



Appeal Decision

Hearing held and site visit made on 23 July 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 August 2024

Appeal Ref: APP/R4408/C/23/3336174

Land known as The Caravan Site, Shaw Lane, Carlton, Barnsley, S71 3HG

- 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 Act").
- The appeal is made by Mr G Ayres against an enforcement issued by the Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 1 December 2023.
- The breach of planning control alleged in the notice is, without planning permission;
 - (i) Operational Development comprising of: excavations to alter the profile of the land, importation and deposit of waste materials and the creation of a hard surface (hard surface shown in the photographs in Appendix 1), as well as the erection of fences (shown in Appendix 1) and a gate (also shown in Appendix 1) on the Land.
 - (ii) The change of use of the Land to use for the residential occupation of caravans and the storage of vehicles, timber huts, gas bottles, children's toys, detritus, and other domestic items associated with the residential use of the Land (shown in photographs referenced Appendix 1).
- The requirements of the enforcement notice are:
 - (i) Remove the hard surface and the fence and gates from the Land.
 - (ii) Remove from the Land any materials or waste arising from compliance with (i)
 - (iii) Restore the Land to its previous profile and condition including cultivation with topsoil and the spreading of agricultural grass seed.
 - (iv) Cease the use of the Land for the residential occupation of caravans.
 - (v) Remove the caravans and vehicles from the Land.
 - (vi) Remove the timber huts, children's toys, gas bottles, detritus, and other domestic items from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on grounds set out in section 174(2)(a), (b) and (g) of the Act. As such, 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, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

APPEAL SITE AND BACKGROUND

1. The appeal site of approximately 0.2 hectares is located off Shaw Lane at the edge of the settlement of Carlton. It is bordered to the east by the Barnsley Canal, to the west by a row of allotments, and to the south by school playing fields.
2. Although there is a lengthy planning history to the site I only need summarise relevant parts of it. There is no dispute that the appellant is a Romany Gypsy. He states he has occupied the land in a caravan since about 2004/2005, apart from a period during 2008 to 2009. In 2011 planning permission was granted

on appeal¹ subject to a number of conditions (C) including C1 which limited occupation to the appellant and his immediate family, and C2 limiting the life of the permission to a maximum period of 4 years, expiring on 7 December 2015. The appellant's application of 14 June 2016 to remove C2 of the 2011 permission was refused by the Council in November 2017.

3. On 22 July 2021 the Council issued an enforcement notice alleging a material change of use of the land for the siting of caravans for human habitation, which was not appealed. Following that, the Council issued the enforcement notice subject of this appeal on 1 December 2023.
4. After the 2011 permission expired he states he continued to live on the land uninterrupted until the present day. This was queried by a local resident who said that although the site was not cleared and a caravan remained on site, he had seen no indications of anyone actually living there for some time after 2015. However, the appellant confirmed that in 2015 and later he was still travelling for his livelihood and, as is typical, spent periods of time away from the site either travelling for work purposes or attending the various Gypsy and Traveller community fairs and events around the country.
5. Additionally, the Council confirmed that the appellant's occupation of the site was included in the 2015 GTAA² and have no reason to consider he was not in occupation at any time after 2015. His planning application in 2016 to remove C2 of the 2011 permission, and the Council's 2021 enforcement notice also indicates his continued occupation of the site.
6. I acknowledge that from external views Gypsy and Traveller sites can often appear unoccupied due to the occupiers' travelling culture and lifestyle away from their home base, sometimes for extended periods of time. However, taking account of all the information before me in this case I have no reason to doubt the appellant has occupied the site continuously since at least 2009.

GROUND (b)

7. For an appeal on ground (b) to succeed the onus is on an appellant to demonstrate, on the balance of probabilities, that the matters said to have occurred in the alleged breach of planning control have not occurred as a matter of fact.
8. The appellant's case is that there has not been a material change of use as alleged, and that operational development and the presence of vehicles, timber huts, gas bottles and other domestic items all are integral elements of the existing use permitted by the 2011 planning permission.
9. It is important to note that the last authorised use of the land was the 2011 permission which permitted use of the land as a residential caravan site. When that permission expired in 2015 there was no actual change to any other use; the use of the land as a residential caravan site simply carried on up to the present day. Hence, no actual change of use of the land (and no material change of use) had occurred when the notice subject of this appeal was issued. Consequently, the alleged breach of planning control is incorrect.

¹ Appeal Ref: APP/R4408/A/11/2155046

² Barnsley Gypsy and Traveller and Travelling Showperson Accommodation Assessment (September 2015)

10. A condition on a planning permission granted for a limited period of time remains the only enforceable condition on that permission if the permitted use continues after the expiry date. As such, the notice should properly have alleged a breach of C2 of the 2011 permission, which required the use to cease by 7 December 2015 and the site to be restored to its former condition.
11. (For the same reasons the allegation and requirements in the earlier 2021 enforcement notice are also incorrect. However, that notice is not before me in this appeal).
12. The appeal on ground (b) in this regard therefore succeeds.
13. In circumstances such as these where there is success for an appellant on ground (b) I should correct the notice accordingly if I can, provided there is no injustice to either the appellant or the Council.
14. Both main parties agreed that correcting the notice to allege a breach of C2 of the 2011 planning permission, together with correcting the notice requirements so as to secure compliance with C2, would not alter the main issues or diminish their respective cases and arguments on grounds (a) and (g). I also consider that to be the case and no injustice would result by my correcting the notice. I will therefore correct the alleged breach and requirements in the notice accordingly using powers available to me under s176(1) of the Act.

GROUND (a)/DEEMED APPLICATION FOR PLANNING PERMISSION

15. For the reasons set out in ground (b) above the notice will be corrected to allege a breach of C2 of the 2011 planning permission. Consequently, the appeal on ground (a) seeks planning permission for the use of the land for siting of two residential caravans and associated facilities without complying with C2 of the 2015 planning permission.

Main Issues

16. There is no dispute that the development constitutes inappropriate development in the Green Belt, which is harmful by definition and to which substantial weight should be attached. As such, the remaining main issues are:
 - (i) the effect on the openness of the Green Belt;
 - (ii) the effect on the character and appearance of the area;
 - (iii) the effect on living conditions of local residents with regard to noise;
 - (iv) highway safety; and
 - (v) whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Planning policy background

17. Policy GB1 of the Barnsley Local Plan (2019) (LP) states that the Green Belt will be protected from inappropriate development in accordance with national planning policy. LP Policy GT1 aims to make provision for Gypsy and Traveller

sites, both through site allocations and through self-sought provision by way of planning applications assessed against the policy's criteria. Other relevant policies are GD1, D1, Poll1, and T4 which, amongst other matters, relate to the Council's concerns in respect of noise, highway safety and the effect on the character and appearance of the area.

18. The NPPF³ echoes the requirement in law that applications for planning permission are to be determined in accordance with the Council's Development Plan unless material considerations indicate otherwise.
19. With particular regard to proposed Gypsy and Traveller sites NPPF footnotes 28 and 41 state that it is PPTS⁴ which sets out how travellers' accommodation needs (for those covered by the definition in Annex 1 of PPTS) should be assessed, and that a 5 year supply of deliverable sites for travellers should be assessed separately in line with the policy in PPTS.
20. There is no dispute between the parties that the appellant meets the definition of 'Gypsies and Travellers', as set out in PPTS, and based on the information before me I have no reason to disagree. As such, in addition to the Council's Development Plan policies, against which the development should be assessed, PPTS is a relevant material consideration.

Main Issue (i) - Effect on openness of the Green Belt

21. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. In *Turner*⁵ the Court held that perceptions of openness can be visual as well as spatial. Additionally, in *Samuel Smith*⁶ the Court established that the matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law.
22. The appeal site location is as described earlier at the edge of the settlement. It has mature tree and hedgerow boundaries enclosing the site on all but the frontage onto Shaw Lane. The front boundary is set back behind a grass verge and enclosed by 'hit and miss' timber fencing and a tall metal mesh gate. The use of the land for siting of up to two caravans on the land together with the currently existing hardstanding, small storage shed, horse box trailer and other associated domestic items, would clearly have the effect of reducing openness in spatial terms.
23. Reduction of openness in visual terms is less significant given the limited visibility of the site, and taking account of it being seen in the context of other nearby semi-urbanising development in the form of various sheds, other constructions and solid front boundary fencing at the adjacent allotments.
24. Overall, I find there would be some loss of openness resulting in a limited degree of harm to the Green Belt in conflict with LP Policy GB1.

³ National Planning Policy Framework, MHCLG, (2023)

⁴ Planning Policy for Traveller Sites, DCLG, (2015) updated 2023

⁵ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 h

⁶ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3e

Main Issue (ii) - Effect on character and appearance of the area

25. PPTS allows for traveller sites in both urban and rural areas. The nature of the appeal development as a Gypsy and Traveller site does not of itself confer an adverse effect on the character and appearance of the area.
26. In land-use planning terms the residential character of the use is not incompatible with other residential uses further along Shaw Lane in both directions, or with other commercial forms of development nearby. It would also be compatible with mixed residential and commercial uses to the east and south of the site on land allocated in the Council's Development Plan (identified as area MU3).
27. Although the large mesh gate and timber fencing appear somewhat old and jaded they do not result in any significant harm, particularly as they are seen in the context of the unattractive solid boundaries to the front of the adjacent allotments. Additionally, if it were necessary the existing position of caravans and hard-surfaced layout of the site, together with any external lighting, can be controlled through appropriately worded planning conditions.
28. The existing tall mature tree and hedgerow boundaries both screen and help to integrate the site with its surroundings, limiting external views such that only passing and partial views are available along the frontage.
29. To conclude, I find overall that there would be no significant harm to the character and appearance of the area, and hence no material conflict with LP Policies GT1, GD1 and D1.

Main Issue (iii) – Living conditions - Noise

30. Any planning permission granted would be for residential use of the site in up to two caravans, which would be of the smallest scale for residential caravan sites and equivalent to a single pitch. As such, I would not expect there to be any significant noise levels over and above those normally generated by typical residential use and activities. Nonetheless, commercial activities can be prohibited and/or limited by way of a planning condition imposed on any permission if granted.
31. During my visit to the appeal site I noted the generator operating at the rear of the site was barely audible when standing at the front of the site. Even if it were repositioned towards the front of the site it would not be audible at other residential properties along Shaw Lane. The appellant states that if full planning permission were to be granted he would seek a connection to the mains power supply. Such provision could also be secured through a planning condition.
32. Given the proposed residential use of the land, and based on the information before me and my own observations, I conclude there would be no significant harm to living conditions of occupiers of the site or to occupiers of other properties in Shaw Lane. As such there would be no conflict with LP Policies GT1, GD1 and D1.

Main Issue (iv) – Highway Safety

33. The existing single site access is set back from the carriageway edge such that vehicles leaving the site can attain views in both directions before

entering the road. The speed limit for this part of Shaw Lane is 30mph and the site access has been in use for many years. I heard that there had been one fatal accident involving a cyclist further along the road, although there was no suggestion that was connected with the use of the appeal site.

34. Given an absence of any convincing evidence from the Council of any accidents related to the use of the site access at any time, or of any technical evidence to suggest that existing visibility splays along this part of the highway are inadequate, I find there would be no significant increase in risk to highway safety from the continued use of the site for residential purposes, and hence no conflict with LP Policy T4.

Main Issue (v) – Other Considerations

Need and supply of pitches/whether alternative sites available

35. With regard to the appellant's own specific need for accommodation the parties agreed that no alternative sites were available to which the appellant could relocate.
36. The Council's assessment of overall pitch need for the area results from the 2015 GTAA. It identified a total demand for 73 pitches over the 5 year period between 2014/15 to 2018/19 compared with a supply of 58 authorised pitches with no turnover assumed. The result at the time of the assessment was an overall shortfall of 15 pitches across Barnsley, with additional need resulting from household formation.
37. The Council's latest land supply report⁷ (LSR) submitted at the Hearing concludes there is an estimated current need for 8 pitches for the 5 year period 2024/25 to 2028/29. However, the Council recognise that some or all of the 6 households on the waiting list at the socially provided Smithies Lane site may not have been included in the need assessment in the 2015 GTAA. As such, the LSR identifies a current surplus of 8 pitches, or, if the 6 pitch need from Smithies Lane is included as need, a surplus of 2 pitches.
38. The LSR information of pitch need and supply includes details of planning permissions granted since 2015. However, the appellant points to there being a lack of information on other unauthorised sites, or sites where applications have been refused planning permission, and whether or not any or all of the households on such sites represent additional need over and above those that were included in the 2015 GTAA needs assessment. In this regard the appellant made reference to the Council's refusal, and dismissal on appeal, of two sites which it is said indicate additional unidentified need for 3 pitches⁸.
39. However, even putting the appellant's above concerns aside, I have a more fundamental basis for doubting the accuracy of the Council's position on the need and supply of pitches. The evidence base for the 2015 GTAA was collected in April to July 2015, now 9 years old. In its assessment of longer term pitch requirements, beyond the first 5 years, it recognised that "*vacancy and turnover rates could change but have not been applied to longer-term projections. Pitch requirements beyond 2019/20 are therefore indicative*"⁹.

⁷ Barnsley Gypsy and Traveller Five Year 'Deliverable' Land Supply Report April 2024 – March 2029 (July 2024)

⁸ APP/R4408/C/20/3258711 - Land to the rear of 1 Pleasant View Street, Barnsley - 1 pitch

APP/R4408/W/22/3308862 - Land off Clayton Lane - 2 pitches

⁹ 2015 GTAA paragraph 6.23

Accordingly, the GTAA recommended that the evidence base be updated after 5 years (2020). However, the Council confirmed there has been no update of the evidence base since 2015 and there is no timetable for such a review or for a new GTAA to be undertaken. As such, I find the GTAA evidence base (which underpins the Council's current calculation of need and supply of pitches) to be out of date, and hence I cannot regard it as being robust.

40. Additionally, the Council's supply assessment includes a total of 19 pitches at two sites allocated in the LP, at Industry Road (11 pitches) and Burntwood Cottages (8 pitches). However, since they were allocated in 2019 there have been no planning applications for either site, and no progress has been made in bringing them forward. The Council's LRS evidence of planning permissions granted at other sites since 2015 all involved smaller sites (provision of 1-3 pitches) and so it appears the demand for larger sites, such as the two allocated ones, may have fallen away. In terms of PPTS (footnote 4) these factors lead me to conclude that there is no realistic prospect of the allocated sites being delivered. Discounting the 19 pitches in the Council's assessment results in a lack of a 5 year supply of deliverable pitches to meet the Council's current need figure.
41. For these reasons, on the balance of evidence before me, I find that there is an immediate unmet need for a pitch suitable for the appellant, and that currently there is a lack of a 5 year supply of deliverable pitches overall in Barnsley. This attracts weight in support of allowing the appeal.

Personal circumstances

42. The appellant is Romany Gypsy and thus has a protected characteristic for the purposes of the Public Sector Equality Duty (PSED) as set out in the Equality Act 2010. As such, I must have due regard to the need, among other things, to advance equality of opportunity between such persons and those who do not share that protected characteristic.
43. Dismissal of the appeal would result in the appellant losing his home. This would constitute an interference with his rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest.
44. The appellant has never lived in bricks and mortar housing and has an aversion to doing so. He also has a terminal medical condition, the full details of this, his life expectancy, and his palliative care treatment are set out in the evidence submitted on his behalf and within the NHS medical report submitted at the Hearing. His family and nursing care staff regularly visit the site to look after him and to attend to some of his daily needs.
45. In the light of all the evidence relating to his personal circumstances I consider that if he were forced to leave the site it would likely have highly deleterious impacts on his wellbeing and the effectiveness of his care treatment. His personal circumstances attract substantial weight in allowing the appeal.

Planning Balance and Conclusion

46. As I set out earlier the development constitutes inappropriate development in the Green Belt which is harmful by definition, and to which I attach substantial weight. I have also found there to be a limited reduction in the openness of the Green Belt to which I also attach a limited degree of weight. The proposed development thereby conflicts with LP Policy GB1. As such, while it does not conflict with LP Policy GT1 in this regard, it does not attract any positive consideration.
47. I have found no harm or conflict with LP Policies in respect of the effect on the character and appearance of the area, living conditions, or highway safety. However, these findings do not attract weight in support of allowing the appeal, they are neutral in the overall balance.
48. At the Hearing the Council raised another concern relating to LP Policy GT1 regarding the location of the site not being within an urban area. However, Policy GT1 states that sites should “primarily” be located within urban areas, and so does not prohibit sites outside of urban areas. Moreover, the site is located at the edge of the settlement and has a reasonably good level of accessibility to shops, services and other facilities, similar to that of all other residents in Shaw Lane. I find no conflict with LP Policy GT1 with regard to this matter which also is neutral in the balance.
49. Against the totality of the harm I have found I attach weight to the appellant’s immediate need for a site and a lack of a 5 year supply of deliverable pitches as I set out earlier, although this by itself does not outweigh the substantial weight resulting from the harm to the Green Belt. As such, a full planning permission is unjustified.
50. With regard to the appellant’s personal circumstances, I consider that securing his existing home at the appeal site, for however long a period of time he may need to occupy it, would be a significant benefit for his wellbeing and healthcare. As such, I attach substantial weight to his personal circumstances.
51. PPTS paragraph 16 sets out that 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, “unlikely” does not mean “never”. The wording in PPTS allows for exceptions where they are justified. In this particular case I find on balance that the substantial weight resulting from the totality of the harm to the Green Belt is clearly outweighed by the combined weight I attribute to the appellant’s personal circumstances together with an unmet need for sites in the Council’s area, and with no suitable alternative site to which he could relocate.
52. Taken in combination these considerations amount to the very special circumstances necessary to justify the grant of planning permission on a personal basis. This would be a proportionate and necessary interference with the appellant’s human rights in the wider public interest.
53. For all these reasons I conclude that the ground (a)/deemed application for planning permission should succeed. A new planning permission will be granted under s177(1)(a) of the Act subject to new planning conditions. In

these circumstances there is no need for me to consider the appeal made on ground (g).

Conditions

54. Given the small scale of occupation together with the existing access, hardstanding, and layout of the site there is no need to impose a condition seeking further plans and details. Given the exceptional justification for this development in the Green Belt relates in part to the appellant's personal circumstances, conditions (1) and (2) are required to reserve occupation of the site solely to the appellant, and for the site to be restored once his occupation ceases. Conditions (3), (4) and (5) are necessary in the interests of strictly limiting the effect on the openness of the Green Belt and to safeguard the character and appearance of the area.

FORMAL DECISION

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

- in Section 1 after "171A", delete "(1)(a)" and substitute "(1)(b)";
- in Section 3 after the word "alleged", delete all of the remainder of the Section, and substitute instead:
"Use of the land for siting of two residential caravans and associated facilities in breach of condition 2 of permission Ref: 2011/0143 (Appeal Ref: APP/R4408/A/11/2155046) which states: *When the premises cease to be occupied by those named in condition 1 above, or at the end of four years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place*";
- in Section 4 delete the first two sentences and substitute instead:
"The breach of planning control has occurred within the last 10 years";
- delete all of subsections 5.1 and 5.2 and substitute instead:
"Comply with condition 2 of permission Ref: 2011/0143 (Appeal Ref: APP/R4408/A/11/2155046) by ceasing the use of the land for siting of residential caravans and associated facilities, and remove all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, and restore the land to its condition that existed before the development took place".

56. Subject to the corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for use of the land for the siting of two residential caravans and associated facilities without complying with condition 2 of planning permission 2011/0143 (Appeal Ref: APP/R4408/A/11/2155046), but subject to new conditions in the following Schedule.

Thomas Shields

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The occupation of the site hereby permitted shall be carried on by Gerald Ayres.
- 2) When the appeal site ceases to be occupied by Gerald Ayres the use hereby permitted shall cease, all caravans, vehicles, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) The site shall not be used for any business, industrial or commercial use, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No external lighting shall be installed or operated at the site, other than in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

End of Conditions.

APPEARANCES

FOR THE APPELLANT:

Gerald Ayres	Appellant
Alison Heine	Heine Planning Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Paul Doherty	Group Leader, Planning, Building Control and Enforcement
Chris Byrne	Planning Enforcement Officer
Emma Coveney	Senior Planning Officer

INTERESTED PARTIES:

Peter Tomalik	Local resident
Amanda Tomalik	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1	Medical report - Appellant
DOC 2	Barnsley Gypsy and Traveller Five Year 'Deliverable' Land Supply Report April 2024 – March 2029 (July 2024)