



Appeal Decisions

Site visit made on 16 April 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2024

Appeal A Ref: APP/R2520/C/23/3333746

Appeal B Ref: APP/R2520/C/23/3333747

Appeal C Ref: APP/R2520/C/23/3333748

Appeal D Ref: APP/R2520/C/23/3333749

Land adjacent to The Bungalow, The Piggeries, Cow Lane, Swinderby, Lincoln, Lincolnshire LN6 9ZT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Thomas Tunstall & Family (Appeal A), Mr James Tunstall (Appeal B), Mrs Charmaine Tunstall (Appeal C), and Mrs Olga Tunstall (Appeal D) against an enforcement notice issued by North Kesteven District Council.
 - The notice was issued on 26 October 2023.
 - The breach of planning control as alleged in the notice is (a) the material change of use of the land to a caravan site by the siting of a static caravan used for residential purposes (the 'unauthorised use') and (b) operational development associated with the unauthorised use including the erection of a day room outbuilding and fencing, the laying of hardcore and the creation of an access.
 - The requirements of the notice are:
 - a) Cease using the land as a caravan site;
 - b) Permanently cease the residential use of the land and remove the static caravan and all associated fixtures and fittings from the land;
 - c) Permanently remove the day room outbuilding, domestic paraphernalia, vehicles and all caravans (touring or static) brought onto or erected on the land in connection with the unauthorised use;
 - d) Remove from the land all the associated operational development undertaken to facilitate the unauthorised use, including hard surfacing, hardcore, gravel, paving and stone, concrete bases, brick bases, brick skirting, steps and planters, fencing, gravel boards and fence posts, entrance gates and pillars and posts;
 - e) Restore the north and west boundaries of the land to their condition prior to the unauthorised use by the planting of hedgerows. Ensure this hedgerow permanently closes off the access to the land from Cow Lane;
 - f) Restore the land to its condition prior to the unauthorised use by laying the land to grass.
 - The periods for compliance with the requirements are:
 - a) 6 (SIX) months after this notice takes effect for step (a);
 - b) 9 (NINE) months after this notice takes effect for steps (b), (c), (d) and (e).
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), and (f) 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.
 - Appeals B, C, and D are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. It is directed that the enforcement notice is corrected by:

- In section 5 the deletion of the word “permanently” from requirements (b) and (c), and in requirement (d) the deletion of the word “gavel” and substitute instead the word “gravel”.
 - In section 6(b) the deletion of the words “(b), (c), (d) and (e)” and substituting instead the words “(b), (c), (d), (e), and (f)”.
2. Subject to the above corrections, the appeals are dismissed and the enforcement notice is upheld. In respect of Appeal A, planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

The Notice

3. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
4. In section 5 there are six actions listed (a) to (f) which the recipients of the notice are required to do. However, section 6 which sets out the time for compliance only refers to steps (a) to (e). The period for compliance in relation to requirement (f) has therefore been inadvertently missed out. Nevertheless, given that requirement (f) requires the land to be returned to its previous condition and is therefore the final step in complying with the notice, I am satisfied that it is possible to deduce from the four corners of the notice that the period for compliance is also nine months. I shall therefore correct the notice accordingly.
5. Requirements (b) and (c) in section 5 include the word “permanently” which is unnecessary and can be deleted. There is also a typographical error in requirement (d) which should read “gravel boards”.

Appeals A, B, C, and D on ground (c)

6. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control.
7. The appellant’s case is that the appeal site has formed part of the curtilage of the adjacent residential dwelling since 1994, and that consequently the siting of the caravan for purposes incidental to the enjoyment of the dwellinghouse would be permitted development.
8. The Council however refer to a previous appeal decision¹ at the appeal site where the Inspector concluded that any accrued former use of the land had been supplanted and a new chapter in the site’s planning history had commenced following the siting of the caravan. Put simply, it is the Council’s view that irrespective of any previous use of the land, a separate planning unit has now been formed and therefore the residential occupation of the land is not incidental to the enjoyment of the adjacent dwellinghouse.
9. The leading case relating to planning units is *Burdle*². It was held in *Burdle* that the planning unit is normally the unit of occupation unless a smaller area can

¹ APP/R2520/X/22/3308561

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. Three broad categories are identified for planning units, which are:

- a) A single unit of occupation with a single primary use with ancillary and incidental activities;
 - b) A single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use); and
 - c) A unit of occupation with two or more physically separate areas which are occupied for different and unrelated purposes. Each area in this scenario forms a separate planning unit.
10. The appeal site as identified on the enforcement notice lies a short distance to the north-west of the bungalow known as The Piggeries. The site is enclosed by a combination of timber fencing, gates, and a short section of wall, although at the time of my visit a section of fencing along the south-western boundary was missing. The site comprises a stoned area which contains a caravan, along with a small lawned area and a small number of domestic structures. Vehicular access to the site is provided from Cow Lane.
 11. By virtue of the scale of the caravan, its separate vehicular access, parking area, private amenity area, outbuildings, and the fact that the site is largely enclosed by a variety of boundary treatments, the site appears independent and to have its own separate curtilage. Consequently, the site appears physically separate from the bungalow.
 12. The caravan is occupied by Mr James Tunstall, the son of Mr Thomas Tunstall who lives at The Piggeries, and Mrs Charmaine Tunstall as their permanent residential accommodation. Although it is stated that the siting of the caravan in this location allows for the occupants to provide care to Mr James Tunstall's parents who live in the adjacent bungalow, very limited information in relation to the nature or regularity of that care assistance has been provided. In addition, whilst the land may be in single ownership, there is nothing to suggest that the occupancy of the caravan was in any way dependant on the residential occupancy of the bungalow or that there was any other functional link between the two.
 13. Consequently, notwithstanding that some amenities including water and electricity supply are shared with the adjacent bungalow, and that pedestrian access is possible between the two sites, the evidence strongly indicates that the caravan is functionally separate from the adjacent bungalow.
 14. For the reasons given above, I find that the appeal site is both physically and functionally separate from the bungalow and forms its own separate planning unit. Therefore, even accepting the appellant's position that the appeal site was previously part of the residential curtilage of The Piggeries, a material change of use of the land has occurred by virtue of the creation of a new planning unit. This is development which requires planning permission, and in the absence of any such permission, the appeals under ground (c) must fail.

Appeal A on ground (a) and the deemed planning application

15. During the appeal process the appellants, including those occupying the mobile home, confirmed that they assert traveller status. The Council have raised no

issues regarding the traveller status of any of the occupants of the site. I have no reason to come to a different view. Both parties were given the opportunity to provide comment on any implications this may have on the appeal.

16. An updated planning policy for traveller sites (PPTS) was published on 19 December 2023 which includes a revised definition of gypsies and travellers following the *Lisa Smith*³ judgement. The PPTS, along with the revised version of the National Planning Policy Framework (the Framework) published on the same day, are material considerations in the determination of the appeal.
17. 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 travellers, 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 in my decision.
18. 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 and access to services and transport;
 - The effect of the development on the character and appearance of the area; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations, including the personal circumstances of the appellant and their family.

Reasons

Location

19. The site is located outside any of the defined settlements as set out in Policy S1 of the Central Lincolnshire Local Plan (CLLP) (adopted April 2023) and is therefore considered to be in the countryside. Policy S5 of the CLLP relates specifically to development in the countryside and lists a variety of different developments, including mobile homes (Part C) and new dwellings (Part D).
20. Part C of Policy S5 states that applications for temporary and mobile homes will be considered in the same way as applications for permanent dwellings, with the only exception being when the temporary or mobile home is needed during the construction of a permanent dwelling on site or on a nearby site. That exception is not relevant here and therefore the development needs to be assessed against Part D of Policy S5.
21. Part D states that applications for new dwellings in the countryside will only be acceptable where they are essential to the effective operation of existing rural operations, as listed in tier 8 of Policy S1. The appellant has not provided any evidence which would demonstrate that the mobile home is essential to the effective operation of any existing rural operations. The development therefore fails to accord with Policies S1 and S5 of the CLLP.

³ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

22. Policy S47 of the CLLP requires development proposals to contribute towards an efficient and safe transport network. In particular, all developments should demonstrate, where appropriate, that they have had regard to the following criteria; *"a) located where travel can be minimised and the use of sustainable transport modes maximised, b) minimise additional travel demand through the use of measures such as travel planning, safe and convenient public transport, car clubs, walking and cycling links and integration with existing infrastructure, and c) making allowance for low and ultra-low emissions vehicle refuelling infrastructure"*. Policy S48 of the CLLP also requires developments to facilitate active travel and demonstrate how the ability to travel by foot or cycle will be actively encouraged.
23. Given the traveller status of the occupants of the caravan, Policy S83 of the CLLP is also relevant. This policy sets out the approach for determining the acceptability, in principle, of planning applications for gypsy and traveller development. The policy is split into three parts, and it is part three "new sites" which is the part applicable to this appeal. This states that proposals for new sites for gypsies, travellers or travelling showpeople will be considered against eight criteria. This includes criteria f) which states *"For non-allocated sites, the proposal should be located within reasonable travelling distance to both primary health care facilities and schools, preferably by walking, cycling, or public transport"*.
24. 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.
25. I observed during my site visit that due to its countryside location to the south-east of the settlement of Swinderby, the appeal site was located some distance from local services and facilities. Furthermore, the site is accessed via a narrow, unlit, country lane that has no footpath available. The busy A46 dual carriageway a short distance to the south of the site serves as a further barrier to any pedestrian or cycle access. Additionally, from the information available to me, there are no bus stops or other modes of public transport in the immediate vicinity of the appeal site. Due to this lack of connectivity, I find it highly unlikely that occupiers of the mobile home would walk or cycle to the nearest services and facilities and would instead be heavily reliant on the private car for their day-to-day needs.
26. The Council has also referred to paragraph 84 of the Framework which states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the five stated circumstances apply. None of these circumstances are applicable to the appeal proposal. The Framework does not provide a clear definition of an 'isolated home' and therefore each case is required to be assessed on its own merits.
27. As outlined above, in addition to being located outside of any identified settlement, I have found that the appeal site suffers from a lack of connectivity to the nearby settlement and a lack of suitable services and facilities nearby. Furthermore, notwithstanding the adjacent residential property known as The Piggeries, the appeal site is otherwise surrounded by open agricultural fields and there is a very clear physical and visual separation between the site and the nearest settlement and built-up area. As a result, I conclude that the

provision of a new dwelling in this location results in an isolated home in the countryside in conflict with paragraph 84 of the Framework.

28. For these reasons I conclude that the appeal site is not an appropriate location for the development, having regard to local and national policies concerning development in the countryside and access to services and transport. The development is therefore in conflict with Policies S1, S5, S47, S48, and S83 of the CLLP and guidance contained within the Framework and the PPTS, the aims of which are set out above.

Character and Appearance

29. Cow Lane is a quiet, single-track road in a rural area. Amongst other things, it serves a small cluster of buildings, including The Piggeries, and also acts as an alternative route for vehicular traffic from the village of Swinderby to access the northbound A46 dual carriageway.
30. As already outlined above, the appellant contends that the appeal site was previously part of the curtilage of the adjacent residential dwelling. The Council contend that the site previously had the appearance of "paddock land". Irrespective of any previous established lawful use of the land, from the evidence available it appears that the site was largely devoid of any built form. Consequently, the siting of a large static caravan for residential occupation has changed the character of the site. The developed nature of the site and its residential use is emphasised by the extensive stoned area, timber boundary fencing, and domestic style outbuildings. The site is prominent from Cow Lane and can be seen by any passers-by.
31. Other factors though temper the visual impact of the development. The site is seen in the context of the adjacent residential dwelling which includes brick boundary walls at its entrance and other domestic structures. Thus, it is not a setting which is entirely free of residential character. Further built form including barns and outbuildings can also be seen further east from the appeal site. Overall, with these factors in mind, the visual harm arising from the development is limited.
32. Policy S83 of the CLLP requires, amongst other things, that new sites for gypsies, travellers or travelling showpeople should not have an unacceptable impact on the amenity of nearby residents (in accordance with Policy S53). Policy S53 requires development proposals to contribute positively to local character, landscape and townscape, and relate well to the site and its local and wider context. What is unacceptable is a matter of judgement, but any such development in a rural area will have some visual impact. Viewed in its surrounding context, the limited visual harm in this instance is not unacceptable and I find no conflict with Policies S83 and S53 in that regard.

Other Considerations

(i) Personal Circumstances

33. The caravan is occupied by James Tunstall and Charmaine Tunstall (Mr & Mrs Tunstall Jnr). James Tunstall is the son of Thomas Tunstall, the owner of the appeal site who resides in the adjacent bungalow along with Olga Tunstall (Mr & Mrs Tunstall Snr). Mr & Mrs Tunstall Jnr are understood to have been on the site since around 2019 and are said to be the primary care providers of Mr & Mrs Tunstall Snr. Although the type of health issues encountered by Mr & Mrs

Tunstall Snr have been detailed, very little information regarding the level of care or treatment they require has been provided.

34. I acknowledge that as with all those who travel, a settled base would enable better access to both medical care and other essential support and services. I also accept that the land has been developed for the purposes of providing Mr & Ms Tunstall Jnr with a permanent home. However, from the evidence I have, there is little to suggest that this needs to be provided at this particular site, rather than one in a more appropriate location. For these reasons I give the personal circumstances of the occupiers limited weight.

(ii) The need for sites and alternative sites

35. The PPTS sets out how travellers' housing needs should be provided for in plan making for those covered by the definition in Annex 1. Paragraph 24 of the PPTS also requires consideration of the availability of alternative accommodation. Neither party has provided any specific assessment of need or alternative accommodation as part of their appeal submissions. I have therefore taken the information from the relevant section in the CLLP, that being Policy S83.
36. Policy S83 sets out that a Gypsy and Traveller Community Accommodation Assessment (GTAA) was undertaken in 2020 to review the needs to Gypsy and Traveller accommodation across Central Lincolnshire between 2019 and 2040. In light of the revised definition following the *Lisa Smith* judgement, a need for 41 pitches between 2019 and 2040 was identified. This was further broken down into a need for 5 pitches in the period to 2024, with a further 10 pitches required from 2024-2029, 11 from 2029-2034 and 15 from 2034-2040.
37. It further goes on to explain that since the GTAA was published, planning permission has been granted for an additional 5 pitches with a further 14 pitches committed to. This comfortably exceeds the 5 additional pitches needed in the period to 2024. Policy S83 also outlined that in the first ten years of the plan period (up until 2029) 27-30 pitches are identified, which comfortably exceeds the 15 pitches identified during this period in the GTAA.
38. Accordingly, from the information available to me and in the absence of any evidence to the contrary, I find that there is no recognised outstanding need for additional gypsy and traveller pitches. Consequently, I find that the need for the appeal site has not been demonstrated. The appellant has also failed to demonstrate that there is a lack of suitable, alternative sites in the district. These matters therefore attract no weight in the overall balance.

Planning Balance and Conclusion on ground (a)

39. I have found that the appeal site is not a suitable location for the development, having regard to local and national policies concerning development in the countryside and access to services and transport. I attach great weight to that harm. Although I have not found any harm in relation to the effect of the development on the character and appearance of the area, that is a neutral consideration in the overall balance.
40. 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 occupants need to be accommodated on this particular site.

41. Overall, I am not persuaded that the development carried out on the 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.
42. 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.
43. 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 home, 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 ensuring that developments are appropriately located, with services and facilities being accessible, 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.
44. 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.
45. For the reasons given above, the appeal on ground (a) fails.

Appeals A, B, C, and D on ground (f)

46. The appeals on ground (f) are that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are to cease the residential use of the land and remove the mobile home, and all other associated operational development, from the land and to return the land to its previous condition. The purpose of the notice must therefore be to remedy the breach of planning control.
47. The appellants have suggested that lesser steps could overcome the objections having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the Caravan Act 1960, and other material considerations. However, for the reasons outlined above the siting and occupation of the caravan and the associated operational development is neither permitted development nor does it benefit from the necessary planning permission. I have further found that the development is unacceptable in planning terms.

48. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeals on ground (f) fail.

Conclusion

49. For the reasons given above I conclude that the appeals do not succeed. I have upheld the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR