



Appeal Decisions

Hearing Held on 16 April 2024

Site visit made on 16 April 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal A: APP/M4320/C/23/3326585

Land west of Rock Lane, Melling L31 1EW

- 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 Marion Doherty against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 27 June 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land from use as grassed open space to the laying of additional hardstanding to form an extended gypsy/traveller caravan site.
- The requirements of the notice are "You must cease the use of the land as an extended gypsy / traveller caravan site, remove the hardstanding and reinstate the land to its previous condition by topsoiling and turfing the land."
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal B: APP/M4320/W/23/3326544

Land west of Rock Lane, Melling L31 1EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Marion Doherty against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2022/02372, dated 16 December 2022, was refused by notice dated 28 April 2023.
- The development proposed is Change of use of land to form extended gypsy/traveller caravan site, including the stationing of 12 caravans for residential purposes, of which no more than 8 shall be static caravans/mobile homes, and the laying of additional hardstanding.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary Matters

Planning History

1. These appeals relate to an existing Gypsy and Traveller site which in broad terms is situated between, and a relatively short distance from, the settlements of Maghull to the north and Melling to the south. It is situated on land between

Rock Lane to the east and the Leeds and Liverpool canal to the west. To the south of the site is Brewery Lane and further to the north is an outlying cluster of residential properties.

2. Planning permission was previously granted on appeal for the “change of use of the site for residential purposes including the siting of caravans” and also for “engineering works including the importation of hardcore to create a hardstanding area.”¹ This followed the service of enforcement notices by the Council for the same.
3. The land affected by the original material change of use allegation was identified on the plan attached to the relevant notice. That site comprised a rectangular area extending southwards as far as Brewery Lane. However, at the time, the caravans were actually sited within a smaller portion of this land at the northern end of the site.
4. The extension targeted by the present notice comprises a parcel of land immediately to the south of the area where caravans were originally sited, but nevertheless still within the larger site area covered by the previous notice and material change of use permission.

The Enforcement Notice

5. At the Hearing the parties agreed that corrections were required to Section 2 of the notice to delete superfluous wording in the site address, and to Section 3 of the notice to better describe the alleged material change of use breach of planning control. I am satisfied that these corrections can be made without resulting in injustice to either party.

Appeal A on ground (c)

6. The appeal is that there has not been a breach of planning control. The appellant’s case is that the planning permission previously granted for the material change of use for residential purposes, including the siting of caravans, included the land targeted by the present notice. Accordingly, the appellant says that a further planning permission for the residential use of the land is not required in relation to the expansion of caravan siting within this part of the site. Furthermore, they say that a planning condition, restricting where caravans could be sited, was not imposed by the previous Inspector. Consequently they say there has not been a breach of planning control.
7. The Council maintains that a breach of planning control has occurred. It refers to a condition attached to the previous Inspector’s decision requiring the removal of hardstanding and site restoration in the event that the residential use ceased. It says because the area of hardstanding in question was identified on a plan attached to the decision as not including the presently targeted area, and because the Inspector’s reasoning specifically excluded consideration of hardstanding within the area presently targeted by the notice², this demonstrates the limited extent of the use permission that the Inspector had in mind. Furthermore it refers to an approved drawing submitted by the appellant in relation to the discharge of a condition imposed which shows the siting of caravans.

¹ Appeal references APP/M4320/C/20/3258166 & APP/M4320/C/20/3258167

² As set out in the Inspector’s deliberations at paragraphs 8 and 9 of the decision letter.

8. I have reviewed the previous Inspector's decision letter and reasoning. I concur with the view that there is nothing to support the position that planning permission was previously granted for operational development comprising hardstanding within the area targeted by the present notice. Such development would therefore require planning permission.
9. However, the present enforcement notice does not allege operational development, rather a material change of use. I am in no doubt that the original deemed planning application for the material change of use to residential, and accordingly the planning permission granted, related to the more extensive area of land which included the appeal site targeted by the present notice. Furthermore, whilst the conditions imposed by the previous Inspector required certain details to be agreed by the Council, this did not include the siting of caravans within the area where the residential use was permitted. Conditions were imposed to restrict the overall number of pitches and caravans on the site. However, there is no suggestion that the expansion of the site, as alleged, has resulted in there being more pitches and caravans on the site than were permitted by the previous permission.
10. I therefore conclude that, on the balance of probability, the use of the area targeted by the present enforcement notice as an 'extended' caravan site would not have required express planning permission. The laying of additional hardstanding, though facilitating the siting of caravans, does not in itself trigger the material change of use of land. The fact that a planning application was made which included material change of use, which is the subject of Appeal B, does not alter this conclusion. The ground (c) appeal therefore succeeds and the notice will be quashed.

Appeal B

Appeal B Preliminary Matters

11. The Appeal B site area includes the northern part of the site that was subject to the original deemed planning application and permission as referred to above. It includes the originally developed northern most part of the site and the area immediately to the south of this that was targeted by the notice to which Appeal A relates.
12. I have concluded above that planning permission has already been granted for the material change of use of the site for residential purposes including the siting of caravans. This permission would include the extended caravan site as proposed, and the stationing of a maximum 12 caravans (of which 8 would be static caravans).
13. Because the principle of the change of use has already been established, my decision therefore focuses on the merits of the additional hardstanding area, which has not already been approved as part of the original permission. However, notwithstanding the permitted use of the site, I am mindful that the hardstanding proposed plays a significant role in facilitating that use. Without the proposed hardstanding, any caravans within the southern portion of the Appeal B site would need to be sited on grass or bare ground, which could make the use of that area as a caravan site very difficult and therefore unattractive in practice. I am not persuaded that without the facilitating

hardstanding the siting of caravans in the same location would definitely go ahead³.

14. Therefore my approach is to consider the merits of the hardstanding, both in its own right and as a means of facilitating the permitted caravan site use.
15. At the Hearing the appellant set out that there was unmet need for sites in the Borough, that was not at present being addressed by the Council, in terms of a shortfall in the supply of deliverable sites. They also assert the personal circumstances of the extended family in support of the present application.
16. I acknowledge that the boundary of the appeal site includes the area where planning permission was granted by the previous Inspector for 8 pitches and up to 12 caravans. Therefore, even if the present appeal were to be dismissed, that permission would be unaffected. Accordingly it would make no difference to the availability of pitches for Gypsy and Traveller need, and would not take away a settled base for the extended family currently residing on the site. I am mindful that the need for sites and the personal circumstances of the site occupiers were matters considered in the planning balance which led to the previous Inspector granting planning permission.
17. The same matters should not therefore be taken in support of the present appeal. Any future change in the need for accommodation for the group of occupiers present on the site, should this arise, would need to be addressed if and when circumstances change in the future.
18. Rather the key issue before me, in terms of the living conditions of the appellants and other site occupiers, is the relative benefits of the additional hardstanding facilitating the spreading out of accommodation over the wider site compared to it being contained within a smaller area in the northern part of the site.

Main Issues

19. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on the living conditions of the site occupiers.
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

³ Indeed it was accepted by Mr Brown at the Hearing that, in practical terms, caravan siting was constrained by where hardstanding was permitted.

Reasons

20. Paragraph 142 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 143 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
21. There is no dispute between the parties that the proposed hardstanding, and the use that it facilitates, would amount to inappropriate development. Indeed, with regard to the use, the Government's Planning Policy for Traveller Sites 2015 (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

Openness and Green Belt Purposes

22. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect⁴. The proposed hardstanding and the various residential caravans, vehicles and paraphernalia that it would facilitate, would take up space which was previously free from development.
23. Outside the site itself, views of the development would be substantially screened, or filtered, by dense boundary planting along or adjacent to the northern, eastern and southern boundaries of the site. This, I consider, would also apply at times of seasonal leaf fall.
24. The parties agreed that the key visual receptors are elevated views from Brewery Lane, as it crosses the canal bridge to the south west of the site, and from the canal towpath to the west.
25. With regard to Brewery Lane, the absence of a footpath means that any views of the site would predominantly be to passing motorists, and then only in terms of fleeting glimpses. Because of distance, and its lack of three dimensional form, I consider any additional hardstanding over and above that already approved would be virtually imperceptible. The upper parts of caravans sited on the hardstanding would be visible, although impact on openness would be substantially mitigated by the background of similar structures on the already approved hardstanding area.
26. In terms of visibility from the towpath, the hardstanding would be entirely screened by existing boundary treatments. The upper parts of caravans would be seen as extending the depth of the site to a degree. However, from the closest viewpoints, directly to the west the site, the caravans would be substantially screened by the canal embankment and in any event would be set against the larger and more imposing building forms of the agricultural buildings associated with the development on the opposite side of Rock Lane.

⁴ *Turner v SSCLG & East Dorset Council* [2016].

27. Drawing these considerations together I consider that cumulatively the sense of visual impact and encroachment of the proposed hardstanding and structures facilitated would be limited. My assessment is unaltered by the operation of external lighting on the site, which could be controlled by a planning condition. So too by the physical presence of the relatively few lighting columns there.

Character and Appearance

28. The site is part of a relatively flat agricultural landscape, although there are reminders of man-made interventions in the vicinity, including the adjacent canal and traffic noise associated with the M58 motorway. Given that this is an existing lawful Gypsy and Traveller site, and because of the context described above and the very limited visibility of the additional hardstanding and development which it facilitates, I find that the development would result in no harm to the character and appearance of the area.
29. I am also mindful that it would be possible to impose a planning condition to require additional planting with a view to enhancing the immediate setting of the site.
30. I conclude that the development would not conflict with Policies HC5 or EQ2 of the Sefton Local Plan 2017 (LP) insofar as they seek to avoid unacceptable harm to the local environment and for developments to respond positively to character and local distinctiveness.

Living Conditions of Site Occupiers

31. The appellant has set out that they do not seek to expand the amount of accommodation on the site. The number of pitches would remain as previously approved, but would be spread over a wider area as facilitated by the hardstanding. They say the primary reason for seeking to alter the development is in the interests of the safety of children on the site, who in a more confined area, would be more vulnerable to conflicts with manoeuvring vehicles.
32. The Council's position is that the layout of the site as previously envisaged allowed for the retention of an open grassed area as a dedicated safe area for children's play, away from the comings and goings of vehicles. It therefore considers the best interests of the children to be harmed by the proposed hardstanding.
33. I am mindful that there are a large number of young children living on the site. Also that the previously envisaged site layout did not allow for significant amounts of external space, within the area where hardstanding was approved, when also allowing for the presence of caravans and the parking and manoeuvring of vehicles. I also note that it is undisputed that certain children on the site have mental health issues which is likely to mean their safety is more at risk than may otherwise be the case.
34. I acknowledge the Council's point above and note there is no dispute that the site could operate in practical terms, in accordance with the originally envisaged layout, without contravening any minimum standards or regulations. However, I am sympathetic to the view that in reality a dedicated grassed area, in itself, may not always be an attractive play space, say if ground

conditions are wet and muddy, or if there is a shortage of equipment for children to play on or around.

35. It is also inevitable that social interactions will take place to a degree in close proximity to living accommodation and not always within a specified area away from this. On balance, when considering the number of, and circumstances of, the children I therefore consider this is a matter that attracts weight in favour of the proposal.
36. I have considered the point that the spacing out of accommodation would also allow the site occupants more privacy. However, whilst this might be desirable, when having regard to minimum standards this argument, in itself, is not compelling.

Other Matters

37. Further objections to the development have been raised by third parties. Reference is made to the presence of other Traveller sites elsewhere in the Borough; also to concerns that the scale of such sites should not dominate the nearest settled community. However the level of occupation of the site, in terms of the number of pitches and caravans, would remain unchanged as a result of the present proposal and these arguments do not therefore attract weight.
38. Concerns have been raised about the development increasing the risk of flooding in the locality. However I note that the Council has raised no objection to the scheme on this ground; also that I am able to impose a planning condition with regard to the control of surface water run-off from the site. The point is made that the application is retrospective. However the Act makes provision for a grant of retrospective planning permission where appropriate, including the imposition of planning conditions.

Planning Balance

39. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia, facilitated by the proposed hardstanding, would cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness to be limited in visual terms.
40. I have not found harm to the character and appearance of the area. However this matter would be neutral in the planning balance.
41. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This states 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. However, it seems to me that for the reasons set out above, the proposed development would be in the best interests of the children, which accordingly I consider should attract substantial weight.
42. I also give weight to the fact that the appeal site already benefits from planning permission for the change of use to a caravan site, without any

restrictions regarding layout and extent of pitches. The degree is tempered to 'moderate' weight, however, given that the absence of permission for hardstanding makes the siting of caravans there unlikely, for the reasons discussed above.

43. Having particular regard to the limited visual harm to the Green Belt, I consider the substantial weight attached to Green Belt harm would be clearly outweighed by the circumstances of the site occupiers in this case, when added to the weight given to the previous grant of planning permission for the change of use of the site. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land, as set out in the Framework and within Policy MN7 of the LP.
44. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention 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.
45. Given the circumstances overall, I find that granting planning permission would be proportionate and necessary. Since I have decided to allow the appeal and grant full planning permission for the proposed development there will be no interference with the appellant's rights to a private and family life and home.
46. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
47. The grant of planning permission would go some way towards advancing equality of opportunity by recognising the circumstances of the site occupiers.

Conditions

48. I have had regard to the conditions imposed by the previous Inspector, as discussed with the parties at the Hearing. A condition is necessary to restrict the occupation of the site to Gypsies and Travellers, in order to ensure the site meets the need which justifies granting the permission. The effect of the condition will be in accordance with that used by the previous Inspector.
49. Restrictions on the number of pitches and caravans reflects the scale of identified need. Restrictions on size of vehicle, site layout and a landscaping requirement are necessary to safeguard the character and appearance of the area. A condition to control surface water discharge from the site is required in the interests of environmental protection. Conditions requiring the set back of access gates and minimum visibility splays are imposed to ensure the retention

of such measures in the interests of highway safety. A condition to ensure the importation of contaminated material is avoided is required in the interests of environmental protection and to safeguard the health of the site occupiers. Details of external lighting are required to protect the character and appearance of the area and the living conditions of nearby residents.

50. In addition I shall impose a condition requiring the removal of hardstanding in the event the use should cease. This is in keeping with the condition imposed by the previous Inspector and is necessary because if the use ceases, it is undesirable to retain engineering works that have facilitated the use. A condition is imposed confirming the approved site location plan for the avoidance of doubt.

Conclusions

Appeal A

51. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
52. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered.

Appeal B

53. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

54. It is hereby directed that the enforcement notice be corrected as follows:

Delete the repetition of the words "Rock Lane" in the site address in Section 2 of the notice; and

Delete the description in its entirety of the alleged breach of planning control, as set out in Section 3 of the notice, and substitute the following wording instead:

"Without planning permission, the material change of use of the land from use as grassed open space to an extended gypsy / traveller caravan site facilitated by the laying of additional hardstanding."

55. Subject to the corrections the appeal is allowed and the enforcement notice is quashed.

Appeal B

56. The appeal is allowed and planning permission is granted for Change of use of land to form extended gypsy/traveller caravan site, including the stationing of 12 caravans for residential purposes, of which no more than 8 shall be static caravans/mobile homes, and the laying of additional hardstanding at Land west of Rock Lane, Melling L31 1EW, in accordance with the terms of the application Ref DC/2022/02372, dated 16 December 2022, subject to the conditions in the schedule below.

R Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) There shall be no more than 8 pitches on the site and on each pitch there shall be no more than 2 caravans, subject to there being no more than 12 caravans on the site at any time and no more than 1 static caravan on any pitch.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed **within 28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **4 months** of the date of this decision a 'site development scheme' with details for:
 - (a) the layout and extent of the pitches, the broad locations of caravans within those pitches, and the type of caravans;
 - (b) a scheme of landscaping and details of a schedule of maintenance for a period of 5 years, to include indications of all existing trees and hedgerows on the site identifying those to be retained and setting out measures for their protection throughout the course of carrying out the site development scheme;
 - (c) the draining of all surface water from the site, avoiding discharge to the public sewer where possible but if not the details shall include measures to restrict the discharge rate;

- (d) the setting back of the access gates to the site a minimum of 6 metres from the edge of the existing carriageway to Rock Lane;
- (e) the provision of visibility splays of 2 metres x 215 metres at the junction with Rock Lane;
- (f) the source of the material for the hardstanding, quantity imported and chemical analysis results which demonstrates the material is suitable for use within the development;
- (g) proposed and existing external lighting on the boundary of and within the site;

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) If within **9 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) If the use of the site for residential purposes should cease, within 28 days of such cessation the hardstanding areas marked in hatched blue lines and red lines on the plans attached to this decision (Plan 1 and Plan 2) shall be removed from the site and the land restored to its former condition.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan.

END OF SCHEDULE OF CONDITIONS



Plan 1

This is the plan referred to in my decision dated: 16 May 2024

by R Merrett Bsc(Hons) DipTP MRTPI

Land west of Rock Lane, Melling L31 1EW

Reference: APP/M4320/W/23/3326544

Scale: Not to Scale





Plan 2

This is the plan referred to in my decision dated: 16 May 2024

by R Merrett Bsc(Hons) DipTP MRTPI

Land west of Rock Lane, Melling L31 1EW

Reference: APP/M4320/W/23/3326544

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Philip Brown	Agent
Marion Doherty	Appellant
Martin Doherty	Appellant's husband

FOR THE LOCAL PLANNING AUTHORITY:

Catherine Lewis	Planning Officer
David Lawrenson	Enforcement Team Leader
Neil Kennard	Senior Planning Lawyer