



Appeal Decisions

Site visit made on 19 June 2024

by Thomas Shields MA DipURP MRTPI

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

Decision date: 16 October 2024

Appeal Ref: APP/C3430/C/22/3303424

Land southwest of Saredon Road, Hospital Lane, Cheslyn Hay, Staffordshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (“the Act”).
- The appeal is made by Mr Billy Rogers against an enforcement notice issued by the South Staffordshire District Council.
- The enforcement notice was issued on 22 June 2022.
- The breach of planning control alleged in the notice is without planning permission, the material change of use of the Land to a Sui Generis residential Gypsy and Traveller site; the stationing of caravans and parking of associated vehicles on the Land; and unauthorised operational development, comprising of the laying of hardcore and erection of a close-boarded fence with concrete posts and gravel boards, which facilitate the change of use (“the Development”).
- The requirements of the enforcement notice are:
 1. Cease the unauthorised residential use of the Land as a gypsy and traveller caravan site
 2. Remove any and all caravans from the Land, whether residential or otherwise, to include any and all accessories and items associated with them.
 3. Remove any and all vehicles associated with the unauthorised material change of use of the Land.
 4. Remove any and all unauthorised hard surfacing from the Land that has been laid out to facilitate the unauthorised use.
 5. Remove any and all close-boarded fencing and concrete fence posts from the Land, constructed to facilitate the unauthorised use.
 6. Remove any and all refuse and waste materials, to include any generated by compliance with steps 2-5 above, from the Land and dispose of at a licensed waste transfer site.
 7. Reinstate the Land to agricultural land by reseeding or returfing the land where the unauthorised hardstanding is located with a mixture of wild-flower mix or a 60% to 40% ratio mix of wild-flower and grass seed.
- The period for compliance with the requirements is 1 month for requirements 1-3 and 3 months for requirements 4-6.
- The appeal is proceeding on grounds set out in section 174(2)(a), (f) and (g) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision

Preliminary Matters

1. There is no need for the alleged breach of planning control in the enforcement notice to state whether the use of the land falls within or outside of a specified Use Class, as set out in the Town and Country Planning (Use Classes) Order

1987. Also, while there is no misunderstanding between the parties of the nature of the use of the land, it was agreed the alleged breach in the notice would be more precisely described by specifying residential use of caravans for occupation by Gypsies and Travellers, rather than the separately worded "stationing" of caravans. There was also no dispute that the parking of vehicles on the land was ancillary to the primary residential use alleged, and so need not be separately stated.

2. I will therefore correct the alleged breach description in the notice accordingly as set out above. This would also necessitate some consequential minor amendments to the wording and ordering of the remedial requirements at Section 5 of the notice. Using powers available to me under s 176(1) of the Act I am satisfied all these corrections can be made without injustice to any party.
3. A draft unilateral undertaking (UU) was submitted at the Hearing for the intended purpose of providing a £344.01 payment towards mitigating the effects of residential development upon the Cannock Chase Special Area of Conservation. It was agreed with the parties that the completed and executed UU could be submitted following the close of the Hearing. Unfortunately, it appears through administrative error, one vital page of the final document submitted was omitted and hence there is no completed UU before me. However, since the appeal is dismissed for other reasons there is no need for me to consider this matter further.
4. Given that the deemed application for planning permission linked to the appeal on ground (a) is for a residential caravan site for occupation by Gypsies and Travellers, the policies and provisions of PPTS¹ are a relevant material consideration in this appeal, in addition to the Council's Development Plan policies against which the development is required to be assessed.
5. Paragraph 4 of the NPPF² states it should be read in conjunction with PPTS, and that regard should be had to the policies in the NPPF, where they are relevant. In particular, NPPF footnotes 28 and 41 make it clear that it is the PPTS document which is relevant for setting out how travellers' housing needs should be assessed, and that a 5-year supply of deliverable sites for travellers should be assessed separately, in line with PPTS.

Main Issues

6. The appeal site is located within the West Midlands Green Belt accessed off Hospital Lane approximately 1km northwest of Cheslyn Hay. There is no dispute that the use of the site constitutes inappropriate development in the Green Belt, which is harmful by definition, and to which substantial weight should be given, as set out in PPTS.
7. Given this background the main issues in the appeal are:
 - (i) the effect on the openness and purposes of the Green Belt;
 - (ii) the effect on the character and appearance of the area; and
 - (iii) whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to

¹ Planning Policy for Traveller Sites (2015) updated in 2023

² National Planning Policy Framework, DLUHC (2023)

amount to the very special circumstances required to justify the development.

Reasons

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

8. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Well established case law confirms that perceptions of openness can be visual as well as spatial.
9. The appeal site is surrounded by fields. There is no documented history of any planning permissions having been granted on the site, which is predominantly open field with some apparent past equestrian use including the siting of a stable building and hardstanding. The site is also enclosed, and separated from the existing public right of way (PROW), by tall close boarded fencing between concrete posts.
10. At the time of my visit to the appeal site the PROW along the eastern boundary of the site was not easily traversed due to overgrowth. Nonetheless, it still exists as a PROW and there is no evidence before me to suggest it would not be maintained and used in future. The tall close boarded boundary fencing entirely blocks openness of the site and the countryside beyond from the PROW.
11. The proposed use for 6 pitches (up to 12 caravans) would see a significant introduction of urbanising development which would result in a marked loss of openness. Openness would be further reduced resulting from typical residential use of the site, including comings and goings of occupiers and visitors in vehicles, outside garden/amenity use, and the presence of associated domestic paraphernalia. In combination these features would significantly reduce the openness of the Green Belt in both spatial and visual terms, and would conflict with one of the Green Belt purposes that seeks to safeguard the countryside from encroachment.
12. I accept that some planting could be carried out on site. However, it would do little to mitigate the reduction in visual openness and would not mitigate at all the loss of openness in spatial terms.
13. To conclude on this issue, in addition to the definitional harm resulting from inappropriateness there would be further harm to the Green Belt resulting from a loss of openness, and which would conflict with the Green Belt purpose of safeguarding the countryside from encroachment. It would thus conflict with the requirements of Policies GB1 and H6 of the South Staffordshire Core Strategy (2012) (CS) and the provisions of PPTS and the NPPF.

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

14. There is an existing residential caravan to the south of the appeal site. However, it lies closer and more related to the nearest industrial and other forms of development and related buildings at the edge of the urbanised settlement area.
15. In contrast the appeal site occupies a relatively more isolated position within and surrounded by open countryside fields. As such, the change to the rural

character and appearance of the countryside resulting from the proposed development would result in significant harm. Planting along boundaries to soften the appearance of the site would not adequately overcome this harm. As such, the proposed development would conflict with CS Policies 2, H6 and EQ4.

Main Issue (iii) - Other considerations

Need and supply of pitches/whether alternative sites available:

16. As set out in PPTS the Council should be able to demonstrate at least a 5 year supply of suitable and deliverable sites to meet the identified need for Gypsy and Traveller accommodation. In this regard the Council's latest assessment³ estimates that against 37 allocated pitches there is an overall need requirement of up to 162 pitches to 2042, with a 5 year need (2024-2028) of 92 pitches, reduced to 90 more recently through the grant of planning permission, with the shortfall in supply to come from any planning permissions being granted.
17. The appellant considers the numerical need and supply position to be worse than as set out by the Council, and that in any event the shortfall of supply is unlikely to be made up through the grant of permissions given the very high proportion of land in the area being Green Belt or subject to other designation. Neither party at the Hearing could identify any alternative and available sites to which the appellant and his extended family could relocate.
18. Overall, the Council accepts it is unable to meet its 5 year supply requirement against identified need. I also find it unlikely that the supply of sites on the basis of allocations and granting of individual planning permissions will meet identified need either immediately or in the near future.
19. PPTS paragraph 27 indicates that outside of designated areas⁴ if a local planning authority cannot demonstrate an up to date 5 year supply of deliverable sites this should be a significant material consideration when considering applications for temporary planning permission. Other than in those particular circumstances, as is the case here given the site is within the Green Belt, PPTS does not indicate what significance or weight should be applied to a lack of a 5 year supply. As such, it remains a matter for the decision maker.
20. I consider the lack of a 5 year supply of deliverable sites to meet identified need, together with the lack of any current alternative site currently available to the appellant, carries moderate weight in support of granting temporary planning permission, with less weight in support of granting permanent planning permission where identified harms would also be permanent.

Personal circumstances:

21. There would be 14 adults and 12 children occupying the site. I heard in detail at the Hearing that several occupiers have medical conditions and other health and welfare issues; some requiring care responsibilities provided by others living on site. I also heard of the attendance at school and some home schooling of the children, and of social and other matters related to the group

³ Gypsy and Traveller Accommodation Assessment update (2024) and Pitch Deliverability Study (2021)

⁴ Designated areas includes Green Belt

as a whole. None of this information was disputed by the Council, and I need not rehearse it all in detail here.

22. I consider the unpredictability of roadside living, which would likely result if permission were refused, would result in some of the medical and welfare conditions of the group more problematic, both in terms of caring responsibilities and of the ability to regularly access fixed health and other essential service facilities. In contrast the appeal site would provide a settled base which would support the elimination or at least the alleviation of some of these issues that would otherwise be the case with roadside living.
23. In this regard the best interests of the child are a primary consideration and no other consideration is inherently more important. Allowing the appeal would provide a permanent base for homelife, thereby providing the children the best opportunity of a secure and stable family life, safe play and access to education, health and other services. Dismissing the appeal would result in fragmented and unpredictable living conditions, likely to be detrimental to the health and social outcomes for the family group as a whole, and particularly so to the educational, social and welfare outcomes of the children.
24. PPTS advises 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. The weight to be attached to the family's personal circumstances is set out below in the overall planning balance.

Planning Balance and Conclusion

25. For reasons set out set out earlier I collectively attach substantial weight to the harm to the Green Belt resulting from inappropriateness, loss of openness and encroachment, and to the harm to the character and appearance of the area. While there is compliance with some of the requirements of CS Policy H6, it does not comply with the policy overall, or with the Development Plan as a whole.
26. In support of allowing the appeal I collectively attach great weight to the wider unmet need for sites within the Council's administrative area, to the lack of any alternative site for the appellant and his family, and to the family's personal circumstances outlined previously. However, in consideration of either a temporary or permanent permission these considerations taken together do not clearly outweigh the harm to the Green Belt and other harm I have described. As such, very special circumstances have not been demonstrated.
27. Dismissal of the appeal would result in the appellant and other occupiers losing their home. This would constitute an interference with their human rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest and well-being of the country, which has been held to include the protection of the environment and upholding planning policies.

28. In this case I find that the legitimate aim of protecting the environment, in terms of the Green Belt and the character and appearance of the area, cannot be achieved by means which are less interfering with the appellant's and his wider family's rights. The dismissal of the appeal for the grant of planning permission on a temporary or permanent basis is therefore necessary and proportionate.

Ground (f)

29. Section 173 of the Act states two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Hence, an appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.

30. In this regard the notice requires the complete cessation of the residential use and the return of the land to its condition prior to the breach taking place. It is clear therefore that the purpose of the notice is to remedy the breach of planning control.

31. Some of the hard surfacing on the site, particularly around the former stable building, appeared to be much older than the more recent hardstanding material imported onto the site to facilitate the residential use. However, the requirements in the notice (both as drafted by the Council, and as corrected) specify the requirements only extend to those materials brought onto the land to facilitate the residential use. Hence, the requirements are not excessive because they go no further than restoring the land to its condition prior to the breach of planning control occurring.

32. The appeal on ground (f) therefore fails.

Ground (g)

33. The ground of appeal is that the periods of time for compliance with the notice requirements falls short of what should reasonably be allowed. The Council confirmed at the Hearing that 6 months would be more reasonable than the periods stated in the notice. The appellant seeks a period of 12 months.

34. For reasons I have set out in ground (a) previously, relating to the unmet need for sites within the area and the unavailability of any alternative sites, I consider it will be difficult for the appellant and his extended family to relocate to other sites within a 6 month timeframe. With this in mind, and also having regard to the interference with their human rights, it would be a more reasonable and proportionate remedy to extend the period for compliance to 11 months. The appeal on ground (g) therefore succeeds to this extent and I will vary the notice accordingly.

FORMAL DECISION

35. It is directed that the notice be corrected and varied by:

- in Section 3 deleting all of the paragraph and replacing it with:
"Without planning permission, the material change of use of the land to a residential Gypsy and Traveller caravan site, including the laying of

hardcore and erection of a close-boarded fence with concrete posts and gravel boards, which facilitate the change of use”.

- in Section 5 deleting requirements 1 to 7 and substituting instead the following requirements:
 1. Cease the use of the land as a residential Gypsy and Traveller caravan site.
 2. Remove all caravans and accessories, and all vehicles and other items brought onto the land associated with the residential use from the land.
 3. Remove all laid hardcore, close-boarded fencing, concrete posts and gravel boards brought onto the land to facilitate the residential use.
 4. Remove all waste materials resulting from compliance with requirements 1-3 above from the land.
 5. Following the removal of hardcore restore that part of the land to the condition that existed prior to the breach of planning control occurring, by reseeded or returfing with a mixture of wild-flower mix or a 60% to 40% ratio mix of wild-flower and grass seed.
 - in Section 6 deleting all the compliance periods therein and substitute instead “11 months”.
36. Subject to the corrections and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown BA (Hons) MRTPI	Phillip Brown Associates
Sherry Clee	Occupier
Thomas Rogers	Occupier
Samuel Clee	Occupier
Simey Lee	Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Alex Evans	Assistant Policy Team Manager
Catherine Gutteridge	Planning Enforcement Team Manager
Paul Turner	Planning Consultant