



Appeal Decision

Inquiry held on 21 and 22 May 2024

Site visit made on 22 May 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal Ref: APP/C3430/C/24/3337033

Land South of New Acre Stables, Wolverhampton Road, Penkridge, Staffordshire ST19 5PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr John Ward against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 15 December 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land to a use for the stationing of a caravan for residential purposes on the Land.
- The requirements of the notice are to:
 - i) Permanently cease the use of the Land for the stationing and residential occupation of caravans.
 - ii) Permanently remove the Caravan, concrete base, brick infill and brick wall entrance to the Caravan from the Land.
 - iii) Restore the Land to its former condition before the change of use commenced.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: the appeal is dismissed.

Applications for costs

1. An application for costs was made by Mr John Ward against South Staffordshire District Council. This application is the subject of a separate Decision.

Ground (e)

2. This ground is that the notice was not properly served on everyone with an interest in the land. The appellant's case in this respect is that the occupier of the appeal site, Ms Donna Ward, was not served with a copy of the notice. However, it was accepted by the appellant's planning witness that there has been no prejudice to Ms Ward, in that she is aware of the appeal and has been able to engage with it. Indeed, she provided a Proof of Evidence and gave evidence at the Inquiry.
3. Accordingly, there has been no prejudice in the lack of service on Ms Ward and thus the appeal on ground (e) must fail.

4. There was also the contention made that the lack of service on the site occupier indicated a lack of a reasonable and thorough investigation on the part of the Council, which if had taken place, would have resulted in a Notice not being served. This, however, is not a matter for consideration under ground (e) and thus has little bearing on my decision.

Ground (a) – the deemed planning application

Main issues

5. The main issues are:

- Whether the development is inappropriate development in the Green Belt, and the effect on the openness of the Green Belt, and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development and effect on openness

6. The appeal site is located within the Green Belt. The Planning policy for traveller sites (the PPTS) sets out at paragraph 16 that:

"Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development."

Thus, the appeal scheme is inappropriate development in the Green Belt. Both the Council and the appellant agree with this position.

7. In terms of the effect on openness, the development has resulted in the stationing of a static caravan within the site, as well as minor ancillary development. This has inevitably led to a loss of openness in spatial terms resulting from an intrusion into the countryside. However, owing to the small scale of the development, together with its limited physical extent, this would be minimal.
8. In addition to the spatial consideration of openness, there is also a visual element. In this case, the site is well screened from all directions, particularly by fencing along the adjacent Wolverhampton Road. The only public views possible are very limited from Wolverhampton Road, where there are glimpses of the static caravan above the fencing. However, these are fleeting and predominantly from traffic travelling along this road. Consequently, in my view, despite the view of the Council to the contrary, the loss of openness in this case is limited, but is nonetheless demonstrably evident and by definition harmful.
9. Accordingly, the development conflicts with policies GB1 and H6 of the South Staffordshire Council Core Strategy (December 2012) (the Core Strategy), insofar as they seek to resist inappropriate development in the Green Belt and prevent demonstrably harmful impacts on the openness of the Green Belt.
10. Paragraph 138 of the National Planning Policy Framework (the Framework) sets out the purposes of Green Belt, and this includes to assist in the safeguarding of the countryside from encroachment. Considering my findings above, the

scheme would indeed encroach into the countryside and thus would conflict with one of the purposes of including land in the Green Belt.

Other considerations

Need for sites

11. The Council has recently published an updated Gypsy Traveller Accommodation Assessment (the GTAA) and it is common ground between the parties that it identifies a need for 142 pitches to 2042, from families that meet the definition of a Gypsy and Traveller. However, if 84% of 'undetermined households' (where interviews were not secured) would need a pitch, then this requirement could rise to 162 pitches up to 2042.
12. The GTAA update identified a 5-year need (2024-2028) of 92 pitches and the Council accepts that it is unable to demonstrate a 5-year supply against this figure.

Failure of policy

13. From the information that was put before me, it is clear that there has been a persisting and ongoing need for sites in the area. This is also acknowledged by other Inspectors when making decisions in the district. Moreover, it was accepted by Mr Turner, the Council's witness, during cross-examination that in recent times there has not been a point in time when there has not been a shortfall in provision against the need. In light of this, it is clear that there has been a failure of policy to address the accommodation needs of gypsy travellers within the area.

Availability of alternative accommodation

14. It is accepted within the Statement of Common Ground that there are no public gypsy traveller sites available for Ms Ward and her children to move to, and that there are none planned at this time. Any alternative provision would therefore be reliant on a private site.
15. It was highlighted by the Council at the Inquiry that Ms Ward is able to occupy part of the authorised private site directly to the north of the appeal site, being listed within condition 3 of the temporary permission authorising that site. It was contended that there was insufficient space within that authorised site to accommodate Ms Ward and that requiring her to relocate would result in overcrowding of the temporarily authorised pitches.
16. However, Mr Carr, during cross-examination accepted that he had not made any assessment of the site using dimensions in order to establish that there was not enough room to accommodate Ms Ward's pitch. In closing submissions, the appellant asserts that a site visit would demonstrate that there is no room within the authorised site which benefits from the temporary permission.
17. At the time of my site visit, I observed that the mobile home that is subject of the enforcement notice is positioned beyond the southern extremity of the authorised site, with a spacious area of land to its front and to the north. It would appear that this area would be located within the authorised site. It was stated during cross-examination of both of the appellant's witnesses that to occupy part of the authorised site would result in overcrowding and result in

the potential for fire risk. But it was further stated that there has been no assessment made of this, assessing the dimensions involved. I observed on my site visit that a gas tank occupied part of the area within the authorised site, but I have no reason to find that this cannot be relocated.

18. Therefore, no substantive evidence, other than assertion, has been put before me to show that the unit of accommodation cannot be relocated to within the, albeit temporarily, authorised site which Ms Ward can legitimately occupy, being named within the temporary grant of planning permission. As such, I find that in the absence of compelling evidence to the contrary, Ms Ward is able to lawfully and legitimately occupy land that is authorised as a gypsy traveller site, and I have nothing that persuades me that the mobile home cannot be relocated. Thus, there is available, alternative accommodation for the use of the site occupier.

Personal circumstances

19. The appeal site is occupied by Ms Donna Ward and her three children. One of the children is of school age and attends primary school, while another will be starting education at the beginning of the next school year. I acknowledge that occupying a settled base, as is currently the case, offers benefits to the occupier and her children.
20. I note that it was put to me that the occupier is uniquely ill-placed to manage roadside living. However, I do not consider that this eventuality would be necessary given the alternative provision that exists.

Best interests of the children

21. As I have set out, the site is occupied by Ms Ward and her three children. As a consequence, the best interests of the children living at the site are a primary consideration in the determination of this appeal and I have kept these best interests at the forefront of my mind, and treated no other consideration as being inherently more important.
22. I have had regard to the health needs of the children at the site, which were discussed at the Inquiry, as well as that all occupants are registered at the local GP practice. There would also be benefits of a stable home in terms of attending school, as well as access to other members of the family, both on the wider site as well as further afield. I also acknowledge that there are children residing on the wider authorised site which facilitates social interaction as well as fostering cultural identity.

Other matters

23. I have been referred to the planning history associated with the currently authorised site to the north of the appeal site. It is contended that initial temporary permissions on that site were granted at appeal, rather than by the Council, which has then only granted extensions or variations to these. It is agreed between the parties that the planning history of this site is a material consideration.
24. I am also conscious that the site has been developed thus far without the benefit of planning permission. Accordingly, the development can be considered to be intentional unauthorised development in the Green Belt. I am mindful that this is a material consideration that I must take into account.

25. I am conscious of the Council's emerging approach to the provision of gypsy traveller sites set out in the South Staffordshire Publication Plan (Regulation 19) April 2024. This sets out that the Council's strategy will be to allocate existing temporary or unauthorised sites as permanent, as well as to consider the intensification and extension to existing sites to meet identified needs. I was made aware that the temporary site is proposed to be allocated within the emerging plan as a gypsy traveller site. While this is noted, I am also mindful that this draft plan is yet to be examined.
26. It is a matter of agreement that the location provides a good level of accessibility to services, the parties describe the site as a "sustainable location." While the appellant invites me to attach positive weight to this, I find that the lack of harm in this respect is a neutral factor.

Planning Balance

27. The Framework requires that substantial weight be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
28. The PPTS 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."*
29. The scheme is inappropriate development in the Green Belt, which is by definition harmful. This harm is accorded substantial weight. I must also take account of the development comprising intentional unauthorised development in the Green Belt, to which I attach limited weight. There are however factors that attract positive weight, and these must be balanced against these harms.
30. There is an identified need for pitches in the district, together with a persistent and ongoing failure of policy to cater for the accommodation needs of gypsy travellers, which attract moderate weight.
31. In terms of alternative sites, I have identified that it has not been satisfactorily demonstrated that the mobile home cannot be positioned within the currently authorised site that lies to the north of the appeal site. The occupier is properly permitted to occupy that site under the terms of the temporary permission that has been granted. In my view, therefore, there is an available, alternative site that the occupier could move to, that is currently subject of a temporary planning permission.
32. In light of this available, alternative provision, I find that the personal circumstances of the site occupier should attract limited weight in favour of the proposal. I acknowledge that having a secure home will result in benefits for the site occupier, and also importantly, the children that occupy the current mobile home. Nonetheless, the interests of these individuals would be equally well served by occupation of the existing authorised site. I recognise that it is authorised by a temporary planning permission, which subsists until April 2025. However, the occupier's specific circumstances were considered at the time of the grant of temporary permission and contributed to the considerations that led to the grant. As such, I consider that it would be wholly appropriate for Ms Ward to occupy part of the authorised site. At the time that the period of the

temporary planning permission expires, it is open to occupiers to seek a new planning permission, whether that be a permanent or temporary permission.

33. In light of the guidance of paragraph 16 of the PPTS (referred to above), whilst I am mindful of the benefits to the children, I find that on balance the harm that would result from the proposal, which is harm to the Green Belt, would outweigh the factors that weigh in favour of the scheme, including the personal circumstances of the appellant and the best interests of the children. Thus, the balance falls against the proposals.
34. I am conscious that in dismissing this appeal there would be interference with the occupier's rights under Article 8 of the *European Convention on Human Rights*, as it would deny them and their family the opportunity to establish a home on this site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate given the public aim of safeguarding the Green Belt, as well as the availability of an alternative site that can be occupied.
35. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal involves the use of land as a gypsy site and the occupier is a gypsy traveller, they have a protected characteristic for the purposes of the PSED. However, having due regard to this, and the need to eliminate discrimination and promote equality, in this case the harm resulting from inappropriate development in the Green Belt, as well as the other considerations as set out in the planning balance above, would outweigh this requirement.

Additional matters

36. The Council highlights that the site is within the 8-kilometre Zone of Influence of the Cannock Chase Special Area of Conservation, and as a result mitigation is required. Following the Inquiry, a Unilateral Undertaking has been submitted in respect of this matter. However, as I am dismissing the ground (a) appeal for other substantive reasons, I have not carried out an Appropriate Assessment in this case and I need not consider this matter further.
37. There was some discussion at the Inquiry in respect of whether the site complied with the definition of "previously developed land" as set out in the Framework. However, this matter has little bearing on the decision and so I have not explored this further in my decision.

Overall conclusion on ground (a) appeal and the deemed planning application

38. I have found that the scheme would be inappropriate development, which would detract from the openness of the Green Belt and conflict with the purposes of including land in the Green Belt. The other considerations offered by the appellant, including the best interests of the children, do not clearly outweigh this harm so as to amount to very special circumstances. The development is therefore in conflict with policies GB1 and H6 of the Core Strategy, as well as the Framework and the PPTS.

39. The proposal would conflict with the development plan as a whole and there are no other considerations which indicate a decision other than in accordance with the development plan.
40. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Ground (g)

41. Ground (g) is that the period for compliance with the notice falls short of what is reasonable.
42. The enforcement notice allows a period of 6 months for the cessation of the use of the land, the removal of the caravan, its base and surrounding plinth, and the restoration of the land. While I note the contention of the site occupiers that the stated period is too short, given that they are able to lawfully occupy a pitch on the adjacent authorised site and that this would involve moving any mobile home only a short distance, I find that 6 months is a reasonable and proportionate period of time.
43. The appeal on ground (g) therefore also fails.

FORMAL DECISION

44. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Constanze Bell	Barrister
She called	
Donna Ward	Site Occupant
Mike Carr	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Freddie Humphries	Barrister
He called	
Paul Turner	Planning Consultant
Mark Bray	Planning Enforcement Consultant

DOCUMENTS SUBMITTED AT INQUIRY

- Hearing notification letter and list of recipients
- Copies of opening comments and closing submissions on behalf of both main parties