



Appeal Decision

Hearing held on 12 May 2010

Site visit made on 12 May 2010

by **Jean Russell MA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
16 August 2010**

Appeal Ref: **APP/C3430/A/10/2120236**

The Bungalow, Rock Bank, Brewood Road, Coven, Staffordshire, WV9 5BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Lee against the decision of South Staffordshire Council.
- The application (ref: 09/00686/VAR), dated 12 September 2009, was refused by notice dated 6 November 2009.
- The application sought planning permission for the residential use of land without complying with conditions attached to the planning permission (s174 appeal ref: APP/C/95/C3430/639913) dated 24 May 1996.
- The conditions in dispute are nos. 1 and 3 which state that:
 1. The use hereby permitted shall be carried on only by Mr John Lee and Mrs Jacqueline Lee and any resident dependents and shall be for a limited period being that during which the land is occupied residentially by Mr and Mrs Lee or by one or other of them.
 3. No more than one mobile home and one other caravan shall be stationed on the land at any one time.
- The reasons given for the conditions are:
 1. To make the permission personal (because the decision in part arises exceptionally from family circumstances).
 3. To limit the permission to 1 mobile home and the touring caravan.

Decision

1. I allow the appeal and grant planning permission for the residential use of land at The Bungalow, Rock Bank, Brewood Road, Coven, Staffordshire, WV9 5BX in accordance with the application (ref: 09/00686/VAR) made on 12 September 2009, without compliance with conditions numbers 1, 2 and 3 previously imposed on the planning permission (ref: 95/00187) dated 24 May 1996, but otherwise subject to the conditions set out in Annex A.

Clarifications

2. As noted above, the original planning permission was granted on an appeal against an enforcement notice. A linked s78 planning appeal was also allowed (LPA ref: 95/00187; appeal ref: APP/C3430/A/95/254040) and permission was thereby granted for the retention of a mobile home. The two permissions were granted subject to the same conditions.
3. The appellant had three dependent children in 1996: Noreen, Leah Kate and John Levi. They are now all of adult age. The disputed condition no. 1 has been breached in that Leah Kate and John Levi have continued to reside on the site. It is proposed to vary the condition so that Leah Kate and John Levi can remain – and

Noreen can move back. She currently lives on a public gypsy site at Ketley Brook in Telford, but stays with the family at weekends.

4. Noreen and Leah Kate have both married but separated from their husbands. Noreen Fellows, as she is now called, has three children: Lias, Reuben and John Asa Fellows, aged 9 and 8 years and 8 months respectively. Leah Kate Finney has two children: Levi (4 years) and Bailey Ray (1 year). John Levi Lee has recently married and his wife, Victoria, has moved to the site.
5. The disputed condition no. 3 has also been breached. I saw two mobile homes on the site (a twin and a single unit), occupied by the appellant and his wife, and Leah Kate and her children. John Levi and his wife live in a hobby caravan, and there is also a small touring caravan. It proposed to vary condition no. 3 to allow five caravans on the site, with up to two being static. Thus, there would be caravans for the appellant and his wife; Noreen; Leah Kate; John Levi; and for travelling.

Policy Context

6. On 6 July 2010, the Secretary of State revoked regional strategies (RS) in England, including the *Regional Spatial Strategy for the West Midlands (RSS)*. The development plan now comprises the *South Staffordshire Local Plan (LP)*.
7. Guidance issued to local planning authorities (LPAs) with the 6 July statement indicates that national planning policy statements continue to apply, but that references in them to RS are no longer valid. I have taken account of this guidance in considering the national policies that are relevant to this appeal: *Planning Policy Guidance Note 2: Green Belts (PPG2)* and *Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites (C01/06)*.
8. Since these policy changes were made after the hearing had closed, the main parties were afforded an opportunity to comment on their implications for this appeal. Both parties responded, but the appellant's submission was received after the deadline and therefore returned. I have taken no account of it.

Gypsy Status

9. John and John Levi Lee have a nomadic way of life that is employment related: they travel for gardening work and to horse fairs. Noreen's older children attend school in Telford, while Levi Finney attends nursery and will start at school in September. Taking their circumstances in the round, I consider that the appellant and his family should be afforded gypsy status for the purposes of this appeal, in accordance with the definition set out in C01/06. The Council does not take a different view.

Main Issues

10. I consider that the main issues are:
 - 1) whether the proposal is inappropriate development for the purposes of PPG2 and development plan policy;
 - 2) the effect of the proposed development on the openness of the Green Belt;
 - 3) its effect on the character and appearance of the surrounding rural area;
 - 4) whether the appeal site would be a sustainable location for the extended gypsy site proposed; and

- 5) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

11. PPG2 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. There is a general presumption against inappropriate development within Green Belts, which should not be approved except in very special circumstances. The making of a material change of use of land is inappropriate development unless it would maintain openness and not conflict with the purposes of including land in the Green Belt.
12. The use of land as a gypsy site is normally inappropriate development in the Green Belt according to C01/06. This is an existing gypsy site, but the effect of allowing the appeal would be to create a new permission for the use. The appellant accepted this point at the hearing. I also consider that, while the existing development reduces the openness of the Green Belt, the proposed additional caravans would then cause a further loss of openness.
13. The site lies within a rural area. I consider that its use as a gypsy site conflicts with one of the purposes of including land in the Green Belt: to safeguard the countryside from encroachment. The proposed additional caravans would not exacerbate that harm, since the site boundaries would not be extended to accommodate them. That does not alter, however, the fact of encroachment through the land use itself.
14. I conclude that the proposal would be inappropriate development in the Green Belt. It would conflict with LP Policy GB1. PPG2 is clear that inappropriate development is harmful to the Green Belt by definition and substantial weight should be attached to such harm.

Openness

15. I have found that increasing the number of caravans on the site would reduce the openness of the Green Belt. This would harm the attributes of the Green Belt as well as being a factor in the harm caused by reason of inappropriateness. The site is large, however. Alongside two lawful caravans, it contains sheds, amenity buildings, kennels, play equipment and sizeable parking and lawn areas. In my view, the proposed caravans would not increase the scale of development or reduce the space on the site such that the loss of openness would be serious.
16. The site would be occupied by more people as well as caravans, perhaps including any children that John Levi may yet have. In my view, however, the site already contains the facilities required for family pitches as discussed in *Designing Gypsy and Traveller Sites: Good Practice Guide*. I heard that while the existing amenity buildings are built of timber, they would be adequate for everyone. They already serve the family, with Leah Kate and John Levi living here unlawfully and Noreen visiting every weekend. With other facilities in the proposed caravans, the development in my view need not result in pressure for more built structures.
17. I conclude that, while the proposed development would reduce the openness of the Green Belt, limited weight should be attached to this harm.

Character and Appearance

18. The Council has objected that the proposed development would be visually intrusive, although it was conceded at the hearing that this is a secondary concern. Apart from dispersed dwellings, the surrounding rural area is largely undeveloped. It is dominated by fields and woodland – a landscape in which caravans might be expected to appear stark and incongruous.
19. In this case, however, the site is set back from Brewood Road, and well-screened by trees, including conifers on most of its boundaries. The twin unit mobile home is visible from the highway to the south, but it does not appear unduly prominent because of the separation distance and boundary planting. Most other structures on the site can scarcely be seen at all.
20. The application did not include site layout or landscaping plans. In my view, such details would need to be secured by condition and approved in order for the proposed development to proceed. From my visit, however, I am satisfied that the site is sufficiently large and secluded to accommodate the extended family. There is room for extra planting on the boundaries and to place the additional caravans in unexposed positions. They would be unobtrusive.
21. I conclude that, subject to the condition described above, the proposed development would cause no unacceptable harm to the character and appearance of the surrounding rural area. It would comply with LP Policy BE26 and PPG2, which expect development to be sympathetic to the appearance and character of the area and protect the visual amenities of the Green Belt. This absence of harm cannot weigh in favour of or against the appeal.

Sustainable Location

22. The Council did not object that the site is in an unsustainable location in its reasons for refusal. However, it has pointed out that another appeal for a proposed gypsy site in this area, discussed in more detail below, was dismissed in part on sustainability grounds.
23. The site is approximately 1 mile (1.6km) from the villages of Coven and Brewood where there are shops and schools. *PPG13: Transport* (PPG13) indicates that walking or cycling can replace short car trips, particularly for distances of less than 2km or 5km respectively. There is no footway along Brewood Road, but the site is clearly within easy cycling distance of nearby facilities. It is also accessible by public transport, since buses run along Brewood Road. I consider that occupiers of the site would not need to rely upon a car in order to access basic amenities.
24. Even if that view is mistaken, C01/06 expects authorities, when assessing the suitability of rural sites for gypsies, to be realistic about the availability of alternatives to the car. Proposals should not be rejected if they would only give rise to modest additional daily vehicular movements. That statement must be germane in this case, where it is only proposed that more members of the same family would live on the site – which could not be described as remote.
25. The appellant suggests that the proposed development could reduce car travel, since Noreen currently drives between the site and Telford every week. I consider that, if she was to live on the site, she would need to make short trips from here for day-to-day living purposes. However, any net gain in miles travelled would likely be inconsequential.

26. Paragraph 64 of C01/06 indicates that, in gypsy and traveller cases, issues of sustainability should not only be considered in terms of transport. Other factors to be taken into account relate to the wider benefits of gypsies having a settled base. The appellant and his family have lived on the site for some 15 years – since John Levi was three years old. They seem peacefully integrated into the community, judging by the low number of objections to the proposal.
27. Having a settled base can ensure easier access to health services and education. I heard that the appellant's family are registered with local GPs. I have noted that Noreen and Leah Kate's eldest children do or will soon attend school. In my discussion on the family's personal circumstances below, I find that the health of some of Noreen's children would potentially benefit from a move to the site, while dismissing the appeal could threaten the access to medical and education services enjoyed by Leah Kate's children.
28. C01/06 indicates that the provision of a settled base can reduce the need for long-distance travelling and possible environmental damage caused by unauthorised encampments. Later in this decision, I find a lack of alternative sites for Leah Kate or John Levi to move to. In principle, therefore, a refusal of permission could lead to long-distance travelling – and/or unauthorised developments in the area, since Leah Kate and John Levi would likely need to visit their parents.
29. The Council agreed at the hearing that the site is closer to settlements than other gypsy sites and relatively sustainable. In my judgement, it would be a highly sustainable base for the appellant's family. The proposed development would comply with C01/06, if not Policy D1 of the *Staffordshire and Stoke-on-Trent Structure Plan 1996-2011* (SP) which encourages the re-use of land in sustainable locations. I attach some weight to this finding in favour of the appeal.

Other Considerations

The General Need for Gypsy and Traveller Sites

30. Since RS have been revoked, the approach set out in C01/06 for the provision of gypsy and traveller sites can no longer apply. The guidance issued with the 6 July statement (see paragraph 7) is that LPAs are best placed to assess the needs of travellers. They should determine the right level of site provision in their area, reflecting local need and historic demand and bringing forward land in development plan documents (DPDs). They should continue to do so in line with current policy. *Gypsy and Traveller Accommodation Assessments* (GTAAs) can form a good starting point but will not be binding.
31. It was agreed at the hearing that there is an existing policy vacuum relating to gypsy and traveller sites in the development plan. Relevant LP and SP Policies have not been saved, and the LP contains no allocations for gypsy sites. In my view, the revocation of the RSS does not alter this situation. The West Midlands Regional Assembly had prepared an *Interim Policy Statement* (IPS) concerning gypsies and travellers for submission to the Secretary of State in March 2010, but it was never adopted and does not now carry any weight.
32. I heard that the Council is keen to establish a policy framework for gypsies and travellers, so that sites can be delivered in a rational and managed way. At the time of the hearing, the Council expected that a Core Strategy (CS) would be adopted in June 2011 and a Site Allocations DPD in June 2012. The CS is likely to include Policy H4, which will set out criteria for the allocation or approval of gypsy and traveller sites. A draft Policy H4 was issued for consultation in March 2010 and

the Council has begun a site search. The Council's post-hearing representations suggest that the CS is now due for adoption by the end of 2010. In my view, however, the CS and DPD are still at too early a stage of preparation to carry significant weight.

33. As the Council accepts, the *Southern Staffordshire and Northern Warwickshire GTAA* provides the main evidence base regarding the need for gypsy sites. It was published in 2008, following research and public consultation. It estimates that 32 pitches for gypsies and travellers are required in South Staffordshire by 2012 (and 15, 17 and 15 by 2016, 2021 and 2026 respectively: 79 in total). These figures were broadly supported by the IPS, which had sought the provision of 30, 12, 15 and 17 pitches in the district by 2012, 2017, 2022 and 2027 (74 in total).
34. The Council objects that the GTAA should not be used to determine the scale and distribution of future pitches. This is because the GTAA focuses upon 'need where it arises', rather than constraints facing LPAs. It seems to me, however, 'need where it arises' must be an important consideration in the determination of this appeal. Indeed, as noted above, the latest Government guidance is to take account of 'local need and historic demand'. In this situation, I consider it material that the Council does not dispute the actual figures in the GTAA or the underlying need for pitches in South Staffordshire.
35. The draft CS Policy H4 was not significantly at odds with the GTAA: it set out an aim to meet the accommodation needs of gypsies in accordance with the phased provision set out in the IPS. The Council's post-hearing correspondence indicates that this aim will be reviewed, in the light of representations received and the demise of the RSS and IPS. Nevertheless, I consider that there is credible evidence of a general need for around 30 gypsy sites in this district in the next two years, and more in the future. Moreover, I heard that the GTAA may have missed the appellant's children as gypsies requiring pitches: recent caravan counts show few unauthorised developments in the district, but Leah Kate and John Levi clearly remained on the site after coming of age.
36. Since 2007, planning permission has been granted (on appeal) for 14.5 pitches in South Staffordshire. In my view, therefore, there remains a clear and unmet need for sites in the district. The Council suggests that there is a risk of an over-provision of pitches by 2012, because other appeals for gypsy sites are yet to be decided. But I can neither predict nor prejudice those future planning decisions. I must determine this appeal in the current context of an under-supply of sites.
37. The Council suggests that the provision of gypsy and traveller sites should be addressed through the CS and DPD. I agree that there is a reasonable prospect of those documents being adopted in time to address medium- and long-term needs. I also note the Council's post-hearing submission that the criteria set out in the draft CS Policy H4 for assessing allocations and planning applications are still considered sound. Nevertheless, and even if the CS is adopted this year, it seems doubtful to me that it or the DPD could facilitate the *delivery* of new pitches by 2012. This means that, unless planning permissions are granted, the sites I have found to be needed in the next two years will not be provided. It also implies that the Council will not, as required, address the under-provision of sites within three to five years of the publication of C01/06.
38. Furthermore, some 80% of South Staffordshire lies within the Green Belt, including areas by Wolverhampton where many gypsies work. Yet draft CS Policy H4 resists gypsy sites that would harm the openness of the Green Belt. The reasonableness

of this approach is not a question for this appeal, but the Council conceded at the hearing that the extent of the Green Belt could make it difficult for them to allocate sites. There are no proposals to alter the Green Belt boundaries, so I repeat my view that the DPD could not be relied upon to deliver sites by 2012.

39. I conclude that there is clear evidence of an unmet need for pitches in this district. There is no certainty that it will be met by other planning proposals or through the development plan process. I attach significant weight to this consideration in favour of the appeal.

Alternative Sites

40. I have noted the appellant's long-term occupation of the appeal site, which he owns. I heard that he and John Levi work across an area some 30-40 miles around in nearby conurbations. Having regard to my findings on their personal circumstances below, I consider that the appellant's children need a settled base in this general area – if not that it should accommodate the family as a whole.
41. There are no local authority-run gypsy sites in this district. I heard that all of the 14.5 pitches approved since 2007 – and those for future consideration – relate to private land. The Council has accepted that there is a lack of available sites, but still criticised the appellant for not undertaking a search for an alternative, non-Green Belt site. It is widely accepted that, in the determination of an application for the use of land as a gypsy site, the appellant's search (or otherwise) for other sites can be a material consideration.
42. Neither Leah Kate nor John Levi has registered on a waiting list for a public gypsy site in Telford. In principle, doing so might have been a prudent undertaking. The appellant suggests that estate agents have been asked about land in the area, but this assertion is not corroborated by records of the agents' names or the dates or details of enquiries. The site has a long planning history, and the appellant and his planning agents have had many discussions with Council officers. But there is little to show that these covered the availability of other sites. In my view, the appellant's search for alternative sites must have been, at best, unenthusiastic.
43. However, I have found an existing under-supply of sites for gypsies in South Staffordshire. The Council failed to allocate such sites in the LP; has not prepared a DPD; and cannot identify any available alternative sites. I also consider, without prejudice to the CS or DPD, that the extent of the Green Belt in this district would surely have impeded any search by the appellant. The Council has consistently refused permission for gypsy sites because they are always within the Green Belt. This may be legitimate in policy terms, but I agree with the appellant that, for different reasons, it is equally difficult for gypsies to find sites in urban areas.
44. In this situation, I consider that it would be untenable to argue that a more thorough site search on the appellant's part would likely have met with success. In my view, there are very few places where he could have been expected to find a suitable, available, affordable and acceptable alternative site. It is wholly unsurprising that he sought to make the best use of his own existing pitch.
45. Moreover, I understand that the waiting lists for those at Telford are long – and Noreen's existing pitch at Ketley Brook may be unsuitable for her family. Since the appellant and his wife are lawfully housed on their own land, which is some distance from Telford, I consider that any move of Leah Kate or John Levi to a public site would put costs on the family in financial and separation terms. It is understandable that they did not pursue this option.

46. As the Council conceded at the hearing, it has been established in case law that there is no requirement for an appellant to prove a need for a particular site, or that no other site is available for him to be allowed to remain on it.¹ In this instance, the inadequacy of the appellant's search does not alter my conviction that there is a shortage of gypsy sites in the district. As a consideration in favour of the appeal, I attach significant weight to the lack of alternative sites for his children to immediately move to.
47. Furthermore, if the appeal was allowed, I heard that Noreen would relinquish her existing pitch at Ketley Brook. C01/06 finds a continued need for public sites for gypsies who are unable or unwilling to buy their own land. In my view, although this does not relate to South Staffordshire, the proposed development would provide a minor planning benefit in freeing up such a pitch for another family.

The Family's Circumstances

48. The original permission was granted subject to a personal condition in part because of Jacqueline's health, but mainly because of the needs of the appellant's children, especially Noreen, whose education had 'evidently suffered' before the family moved onto the site.
49. I have noted that it is now Noreen who lives off the site. In theory, she has a settled base. But I understand that she has suffered domestic violence, causing her marriage to end. The Design and Access Statement also suggests that her pitch only supports one caravan with insufficient room for three children. She now relies upon the appellant and his wife for support, as shown by her weekend visits.
50. A doctor's letter submitted to the hearing indicates that Reuben Fellows suffers from diurnal enuresis (bed wetting). The letter says that Reuben is otherwise clinically 'thriving', so it seems unlikely that he has critical medical problems. However, I note that the doctor recommends both follow-up clinic appointments with more nursing support and – perhaps more pertinently to this appeal – the provision of a mobile home with a toilet on the site.
51. I heard that Noreen's baby, John Asa, has asthma. I have no written evidence of the severity of his condition, but I accept that it could be more difficult for Noreen to care for her son while she is a single parent living at some distance from her family. If John Asa has an asthma attack at night, she is unable to leave her other children and take him for medical attention. I heard that the appellant has had to drive out to Telford and assist on such occasions. I am satisfied therefore, that Noreen and her children lack stability and adequate facilities in their present home. I consider that allowing them to move back to the site should materially improve their health and life prospects.
52. Leah Kate's children have no health or educational problems and in my view this may be related to their hitherto steadier home life on the site. In any event, I am concerned that, if she were forced to move, this would make it difficult for her to access her existing or another GP at a time when her children are young. It could also prevent Levi from being enrolled at school. Like Noreen, Leah Kate relies upon her parents for support, but she could lose this if she had to relocate – she would have nowhere (local) to go. A refusal of permission would seriously affect her children's life prospects.

¹ South Cambridgeshire District Council v SCLG and Brown, Neutral Citation No: [2008] EWCA Civ 1010

53. I consider that John Levi's individual circumstances are of less significance to this appeal. He and his wife have no children or health concerns. The fact remains, however, that dismissing the appeal would leave them statutorily homeless. Moreover, John Levi travels with his father for work. Paragraph 19 of C01/06 notes that some gypsies live in extended family groups and often travel as such. This is a key feature of their traditional way of life that has an impact on planning for their accommodation needs. It is clear to me that the appellant's family as a whole have a need to live together for reasons of culture and mutual support.
54. I conclude that Noreen and her children are in unsatisfactory accommodation and would benefit from living on the site. Without a lawful base, Leah Kate and her children could be deprived of access to medical services and education, and the support of her parents. John Levi does not have pressing personal needs, but the family has cultural and practical reasons for living together. The Council has not disputed that their circumstances weigh in favour of the appeal, only the amount of weight carried. In my view, the weight is significant.

Human Rights

55. Article 8 of the European Convention on Human Rights (ECHR) is concerned with respect for private and family life. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
56. In my view, dismissing the appeal would not deprive Noreen or her children of a pitch. Leah Kate and John Levi have no lawful home and would be at risk of eviction were they to stay on the site in breach of the disputed conditions. However, the Council has made no threat of enforcement action. Indeed, it has even visited the site, in relation to the preparation of the DPD, to assess its potential for extension. If an enforcement notice was served, there would be a right of appeal. I find that Leah Kate and John Levi could likely remain on the site at least for a few months – if not long enough for the DPD to be adopted.
57. Nevertheless, I agree with the appellant that a refusal of permission would seriously interfere with the rights of the individuals who wish to live lawfully on the site under Article 8. Leah Kate and John Levi would remain statutorily homeless. This would cause them distressing uncertainty and could limit their access to services. Dismissing the appeal would also force Noreen to remain in accommodation that is unsatisfactory for her children. More critically perhaps, it would prevent the extended family from living together for mutual support in accordance with their traditions and culture.
58. In my view, this interference with the appellant's rights would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the Green Belt from inappropriate development. Thus, it is necessary to consider the degree to which interference with his rights under Article 8 would be proportionate. I deal with this matter in my overall conclusion below.

Overall Conclusion

59. I have found that the proposed development would be inappropriate development in the Green Belt and substantial weight should be attached to such harm. The development would reduce the openness of the Green Belt, causing additional but limited harm.
60. I have also found that, subject to a condition, there would be no unacceptable harm to the character and appearance of the surrounding rural area.

61. In favour of the proposal, I have identified a clear and unmet need for gypsy sites and a lack of available alternative sites for the appellant's children to move to. I have attached significant weight to these considerations and the family's personal circumstances. That the site would be a sustainable location to accommodate the appellant's children adds further, albeit moderate weight to his case.
62. Paragraph 49 of C01/06 notes that alternatives should be considered before Green Belt locations for gypsy sites – but pressure for Green Belt development can usually be avoided if sufficient sites are allocated elsewhere. In this case, not only is there a lack of sites to meet general needs, allocated or otherwise – but the appeal site is already occupied lawfully by the appellant. His children need to reside close by, because they work with or rely upon him. It seems to me that preventing the family from living together on this existing pitch could ultimately serve to *increase* demand for Green Belt sites in the district. The Council conceded at the hearing that the appellant's long-term occupation of this site gives it advantages for development over new ones in the Green Belt.
63. I also agree with the appellant that, while the proposed development would conflict with draft CS Policy H4 in respect of the Green Belt, it would comply with all of its other relevant criteria, notably no. 8, which allows for extensions to existing gypsy sites where there is evidence of a housing need arising from those living on the site or their immediate families. In my view, this highlights the problems facing gypsies and the Council when looking for sites in South Staffordshire – and the benefits of the proposal. The general need for and lack of sites and the Lee family's circumstances must be the critical factors in this case, especially if a refusal of permission might not serve the Green Belt well in the long-term.
64. To my mind, there is a compelling case for allowing the Lee family to live together on the appeal site. I conclude that the harm caused by the proposed development, as outlined above, would be clearly outweighed by the other considerations advanced. Looking at the case as a whole, in accordance with PPG2, C01/06 and SP Policy D5B, very special circumstances exist to justify the proposal. They override the conflict with LP Policy GB1. A grant of permission would be necessary and proportionate in the circumstances to avoid a violation of the appellant's rights under Article 8 of the ECHR.
65. In reaching this conclusion, I have considered the possibility of retaining the disputed conditions, but imposing additional conditions to allow the appellant's children and their caravans to only remain on the site for a temporary period. It is possible that alternative sites will come forward through the DPD within a few years. In this instance, however, I have found that the harm caused to the Green Belt by a permanent permission would be clearly outweighed by other considerations. It would therefore be unreasonable to restrict the duration of the permission.

Other Matters

66. As indicated above, an appeal was dismissed in 2010 for a proposed gypsy site in Coven (ref: APP/C3430/A/09/2114192), for reasons related to the Green Belt and sustainability. In that case, however, the proposal was for a new rather than extended gypsy site and there were no named occupants. There would have been harm to the visual amenity as well as the openness of the Green Belt. The site included stables, which would have generated additional trips. I consider the proposed development sufficiently dissimilar as to merit a different approach.

67. I also consider that a proposal for a new amenity building on the appeal site, dismissed at appeal in 2009 (ref: APP/C3430/A/09/2103240), could not be described as a comparable form of development to this before me.
68. Local residents have concerns about highway safety and drainage. Brewood Road is subject to the national speed limit but the proposed development would not significantly increase the use of the site access. Conditions could be imposed to ensure that visibility splays remain unimpeded by nearby conifers – and to secure a drainage system commensurate to the level of occupation of the site.
69. I have had regard to all the other matters raised but none alter my decision to allow the appeal.

Conditions

70. Since this appeal relates to Section 73A of the *Town and Country Planning Act 1990*, I have the option to vary, retain or delete all of the conditions imposed on the original permission – not just those in dispute – and to impose new conditions.
71. *C11/95: Use of Conditions in Planning Permissions* warns that personal conditions should only be imposed where the alternative would normally be a refusal of planning permission. In this case, since the proposal would amount to inappropriate development in the Green Belt, but the balance in favour of a permission is in part dependent upon the personal circumstances of the appellant and his family, it is necessary to vary the disputed condition no. 1 to allow occupation of the site by the appellant, his wife, his adult children and their dependants. I shall also restrict occupation of the site to gypsies and travellers.
72. To protect the openness of the Green Belt, I shall require the cessation of the use when the land is no longer needed by the named occupants. The original condition no. 2 covers this matter, but I shall vary it to ensure the reinstatement of the land at that time. Again to protect the Green Belt, I shall limit the caravans stationed on the site to the number and type proposed – and the weight of commercial vehicles that can be parked on the site. I shall also retain the original condition no. 4, which prevents the use of the site for industrial or other business use.
73. To protect the character and appearance of the area, I shall require the submission of a site development scheme that includes site layout and landscaping details. To ensure highway safety and adequate drainage, and notwithstanding the plan submitted by the Hurlstone Partnership, the site development scheme should also include measures for the retention of safe visibility splays and details of a drainage system. Since the use of the land has commenced, it is necessary to ensure that development ceases if the condition is not discharged in a timely fashion. It was agreed at the hearing that three months would be a reasonable and adequate period for the preparation and submission of the necessary scheme.

Jean Russell

INSPECTOR

ANNEX A: SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr John Lee, Mrs Jacqueline Lee, Mrs Noreen Fellows, Mrs Leah Kate Finney and/or Mr John Levi Lee.
- 3) When the land ceases to be occupied by those named in condition 1) above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed. Within six months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
- 4) No industrial or other business use, or the storage or sorting or burning of scrap metals/materials shall be carried out on the site.
- 5) No more than five caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months 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 for: the means of foul and surface water drainage of the site; improved visibility splays at the site access; the internal layout of the site, including the siting of caravans, hardstanding, access roads, parking and amenity areas; and tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the 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 scheme shall have been carried out and completed in accordance with the approved timetable.

ANNEX B: APPEARANCES, DOCUMENTS AND PLANS

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	The appellant's agent
Mr John Lee	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Turner	Paul Turner Planning Consultancy
Cllr Brian Cox	Chair of the Regulatory Committee, South Staffordshire Council, and of the Staffordshire and Stoke-on-Trent Planning Forum

INTERESTED PERSONS:

Mr Stephen Davies	Local resident
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DOCUMENTS

- 1 The Council's letter of notification of the hearing and list of those notified
- 2 Letter from Dr Varsha Sadavarte, dated 10 June 2009, concerning Reuben Fellows, and letter from The Princess Royal Hospital NHS Trust, dated 21 April 2010, offering an appointment at the Children's Unit (for an unspecified reason) for John Asa Fellows
- 3 Email from Staffordshire County Council (Transport Development Control) dated 29 June 2009, and letter from the Hurlstone Partnership dated 30 June, concerning the site access and visibility splays
- 4 The Council's Policy Choices Consultation paper on Draft Core Strategy Policy H4, dated March 2010
- 5 The Interim Local Development Framework Programme
- 6 Letter from the Council dated 3 August 2010, concerning the revocation of regional strategies

PLANS

- A Figure 1 – Existing Measured Visibility Splays