
Appeal Decisions

Hearing held on 12 December 2017

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 13 February 2018

Appeal A: Appeal Ref: APP/X0360/C/17/3174822

Land at the junction of A321 Wargrave Road and A4 New Bath Road, Twyford, Berkshire, RG10 9PN

- 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 James Smith against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, numbered 172617, was issued on 5 April 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to the use for the stationing of a mobile home for human habitation, the approximate position of which is shown hatched in blue on Plan 1 attached to the notice, associated parking of a touring caravan and motor vehicles, erection of fencing and gates, formation of hardstanding and installation of a septic tank and utilities.
- The requirements of the notice are :
 1. Cease the use of the land for the stationing of caravans for human habitation.
 2. Remove all caravans (including the mobile home shown on Plan 1) and associated vehicles from the land.
 3. Break up the hardstanding, excavate and remove the resulting debris from the land.
 4. Spread topsoil to a depth of 20 centimetres over the area excavated in accordance with 5.3 above and sow with grass at 50 grammes per square metre.
 5. Remove all fencing and gates from the land.
 6. Remove all septic tanks, underground services, stand pipes, electricity meters, cupboards and other utilities associated with the unauthorised use from the land.
 7. Remove from the land all materials resulting from compliance with steps (1 to 6) above.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Decision.

Appeal B: Appeal Ref: APP/X0360/W/17/3174161

Land at the junction of A321 Wargrave Road and A4 New Bath Road, Twyford, Berkshire, RG10 9PN

- 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 James Smith against the decision of Wokingham Borough Council.

- The application Ref 170278, dated 28 January 2017, was refused by notice dated 24 March 2017.
- The development proposed is the change of use of land to a residential Gypsy site for one Romani Gypsy family. Site to contain one static caravan, parking for two vehicles, with associated hardstanding and cesspit.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The application form for Appeal B says that the development has not commenced¹, however, the Council decision notice refers to the development as retrospective. Given the terms of the enforcement notice and the Appellant's case it was clear that the development had taken place and I will determine Appeal B on this basis.
2. Although the ground (a) appeal and deemed planning application in Appeal A have lapsed these matters are, in effect, covered by the appeal in Appeal B. I note that the reasons for issuing the notice are in similar terms to the reasons for refusal.
3. The Appellant's status as a gypsy as defined in Planning Policy for Traveller Sites (PPTS)² is not in dispute.

Appeal B

Main Issue

4. The main issue in this appeal is whether planning permission should be granted for the change of use of the land to a residential Gypsy site for one Romani Gypsy family comprising one static caravan, parking for two vehicles, with associated hardstanding and cesspit (the development). The principal matters that will be taken into account are:
 1. Whether the development is inappropriate development
 2. The effect of the development on the openness of the Green Belt
 3. The effect of the development on visual amenities, the landscape character of the area and whether the development is sustainable
 4. The existing level of local provision and need for traveller sites
 5. The degree of compliance with locally specific policy criteria for assessment of traveller sites
 6. The availability or lack of alternative accommodation
 7. Relevant personal and family circumstances, including the best interests of the children
 8. The Green Belt balance as to whether the totality of the harm to the Green Belt and any other harm, are clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments
 9. In the event that the Green Belt balance is against the development, whether requiring the use to cease would be necessary and proportionate

¹ Part 3

² Annex 1

Policy

5. The development plan includes the Wokingham Borough Core Strategy (CS) and the Wokingham Borough Managing Development Delivery Local Plan (MDD). The notice of refusal refers to a number of CS policies which include the following. Policy CP1 is a general policy seeking sustainable development; Policy CP2 seeks to ensure the provision of sustainable and inclusive communities and refers to the specific identified needs of the gypsy and traveller community; Policy CP3 sets out the general principles for development; Policy CP6 manages travel demand; and Policy CP12 says that planning permission will not be granted for inappropriate development within the Metropolitan Green Belt as defined.
6. The notice of refusal also refers to policies in the MDD which include the following: Policy CC01 sets out the presumption in favour of sustainable development; Policy CC03 defines Green Routes and Green Route Enhancement Areas; Policy TB01 defines the extent of the Green Belt and refers to paragraphs 89 and 90 of the Framework; Policy TB10 relates to traveller sites; and Policy TB21 refers to landscape character.

Whether the development is inappropriate development

7. There was no dispute between the Parties that the development that has taken place is inappropriate development in the Green Belt within the terms of the National Planning Policy Framework (the Framework). By definition inappropriate development is harmful to the Green Belt³.

The effect of the development on the Green Belt – openness

8. The appeal site is a plot of land about 2.2 hectares in the Metropolitan Green Belt outside the settlement boundary of Twyford. It is bounded to the east by Wargrave Road, part of which is pedestrian/cycle only; to the west by the A321; to the north by paddocks; and to the south by a roundabout which includes the A4, the A321 and local residential roads.
9. Prior to the development taking place the appeal site was an open paddock with a post and rail fence and a five bar metal gate. The site has been developed and now includes a large area of gravel hardstanding; a paved area under which the septic tank is located; a static caravan; a touring caravan; and high black close boarded fencing and gates.
10. The appeal site forms part of a strip land on the edge of the Green Belt which provides a gap between the settlements of Twyford and Wargrave. The development of the site has reduced this open green gap and thus the openness of the Green Belt.
11. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. Given the amount of development that has taken place on this previously open and undeveloped plot of land I consider that the development has a significant adverse impact on the openness of the Green Belt.

³ Paragraph 87 of the National Planning Policy Framework

The effect of the development on visual amenities, the landscape character of the area and whether the development is sustainable

12. The black close boarding fencing is visible in views on the approach to the roundabout from Twyford and other roads. It is a dense and forbidding enclosure that is out of keeping with the predominantly rural and undeveloped area in which it is located. I appreciate that a roundabout comprising major roads, a pedestrian bridge, a nearby nursery with substantial buildings and signage, and a BP garage do not contribute in a particularly positive way to the rural setting but these developments are outside the Green Belt and have the benefit of planning approval. Even if the fence was a different colour because of its design, height, extent and location it would be over dominant in appearance and would have an adverse impact on visual amenity.
13. In addition the static caravan is clearly visible above the height of the fence from all public view points. Its prominence in the landscape is enhanced by its light colour and bulk above the height of the fence. The mobile home in the paddock some way further north of the appeal site is used for the storage of hay and it is located parallel with a hedge and is not in such a prominent location as the static caravan on the appeal site. I also understand that this mobile home is the subject of an enforcement investigation. I also saw, with some difficulty because it was located some distance from the road and was screened by greenery, a caravan in the rear garden of one of the properties on Wargrave Road; the siting of a caravan such as this is not comparable with the one with which I am concerned because, among other things, it is within the curtilage of a residential dwelling.
14. The appeal site is not within any settlement boundary and because the development of the site encroaches into the countryside it does not comply with one of the purposes of including land within the Green Belt which is to assist in safeguarding the countryside from encroachment⁴.
15. The general forms of boundary treatment along the roadside in the area comprise native planting with permeable views into the adjoining paddocks and fields and the fencing does not reflect this. The Appellant has suggested that he re-locate the laurel bushes he has planted inside the fence to outside so as to soften the appearance of the fence but laurel is also dense in appearance and it would not reflect the native planting predominant in the area. The conifers and laurel that screen the houses in Wargrave Road reflect the edge of settlement location of these residential properties and are not comparable with the appeal site.
16. The area in which the appeal site is located is a designated Green Route Enhancement Area and MDD Policy CC03 seeks, among other things, to prevent the loss and fragmentation of green infrastructure. The erection of the close boarded fencing has closed off views into and through the site which is at odds with the prevailing type of open fencing and hedgerows in the area.
17. The development that has taken place on the appeal site has a harmful effect on both the landscape character of the area and visual amenity and I give this significant weight.

⁴ Paragraph 80 of the Framework

18. The Framework advises that there are three elements of sustainable development which are economic, social and environmental. In addition, the PPTS sets out criteria to ensure that traveller sites are sustainable in all three respects⁵. The appeal site is outside the settlement boundary but it is in relatively close proximity to services and facilities in Twyford and two of the Appellant's children go to school in nearby Wargrave and the family are registered with a GP in Twyford. In these respect the development is socially, economically and environmentally sustainable, but the environmental role also includes the contribution of the planning system to protecting and enhancing the natural and built environment.
19. For the reasons I have given above, I do not consider that the development of the appeal site contributes to the protection or enhancement of the natural and built environment and it does not comply with the environmental element of sustainability. I give this finding significant weight.

The existing level of local provision and need for traveller sites

20. The May 2017 Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2017 (GTAA) was updated in September 2017⁶. The methodology for the GTAA has, among other things, analysed households that meet the PPTS definition (on the basis of their travelling practices) and those that do not (because they do not travel); these latter households are included in the GTAA within the 'cultural' definition. The requirements stated in the GTAA are a total need for 125 pitches over the next five years compared with a supply of 107 authorised pitches which results in a cultural shortfall of 18 pitches and 5 pitches under the PPTS definition. Over the longer term the GTAA recommends a cultural need for 90 pitches and 26 PPTS definition pitches.
21. The Council has calculated that as at 31 March 2017 it had an 11 year land supply for pitches in accordance with the PPTS⁷ and since that date planning permission has been granted for four sites⁸. The progress towards a new Local Plan has been delayed and adoption is not likely to take place before 2020 and it is through that process that further gypsy and traveller sites will be established.
22. There are acknowledged defects with the GTAA which include the low number of responses and the shifting gypsy and traveller population and in this respect I note that whilst the updated GTAA report includes the appeal site, the appeal site does not appear on the Count of Traveller Caravan July 2017⁹. Although the September GTAA is a recent document and the Council has the necessary land supply and is being proactive in granting permissions, it appears that the need for traveller sites within the Borough may have been under represented. I give the need for traveller sites substantial weight.

⁵ Paragraph 13

⁶ Appendix 4 to the Council's statement

⁷ Paragraph 6.12 of the Council's statement

⁸ Ref 171589 Appendix 6 to the Council's statement and ref 173022 Document 4

⁹ Appended to the Appellant's response Document 7

The degree of compliance with locally specific policy criteria for assessment of traveller sites

23. MDD Policy TB10 says that planning permission may be granted for new gypsy and traveller pitches where a number of specific criteria can be demonstrated. With regard to the criteria:
24. The site is not located within an existing settlement nor is it adjacent to an existing site; it has an impact on the identity of the settlement of Twyford in that it does not reflect the character or appearance of the permanent residential and other building types within the settlement; it has access to a range of local services; there are no significant barriers to the development; it has unacceptable impacts on the character and appearance of the surrounding landscape and a landscape scheme would not minimise that impact for the reasons given above; there is no loss of amenity to neighbouring land uses because no person is entitled to a view; it is not a mixed use proposal; and it has no adverse impact of the Special Protection Areas.
25. I bear in mind the Appellant's contention that no development ever fully complies with policy and that in this appeal the development partly complies with Policy TB10 and partly fails to comply but in order to comply with this policy the development must demonstrate compliance with the criteria and it does not do so. I give this failure to comply with Policy TB10 substantial weight.

The availability or lack of alternative accommodation

26. It is apparent from what I have set out above with regard to the provision and need for traveller sites that there is no available authorised alternative accommodation for the Appellant. Members of the Appellant's extended family live on authorised sites but the number of pitches is limited by condition and any occupation by the Appellant's family in their own caravan would be unauthorised.

Relevant personal and family circumstances, including the best interests of the children

27. The Appellant and his wife have never lived in 'bricks and mortar' and nor have his four children. For some months before he moved onto the appeal site the Appellant lived on his uncle's site. He was separated from his wife at that time and she was living with the children on a site in High Wycombe. The Appellant bought the site in late 2016 and moved onto the site with his family in January 2017. His two older children went to school 'on and off' until they were 11 years old and since that age they have been home tutored with the tutor attending twice a week both prior to and since they moved onto the appeal site. The tutor has advised that tuition will continue to be provided at the appeal site but any future change would be difficult to accommodate¹⁰. The two younger children, aged 9 and 6, joined a primary school in Wargrave in March 2017.
28. The family is registered with a GP in Twyford. One of the younger children is an outpatient at a local hospital and both the Appellant and his wife have some health problems.

¹⁰ Letter dated 17 October 2017 appended to the Appellant's response Document 4

29. The Appellant is a builder and he undertakes work around the area in places such as Reading and Bracknell and he travels with his wife and children to various horse fairs in the school holidays.
30. It is clearly in the best interests of the children to have a settled base where they can have access to education but this only applies to the younger children, and will be of limited duration given their ages and the fact that they will not attend secondary education but will be home tutored in a similar fashion to their elder siblings. I appreciate that the current home tutor may not be available in future but home tutors by their very nature can travel to any location.
31. The youngest child and the Appellant and his wife have some health needs, and whilst I appreciate that a settled base would be preferable, their health needs are such that they could be provided for in any locality.

The Green Belt balance as to whether the totality of the harm to the Green Belt and any other harm, are clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments

32. The development that has taken place is inappropriate development in the Green Belt and, as such, is by definition harmful and should not be approved except in very special circumstances; this advice in the Framework is replicated in Policy E of the PPTS. I therefore give substantial weight to the harm resulting from inappropriate development. Similarly I give substantial weight to the harm arising from the loss of openness and the adverse impact on landscape character and visual amenity. The development is not sustainable and this also attracts substantial weight. The development does not comply with MDD Policy TB10 and other policies in the CS and MDD that I have been referred to. The totality of the harm occasioned by the development is therefore substantial.
33. Planning policy advises¹¹, particularly in the case of Green Belt, that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The Appellant purchased the site in late 2016. The application for planning permission was made on 28 January 2017 and it is around that time that the Appellant began his occupation of the site. The Appellant was professionally advised at the time and was aware that planning permission needed to be granted for his proposal but nevertheless he moved onto the site before the application could be determined. I take into account his personal circumstances but I cannot ignore the fact that the development of land has been undertaken in advance of obtaining planning permission and there was no opportunity to appropriately limit or mitigate the harm that has already taken place. This matter adds weight to the substantial harm I have found above.
34. Weighing against that substantial harm is the unmet need for gypsy and traveller sites in Wokingham, the lack of alternative or available accommodation for the Appellant and his family, the personal circumstances of the family, the best interests of the children and their need for permanent sites. These matters in my opinion also attract substantial weight.

¹¹ DCLG letter dated 31 August 2015

35. However, Policy E of 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'. I have referred above to the best interests of the children being qualified by the specific circumstances of these children with regard to the education and health.
36. For the above reasons I conclude that the totality of the harm to the Green Belt and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

In the event that the Green Belt balance is against the developments, whether requiring the uses to cease would be necessary and proportionate

37. There is no question that the Appellant's Article 8 Convention¹² rights to respect for private and family life and the home are engaged because the refusal of permission will result in the loss of the family's home because of the terms of the enforcement notice. Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community or state interest. In the context of Article 8, the best interests of a child must be a primary consideration and no other consideration can be treated as inherently more significant. However, a child's interest is not determinative of the planning issue and may be outweighed by the cumulative effect of other considerations as I have found above.
38. Article 8 also imposes a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions in particular. In this respect I have taken into account the Council's efforts to provide gypsy sites in the Borough.
39. I have sympathy with the Appellant's circumstances and his wish to provide a settled home for his family, but the interference with the Appellant's right to a home and family life is necessary and proportionate because of the harm to the Green Belt that has occurred and would continue if the appeal was allowed.
40. The Appellant and his family as Gypsies have a protected characteristic for the purposes of the Public Sector Equality Duty (PSED)¹³ and I have taken into account the many disadvantages that gypsies experience but for the reasons given above this does not outweigh the harm to the Green Belt.

Other matters

41. I have taken account the appeal decisions referred to by the Council insofar as they are relevant to this appeal but I note, among other things, that they have been overtaken by events that include a challenge in the High Court and the GTAA updating report.
42. I have also taken into account the documents produced by the Appellant with regard to the Gypsy way of life.

¹² The Human Rights Act 1998 enshrines into UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights

¹³ Contained in s.149 of the Equality Act 2010

43. Local residents, at the application stage, raised a number of issues including highway safety, the impact on wildlife and vegetation and the precedent of a Gypsy site in the area. These matters were not included in the reasons for refusing the application and therefore do not fall to be considered within the main issues in this appeal.
44. I have given consideration to whether a temporary planning permission, personal to the Appellant, should be granted for the period until the youngest child reaches secondary school age. This would be for a maximum period of five years and bearing in mind the Council's supply of gypsy and traveller sites and the harm that arises from the development I conclude that a temporary planning permission for any length of time would not be justified.

Conclusions

45. For all the reasons given above and taking all other matters into account I conclude that Appeal B should be dismissed.

Decision

Appeal B: Appeal Ref: APP/X0360/W/17/3174161

46. The appeal is dismissed.

Appeal A

The appeal on ground (f)

47. In an appeal on ground (f) the Appellant has to show that the steps required by the notice exceed what is necessary to remedy the breach of planning control.
48. The purposes of the requirements are to remedy the breach by discontinuing any use of land and by restoring the land to its condition before the breach took place¹⁴.
49. Step 1 requires the cessation of the use of the land for the stationing of caravans for human habitation and given the statutory purpose this requirement is not excessive. With regard to Step 2 I accept that in certain specific cases it is possible for a caravan to be sited on land but this is not one of those cases and the requirement fulfils the statutory purpose. Similarly with regard to Step 5, permitted development rights¹⁵ allow for the erection of fences and gates subject to specified limitations, tolerances and conditions. However, the fencing and gates that are the subject of the notice were erected to facilitate the unauthorised residential use and the notice fulfils the statutory purpose by requiring their removal. So far as Steps 2 and 5 are concerned, compliance with the requirements of a notice does not prevent a landowner exercising lawful rights in the future.
50. Step 4 requires the spreading of topsoil to a depth of 20 centimetres over the area excavated in accordance with Step 3 and the sowing of grass at 50 grammes per square metre. I consider this to be an improvement rather than a requirement to remedy the breach and it is excessive. I will amend the

¹⁴ S.173 (4) of the 1990 Act

¹⁵ The Town and Country Planning (General Permitted Development) Order 2015

requirements accordingly by the deletion of Step 4 and the substitution of a requirement to restore the land to its condition before the breach took place.

51. To this limited extent the appeal on ground (f) succeeds.

The appeal on ground (g)

52. An appeal on ground (g) is on the basis that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice specifies a period of nine months and the Appellant seeks a period of 18 months.

53. Any extension of the compliance period would be in effect a grant of a temporary planning permission with no other conditions imposed. I have found above that a temporary planning permission would not be appropriate in this case and it would therefore be perverse if the period for compliance was extended beyond the nine month period.

54. The Appellant said that he had prepared the site for residential use, which included the laying of the hardstanding and the erection of the fencing, in two or three days. Whilst I accept that the requirements also include the residential use to cease, it seems to me that a period of nine months to comply with the notice is not unreasonable.

55. The appeal on ground (g) fails.

Conclusions

56. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Decision

Appeal A: Appeal Ref: APP/X0360/C/17/3174822

57. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied: by the deletion of Step 4 and the substitution of the following requirement: Step 4 Restore the land to its condition before the breach of planning control took place. Subject to this variation the enforcement notice is upheld.

Gloria McFarlane
Inspector

APPEARANCES

FOR THE APPELLANT

Mr J Jones BFSGC

Mr J Smith The Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr D Cooper Interim Development Management Manager
LLB (Hons)

Ms B Crafer Landscape Officer
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Mr J McCabe Planning Policy
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Dr M Bullock arc⁴
BSc PhD MMRS CLHM

INTERESTED PERSONS

Mrs M Denham Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1 - Photographs dated September 2017, submitted by the Council

Document 2 - Aerial photographs dated August 2016, submitted by the Council

Document 3 - Plan showing the Green Belt, submitted by the Council

Document 4 - Planning permission ref 173022, submitted by the Council

Document 5 - *Buckley v The United Kingdom* ECHR No 20348/92, submitted
by the Council

Document 6 – Green Belt Review final report dated June 2016, submitted by the
Council

Document 7 – The Appellant’s response to the Council’s statement