



Appeal Decisions

Site visit made on 14 August 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal A Ref: APP/J3720/X/23/3333518

Fir Tree Farm, Welsh Road, Bascote, Southam, Warwickshire CV47 2DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Noel Robb against the decision of Stratford-on-Avon District Council.
 - The application ref 23/02124/LDP, dated 21 July 2023 was refused by notice dated 5 October 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990, as amended.
 - The development for which a certificate of lawful use or development is sought is described as *'Proposed use of land for mixed use of agriculture, keeping of horses and caravan site for the stationing of 3 mobile homes for residential purposes.'*
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Appeal B Ref: APP/J3720/W/24/3340845

Fir Tree Farm, Welsh Road, Bascote, Southam, Warwickshire CV47 2DY

- 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 Mr Noel Robb against the decision of Stratford-on-Avon District Council.
 - The application ref 23/02841/FUL, dated 19 October 2023 was refused by notice dated 26 January 2024.
 - The development proposed is described as *'Change of use of land to a mixed use for agriculture, keeping of horses and as a residential caravan site for three gypsy families through retention of one mobile home and the addition of two mobile homes together with operational development comprising erection of a stable building, laying of hardstanding and construction of a new access and driveway'.*
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Decisions

Appeal A

1. The appeal is dismissed.

Decision

Appeal B

2. The appeal is dismissed.

Application for Costs

3. An application for an award of costs was made by Stratford-on-Avon District Council against Mr Noel Robb. This application is the subject of a separate decision.

Appeal A

Background

4. With reference to Appeal A the appellant relies on an existing LDC, under s191 (ref 22/00065/LDE) issued in March 2022 which confirmed the lawfulness of a single mobile home, stationed on the land for residential purposes.
5. Given that the above development involved a caravan/mobile home this relates to the use of the land.

Preliminary Matters

6. A lawful development certificate (LDC) issued under s191 confirms that the use, operation, or activity named on it is lawful for planning control purposes. In the case of Fir Tree Farm the LDC was issued for a mobile home within a limited area of surrounding curtilage.
7. The subsequent application for a LDC under s192, now at appeal, involves a much wider area of land related to the proposed use of land for mixed use of agriculture, keeping of horses and caravan site for the stationing of 3 mobile homes for residential purposes. The Council, in refusing the application, took into account the significantly additional area of land ringed red comprising the application site.
8. The expanded site was increased in area following the clearance of this former agricultural site, demolition of a number of former farm buildings, the laying of hardcore and two additional mobile homes being brought onto the land. Aerial photographs have been supplied and what appears as traditional farm buildings were then in place. Compared to the then situation my site visit revealed a relatively large piece of land, with a distinct feeling of openness, almost spartan-like, and largely covered with hardcore.

Main Issue

9. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

10. In seeking a LDC, be it under s192, as here, or s191 of the 1990 Act (as amended) the onus of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on evidential facts, relevant planning legislation and also case law.
11. In determining an application for a prospective development under s192 I need to ask whether, if the use as described had/has occurred, it would be lawful for planning purposes.
12. The appellant considers that the appeal site constitutes a single planning unit in a composite use for agriculture, keeping of horses and as a residential caravan

- site. However, in order to support the appeal the proposal should be described in sufficient detail and with precision to enable a decision to be correctly made. This equally applies to both Appeals A and B.
13. The appellant relies primarily on various Court judgements to support his case; in the first instance, *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited* [2012] EWCA Civ 1473.
 14. The Hertfordshire case involved an intensification in the use of a scrap yard and whether this constituted a material change in the use of the land. The Inspector had allowed appeals against enforcement notices issued against the use, finding that there had not been a breach of planning control.
 15. The judge indicated that the Inspector had correctly considered what must be determined as to whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a change in the definable character of the use so that it amounts to a material change of use. In other words, one that requires planning permission.
 16. The underlying principle in the above case is that mere intensification is not sufficient to amount to a material change of use if it falls short of materially changing the definable character of the use of the land. Impact cannot be considered in isolation from what is happening on the land. It is the overall character of the use that must be considered. This judgement followed the High Court case of *Childs, R (on the application of) v SoS* from 2005 which arose from an Inspector, on appeal, upholding the decision of a local planning authority not to issue a LDC under s192 for an increase from 4 to 8 caravans on the land. The Court accepted the Inspector's reasoning that, as a matter of fact and degree, a material change in the character of the use of the land would result from the proposal.
 17. The issue of intensification had already been rehearsed in the cases of *Lilo Blum* and *Mia Carla*, as cited by the appellant. Finally, the appellant refers to an appeal decision from 2007 (*APP/W3520/X/07/2039698*) where, in the case of a proposed increase from 6 to 12 caravans a Council had refused to issue a LDC. The Inspector disagreed that a material change would result from any such intensification reasoning that the site was well screened by an evergreen, dense, high hedge, and the proposed increase in caravans would not be apparent from outside the site. Accordingly, the Inspector concluded that there would be no visual impact on the character and appearance of the area, with occupation similar to that existing.
 18. The correct approach to be taken in such cases is as laid down by the Court of Appeal in *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330. It is necessary to compare the proposed use with the actual existing use, and not with some notional use that might be lawful. Accordingly, the wording of the use proposed in the s192 LDC application should be examined and a decision made as to whether the development as described on the application form would represent a material change of use as a matter of fact and degree.
 19. It must be borne in mind that appeal decisions are both site and fact sensitive, essentially involving the particular individual circumstances of the case. I have had regard to the decision letters provided by the appellant – in fact, all the

supportive material put forward - but none of the cases have affected my conclusions.

20. In the current appeal, having assessed the proposed significant changes to the land use, and the expansion of the previously identified planning unit, I must conclude that a material change of use would result, requiring express planning permission. The site's expansion is a case in point as to individual factors and circumstances being the determinative points. Accordingly, I consider that the requested LDC goes beyond the scope of the existing LDC.
21. From the evidence adduced I therefore conclude that the proposed use would be materially different to that possible under the existing LDC and its limitations. What could easily amount to a change to the scale and type of operation would bring about a material change in the definable character of the use.
22. Transitioning from the use of land for agriculture to residential use – in this case for gypsy and traveller accommodation generally constitutes a material change of use, going beyond what the existing LDC can provide and, in bringing additional residential units onto the agricultural land, typically meets the threshold for a material change, impacting on the character of the land. Accordingly, the development proposed by way of the s192 application, requires the benefit of planning permission.
23. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of land for mixed use of agriculture, keeping of horses and caravan site for the stationing of 3 mobile homes for residential purposes was well-founded and that the appeal should fail.
24. I will exercise, accordingly, the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Appeal B

Background

25. The land was previously in agricultural use, until the former farm buildings were demolished. The proposed site plan shows the intended layout which, along with the two additional mobile homes that have been brought onto the land, also includes a proposed stable, an 'approved' barn, intended hedgerow and fencing. The new, widened, access driveway has already been laid with gravel covered with tarmac road planings. Within the site itself, which is demarcated from the driveway by post and rail fencing, areas of hardstanding and grass are shown.

Preliminary Matters

26. In 2020 the Council decided under application ref 20/00823/AGNOT that no prior approval was required to erect the said barn. However, I note that the Council now considers that this would not be development permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015, and planning permission is required for its erection. I am unclear why the Council believes this to be the case but, as a consequence, the Council says that the barn was not assessed at the application stage.

27. Another matter is that the appellant, in claiming that the proposal would not involve a material change of use, has also made an appeal under s78 and is thereby applying for planning permission which, if the claim for the LDC is successful, would not be required. The appeals are therefore at odds with each other. Nonetheless, I shall treat the s78 appeal as a safeguard for the appellant.

Main Issues

28. The main issues in this instance relate to the points raised by the Council in its reasons for refusal set out in the decision notice.

29. These are as follows:

- 1) National policy, and the objectives of the development plan in respect of gypsy and traveller accommodation;
- 2) Whether the development is in a suitable location with regard to services and facilities;
- 3) The effect of the development on the character and appearance of the surrounding area;
- 4) The effect of the development on the setting of the neighbouring listed building; and
- 5) The effect of the development on highway safety.

Policy, need and provision of sites

30. The government's document 'Planning policy for traveller sites' (PPTS), published in December 2023, confirms that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. In addition, the guidance says that the existing level of local provision and need for sites is considered along with the availability of alternative accommodation. Personal circumstances should also be taken into account.
31. The PPTS expects Councils to identify an up-to-date 5 year supply of deliverable sites for gypsy and traveller purposes and advises that this should be a significant material consideration when considering applications for planning permission.
32. However, the document also advises that Councils 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. It goes on to say that such sites should respect the scale of, and not dominate, the nearest settled community, and avoid placing undue pressure on local infrastructure.
33. In April 2019 the Council's Gypsy and Traveller Accommodation Assessment Update Study (GTAA) was published which indicated that there has been a significant under-provision in plots resulting in a clear unmet need for sites within the District. Accordingly, in its Statement of Case the Council accepts it cannot demonstrate a five year supply of specific deliverable sites for gypsy and traveller purposes. This was confirmed in an e-mail dated 2 April 2024 from the Council's case officer.

34. The Stratford-on-Avon District Core Strategy sets out a criteria based approach for assessing proposals for new pitches, plots and sites. This includes the identification of two preferred broad locations for new provision. The CS sets out the intention to produce a specific Gypsy and Traveller Plan to identify specific new sites but, due to the lack of available sites, it has not yet been possible to progress this Plan.
35. The appellants' case here is primarily based on unmet need, and given the Council's acknowledgement that a five year supply of such land cannot be demonstrated, I afford this matter significant weight.

Location

36. Policy CS.21 of the Council's Core Strategy (CS) sets out several criteria when considering applications for gypsy and traveller purposes. These are identified as the site being accessible to schools, health and local services and with good access to the road network. The appeal site falls within the open countryside, and the nearest town centre is distanced some 2.4km. Accordingly, I would consider, due to the location, that there will be heavy reliance on the private motor vehicle.
37. The Framework, though, advises that in terms of giving people a choice in how they travel, different measures are required by different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
38. I note that paragraph 25 of the PPTS says that Councils should very strictly limit new traveller site development in open countryside that is away from existing settlements, but this should be balanced with the benefits provision of a settled base for the family.
39. Along Welsh Road, which has classified status, within the vicinity there are scatterings of dwellings amongst mainly farmland and their associated buildings. Adjacent to the appeal site is a converted barn, now in residential use, whilst I understand that there is an intention to refurbish the currently derelict Fir Tree Farmhouse for future residential use.
40. I accept that the development is contrary to the Council's spatial policy objectives, namely CS policies CS.1, CS.15, CS.21 and AS.10. However, given the circumstances I would consider that any environmental harm resulting from the siting and residential use of the caravans would be somewhat neutral in the overall planning balance.

Character and Appearance

41. The appeal site, which the appellant considers represents a single planning unit, has been recently altered due to the clearance of the former agricultural buildings, along with the unauthorised development, forms part of the general rural character.
42. CS policy CS.21 requires that gypsy and traveller development should conserve and enhance landscape character. This is backed up by policy CS.5 which says that landscape character will be protected and maintained by ensuring that development takes place in a manner that minimises and mitigates its impact. Further, policy CS.9 indicates that new development should be attractive and

sensitive to its setting, reflecting also the character and distinctiveness of its locality.

43. The Long Itchington, Bascote & Bascote Heath Neighbourhood Plan (2021-2031) which also forms part of the local development plan reaffirms the above policies with policy BE1 thereto requiring that development proposals must demonstrate that their scale, form, layout and design are consistent with the rural setting and its open character. Further, the document's policy NE1 says that proposals should integrate within their landscape setting.
44. The appeal proposal would introduce an upgraded access drive, sizeable areas of hardstanding, a mobile home, and new buildings in the form of a stable block and a barn; although the main parties disagree as to whether the barn has already been approved. Although the development is considerably set back from Welsh Road, and is not visible therefrom, it would nonetheless appear incongruous and out of keeping with both its rural surroundings and also in relation to the two residential properties to the east of the site.
45. A substantial area of hardcore has already been deposited and spread across the site. The Council estimate this to cover an area of some 1,900 sqm and this has raised the land levels, although it is not clear to the extent of the depth.
46. Stretches of proposed hedgerow are shown on the site layout plan but, taken together with the modern timber fencing already erected, I do not believe that the screening would mitigate the intrusive effect of the scheme on this area of countryside. In my opinion the development as proposed would not allow for the primary element of the scheme to successfully integrate into the landscape.
47. The site is not within an area subject to any particular landscape designation, but I have had regard to paragraph 180 of the National Planning Policy Framework (the Framework) which includes recognition of the intrinsic character and beauty of the countryside. For the reasons set out above, the proposal would fail to respect this intrinsic character and beauty.
48. I conclude, therefore, that the proposal would cause significant harm to the character and appearance of the countryside and could not be successfully integrated into the landscape. This brings the scheme into clear conflict with the various policies referred to above.

The effect on the Heritage Asset

49. Fir Tree Farmhouse, a mid-18 century brick-built building, is Grade II listed. It sits to the west of the application site in proximity to a lengthy, modern timber fence which straddles the common boundary. The farmhouse is somewhat derelict, and in clear need of repair and renovation. Its owner, who was present at my site visit, has indicated that the intention is to refurbish the building for residential use and had requested in advance that I view the appeal site from the farmhouse's first floor facing windows to assess the effects arising.
50. Accordingly, and given that I have a particular duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the desirability of preserving the listed building's setting, along with its features of special architectural and historic interest, I agreed to the request.

51. Development proposals that affect any heritage asset or its setting should preserve and, wherever possible, enhance the significance of the asset having regard to its special architectural or historic interest of its character, appearance and the contribution made by its setting. The setting of a heritage asset is defined in the Glossary to the National Planning Policy Framework (the Framework) as:
- 'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'.*
52. The appellant says that the proposed development would re-establish the presence of modern 'farm buildings' on the appeal site, and considers that it would have no direct effects on the listed building. I fail to understand the appellant's reasoning here, or realistically how it can be concluded that the proposed buildings, when also taking into account the additional mobile homes, would enhance the appeal site. The site clearance, the land raising and laying of hardcore has impacted on the setting of the Fir Tree Farmhouse, contrary to the objectives of CS policy CS.8 which requires that designated heritage assets such as listed buildings and their settings, will be protected.
53. Having weighed up the impact, and with the setting of the listed building having been altered over time, I agree with the Council that the resultant harm would be 'less than substantial'. Nonetheless, given the statutory duty under s66 which I have referred to, such harm carries considerable importance and weight. Moreover, whilst I acknowledge the benefits to the appellant's family, there would not be any marked public benefits arising from the development to weigh into the balance. Indeed, the implications for highway safety, discussed below, could potentially place the public in danger.
54. Accordingly, I conclude that the proposed development would fail to protect the listed building's setting and would therefore be harmful in this respect. This is also contrary to the objectives of CS policy CS.21 and policy BE2 of the Neighbourhood Plan.
55. Such harm is sufficient in itself to refuse planning permission.

Highway Matters

56. Welsh Road is of classified status, subject to a 50mph speed limit in the vicinity of the existing access point which fronts the approach to Fir Tree farm. At the application stage Warwickshire County Council, the local highway authority (LHA), had concerns about safety due to certain visibility splays being less than those specified in the Design Manual for Roads and Bridges (DMRB).
57. During the appeal process the appellant proposed the creation of a new access, on Welsh Road, some 25m to the south east of the existing access point. In response, and commenting on the safety aspect of the proposed access, the LHA requires that an independently prepared Stage 1 Road Safety Audit be carried out for the new vehicular access in accordance with the DMRB document, traffic survey results and a swept path analysis. This would allow for a full assessment to take place.
58. I observed the location of the proposed new access at my site visit but, in the absence of the requisite surveys and justifiable details to demonstrate

otherwise, I must conclude that the proposal would have potential implications for highway safety, and is thereby contrary to CS policy CS.26 and the relevant requirements of policy CS21.

Other considerations

Personal circumstances

59. The appellant's agent indicates that the site is currently occupied by three families, with a number of children of school age. These are the families of Noel Robb and his brothers, Patrick and Joseph, who all wish to live in proximity to each other. Currently, as I am led to understand, although there were three static caravans present at the time of my site visit, only one was occupied.

Human Rights and the best interests of the child

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

67. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account in the overall exercise was a question of substance, to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children's best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.
68. If the appellants or intended occupiers are living on the site it should be regarded as their home and I consider that this illustrates the significant weight to be afforded to both Article 8 and the best interests of the children.
69. The best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
70. Accommodation by way of a settled base, rather than a roadside existence, can only therefore be beneficial. I consider that the development would likely provide suitable accommodation consistent with this and, as such, the personal circumstances of the appellants including the best interests of the child must be afforded substantial weight.

Planning Balance

71. I am mindful that a small part of the planning unit now identified by the appellant, does enjoy use rights as a caravan site. That said, the expanded red line represents a considerable increase in the area involved, with the appellant believing that the planning unit has been substantially increased. However, this belief could be based on land ownership and the now physical demarcation, but that is not necessarily determinative of the planning unit.
72. The fact that such an expansive area of hardcore has been spread across the site plus two additional caravans brought onto the land means that there has been a significant degree of intentional unauthorised development (IUD) carried out. In view of this it is unlikely that the site layout plan can be implemented as proposed. Moreover, the degree of IUD is not consistent with the agricultural element which was referred to on the application form. In fact, looking at the proposed site plan, save for the 'approved barn' there is no indication of any agricultural use. The proposed stable would relate to equine activity arising from the keeping of horses.
73. Whilst it is understandable that the Robb brothers and their families wish to live near each other I am not convinced that the amount of hard core laid on the land, and the raising of its levels was all necessary to create a habitable environment. Moreover, from the information provided I would reasonably conclude that the intended development is not one of mixed use but instead would comprise a single primary use; that as a caravan site for gypsy and traveller purposes and an ancillary use involving the erection of a stable building for the keeping of horses.

74. I acknowledge that the Council cannot demonstrate a 5 year supply of land for gypsy and traveller purposes, a matter to which I ascribe considerable weight. I have also given due regard to the personal circumstances of the occupiers – particularly the interests of the children resident which I give substantial weight to. However, the appellant has failed to resolve the issue of highway safety with reference to either the existing access and potential difficulties identified by the LHA, or, alternatively, problems which could arise from the new access now proposed off Welsh Road.
75. The above issue is sufficiently persuasive in itself to discourage me from considering the possibilities of a temporary planning permission.
76. In addition, I am particularly concerned as to the development's impact on the setting of the listed building and also the effect on the rural character of the surroundings.
77. I note that the Council also refused planning permission on the consideration that the development would affect future occupiers' amenities through disturbance, odour and noise impacts. However, as I am dismissing this appeal on other substantive matters it is not necessary for me to explore this matter further in this decision.
78. Whilst unmet need and also the personal circumstances of the appellant and his extended family are matters of considerable weight I consider that the relevant planning policies, taken together, hold a clear planning purpose when faced with particular proposals such as this, and the various factors and considerations involved.
79. Again, I have had regard to the previous appeal decision letters, and all other material, provided by the appellant in support of his case. However, each planning proposal should be determined with regard to the particular merits and impacts arising, having regard to the individual factors and circumstances involved. Accordingly, these have not affected my conclusions.

Overall Conclusions.

80. I have found harm on several of the main issues identified, and although I have identified matters that might lend support to the proposal, I am mindful that the appellant has failed to convincingly address other points of contention. Further, at this point, there is no enforcement notice at issue and whilst this is wholly a matter of expediency for the Council, disallowing this appeal does not at this time directly threaten the intended use of the land, albeit unauthorised, and the associated welfare of the current occupants.
81. For the above reasons, and having had regard to all matters raised, I must conclude that the proposal is contrary to the development plan as a whole and also conflicts with relevant advice within the Framework.
82. The appeal is therefore dismissed.

Timothy C King

INSPECTOR