



Appeal Decision

Site visit made on 13 January 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 FEBRUARY 2025

Appeal Ref: APP/M2372/C/24/3349797

Land at Hall Moss Farm, Bolton Road, Darwen, BB3 2TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr John Young against an enforcement notice issued by Blackburn with Darwen Borough Council.
 - The notice was issued on 12 July 2024.
 - The breach of planning control as alleged in the notice is without planning permission, unauthorised engineering operations comprising of land level alterations, the importation and deposition of waste materials used to create hard standings and the change of use of the land to a residential use by virtue of the siting of caravans on the land used for residential purposes.
 - The requirements of the notice are to (i) cease the residential use of the land, remove from the land all caravans. Remove all unauthorised engineering operations that have been carried out and return the land to the condition it was prior to its occupation and the unauthorised operations carried out.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words "*09 months from the date this notice takes effect*" in section 6, and its substitution with the words "*11 months from the date this notice takes effect*". Subject to the variation, the enforcement notice is upheld.

Preliminary Matters

2. There is no dispute between the parties that the appellant, including his extended family, are Travellers with reference to the definition in annex 1 of Planning Policy for Traveller Sites 2024 (PPTS 2024). I have no reason to disagree with this common ground position.
3. The evidence indicates that when the notice was issued there were three Traveller pitches on the land. However, the evidence indicates that the intention was to create six Traveller pitches on the land given the submission of a planning application to the local planning authority (LPA) on 2 June 2024¹. The evidence indicates that this planning application was registered on 6 January 2025. The statutory consultation period ends on 31 March 2025. On the evidence that is before me, a planning application decision cannot therefore be made until 1 April 2025.
4. The LPA issued a stop notice on 12 July 2024 which required all engineering operations on the land to cease involving the provision of utility services, water/electricity, and foul water systems, and to cease the importation and

¹ Planning application 10/24/0512

deposition of waste materials to the site for the provision of hard surfaces to further facilitate the use of the land as a residential use.

Reasons

5. An appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
6. The appellant's claim under the ground (g) appeal is that a compliance period of eighteen months is needed as, firstly, there are no suitable alternative sites available for the extended family owing to a failure of policy; secondly, the site enables members of the extended family to be registered with a health centre and a dentist in the local area and to attend local hospitals in connection with their identified health and disability needs; thirdly, that some of the children are home schooled and a settled base is advantageous in terms of the children's education, social development, and well-being, and, fourthly, leaving the site and having to live a roadside existence would have a detrimental impact on the emotional and physical well-being of the extended family and particularly those that have identified health and physical conditions.
7. I shall deal with each of the above in turn.

Traveller pitch need and provision and the availability of suitable alternative sites

8. There is no dispute between the main parties that the appellant and his extended family are Travellers in PPTS 2024 terms. In this regard, I have had regard to Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998 (HRA), which 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.
9. Race constitutes a relevant protected characteristic for the purposes of the Public Sector Equality Duty (PSED). Romany Gypsies and Irish Travellers are ethnic minorities, and thus have the protected characteristic of race. In this regard, I am mindful that use of the land for a longer period as a residential caravan site would enable the appellant and his extended family to live a nomadic lifestyle in accordance with their culture and values.
10. There is provision within the development plan for allocated Traveller sites to meet the need for pitches (i.e., 17 permanent and 5 transit pitches for the period 2021-2037) as identified in the Council's Gypsy and Traveller Showperson Accommodation Assessment 2019 (GTAA) which informed the January 2024 adopted Blackburn with Darwen Local Plan 2021-2037 (LP).
11. Paragraph 3.48 of the LP states that '*the Council has identified a specific, deliverable site at George Street West (GT213) which will provide 5 permanent pitches within the 5-year period. An additional site at Branch Road, Lower Darwen has recently been developed which will ensure the 5-year requirement is fully met. Although currently unauthorised, the Council is working with the landowner to submit a planning application to formalise the site*'. The GTAA represents the most up to date position in terms of objectively assessed need for Traveller pitches in the area.

12. The appellant's agent disputes that the Branch Road site will be made available for Travellers. He comments that the owners of the land do not want to see a residential caravan site within the grounds of a dwellinghouse which has planning permission and that such owners are in the process of submitting a new planning application for a two-bedroom bungalow on the land rather than the approved five-bedroom dwellinghouse. There is some uncertainty in terms of whether the Council can demonstrate a five-year supply of deliverable Traveller sites, based on the most up to date position of objectively assessed Traveller pitch need. I do not know, on the evidence before me, whether the owner of the Branch Road site would likely make this site available for Traveller pitches within the next five-years.
13. Moreover, the evidence indicates that there is a waiting list of sixteen families for the Council's only Council run Traveller site in the Borough. This casts some further doubt over the need and provision position. In addition, it is noted that the PPTS now includes a wider definition of Travellers in annex 1 to include '*all other persons with a cultural tradition of nomadism or of living in a caravan*'. This adds to the uncertainty in terms of the five-year supply need position relative to the assessment undertaken as part of the GTAA.
14. The appellant states that there are no suitable or available pitches now to accommodate the needs of the family. He asserts that eighteen months is needed to find an alternative site to meet the health, medical and social requirements of the extended family. I cannot be certain if the site at George Street West would be suitable for all or some of the members of the extended family, or indeed whether it would be available for occupation within nine months. The evidence indicates that this is unlikely as the LP anticipates a '*one year build out*' for the George Street West site and of course planning permission would first be required for the land.
15. As detailed above, the Council refers to the site at Branch Road with an estimated five pitches. However, the evidence is uncertain in terms of whether this land will be made available as a Traveller site and, even it was to be made available, I do not know whether it would be suitable or available for the extended family.
16. Notwithstanding the above, the LP permits windfall Traveller sites in the area in accordance with policy DM04. There is no compelling evidence before me to indicate that it would not be possible to find an alternative site elsewhere in the area within nine months, including obtaining the necessary planning permission and putting in place the required infrastructure to enable occupation by the extended family. Such a process need not therefore mean that the family had to resort to a roadside existence if the notice was upheld.

Health centre, dentist, and hospital provision

17. I acknowledge that the extended family appear to be registered at a local health centre and dentist and that the site is conveniently located for hospital appointments. However, this must be weighed against the above in so far that there is no objective or compelling evidence to indicate that an alternative and authorised site could not be secured elsewhere in the area within the nine-month compliance period, and which would offer similar convenience and benefits for the family members in terms of health centre and dentist registration and attendance at hospital appointments.
18. I acknowledge that moving to a different site may result in some distress or anxiety for some members of the extended family, some of which appear to have health

and medical conditions. However, there is nothing before me to indicate that a move to an alternative, new and authorised site would not be capable of taking place within nine months, or that such a transition would cause very significant harm to the health or well-being of the extended family.

Health and disability considerations

19. I have carefully considered the health and disability evidence submitted by the appellant including the updates provided at statement of case stage. In this regard, I have had due regard to the PSED contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
20. I do not doubt that the certainty of a stable residential base, helps to alleviate and control some of the symptoms associated with the health and medical conditions of some members of the extended family. However, the appellant's evidence does not sufficiently demonstrate why it would not be possible to transition from the appeal land to an alternative and new site elsewhere in the area within nine months. Hence, the evidence does not support the contention that upholding the notice would necessarily lead to a roadside existence for the extended family. Hence, the claimed stress and anxiety associated with upholding the notice need not be as significant as claimed by the appellant.

Best interests of the children including their education and social development

21. The evidence is that some of the children on the site are of school age and are being home schooled. I do not doubt that a settled base provides educational and emotional stability for the children. I also acknowledge that since the appeal was lodged, a baby has been born and is occupying a pitch on the land.
22. The above matters weigh in favour of affording as much time as possible to stay on the site, but nonetheless must be weighed against the planning harm identified in the reasons for issuing the notice. Moreover, it need not be the case that upholding the notice means that the children could not continue to be home schooled on an alternative site, or that a roadside existence is an inevitable outcome.

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23. I cannot predict the outcome of the retrospective planning application that remains to be determined by the LPA. Moreover, it would not be appropriate for me to consider the planning merits of such development as part of the consideration of this ground (g) appeal. However, it remains at least possible that either permanent or temporary planning permission could be granted for the breach of planning control as part of the LPA's determination of planning application 10/24/0512 which was registered on 6 January 2025.
24. In this context, I find that it would be reasonable and proportionate to afford the occupiers of the site an extended period to comply with the requirements of the notice. Put another way, it would not, in my judgement, be reasonable for the appellant to start planning to find and/or to secure another site elsewhere to meet the accommodation needs of the extended family prior to knowing the outcome of

the retrospective planning application. In this regard, I find that the nine-month period should start from April 2025.

25. I shall therefore extend the compliance period from nine to eleven months. This extra two months accounts for the approximate period between the date of this decision and the likely/approximate time when the decision for planning application 10/24/0512 will be made.

Other considerations

26. I have considered representations made by other interested parties. Many of the comments made relate to concerns about the alleged planning harm caused from the breach of planning control. These are not matters that I can consider as part of the ground (g) appeal. They are matters that are relevant to the consideration of a ground (a) appeal and a deemed planning application. This appeal does not include an appeal made on ground (a) of section 174(2) of the Act.
27. In respect of third-party comments made in respect of the compliance period, I note that some consider that a nine-month compliance period is ‘*generous*’ in the context that the land has continued to be developed despite the LPA issuing enforcement and stop notices. Some third parties consider that the appellant has already had time between issuing the notice and the date of this decision to find an alternative site and assert that the time was used instead to continue to undertake further unauthorised development on the land. In this context, several third parties consider that extending the compliance period beyond nine months is not justified.
28. While I do not condone any further alleged unauthorised development on the land, the appellant is nonetheless entitled to presume success in respect of the ground (g) appeal. Moreover, it has been necessary for me to balance several matters as part of the consideration of the ground (g) appeal and, in this case, it is necessary that I consider whether nine months as distinct from eighteen months is a reasonable and proportionate compliance period from when the notice takes effect. The time before the appeal was lodged is of no relevance in respect of the ground (g) appeal.
29. Given my reasoning above, the comments made by third parties, some of which support occupation of the land for residential purposes, do not alter or outweigh my ground (g) appeal conclusion below.

Ground (g) appeal conclusion

30. When all of the above matters are considered in the round, I conclude that a varied compliance period from nine to eleven months strikes a proportionate and reasonable balance between bringing the unauthorised development to an end in the public interest, while also considering the rights of the extended family under Article 8 of the HRA (including the loss of a home), the PSED, the personal circumstances of the extended family, the best interests of the children on the land, and the undetermined retrospective planning application on the land. To this extent, the ground (g) appeal succeeds.

Overall Conclusion

31. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

D Hartley

INSPECTOR