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## Appeal Decisions

Hearing held on 13 December 2013

Site visit made on 13 December 2023

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 March 2024**

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### **Appeal Ref: APP/D1265/C/21/3282186 (Appeal A)**

#### **Land on the south west side of Broadmead Road, Three Legged Cross, Wimborne BH21 6RW**

- 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 Mrs M Ward against an enforcement notice issued by Dorset Council.
- The enforcement notice was issued on 5 August 2021.
- The breach of planning control as alleged in the notice is:  
Without planning permission, in the area edged red on the attached plan, unauthorised development consisting of the change of use of the land for the storage of caravans without planning permission.
- The requirements of the notice are :
  - (1) On the land edged red on the attached plan, permanently cease the use of the land for the storage of caravans.
  - (2) Permanently remove from the land edged red on the attached plan all caravans stationed on the land.
  - (3) Permanently remove from the land edged red on the attached plan the unauthorised 1.8m closed boarded fence enclosing the land on three sides erected to facilitate the use of the land for caravan storage.
  - (4) Permanently remove from the land edged red on the attached plan all the materials used to create the unauthorised area of hardstanding namely all untreated building waste material, recycled crushed waste material and compacted scalplings, to a licensed facility, retaining waste transfer notes for inspection by the local planning authority.
  - (5) Following compliance with the above, restore the land edged in red on the attached plan with a layer of 10cm of topsoil and then by sowing with a mix of meadow grass seed at 25-30grams per square metre.
- The period for compliance with the requirements is three (3) months after this Notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2) b, f and g of the Town and Country Planning Act 1990 as amended. An application for planning permission is therefore deemed to have been made under section 177(5) of the Act.

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### **Appeal Ref: APP/D1265/C/21/3282185 (Appeal B)**

#### **Land on the south west side of Broadmead Road, Three Legged Cross, Wimborne BH21 6RW**

- 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 Mrs M Ward against an enforcement notice issued by Dorset Council.
- The enforcement notice was issued on 5 August 2021.

- The breach of planning control as alleged in the notice is:  
Without planning permission, in the area edged red on the attached plan, unauthorised development consisting of:
    - (1) Development consisting of the creation of a large area of hardstanding made of a combination of untreated building waste material, recycled crushed waste material and compacted scalpings without planning permission.
    - (2) Development consisting of the creation of a boundary fence made of concrete posts, gravel boards and close boarded fencing panels without planning permission
  - The requirements of the notice are:
    - (1) Permanently cease the creation of the hardstanding made of a combination of untreated building waste material, recycled crushed waste material and compacted scalpings from the area edged red on the attached plan.
    - (2) Remove from the area edged red on the attached plan all the materials used to create the unauthorised area of hardstanding including all untreated building waste material, recycled crushed waste material and compacted scalpings to a licensed facility, retaining waste transfer notes for inspection by the local planning authority.
    - (3) Remove all materials from the drainage culvert/watercourse on the north west boundary of the site hatched in blue on the attached plan.
    - (4) Remove from the land all unauthorised boundary fencing consisting of concrete posts, gravel boards and close boarded wooden fencing panels.
    - (5) Following compliance with the above, restore the land edged in red on the attached plan with a layer of 10cm of topsoil and then by sowing with a mix of meadow grass seed at 25-30 grams per square metre.
  - The period for compliance with the requirements is three (3) months after this Notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) b and c of the Town and Country Planning Act 1990 as amended.
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**Appeal Ref: APP/D1265/W/21/3286641 (Appeal C)**  
**Land at Broad Mead Road, Three Legged Cross BH21 6SA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mrs M Ward against Dorset Council.
  - The application ref 3/21/1285/FUL is dated 17 June 2021, and is described as *Change of use of land for the creation of a 4 pitch traveller site comprising the siting of 4 mobile homes and 4 touring caravans, and the installation of a cesspit.*
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## **Formal Decisions**

### **Appeal A**

1. It is directed that the enforcement notice be corrected by the deletion of requirements iii, iv and v. Requirement v, which becomes requirement iii, is then reinstated, but reworded, to read:  
  
"Following compliance with the above, restore the land to its condition prior to the breaches taking place".
2. The compliance period is extended to six (6) months from the date of this decision. Subject both to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

### **Appeal B**

3. It is directed that the enforcement notice be corrected by the re-wording of requirement iv to read:  
  
"Remove from the land the boundary fencing consisting of concrete posts, gravel boards and close boarded wooden fencing panels which lies adjacent to Broadmead Road."
4. It is directed that the enforcement notice be corrected by the deletion of requirement v. Requirement v is then reinstated, but reworded, to read:  
  
"Following compliance with the above, restore the land to its condition prior to the breaches taking place'.
5. The compliance period is extended to six (6) months from the date of this decision. Subject both to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

### **Appeal C**

6. The appeal is dismissed and planning permission is refused.

### **Application for costs**

7. An application for costs was made by Dorset Council against Mrs M Ward. This application is the subject of a separate decision.

### **Procedural Matters**

8. Although the written evidence did not advance any appeal on ground (g) in terms of the operational development carried out and enforced against this was pleaded at the Hearing itself, with the appellant asking that the compliance period for the removal of the hardstanding and fencing be extended from three months to twelve months.
9. Although it was only introduced at this late stage the Council did not respond to the request. Further, as I am extending the compliance period for the cessation of the storage use, I have decided to accept the ground (g) appeal for Appeal B, which I will similarly allow to align the respective remedial periods for compliance.

### **The appeal site**

10. The appeal site, which the Council considers was previously agricultural land, is accessed off Broadmead Road, a cul-de-sac. It is a piece of open land which sits behind the residential properties, Vine Cottage and Hialeau that lie on the south side of Verwood Road.
11. Opposite the site's access Broadmead Road then bends round to the east with a bridleway passing immediately beyond the eastern boundary past the site continuing towards Lower Common.
12. The site lies outside any settlement boundary as identified in the Christchurch and East Dorset Core Strategy, and is located within the South East Dorset Green Belt.

13. The appellant says that, in the 1970s, the land was used in connection with a residential caravan sited on the land. On this basis she considers it previously developed land (PDL) in that it is, or was, occupied by a permanent structure.

### **Background**

14. In early January 2021 it is understood that the Council received a complaint that the appeal site, which it says was previously agricultural land, was being cleared. A subsequent site visit confirmed this but, importantly, the then owner had asked the contractor to lay a base of untreated builder's rubble on the land.
15. The then owner claimed he was turning the site into a paddock for horses to graze with a field shelter, and the hard surfacing was required to get lorries into the site's far corner to deliver soil and fencing materials. Although the owner was advised by the Council's enforcement team to cease works they continued regardless and it was estimated that the ground level was raised between some 0.5 and 1m.
16. A subsequent site visit later in January 2021 revealed that crushed and graded waste material had been laid over the untreated rubble. The site's drainage channel had also been filled in. Further material continued to be brought onto the site which was compacted, and in February 2021 two caravans were brought onto the site for residential occupation.
17. A retrospective planning application was submitted in March 2021 by the current appellant, seeking planning permission for the said use but the Council considered it incomplete and thereby invalid.
18. The planning application, the subject of Appeal C was submitted in June 2021 and the enforcement notices the subject of Appeals A and B were issued in August 2021. Injunctive relief was also sought by the Council and granted by the courts, albeit temporarily. However, a subsequent High Court hearing allowed the appellant to live at the site pending the outcome of the enforcement appeals.

### **Matters concerning the enforcement notices**

19. The enforcement notice, the subject of Appeal A, is concerned with the storage of caravans on the land which, it is alleged, constitutes a material change in the use of the land. Enforcement notice B targets the associated and facilitative operational development carried out. I note, though that the residential use of the land facilitated by the caravans present has not been enforced against.
20. The former notice, in its requirements, refers erroneously to the removal of boundary fencing and hardstanding which is unnecessary, as these aspects are covered by notice B. In the circumstances I will correct the enforcement notice, the subject of Appeal A, by deleting its requirements iii and iv.
21. From the evidence adduced by the Council the enforcement notice is only targeting the boundary fencing on the appeal site's eastern boundary, adjacent to Broadmead Road. Indeed, in terms of the permitted development claimed by the appellant, the existing enclosures on the other boundaries would satisfy the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO).

Accordingly, I will draw a distinction and re-word the relevant requirement in the notice to clarify matters.

22. Both enforcement notices' final requirement is that the land be restored with a topsoil to be laid and meadow grass seed be sown at 25-30 grams per square metre. This is a positively worded requirement which goes beyond the normal and standard wording such as 'cessation of' and 'removal of' and thereby goes beyond what can be legitimately required. Accordingly, I will reword requirement v on both notices to require only that the land be restored to its former condition.

### **Appeal A**

#### **The appeal on ground (b)**

23. The appellant is claiming that the alleged breach has not occurred as a matter of fact. The onus is on the appellant to prove this and the burden of proof is the balance of probability.
24. The ground (b) appeal is simply that the caravans are not stored, as is alleged in the enforcement notice, but are part of a proposed residential use. At this time the agent mentioned that the appellant was unable to occupy the caravans because of the temporary injunction in effect then.
25. However, their occupation for residential purposes is not the breach alleged and, as the agent accepted that caravans were stationed on the land on 5 August 2021, the date the notice was issued, the appeal on this ground must fail.

#### **The appeal on ground (f)**

26. An appeal on ground (f) is that the enforcement notice's requirements go beyond what is necessary to remedy the alleged harm caused by the breach. The appeal here is based on the assertion that the notice's requirements iii and iv 4 are not related to the alleged breach. I have mentioned that this is, indeed, the case and, accordingly, to this extent, the appeal succeeds.

#### **The Appeal on ground (g)**

27. An appeal on ground (g) that the period for compliance stipulated on the enforcement notice is unreasonably short. Rather than the required 3 months the appellant has requested a compliance period of 16 months.
28. Whilst I consider that 16 months is excessive, and would effectively be tantamount to a temporary planning permission, given the appellant's circumstances, and the apparent absence of alternative sites, I shall extend the compliance period to six months.

### **Appeal B**

#### **The Appeal on ground (b)**

29. The appellant is again claiming that the alleged breach has not occurred as a matter of fact and, as mentioned before, the onus is on the appellant to prove this and the burden of proof is the balance of probability.
30. When the appeals against the enforcement notices were first lodged, the appellant's then planning agent, said that the hardstanding at issue was not

‘untreated building waste material’ as referred to in the enforcement notice. However, with reference to the photographs submitted by the Council it would appear that the Council’s allegation is correct. Indeed, no compelling evidence has been produced by the appellant to suggest otherwise.

31. Accordingly, in the absence of such the appeal on ground (b) does not succeed.

### **The Appeal on ground (c)**

32. An appeal on ground (c) accepts that the allegation has occurred and is development but express planning permission is not required, or planning permission has already been granted for such.

33. The ground (c) appeal is saying that the boundary fencing is permitted development. Schedule 2, Part 2, Class A allows for the erection or alteration of a gate, fence wall or other means of enclosure. Paragraph A.1 says that this is subject to a proviso which restricts the height of such erected adjacent to a highway used by vehicular traffic which, after the carrying out of the development, would exceed 1 metre above ground level.

34. Given the above wording no distinction is made between adopted and unadopted roads and the proviso must apply to both.

35. From my site visit I noted that the boundary fencing fronting Broadmead Road clearly exceeds 1 metre in height and, therefore, subject to some minor clarification in terms of its wording, I am satisfied that requirement iv is permissible and the benefit of planning permission is required for the lawful retention of this section of the boundary fencing. None has been granted nor sought.

36. Accordingly, the appeal on ground (c) fails.

### **The Appeal on ground (g)**

37. As mentioned, an appeal on ground (g) is that the period for compliance stipulated on the enforcement notice is unreasonably short. Rather than the required 3 months the appellant has requested a compliance period of 12 months.

38. In line with Appeal A, given the appellant’s circumstances, and the apparent absence of alternative sites, I will similarly extend the compliance period to six months.

39. The appeal succeeds to this extent.

## **Appeal C**

### **Reasons**

#### **Main Issues**

40. The site lies within the Green Belt. As such, the main issues in this appeal are:

- 1) whether the development amounts to inappropriate development within the Green Belt, for the purposes of the National Planning Policy Framework;
- 2) if so, the development’s effect on the openness of the Green Belt;



- 3) whether the development has given rise to any other harm, and in particular, the effect on the integrity of the Dorset Heathlands' European sites, and also local character;
- 4) the position in the Dorset Council area regarding the provision and need for gypsy and traveller sites, and policy thereto; and
- 5) whether the appellant has demonstrated that very special circumstances exist to outweigh the fundamental policy objection.

*Inappropriate development and the openness of the Green Belt*

41. The National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
42. Paragraph 154 of the Framework sets out certain exceptions to that considered inappropriate development. One such exception is 'limited infilling in villages' which the appellant has cited as supporting the appeal.
43. The appellant's original agent, in setting down the initial grounds of appeal within a letter dated 1 September 2021 states on page 10:

*'Whilst spatially this harm (to the openness of the Green Belt) is unavoidable given that the site was previously undeveloped, visually the site could be considered as an infilling of a corner plot in an area of development. Furthermore, it is submitted that the site is a village on the ground, despite not having a policy designation. It is not submitted that the site would fall within the limited infilling within the Green Belt exception, as it does not infill a clear gap in a built-up frontage, which would negate much of the spatial harm. However, the visual harm of the development is considered to be minimal.'*
44. Whilst Three Legged Cross might be considered as an extended village Broadmead Road sits out on a limb and, although washed over by the Green Belt designation, and the immediate feel being one of residential character, the appeal site is the last defined plot of land before the road tapers out into a bridleway, which then passes through open Green Belt land.
45. The development which has taken place cannot, therefore, be considered as falling within the 'limited infilling in villages' exception. Moreover, I find that the development in this particular instance does not meet any of the exceptions set out in the Framework. Accordingly, both the storage of use, and also the hardstanding constitutes inappropriate development in the Green Belt.
46. A fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Although not defined in the Framework openness is identified as one of the essential characteristics of the Green Belt. In this instance I consider that the material change in the use of the land involving the storage of the caravans has harmed the openness of the Green Belt.
47. At my site visit only two caravans were present but, considering that the proposal would involve a four-pitch traveller site which would accommodate four mobile homes and also four touring caravans, The harm I have identified

would therefore be markedly compounded and, accordingly, I conclude that the development is contrary to relevant advice within paragraphs 152 and 153 of the Framework and also policy KS3 of the Christchurch and East Dorset Local Plan Part 1 Core Strategy (LP).

#### *Integrity of the Dorset Heathlands*

48. The appeal site lies some 230m of two lowland heathland areas that form part of the Holt and West Moors Heath SSSI, designated in 1977 and subsequently expanded. This, and other component parts of the Dorset heathlands, are of particular ecological importance.
49. In essence, the development potentially impacts upon the Dorset Heathlands which are an extensive network of lowland heaths recognised both nationally and internationally for their nature conservation as a Site of Special Scientific Interest (SSSI), as a Special Protection Area (SPA), Ramsar and Special Area of Conservation (SAC). These are protected under Regulation 8 of the Habitats Regulations.
50. The conservation objectives for habitats within the SACs and Ramsar sites are to maintain in favourable condition the European dry heaths, the northern Atlantic wet heaths and the depressions on the peat substrates. For the SPA the objectives are to maintain in favourable conditions habitats for the populations of the Dartford warbler, nightjar and woodlark.
51. Natural England (NE) takes a zonal approach to any housing development that is close to or in the wider locality of the SPA or SACs. NE considers that such development is likely to have a significant adverse effect upon the designated sites, either alone or in combination with other developments.
52. LP policy ME1 aims to protect, maintain, and enhance the condition of all types of nature conservation sites, habitats and species within their ecological networks. Where development is considered likely to impact upon particular sites, habitats, or species, it will need to be demonstrated that the development will not result in adverse impacts.
53. However, LP policy ME2 states that no residential development will be permitted within 400 metres of protected European and internationally protected heathlands. This is consistent with the advice within the Dorset Heathlands Planning Framework 2015 -2020 Supplementary Planning Document, adopted in 2020 (SPD).
54. The SPD sets out a strategy for the avoidance and mitigation of impacts of new residential development upon the Dorset Heathlands, and thereby seeks to avoid harm thereto. It establishes a framework to assess the appropriateness of applications for development proposals. The strategy relies upon preventing further residential development within 400 metres of the protected heathlands in an attempt to control the cumulative effect of increased residential development.
55. NE considers that the likely *significant* effect of any new residential unit cannot be mitigated against and is therefore not compliant with the avoidance and mitigation strategy of the SPD and, moreover, LP policy ME2 which is unequivocal in that no residential development is allowed within the 400 metres buffer zone.



56. The appellant argues that the word 'significant', in this context, has a biological meaning rather than an actual meaning, and there are no biological reasons why the proposed development should not be approved.
57. The NE representative at the Hearing referred to an independent review of the 400 metre buffer zone, commissioned in 2015 by the former Dorset County Council. This found that development within easy walking distance of the heathlands is more likely to be at risk since it is unrestricted by accessibility factors such as car parking.
58. General effects identified in association with the proximity of dwellings to these protected areas include, an increase in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion, as well as disturbance by humans and their pets amounting to the disturbance of ground nesting birds.
59. On the above basis the Council carried out an Appropriate Assessment (AA) as to the use of the land for which planning permission is sought ie a four-pitch traveller site. This concluded as follows:
- 'Given that the site is currently not permitted for residential use, it is evident that the population of the proposed use will be greater than that of the existing permitted use, resulting in an increase in urbanising impacts from human pressures, which have an adverse effect upon protected habitats and species. Given that Natural England have advised that it is not possible to fully remove any adverse effect resulting from an increase in population within 400m of the European sites it must therefore be concluded that the above proposal is likely to result in an adverse effect upon the integrity of the Dorset Heathlands European sites'.*
60. However, notwithstanding NE's zonal approach the appellant says that such footprint ecology has been rejected by other local planning authorities, and also questions the conservation value of the designated sites remarking that there has been no attempt by the Council to determine if the SAC or SPA sites contain the habitats or species for which they were designated. Further, the appellant comments that NE has failed to maintain the Dorset Heathlands as a European site and indicates that NE has not provided the Council with any monitoring of the heathlands to identify if they are in a favourable conservation status.
61. Even if any of the above may be the case I consider it to be something of a sideshow as the actual designation is a given and cannot be challenged as part of the current appeal; it is not the correct forum. Instead, I must have due regard to LP policy ME1, the SPD, relevant advice within paragraphs 186 and 187 of the Framework and also Natural England's general approach as to the prohibition of residential development within the 400m exclusion zone.
62. Accordingly, in applying the precautionary principle I conclude that there is a risk that the proposal would have a significant effect on the integrity of the protected heathlands.

#### *Local character*

63. The site is located within an area of landscape categorised as heath/farmland mosaic. However, it is recognised that the landscape is impacted by transport corridors and, at my visit, I noted that to the north and east of the site the

immediate area has more of a suburban feel despite the Green Belt location. This, though, is the last site before the green field immediately to the south and the open land beyond.

64. Given that the proposal would involve the creation of four traveller pitches which would cover the majority of the site, I consider that the nature and intensification of use would be out of character with the suburban feel.
65. I find, therefore, that the development is in conflict with LP policy HE3 which requires that development protects and seeks to enhance the landscape character of the area.

*Need for, and provision of gypsy sites*

66. The latest Planning policy for traveller sites document (PPTS) was published in December 2023. Paragraph 16, in referring to traveller sites in the Green Belt, confirms that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. The paragraph goes on to say 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 demonstrate the very special circumstances necessary.
67. The most recent local Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) was published in August 2022, and there appears to be an unmet need of 113 pitches up to 2028. The Council looks upon this differently, saying that this is not an immediate need, and the current need is for 84 pitches between 2022 and 2026. Instead, the appellant estimates an immediate need of 120 pitches.
68. Nonetheless, and notwithstanding the differing estimations, the shortfall in provision constitutes a failure of policy, and I attach considerable weight to this issue.

*Personal circumstances*

69. The Rev Herbert, who works as a chaplain for gypsies and travellers has known Mrs Ward for the past three years. He spoke on her behalf and expressed concern as to the uncertainty as to whether Mrs Ward will have to leave the site and the effect this is having on her. He indicated that, although she is looking for other possible sites, there are very few available.
70. At the Hearing it was outlined that in 2021 a temporary Injunction was granted at the High Court both prohibiting the use of the land for residential purposes and the stationing of any more caravans. The injunction was later extended until December 2021.
71. In January 2022 the Court was persuaded that the personal circumstances of the family and the lack of alternative available sites outweighed the potential harm of the family living there until such time as the appeals against the enforcement notices are determined. The judgement allowed Mary Anne Ward, James Ward, Catherine Ward and their dependant children to occupy the land for residential purposes and was made without prejudice to the outcome of the planning appeals or the final hearing.

72. The Ward family moved onto the site during the second week of February 2022 initially in two touring caravans. In June 2022 a large twin unit static mobile home was moved onto site and one of the stored static homes was removed. Regular compliance checks were undertaken by the Council during May, June and July and no significant breaches of the amended County Court Injunction were identified.
73. At the time of my site visit there were two caravans on the land: with one apparently mainly used for storage purposes. Although the Council says that the site is only sporadically occupied it appears that Mrs Ward currently resides at the site with her son, daughter-in-law and sister-in-law. In addition, I understand that three children live at the site, at least one of whom is of school age.

*Human Rights Act and the best interests of the child*

74. The appellant has raised both these matters and I shall deal with them with reference to case law authority.
75. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
76. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
77. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
78. In 2013, in the High Court judgement of *Stevens v SSCLG* [2013] EWHC 792 (Admin) it was held that where the Article 8 rights are those of children, their best interests are a primary consideration. Once identified, although a primary consideration, the best interests of the children were not determinative of the planning issue, but no other consideration was more important or to be given greater weight and those best interests had to be kept at the forefront of the decision maker's mind.
79. Importantly, it was held that the best interests of the children were not only not determinative, neither were they paramount, the judge noting that Article 3 says "*a primary consideration*" rather than "*the primary consideration*". Nor should they be considered temporally or logically first.
80. In the case the planning appeal Inspector, in her assessment, had referred to the children's benefit as carrying moderate weight. However, the court decided that, after examining all the material considerations, she was not giving the children's best interests inherently less weight than the visual harm to which the development had given rise. She was, therefore, fully entitled, after that analysis, to conclude that the dismissal of the appeal against the refusal of planning permission would not have a disproportionate impact on the family.

81. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account in the overall exercise was a question of substance, to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children's best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.

#### Planning Balance

82. I have taken into account the Council's failure of policy as to local gypsy and traveller provision. However, I am also guided by the PPTS guidance which says that personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to illustrate the very special circumstances necessary to override the policy objection.
83. Admittedly, Human Rights legislation and the best interests of the children should be factored in, and I have given due consideration to these matters. The Council, in refusing planning permission for the proposed development given the Green Belt location and also the proximity of the protected Dorset Heathlands, clearly indicate that the Council's approach served a legitimate aim and was in the public interest. It is understood that children do live at the site and their schooling and health are material considerations but by reason of the degree of planning impacts consequent on the development the appellant should have realised that successful appeals were considerably less than likely despite the time the appellant has been resident at the site.
84. It appears from the evidence that finding alternative accommodation has proved difficult but given that this is an unsuitable location for the development proposed – and certainly its intensity – the arguments that the appellant and her family should remain are outweighed by the resultant adverse impacts and I consider that this reduces the weight to be afforded to both Article 8 and the best interests of the children.
85. I have taken into account the appellant's claim that the site is previously developed land, but this has not altered my conclusions that the necessary very special circumstances do not exist.
86. Given that I am dismissing the appeal on other substantive issues it is not necessary that I explore the potential damage to nearby trees which are covered by tree preservation orders, nor is it necessary that I examine any potential flood risk issues which the Council has outlined.

#### Conclusion

87. For the above reasons, and having had regard to all matters raised, I must conclude that the proposal is in conflict with the development plan as a whole, along with the Council's SPD and relevant government advice contained within the Framework. Accordingly, the appeal is dismissed.

*Timothy C King*

INSPECTOR