



Appeal Decision

Hearing held on 16 November 2023

Site visit made on 16 November 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2023

Appeal Ref: APP/F1610/C/22/3311035

**Land at 'Caravan', Draycott Road, Blockley, Moreton-In-Marsh,
Gloucestershire GL56 9DY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Adam Boswell against an enforcement notice issued by Cotswold District Council.
 - The notice was issued on 12 October 2022.
 - The breach of planning control as alleged in the notice is 'without planning permission, the change of use of the Land from agricultural to a mixed use, consisting of a residential caravan site along with the keeping and breeding of dogs in association with a commercial operation ("the Unauthorised Use")'.
 - The requirements of the notice are:
 - (i) Permanently cease the Unauthorised Use of the Land as a residential caravan site;
 - (ii) Permanently remove from the Land the unauthorised caravans;
 - (iii) Permanently cease the Unauthorised Use of the Land for the keeping and breeding of dogs;
 - (iv) Permanently remove from the Land the unauthorised wooden buildings, cages, enclosures, construction materials and all paraphernalia associated with the commercial dog breeding operation.
 - The period for compliance with the requirements is 6 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. The site falls within what was formerly known as the Cotswolds Area of Outstanding Natural Beauty (AONB). On 22 November 2023, all designated AONBs in England and Wales were renamed 'National Landscapes'. I shall therefore refer to the former AONB under its new name of the Cotswolds National Landscape. This is a name change only, and the policies relating to the designation are unchanged.
3. The 2015 Government publication *Planning policy for traveller sites* (the PPTS) includes a definition of Gypsies and Travellers. On 19 December 2023, the Government amended the definition in order to include persons who have ceased to travel permanently. However, in the circumstances of this case, the

changed definition has no bearing on my decision. On the same day the National Planning Policy Framework (The Framework) was also revised, but the changes have no bearing on this case.

4. The appellant has provided a sketch plan showing how the site might be developed to provide accommodation for his family. The plan shows 3 pitches, each with a park home, a touring caravan and a day room, as well as dog pens, a steel-framed building and a new access. As I explained in a pre-hearing note and at the hearing, the deemed planning application is derived from the matters stated in the notice, which are 'the change of use of the Land from agricultural to a mixed use, consisting of a residential caravan site along with the keeping and breeding of dogs in association with a commercial operation'. The plan submitted goes well beyond the allegation in the notice, in that it includes development such as the proposed dayrooms and steel-framed building. Consequently, while I have had regard to the plan insofar as it shows how the site could be laid out in the future, it does not form the basis of the deemed planning application before me.

How the site is used and occupied

5. At the hearing the appellant advised that the site is currently occupied by 3 people - the appellant, his wife and their adult son. There are no children at the site. The appellant anticipates that his son will soon move away from the site to set up home with his partner. The appellant's grown-up daughter previously lived at the site but has now moved away.
6. The occupiers of the site all identify as traditional Gypsies. I am told that the appellant used to make a living as a roofer, for which he travelled, but ceased that line of work due to ill health. I am told that he also made a living from the dog breeding and from working on timepieces. He continues to attend horse fairs but otherwise leads a settled life. The appellant points to his surname - which is said to have a longstanding association with Gypsy families. Although the evidence before me is limited, I have nothing to cast doubt on the appellant's claim regarding his family's cultural background as Gypsies. Thus, I have determined the appeal on the basis that the claim is correct. The revised definition within the PPTS did not alter my view on this matter.
7. Race (including ethnic or national origin) is a 'protected characteristic' for the purposes of the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010. Consequently, since I accept the claim that the family occupying the site are Gypsies, I have had due regard to the aims of the PSED, together with relevant provisions of the Human Rights Act 1998, in determining the appeal. I return to this later.

The appeal on ground (a) and the deemed planning application

Main issues

8. The main issues are:
 - Whether the site is an appropriate location for the development, having regard to local and national policies concerning development in the countryside;
 - The effect of the development on the character and appearance of the area and on the Cotswolds National Landscape;

- The effect of the development on the living conditions of neighbouring occupiers, with particular regard to any noise disturbance;
- The effect of the development on road safety; and
- Whether any harm is outweighed by any need for the development.

Location

9. The appeal site is part of a field situated at a road junction on Draycott Road/Northcot Lane¹. The site has frontages to Draycott Road/Northcot Lane to the south and an unnamed road to the east. The site is bounded by hedges and access is by a gateway at the corner, directly from the road junction. The site is close to the small village of Draycott and there are houses and some business units on the opposite side of Draycott Road. However, there are fields to the north, east and west of the site and, despite the buildings nearby, the site is in the countryside.
10. The rural location of the site is reflected in the development plan. The site is not included in any development boundary by the Cotswold District Local Plan 2011-2031. The plan seeks to generally direct new residential development to locations within settlements, in accordance with Policy DS4. The plan has policies permitting certain other forms of accommodation in the countryside. The only one of these of relevance here is Policy H7, which is concerned with sites for Gypsies and Travellers.
11. The policy sets out the approach for determining the acceptability, in principle, of planning applications for Traveller development. The policy prefers allocated Traveller sites, additional pitches within the boundaries of existing Traveller sites or extending existing suitable Traveller sites adjacent to existing boundaries (that is, the boundaries to existing Traveller sites). Only where a sufficient supply of pitches cannot be achieved at the above locations will new sites be considered. This policy is in alignment with the PPTS, which advises that local planning authorities should very strictly limit new Traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. The PPTS also indicates that previously developed (brownfield) sites are to be preferred over greenfield sites.
12. The appeal site was an undeveloped (greenfield) former farm field and does not relate to any existing or designated Traveller site. Consequently, in terms of H7, it is the least preferred type of location, and its development is only permissible if a sufficient supply of pitches cannot be achieved on preferable sites. I consider the need for the development and alternative Traveller sites later, but the evidence before me does not indicate that no preferable sites are available. Moreover, as a greenfield site within the countryside, it is not the kind of site encouraged by the PPTS.
13. For these reasons I conclude that the appeal site is not an appropriate location for the development and find conflict with Policy H7.

¹ The road name changes at this point

Character, appearance and the National Landscape

14. The site is within the Cotswolds National Landscape. The statutory purpose of the designation is to conserve and enhance the natural beauty of the area. In determining development proposals within the National Landscape, Policy EN5 of the Local Plan requires the conservation and enhancement of the natural beauty of the landscape, its character and special qualities to be given great weight. The Framework advocates a similar approach.
15. The appeal site was formerly a farm field. As a consequence, it would have fitted well with the surrounding fields and the rural character of the area as a whole. The development that has taken place on the land has seen the introduction of 3 caravans, wooden kennels, cages and a variety of minor structures. These have resulted in the site having a more developed appearance. Vehicles are parked on the site and it is obvious that people are living there. The structures on the site are crude and makeshift in appearance. The overall effect is that the development harms the rural character of the area.
16. The site has hedgerows around the boundary which significantly screen the development. Nevertheless, there are filtered views of the caravans and other structures through the hedgerow and views from the access. The development will be more visible in the winter months due to leaf loss. I appreciate that there are many other developments close to the appeal site and within the National Landscape, but that does not alter the need to assess the impact of this particular development with regard to the policies that now apply.
17. I understand that the appellant may have wished to improve or replace some of the structures on the site in due course, but that would not alter the fundamental change in the appearance of the site. While some of the dog kennels have been removed, a number of structures remain, in addition to the caravans, and the change in the appearance of the site is very obvious.
18. For these reasons, the development harms the character and appearance of the area and the natural beauty of the National Landscape. Accordingly, there is conflict with Local Plan Policy EN5 and the Framework. I attach great weight to the harm to the National Landscape. Additionally, there is conflict with Local Plan policies EN2 and EN4, which seek to protect the natural landscape and ensure that development is of an appropriate design quality.

Living conditions

19. The appellant advised at the hearing that he has had a business breeding English bulldogs. When he moved onto the site he had around 33 dogs plus 25 puppies, kept in pens on the site. However, these, I am told, have been rehomed and the appellant advised that he had stopped breeding dogs. I saw only 2 dogs during my site visit, which were kept within caravans. Nevertheless, there is nothing to suggest that the allegation in the notice is wrong and, indeed, it is clear that dogs were on the site when the notice was issued.
20. I have not been provided with any detailed noise assessment by either party, and so have made a general assessment of likely noise impact, based on the information available. Despite its rural location, there are dwellings close to the site, the closest being on the opposite side of Draycott Road/Northcot Lane.

The keeping of 30 or more dogs at the site could generate significant noise levels due to barking and howling. Even if located at the far end of the site (as indicated on the appellant's sketch plan), the dog pens would still be too close to houses and likely to cause significant levels of disturbance. Moreover, the makeshift, lightweight construction of the kennels means that they would provide little noise attenuation when the dogs are in them. While improved pens could be installed, I have no detailed proposal to consider. In any event, the dogs would need to be brought outside for exercise from time to time.

21. For these reasons, the introduction of a dog breeding business so close to housing will have caused significant harm to the living conditions of the occupiers of those dwellings. My view on this is reinforced by representations from residents, which indicate that significant noise from the dogs was experienced, particularly for people using their gardens. This harm puts the development at odds with Local Plan Policy EN15, which seeks to prevent the amenity of existing land uses from being unacceptably affected by the generation of noise.

Road Safety

22. The appeal site is accessed directly from the road junction. At the hearing both parties confirmed that an access existed at this point before the site was occupied by the appellant. The Council's concern is that the residential occupation of the site has resulted in an intensification of use of the access.
23. I have no technical information regarding the access and the Highway Authority has not been consulted. The Council advised at the hearing that its concern centres on limited visibility at the access. I saw during my site visit that visibility to the right for vehicles leaving the site is very restricted.
24. The appellant agrees that the access is unsafe, but wishes to create an alternative access at the other end of the site, directly onto Draycott Road. However, I have no details of the proposed access, and cannot assume that it would be safe. Accordingly, I attach little weight to the suggestion.
25. Quite clearly, the existing access is far from ideal. However, it was a pre-existing access and I have no evidence to show clearly how the intensity of the current use compares with its previous use. Its use to serve the unauthorised development is likely to be fairly limited in my view, and will mainly relate to the use of domestic type vehicles. It may be that the use of the access in connection with the lawful agricultural use was more limited still, but I cannot be sure of that. Moreover, it might have entailed the use of large farm vehicles and trailers.
26. Overall, it is not clear to me that the current use of the site leads to a harmful increase in the use of the access. Accordingly, I find no harm to highway safety and no conflict with Local Plan Policy INF4 or the Framework in that regard.

Need

27. The appellant does not regard the general provision of Traveller accommodation as relevant, his specific aim being to secure permanent accommodation on this site. Nevertheless, given the cultural background of the appellant, the need for and provision of Gypsy and Traveller accommodation in the area was discussed at the hearing. Central to this is *The Gloucestershire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment 2022*

(the GTAA), together with an addendum published in October 2023. At the hearing the Council confirmed that the previous 2017 GTAA is no longer relevant.

28. The GTAA identifies 41 current occupied permanent residential pitches within the Cotswolds area and a further additional supply of 8 pitches. A total additional need for 26 pitches is identified for the period 2021-2026. Deducting the 8 additional pitches from this leads to a need for an additional 18 pitches for this period. A need for a further 5 pitches is identified for the period 2026-2031. Thus, the total additional need for the period 2021-2031 is 23 pitches. These figures are based on the 'ethnic' Gypsy/Traveller definition. Although the GTAA provides alternative figures based on the PPTS definition that applied at the time, it advises that the ethnic definition is to be preferred and, in light of the *Lisa Smith* judgement² and the recent change to the PPTS definition, I agree.
29. Following the reassessment of 8 households residing on an unauthorised site, the October 2023 addendum has reduced the estimated need figure for 2021-2026 to 10 and the total for 2021-2031 to 15. The Council has provided details of 15 Traveller pitches for the period 2023-2028. The appellant does not challenge any of these additional sites on the basis of their suitability or deliverability. On the face of it, these sites would (just) meet the requirement for additional pitches up to 2031. The Council regards all of these sites as preferable to the appeal site in planning terms.
30. Even assuming that all the additional sites identified by the Council come forward, there is no slack in these figures. However, I am also mindful that the appellant and his family are not adverse to living in bricks and mortar accommodation. Indeed, they lived in a house for many years and, I understand, would be happy to do so again. Consequently, the appellants are not limited to (or apparently desire) accommodation on alternative Traveller pitches, and the availability or otherwise of such pitches cannot be decisive in this instance.
31. The appellant raises a number of health issues relating to the occupiers of the site and states that 2 of the occupiers are registered as disabled (a 'protected characteristic' under the Equality Act 2010). I was not provided with any documentary evidence to verify this, but the Council did not directly dispute the claims. I am mindful that one of the benefits of a settled base is that the occupants, whether healthy or not, can register with a local doctors' surgery and establish a continuity of health care. However, people can also move from one surgery to another, and the evidence before me does not show that there is any fundamental need for the residents to remain in this specific location for treatment.
32. The appellant says that the family were unfairly evicted from their previous housing association home, but the circumstances relating to that are not clear and I attach little weight to it. At the hearing I asked the appellant what the family would do if the notice is upheld. The appellant suggested that he would be able to fund their relocation by selling the appeal site, although there was no firm plan in place. The Council was unable to give any definitive view

² In *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391 the Court of Appeal found that the PPTS definition that applied at the time was unlawfully discriminatory

regarding re-housing the occupiers of the site, but indicated that it would take a multi-agency approach to considering the case and providing assistance.

33. Drawing these threads together, while the appellant does not rely on any general shortfall in the provision of Traveller sites, it is clear that there is a personal need for the accommodation at the site. This is particularly acute given the health and disability issues raised. I cannot rule out the possibility that losing the accommodation on this site would result in the appellant's family leading a roadside existence while suitable alternative accommodation is found. These matters are an important consideration weighing in favour of the development.

Suggested planning conditions

34. At the hearing there was a discussion regarding conditions that could be attached in the event of planning permission being granted. This included the suggestion of a temporary planning permission for a 5-year period. A temporary permission would be less harmful than a permanent one in that the harm I have found would eventually cease. However, the 5 years suggested is somewhat arbitrary and I have no reason to suppose that the appellant's circumstances would be different in 5 years' time. A 'personal' planning permission would ensure that the site would be used to address the specific needs of the appellant and his family, but the harm arising from the development would be the same.
35. Of the other conditions suggested, I am not persuaded that the visual impact of the development would be significantly reduced with new landscaping, given the screening already provided by the existing hedgerows. Certain aspects of the layout and use of the site could be controlled with planning conditions, but the benefits of this would be very limited in my judgement.

Planning balance and conclusion – ground (a)

36. I have found that this site is not a suitable location for the development. Despite the screening provided by the hedgerow at the site, the harm to the character and appearance of the area and the natural beauty of the National Landscape is significant. I attach great weight to that harm. I have also found that significant harm has arisen from noise due to the keeping of dogs at the site. I have not found harm to road safety, and that is a neutral consideration in the overall balance.
37. Weighed against this harm is the benefit the accommodation provides in meeting the housing needs of the occupiers of the site. However, the available evidence does not suggest that the appellants need to be accommodated on this particular site or in this type of accommodation. Furthermore, the re-homing of the dogs removes one of the particular needs that will have limited the housing options open to the appellant. Nevertheless, upholding the notice would lead to the occupiers of the site losing their current home. Although at the hearing the appellant indicated that he had options for relocating his family, it was not clear exactly what these were. The Council indicated a general willingness to assist but, again, there was no concrete proposal. Thus, there is uncertainty as to where the appellants would go.
38. Overall, I am not persuaded that the development carried out on this site is justified on the basis of any general or personal need for it. Conditions,

including a condition to create a temporary or personal planning permission would not overcome the harm I have found.

39. I have no doubt of the important implications of upholding the notice for the occupiers of the site. Loss of their home would represent a serious interference with their right to respect for their private and family lives and homes in accordance with Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998.
40. However, that is a qualified right. The interference in this case is in accordance with the law, given the provisions of the Town and Country Planning Act 1990. While the notice would result in people losing their current homes, that must be weighed against the public interest of ensuring the proper planning of the locality. I cannot see that the legitimate planning aim of protecting the National Landscape and living conditions of local residents in accordance with established local and national policy could be achieved by any other means which would cause less interference with their rights under Article 8. In my judgement, dismissal of the ground (a) appeal is a necessary and proportionate response, and would not result in any violation of the rights of the individuals concerned.
41. I have had due regard to the aims set out in the PSED of eliminating discrimination, victimisation or harassment against persons with protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. Nevertheless, for the reasons explained above, I conclude that the enforcement notice is a proportionate response to the breach of planning control.
42. For these reasons, the appeal on ground (a) fails.

Ground (g)

43. The appeal on ground (g) is concerned with whether the 6-month period for compliance with the notice is sufficient. At the hearing I asked the appellant to clarify the period he considered should be allowed. No definite period was suggested, but it is nevertheless important to consider whether the 6 months specified in the notice is adequate.
44. Many of the structures on the site have already been removed and most of the dogs have gone as well. However, 3 people currently live on the site and they will need to make arrangements for alternative accommodation. The appellant's son is apparently planning to leave the site soon anyway. The appellant and his wife wish to remain on the site. Given the health issues raised by the appellant, which were not disputed, it is important that an adequate period of time is allowed to enable them to find suitable accommodation.
45. As I have already stated, it is not clear what the appellant will do in terms of finding future accommodation for his family. There is a risk this could result in them leading a roadside existence while permanent accommodation is found. In order to minimise that risk, a compliance period of some months is necessary to allow appropriate accommodation to be found. This, however, needs to be balanced against the desirability of remedying the harm I have found without undue delay. In my judgement, the 6 months specified in the notice is proportionate and strikes an appropriate balance. In reaching that

view I have had in mind the human rights of those concerned and the PSED, as outlined earlier in this decision.

46. For these reasons, the appeal on ground (g) fails.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Adam Boswell – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Morren – Development Manager

Tom Sadler – LPC Trull Ltd