saw during my site visit that this not always the case. Pedestrians walking within the carriageway would be at risk, although the adjacent grass verges provide a place of refuge from traffic. Vehicles entering and exiting the site have adequate visibility to see vehicles, pedestrians and other road users approaching from both directions. The development would not generate any significant increase in traffic utilising the surrounding road network. As such any adverse impact on highway or pedestrian safety arising from the development would be negligible in the wider pre-existing context.

Conclusion on Green Belt and other harms

36. Having regard to the above, I have found this to be inappropriate development, which is by definition, harmful to the Green Belt. Moreover, whether assessed by themselves or as part of the consideration of inappropriateness, it would harm the openness of the Green Belt, and conflict with its purposes. In

accordance with paragraph 148 of the Framework I give this Green Belt harm substantial weight. The development also detracts from the character and appearance of the area and represents intentional unauthorised development, to which I afford both moderate weight.

OTHER CONSIDERATIONS

37. The Framework states that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
38. Further, policies E and H of the PPTS, in relation to traveller sites, says 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.'*
39. The courts have held that the weight given to matters remains for the decision-maker. However, as the PPTS says it is *'unlikely'* that personal circumstances and unmet need would outweigh Green Belt harm and other harm, it is not saying that these factors would, by themselves, never outweigh the harm. Moreover, while personal circumstances and unmet need are *'unlikely'* to outweigh harm, there is nothing in the PPTS to say that they could not contribute to outweighing the harm when taken with other material considerations.
40. It is the appellant's desire to secure a non-personal permission on the site, so that it could be occupied by any who are recognised as being gypsy and travellers. To this end he relies upon what he perceives to be failures arising from the identification of need by the Council and the future occupiers' personal circumstances.

Need

41. The Council has an up-to-date development plan, whereby policy 11 was based upon the Gypsy/Traveller Annual Needs Assessment 2018 (the 2018 GTANA). This policy identifies that need should be met through existing site capacity and by maintaining a five-year supply of sites. Policy 11 confirms that the re-use of vacant plots and unused land on these sites will be supported. Policy 11 also provides for windfall sites to be brought forward throughout the district, although within the Green Belt, this would only be where very special circumstances have been demonstrated.
42. In accordance with the supporting text for policy 11, the Council has undertaken a review of local need, the 2022 GTANA. The 2022 GTANA represents a recent snapshot in time, and it utilises a methodology that has been independently assessed and accepted by previous Inspectors.
43. The appellant claims that the 57 unauthorised pitches identified in the 2022 GTANA demonstrates a significant need for additional pitches. They go on to identify that the 2022 GTANA only includes a need for a single pitch arising from the appeal site rather than the 4 pitches that planning permission was sought for.
44. The Council say that of the 57 unauthorised pitches, 45 are located on authorised sites and 12 are located on unauthorised sites. Furthermore, 13 of

the 45 pitches are likely to be granted planning permission within the year and 6 of the 45 are immune from enforcement action. This reduces the unauthorised number of pitches to 38. The Council also take account of estimated household growth over the plan period (23 pitches) along with households on pitch waiting lists (9 pitches). The Council's need figure is therefore 70, which it then compares to sites granted planning permission and the total number of vacancies on authorised public and private sites. No planning permissions have been granted. The Council has identified 17 vacant pitches on publicly owned sites and 54 vacant pitches on privately owned sites. Providing an available supply of 71 vacant pitches.

45. While the surplus of sites identified through the 2018 GTANA has reduced considerably, the 2022 GTANA continues to demonstrate that a limited surplus exists, in part due to the regular turnover of pitches on authorised sites. However, I agree that the surplus would cease to exist if the number of pitches on this land was counted as 4 as opposed to 1. Figures contained within any GTANA will fluctuate almost constantly. Therefore, even accepting that the appeal site has been misrepresented, in terms of the banding set out in the 2022 GTANA, the need for sites remains low¹. I find it more than likely that this low level of need could be accommodated through the windfall provision advocated through policy 11.
46. The vacant pitches identified in the 2022 GTANA represent reasonably available alternative sites. No evidence was presented to show that the appellant had contacted the operator of any of the publicly or privately owned sites nor was any evidence presented to show why their need for 4 pitches could not be accommodated through the occupation of any of the identified vacant pitches. While Mr Wood argued that the appellant had not been made aware of those vacancies, there is no requirement for the Council to publicise the availability of pitches. The publication of the 2022 GTANA does however make the availability of vacant pitches publicly known.
47. Based on the Council's policy approach, I am satisfied that there is no significant identified need for sites. As such this matter does not clearly outweigh the identified harm and so does not justify a non-personal permission in this case.

Personal circumstances

48. I have been provided with written information confirming that the appellant and his wife have two children who are 22 and 24 years of age, and that they would occupy pitch 1. Mr Brian McDonagh and his wife would occupy pitch 2. Mr Charlie McDonagh, his wife and their 2 children would occupy pitch 3. Mr Martin Ward, his wife and their 4 children would occupy pitch 4. The current living arrangements of the appellant and his family, and the other named families are not known. I understand why these families want a settled base, though this seems to be a commonly held desire amongst the Gypsy and Traveller community.
49. While I have taken note of the appellant and his wife's health issues, I was not told of any specific reasons why they need to live on this site, with its identified harms. Similarly, I have been provided with no specific reasons why the individual landscaping/gardening businesses need to operate from this land.

¹ Paragraphs 66 & 68 and the accompanying table in the 2022 GTANA (page 14)

Given that work is found through general advertising, word of mouth, and leafletting, these businesses could, more than likely, be operated elsewhere without detriment.

50. Finally, turning to the best interests of the children. At the outset I have regarded no other consideration as more important or, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
51. The appellant's children are of an age whereby they are no longer classed as children. The ages of the 'children' occupying pitches 3 and 4 have not been provided. The only other information relating to these children is found at paragraph 2.2 of the appellant's personal circumstances statement, which states *'The children on site mostly were/are tutored by parents, in part due to the struggle to find a settled based [sic] throughout recent times.'* The available information is not sufficiently precise to determine whether children will actually occupy any of the pitches.
52. Notwithstanding the lack information pertaining to children using the development, I accept that a settled base is in a child's best interests as it would allow them security, access to general health care, a stable education and access to social groups. These factors apply to most, if not all, Gypsy and Traveller children, and when weighed against the harm I have identified to the Green Belt and the other harms, I find they do not justify occupancy of this particular site. Even taken with the personal circumstances of the adults, the best interests of the children do not clearly outweigh the harm I have identified. The grant of a personal permission is therefore not justified.
53. In assessing this case I have had regard to the other decisions to which reference was made. Consistency in decision making is important to maintain public confidence in the system, but each case must be determined on its own merits. That is all the more so where personal circumstances fall to be considered and in different policy contexts. Having considered all those decisions, most identified significant unmet need, lack of 5-year supply and no suitable alternative sites, along with stronger personal circumstance cases. As such the policy context and personal circumstances of all were significantly different to what is before me. My findings are based very much on the facts before me and the current policy context, and I see nothing in the identified appeal decisions that leads me to a different view.
54. I accept that dismissing this appeal would interfere with the appellant's rights under Article 8 of the European Convention on Human Rights as it would deny him, his family and the other families' opportunity to establish homes on the land. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate to the rights of the adults and the best interests of the children given the public aim of safeguarding the Green Belt and the effects on the countryside.

Conclusion on ground (a)

55. For the reasons given above the development does not accord with the development plan as a whole and the appeal on ground (a) should be dismissed.

Appeal on ground (g)

56. An appeal on this ground is that the compliance period specified in the Notice falls short of what should reasonably be allowed. The appellants are seeking a period of 12 months to cease the use, in order that they can find a suitable alternative site as opposed to returning to a roadside existence. The other compliance periods for each of the other requirements should be extended accordingly.
57. While the injunction prevented any additional caravans or motorhomes being brought onto the site, it did not require the four caravans and one motorhome stationed on the site for residential purposes at that time to be removed. The site is currently vacant and, from the written submissions and oral evidence given by interested parties at the Hearing, has been vacant for extended periods of time since the breach occurred. Mr Wood, acting for the appellant, was unable to provide any explanation for these extended absences, the current absence or details of where the appellant, his family or other claimed residents of the site are currently residing.
58. In the absence of such evidence, and given that the site is currently unoccupied, I find the period specified in the Notice, in accordance with section 173(9), to be reasonable. The appeal on ground (g) fails.

Overall Conclusion

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

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Wood	Managing Direct of WS Planning & Architecture
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Robson, counsel for the Local Planning Authority	Instructed by Ms Stacy Cutler of City of Doncaster Council (CDC)
Mr Garry Hildersley	Planning Development Manager, CDC
Ms Frances Horne	Pegasus Group – Landscape Evidence
Mr Martin Nowacki	Ecologist Planner, CDC
Mr Andy Brown	Senior Policy & Insight Manager, CDC

INTERESTED PARTIES:

Mr D Binney	Resident
Mrs J Binney	Resident
Mr P Needham	Resident
Mr C Illsley	Resident
Mrs C Godbehere	Resident
Mr G Fennell	Resident
Mr A Davies	Resident
Mr C Cato	Resident
Councillor M Greenhalgh	Ward Member CDC

DOCUMENTS

H1	Appeal Decision reference APP/Q3630/W/3306901
H2	Impact Statement submitted on behalf of interested parties