



Appeal Decisions

Hearing Held on 26 November 2024

Site visit made on 26 November 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal A: APP/U2750/C/23/3322444

Land off Redhill Field Lane, Bilbrough

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jim Swales against an enforcement notice issued by North Yorkshire Council.
- The enforcement notice was issued on 21 April 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of Land from agricultural land to a private gypsy site, including the stationing of caravans for residential use; the creation of hardstanding; the erection of an amenity building, dog kennel and the installation of a package treatment plant; the stationing of other items and residential paraphernalia associated with the residential use.
- The requirements of the notice are STEP 1 Cease the use of the land as a private gypsy site; STEP 2 Cease the use of the land for stationing of caravans; STEP 3 Permanently remove from the land all caravans, amenity building, dog kennels, vehicles and other residential paraphernalia, hardstanding and the provision of electric, water and sewage for human habitation; STEP 4 Return the Land to its previous condition of agricultural Land.
- The periods for compliance with the requirements are Steps 1-3: 6 months and Step 4: 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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 allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/U2750/W/23/3322355

Land off Redhill Field Lane, Redhill Field Lane, Bilbrough Top, York YO23 3PP

- 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 & Mrs Jim Swales against the decision of Selby District Council.
- The application Ref 2022/0599/COU, dated 20 May 2022, was refused by notice dated 7 March 2023.
- The development proposed is Change of use of land to a private gypsy site for one family including formation of hardstanding.

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

Preliminary Matters

1. The enforcement notice describes the appeal site as "Land east side of Redhill Field Lane...". However the Council accepted at the Hearing that this description was inaccurate and that it should refer to "Land off Redhill Field Lane...". I have amended the wording accordingly in the banner heading to this decision letter.
2. For the avoidance of doubt, the Council became part of the new unitary Council for North Yorkshire on 1 April 2023, following its decision on the planning application which is the subject of Appeal B, but prior to issuing the enforcement notice which is the subject of Appeal A.

Appeal A on grounds (b) and (c)

3. The appeals are respectively that the matters alleged to constitute the breach of planning control have not occurred as a matter of fact (ground b); and that those matters (if they occurred) do not constitute a breach of planning control (ground c). The burden of proof rests with the appellant, with the standard of proof being the balance of probability.
4. The appellant's case is specific to some of the wording describing the alleged breach of planning control in the notice. They say that reference to 'the stationing of other items' and certain 'residential paraphernalia' is not qualified and accordingly is not a planning use that, in itself, can be appealed against. However, it seems to me that the allegation clearly refers to such items and paraphernalia 'associated with the residential use'. There is no suggestion that the residential use of the land has not occurred, and I am not persuaded that the identification of items and paraphernalia on the site, associated with the residential use, would be a difficult task. I therefore find no justification to correct the notice in this regard.
5. The appellant argues that the construction of the hardstanding area would be permitted development having regard to Part 6 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, Part 6 of the GPDO is concerned with permitted development rights for agricultural and forestry development, which would not encompass the residential land use that is undisputed to have taken place in this case.
6. Drawing the above considerations together the appeals on grounds (b) and (c) must fail.

Appeal A on ground (a) and Appeal B

Main Issues

7. The main issues are:
 - whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area;

- whether the appeal site is in a sustainable location;
- the effect of the development on the living conditions of site occupiers in terms of exposure to pollution;
- the effect of the development on the supply of agricultural land;
- the effect of the development on biodiversity;
- the question of the need for gypsy / traveller sites;
- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

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

Openness and Green Belt Purposes

10. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹.
11. That there are caravans and paraphernalia associated with the residential use, which inevitably take up space, is not controversial between the parties. I see no reason to take a contrary view.
12. The appeal site comprises a broadly elongated hexagonal shape, immediately to the north of the A64 dual carriageway. It is accessed from Redhill Field Lane via a short private road and is close to various roadside service facilities on the opposite (south) side of the A64. The village of Bilbrough is located further to the north along Redhill Field Lane.

¹ *Turner v SSCLG & East Dorset Council* [2016].

13. The residential use and associated development, including the caravans, small structures and hardstanding, are concentrated within the northern part of the site; with the remaining area forming a grassed paddock. The site is bounded by a hedge running around the southern and eastern perimeter.
14. Whilst it is possible to see the development from the A64 road via gaps in the hedge and broken fencing, a vast majority of the view recipients would be motorists passing the site at speed. From this perspective, visibility of the single pitch site would be extremely limited and fleeting. Similarly, when driving along Redhill Field Lane, or the access road linking with the roadside service area, visibility of the site would be heavily screened or filtered by dense boundary hedging. I am not persuaded that, in itself, the movement of vehicles to and from the site would have any tangible effect on the sense of openness of the Green Belt.
15. It seemed to me that the site is most visible from the public right of way leading northwards away from the appeal site towards Bilbrough. From here it is possible to see the light colouring of the touring caravan and other small structures on the site, across an open field, with limited screening present. However these views are at distance and the structures appear small, with the eye being distracted to a degree by signage and the massing of the upper parts of buildings associated with the aforementioned roadside facilities in the background.
16. Drawing the above considerations together, I concur with the view that the development results in a degree of encroachment into the countryside, and as such is at odds with one of the Green Belt purposes, as set out in the Framework. However, I conclude that the development results in limited harm to openness, viewed from the public domain. Also when considering the location and scale of development I do not agree that it risks infringing other Green Belt purposes, aimed at restricting the sprawl of large urban areas and the merging of neighbouring towns.

Character and Appearance

17. The site falls within the York Fringe West area, as identified within the submitted Selby Landscape Character Assessment². I agree it is within an area of undulating farmland, with mature hedges and pockets of woodland scattered throughout. There is limited built development in the wider area, though the nearby roadside facilities at Bilbrough Top form a significant cluster of buildings and associated features.
18. I have set out above, where I consider the key views of the site to be from. I have also noted that character and appearance harm was not one of the reasons given by the Council for the refusal of planning permission; that there is no requirement in national policy for traveller sites to be invisible and that it would be possible to require the appellant to undertake additional planting measures with a view to enhancing the level of screening. When considering the location and limited scale of development I do not concur with the view that it would significantly alter the character and appearance of the landscape or result in a harmful urbanising impact. I acknowledge the land is not classed as previously developed, however this does not exclude it from future development in policy terms.

² dated November 2019.

19. I have also considered the potential impact of external lighting on the site, increasing awareness of its presence. However, I am satisfied that this can be satisfactorily controlled by condition.
20. Several local residents have raised concerns about the negative effect of the development on the setting of the historic village of Bilbrough, situated further along Redhill Field Lane to the north. However, whilst the site is situated relatively close to the village, there remains a substantial belt of open countryside and very limited intervisibility between the two. I am in no doubt that the site is far enough away not to result in any harm to the setting of the village.
21. I therefore conclude that the development conforms with Policies SP18 and SP19 of the Selby District Core Strategy 2013 (CS) and Saved Policy ENV1 of the Selby District Local Plan 2005 (LP) insofar as they seek high quality design that avoids harm to, and where possible enhances, the landscape character.

Sustainable Location

22. Policy SP2 of the CS is concerned with the Council's spatial development strategy and in essence seeks a majority of new development to be directed to the towns and more sustainable villages, with strict control over development in the countryside. Policy SP11 of the CS sets out that traveller site development will be determined in accordance with national policy.
23. The PPTS states 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. I am also mindful that the Framework states that the development of isolated homes in the countryside should, subject to certain limited exceptions, be avoided.
24. In terms of the nearest residential settlement, the village of Bilbrough is a few hundred metres away from the site, although it is undisputed there are next to no facilities or services there. The site is also close to the roadside facilities at Bilbrough Top. In addition to motorist services, including a restaurant and petrol filling station with a small convenience store, there is also a hotel and some small scale business development present there. Therefore despite its rural position I do not regard the site location as isolated.
25. Despite the claimed use of facilities at Bilbrough Top to a degree, and sometimes on foot, the parties agreed at the Hearing that it would be necessary for the site occupiers to travel to the larger settlements of Tadcaster, Copmanthorpe and York in order to access a full range of day-to-day services and facilities. Indeed, it was confirmed at the Hearing that the family use medical, shopping and education facilities in those places.
26. With regard to connectivity it would be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would need to be significant reliance on private vehicles in order to gain access to services and facilities. I have not been provided with any evidence to persuade me that the use of alternative means of sustainable travel would be likely.
27. Drawing the above considerations together I conclude that the development is inconsistent with the PPTS objective, in terms of it being 'away from' existing settlements, and also in conflict with the Council's spatial development

strategy. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and I do consider that the length and duration of journeys necessary to access essential services and facilities, even if taken by car, would not in this case be excessive for a rural location. I consider the site has reasonable access to key services and facilities and this serves to limit the adverse weight that I give to this factor. I do not agree that the site itself is difficult to gain access to by vehicles.

28. Furthermore, I have had regard to the PPTS objective of ensuring that traveller sites are sustainable, economically, socially and environmentally, and to the various related criteria in paragraph 13 of that document. These include that a settled base may serve to reduce possible environmental damage resulting from unauthorised encampment. I also acknowledge that a settled base would tend to promote access to appropriate health services and ensure that children can attend school on a regular basis.
29. On balance, I am not persuaded that the appeal site could reasonably be described as being in a sustainable location. However, for the reasons in the aforementioned paragraphs the adverse weight that I give to this matter is reduced to a limited level.

Living Conditions

30. Concern has been raised by the Council, regarding potential exposure of the site residents to noise disturbance, poor air quality and ground contamination, resulting from traffic using the nearby A64 road.
31. There is no doubt that traffic related noise is audible on the site. However, from my visit, it was also apparent that although the sound of passing vehicles may be heard from within the appellant's mobile home, this was to a much lesser degree. It was possible to hold a conversation inside without voices being raised. In my judgment it is unlikely that steps could be taken to significantly insulate the mobile home against noise intrusion.
32. It seems to me the siting of living accommodation and ancillary external space as far away from the main road as possible provides a degree of mitigation. I also acknowledge that the site occupiers confirmed they were content with and felt unaffected by vehicular related noise.
33. From personal observations on the site, it seemed to me that air quality was not being adversely affected by unpleasant traffic fumes. Whilst this was only a snapshot, as a matter of judgment, when considering the openness of the location and position of the residential use on the part of the site furthest away from the road, I consider it unlikely that lingering vehicle fumes would be apparent, so as to harm living conditions.
34. The site is close to but does not adjoin the A64 road and, as set out above, the part actually used for residential purposes is towards the northern boundary, furthest away from the road. In addition, there is no reason for me to consider the run-off of potentially polluting substances on the road would not be captured by surface water drainage arrangements before coming into contact with adjoining land. Therefore, the argument that the ground could be contaminated by polluting materials emitted from vehicles is simply not compelling.

35. Drawing the above considerations together, I consider because of traffic noise intrusion, the site cannot be said to conform with Policies SP19 of the CS and Saved Policy ENV2 of the LP which seek to avoid such impacts. Notwithstanding this, I consider the degree of harm to be very limited in this case. I do not find a policy conflict having regard to air quality and ground contamination matters.

Agricultural Land

36. The parties agree the appeal site was formed as a small left-over portion of agricultural land, to the east of the former route of Redhill Field Lane, following junction improvement work to the A64 road. The site is now 'severed' from adjoining land by the routes of the old and new roads.
37. Though nominally classified as 'very good' agricultural land, the Council accepted at the Hearing that it would not have been used for crop production for several years; also that the limited area and physical constraints of the site means it is poorly suited to modern farming. I concur, and in particular find the loss of the land to agricultural production would be likely to have a negligible impact, on the basis that if the land is poorly suited to modern farming it cannot be regarded as valuable for that purpose. I do not therefore find conflict with Policy SP18 of the CS insofar as it seeks to protect higher quality agricultural land.

Biodiversity

38. One of the Council's reasons for refusing planning permission was because it had received insufficient information to assess the impact of the development on biodiversity interests and any potential enhancement measures.
39. I am mindful that the consultation response from the Council's ecologist, in relation to the planning application, found the site to be of low ecological value with no great risk to protected species anticipated. The consultee concluded that it would be sufficient to require some planting in order to secure net biodiversity gains.
40. At the Hearing the Council accepted that there was sufficient land available, such that biodiversity mitigation and enhancement measures could be secured through the imposition of a planning condition. I concur, and accordingly find that the development would not conflict with Policies SP18 of the CS or with Saved Policy ENV14 of the LP, or with the Framework insofar as they seek to avoid harm to protected species and to secure biodiversity enhancements. It was agreed that Saved Policy ENV9 of the LP, which is concerned with the protection of designated nature sites, is not relevant to the current appeal.

Need for Gypsy and Traveller sites

41. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in May 2018. This identified a requirement for 8 additional pitches until 2033, for those gypsies and travellers meeting the relevant PPTS definition at that time. The Council confirmed in the meantime it accepted it needed to make a higher allowance for unknown households meeting the

- definition, and was therefore working to a requirement for an additional 21 pitches.
42. However this analysis does not take into account the recent definitional change in the PPTS³. This change means that gypsies and travellers who have ceased to travel permanently on grounds of age or disability, must now be included within assessments of need, which was not the case at the time of the 2018 GTAA. At that time the GTAA identified a deficiency of some 26 pitches for travellers who did not meet the narrower definition, but who now would be expected to be encompassed within the overall pitch requirement.
43. Furthermore the GTAA is now more than six years old and the Council conceded at the Hearing that it would be reasonable to consider the assessment as being out-of-date. The need for sites may therefore now be greater still. The Council conceded it is unable to confirm it has a defensible position on the supply of gypsy and traveller pitches, as the current level of need is unknown.
44. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. Since publication of the GTAA in 2018 the Council confirms it has granted planning permission for 8 permanent pitches at Kellington, and more recently 12 permanent pitches at South Milford⁴. This is significantly short of the known levels of need identified above. The Council confirmed it is unable to demonstrate a five-year supply of identified sites. I find no reason to disagree, and accordingly there is conflict with Policy SP11 of the CS on this basis.
45. A suitable and available alternative site for the family occupying the appeal site cannot be identified by the Council at this time. This is also indicative of an immediate unmet need for sites in the District.
46. The Council set out at the Hearing that an up to date understanding of the level of need for traveller sites will only be known once work on the revised GTAA is completed, currently scheduled for May 2025. However, it seems to me that even then, there is likely to remain uncertainty as to when and where the identified level of need will be met. The timescale for adoption of the Council's emerging Local Plan is also uncertain at this stage.
47. I am also mindful that the PPTS states that Councils should set policy criteria to provide a basis for decisions so as to facilitate the traditional and nomadic life of travellers, while respecting the interests of the settled community. A recent appeal decision⁵ identified that the Council had not produced such a locally specific criteria-based policy (albeit that there is reference to determining applications in accordance with national policy); also that there are no existing development plan policies in relation to those travellers who did not meet the then PPTS definition. I concur with the view that this represents a failure of policy.
48. The aforementioned factors therefore weigh in favour of the development.

³ From 19 December 2023 the definition has reverted to that adopted in the 2012 version of the document.

⁴ Planning permission dated 12 July 2024.

⁵ Appeal ref: APP/N2739/W/21/3280032 – dated 11 May 2022.

Personal Circumstances

49. The appellant confirmed at the Hearing that he lives on the site, in one of the caravans (static), with his wife and two of his children. The ethnic gypsy status of the family is a matter of common ground between the parties. There is no dispute that Child A has been diagnosed as having a developmental disorder, resulting in a need for focused educational support and guidance. It appears that Child A has settled well at college and is making good progress. I have had regard to documents supporting this position, the veracity of which I have no reason to doubt and which the Council did not seek to challenge.
50. At the Hearing the appellant's wife also explained how having a settled base meant peace of mind because of the certainty of being able to access basic facilities and amenities such as fresh water and sanitation.
51. If the appeal is not successful, in the absence of an alternative site, the family are at risk of being made homeless. It would remove a settled base that would potentially mean having to resort to living on the roadside. This in turn would very likely mean disruption to the aforementioned child's educational provision and the family's health care as a result. I am mindful that it may be difficult to enrol children in school and /or maintain their attendance; and to gain access to medical services if a family has no fixed address.
52. The appellant's personal circumstances therefore weigh in favour of the development.

Other Matters

53. There have been a number of further concerns raised by third parties. I have considered the possibility of harm to highway safety, particularly as a result of vehicles emerging from the site access road onto Redhill Field Lane and the proximity of the A64 road. From my site visit I have no reason to doubt that there is satisfactory visibility for drivers at the aforementioned junction, and I have not been informed there have been any reported personal injury collisions associated with that junction in recent years.
54. Furthermore, the site access junction is beyond the access road for east bound traffic using the roadside service facilities at Bilbrough Top. Consequently, this means there is significantly less traffic passing the site, than might otherwise have been the case. I am also mindful that the local Highway Authority raises no objections; so too National Highways which observes that there would be negligible traffic movements associated with the site, and no direct access onto the A64. The argument that the site, including activity there, would distract drivers using the A64 road, is simply not compelling when considering the limited scale and relative screening of the development.
55. I noted during my visit the absence of a roadside footway connecting the village, but that it was possible to use a path for much of the route to the roadside service area. Drawing the above considerations together I do not consider the development results in harm to highway or pedestrian safety.
56. Many residents expressed concern that the site was occupied, without planning permission first being sought, such that due process was not followed. However, I am in no doubt, for the reasons set out above, there is a shortage of sites and that the family were potentially facing a roadside existence.

57. A ground (a) appeal was made and an application for planning permission was sought, albeit retrospectively. I am also mindful that it is possible to impose planning conditions to mitigate the development in this case. The 1990 Act makes provision for a grant of retrospective planning permission, including the imposition of planning conditions, and planning enforcement that is remedial rather than punitive. I therefore attach only very limited weight to the intentional unauthorised nature of the development in this case.
58. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case. For the same reason I do not accept that the grant of planning permission in this case would be inconsistent, as alleged, with previously failed planning applications for garden extensions elsewhere, and in relation to which different material considerations would have applied.
59. I am satisfied that water and electricity is being supplied to the site, also that subject to details being agreed, adequate arrangements may be made for drainage. I have no reason to doubt that containerised gas may be safely stored on the site for domestic purposes. The Council also confirmed that it is servicing the site for the collection of domestic waste and recycling materials.
60. The suggestion is made that the development results in harm to the human rights of local villagers. However, this statement is unfounded and I find no evidence that the living conditions of nearby residents would be harmed by the development.

Green Belt Balance

61. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness to be limited in visual terms.
62. For the above reasons I attach limited weight to the site not being in a sustainable location, and very limited weight both to the noise impact on the site occupiers and to the intentional unauthorised nature of the development.
63. I have found that the development would not result in harm to the character and appearance of the landscape, including to the setting Bilbrough; to the site occupiers in terms of air quality and ground contamination; to the supply of agricultural land or to biodiversity interests. This 'absence of harm' is neutral in the planning balance and does not weigh in favour of the appeals.
64. There are considerations which support the appeals. I attach significant weight to the present unmet need for sites, including the lack of any alternative site being available now to accommodate the site occupiers. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites should not amount to the significant material consideration it

may otherwise do in a less strictly controlled area, when considering applications for the grant of temporary planning permission. Accordingly I attach moderate weight to the lack of an up-to-date 5-year supply of deliverable sites. I also attach significant weight to the appellant's personal circumstances.

65. 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. However, an unlikely scenario is distinguishable from one that may never occur and furthermore a child's best interests is an important factor in this case.
66. I have balanced the harm to the Green Belt and any other harm, against the other considerations referred to above. Having regard to the PPTS, I find that these other considerations clearly outweigh the harm identified. However, I only find this to be the case when taking into consideration the weight that I have afforded the site occupiers' personal circumstances. It therefore seems to me that a personal planning permission would be most appropriate in this case, but I discount that this should only be for a temporary period, given my doubt as to when there will be a realistic prospect of the level of need for sites being satisfied.
67. For the avoidance of doubt the Council's apparent policy failure also weighs significantly in favour of the development but does not alter the conclusions already made above, in the overall balance.
68. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land, as set out in the Framework. In this context I do not find conflict with Policy SP3 of the CS which seeks to protect the Green Belt in accordance with national policy.
69. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
70. Given the circumstances overall I find that granting personal planning permission would be proportionate and necessary. Since I have decided to allow the appeal and grant full planning permission for the proposed development there will be no interference with the appellant's rights to a private and family life and home.
71. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected

characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

72. The grant of personal planning permission would go some way towards advancing equality of opportunity by providing much needed gypsy and traveller accommodation and by recognising the personal circumstances of the appellant's family.

Conditions

73. I have considered the various conditions discussed at the Hearing. The permission is personal and accordingly a condition restricting occupation to the appellant, his wife and resident dependants is necessary. A condition requiring the restoration of the site, when occupation ceases, is required in the interests of helping to safeguard the Green Belt.
74. A condition limiting the development to a single pitch and the number of caravans stationed there is needed in recognition that the permission is personal, and in order to protect the character and appearance of the area. Conditions preventing commercial activity on the site and restricting the number of commercial vehicles are required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
75. A condition is required specifically in relation to Appeal B to confirm the approved plans in the interests of certainty.
76. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, foul and surface water drainage arrangements, external lighting arrangements and hard and soft landscaping works, including their maintenance, is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers and to secure biodiversity enhancements.
77. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
78. Considering the age of the site occupants, I do not consider a condition requiring the provision of a play area for children to be necessary.

Conclusions

Appeal A

79. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice subject

to conditions. The enforcement notice will be quashed, and it follows that the appeals on grounds (f) and (g) do not fall to be considered.

Appeal B

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

Formal Decisions

Appeal A

81. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of Land from agricultural land to a private gypsy site, including the stationing of caravans for residential use; the creation of hardstanding; the erection of an amenity building, dog kennel and the installation of a package treatment plant; the stationing of other items and residential paraphernalia associated with the residential use at Land off Redhill Field Lane, Bilbrough as shown on the plan attached to the notice and subject to the conditions in the schedule below.

Appeal B

82. The appeal is allowed and planning permission is granted for Change of use of land to a private gypsy site for one family including formation of hardstanding at Land off Redhill Field Lane, Redhill Field Lane, Bilbrough Top, York YO23 3PP in accordance with the terms of the application, Ref 2022/0599/COU, dated 20 May 2022, subject to the conditions in the schedule below.

R. Merrett

INSPECTOR

SCHEDULE OF CONDITIONS IN RELATION TO APPEAL A and APPEAL B

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:

James Swales and Lamont Swales.
- 2) When the land ceases to be occupied by those named in condition 1 above, the use hereby permitted shall cease and all caravans, structures, vehicles, materials and equipment brought on to the land and the development comprising the hardstanding shall be removed and the land shall be restored to its condition before the development took place.
- 3) There shall be no more than **one** pitch on the site. On the pitch hereby approved no more than **two** caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than **one** shall be a static caravan), shall be stationed at any time.
- 4) No more than one commercial vehicle shall be kept on the site for use by the occupiers of the caravans hereby permitted and this vehicle shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the external storage of materials.
- 6) The residential use hereby permitted shall cease and all caravans, structures, vehicles, equipment and materials brought onto the land for the purposes of such use shall be removed, and the land restored to its condition before the development took place within **30 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme with details for:
 - (a) the internal layout of the site including the extent of the residential pitch, the location of the caravans, vehicle parking and hardstanding area;
 - (b) the means of foul and surface water drainage of the site;
 - (c) proposed and existing external lighting within the site;
 - (d) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.
 - ii) If within **6 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

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

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

ADDITIONAL CONDITION IN RELATION TO APPEAL B ONLY

- 7) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan – SY/21/001/001

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Bradley Stovell	Planning Consultant
David Stovell	Planning Consultant
James Swales	Appellant
Lamont Swales	Appellant's wife
Maryann Swales	Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Gareth Stent	Principal Planning Officer
Rachel Robinson	Enforcement Team Manager – South Area

Documents submitted at Hearing:

- 1) Council's position statement regarding need for sites.
- 2) Appellant's suggested conditions.
- 3) Supporting letter from child's college.
- 4) South Milford site – Decision notice and Committee report.
- 5) Appellant's child's education certificates.
- 6) Appeal Decision Ref: APP/N2739/W/21/3280032 – Land north of Hillam Lane.