The Planning Inspectorate

Appeal Decisions

Hearing held on 24 November 2022

Site visit made on 24 November 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal A Ref: APP/C3430/C/22/3303085
Land off Micklewood Lane, Penkridge, South Staffordshire ST19 5SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Bryan Rogers against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 14 June 2022.
- The breach of planning control as alleged in the notice is
  (i) Without planning permission, the material change of use of the Land to a mixed use comprising an agricultural use and the use of the Land for the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles.
  (ii) Without planning permission, the unauthorised siting of caravans on the Land for the purposes of human habitation.
  (iii) Without planning permission, the importation of materials on to the Land to form hardstanding in the location hatched blue on the Plan for the siting of caravans to facilitate the unauthorised use of the Land as a gypsy and traveller site.
- The requirements of the notice are to:
  (i) Cease the unauthorised use of the Land for the stationing of caravans for residential purposes as a gypsy and traveller site.
  (ii) Remove from the Land all unauthorised caravans.
  (iii) Remove from the Land all vehicles associated with the unauthorised material change of use of the Land.
  (iv) Remove from the Land the unauthorised hardstanding located in the position hatched blue on the attached plan which has been constructed to facilitate the unauthorised use referred to in (i) above.
  (v) 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 6-% to 40% mix of wildflower and grass seed.
  (vi) Remove from the Land all materials arising from compliance with (iii)–(v) above.
- The periods for compliance with the requirements are:
  Steps (i) – (iii) Two months
  Step (iv) Four months
  Step (v) Five months or the next available planting season, whichever is the soonest after compliance with step (iv) above.
  Step (vi) Five 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.

Appeal B Ref: APP/C3430/W/22/3306032
Land north of Micklewood Lane, Hatherton, Penkridge ST19 5SA

- 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 Bryan Rogers against the decision of South Staffordshire District Council.

- The application Ref 22/00473/FUL, dated 8 May 2022, was refused by notice dated 26 August 2022.
- The development proposed is change of use of land to use as residential caravan site for 4 gypsy families, including stationing of 6 caravans, laying of hardstanding and erection of communal amenity building.

Decisions

Appeal A

1. It is directed that the notice is corrected by:

   - The deletion of section 3(i) and its substitution with:

     Without planning permission, the material change of use of the Land to a mixed use comprising the use of the Land for the keeping of horses and the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles.

   - The deletion of section 3(ii) and renumbering of section 3(iii) as 3(ii)

   - The deletion of section 3(ii), as renumbered, and its substitution with:

     3 (ii) Without planning permission, the importation of materials on to the Land to form hardstanding in the location hatched blue on the Plan for the siting of caravans to facilitate the use of the Land for a mixed use comprising an agricultural use and the use of the Land for the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles.

   - The deletion of section 5(i) and its substitution with:

     5(i) Cease the use of the Land for a mixed use comprising the use of the Land for the keeping of horses and the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles.

   - The deletion of the word 'unauthorised' from sections 5(ii), 5(iii) and 5(iv).

   - The deletion of section 5(v) and its substitution with:

     5(v) Restore the Land to its condition before the breach took place.

2. It is also directed that the notice is varied by the deletion of the time periods of compliance set out in section 5 and the substitution of 12 months after the notice takes effect as the time period for compliance with requirements (i) to (vi).

3. Subject to the corrections and variations, Appeal A dismissed, and the enforcement notice is upheld.

Appeal B

4. Appeal B is dismissed.

Preliminary Matters

Appeal A

5. The appellant introduced an appeal under ground (d) at the Hearing. This was on the basis of information which had been submitted by the appellant shortly before the Hearing opened. The information was in the form of statutory declarations (SDs) from the previous owner of the land and his accountant and letters from local residents. The authors of the SDs were not present at the Hearing.

6. Having taken account of the late introduction of the ground (d) arguments, which had not been submitted formally in accordance with the timetable and in advance of the Hearing, I considered that the Council would be prejudiced were I to include ground (d) as an item on the agenda for the Hearing. The nature of the submissions was such that it would not be necessary to take evidence under oath, which in any case is not possible as part of a Hearing.

7. Taking all of these matters into account I decided that the most appropriate way forward, which would also make effective use of the Hearing, was to deal with Appeal B and ground (g) of Appeal A at the Hearing, and to invite written representations from the parties on ground (d) of Appeal A.

Appeal B

8. Appeal B relates to an application for planning permission and the appeal site is smaller than that which is the subject of the enforcement notice. The use of the land is confined to use as a residential caravan site for 4 gypsy families i.e. the application does not relate to a mixed use. This use has commenced, but the site is not laid out as shown on the plan submitted with the planning application. The area of new hardstanding is a different shape, and the dayroom has not been constructed. Neither the erection of post and rail fencing separating the caravan site from other land in the appellants ownership, nor the hedge/tree planting have commenced.

9. I observed during my site visit that there are a number of caravans and vehicles on the site. There was also an unused caravan and stable buildings which the appellant indicated had been left by the previous owner and a small w.c building. The appellant also said that he had installed a water treatment device and pointed to ground work which had been carried out to link the toilet to it.

10. The appellant said that he had constructed a fence around his land and this feature was present. It is not the post and rail fence shown on the submitted plans. The new fence is constructed of timber and in some areas it is topped by green netting. It is set against the roadside planting made up of trees and hedges. There was also a gate at the entrance to the site off Micklewood Lane. None of these boundary features are shown on the submitted plans. Therefore, they are not before me for consideration as part of the appeal and the extent to which they constitute development for which planning permission is required is a matter for the Council.

11. There is no dispute between the parties that the use has commenced and that this has implications for the determination of the appeal including the detailed wording of planning conditions and Unilateral Undertaking if relevant.

12. In response to my requests the Council provided more information about the Cannock Chase Special Area of Conservation (SAC) and the appellant also submitted a Unilateral Undertaking in respect of mitigation measures in relation to the SAC before the Hearing was closed in writing on 2 February 2023.

The Plans (Appeal B)

13. The plans submitted with the planning application included two layout plans. One of these plans is the proposed layout plan and I have re-labelled that plan to distinguish it from the other layout plan and determined Appeal B on the basis of the proposed layout.

The Notice (Appeal A)

14. In its response to the appellant's submissions on ground (d) the Council states that 'the established primary use of the appeal site is for the keeping of horses'. The breach as described in the notice refers to agricultural use which is not the same as a use for the keeping of horses. I have asked the Council for its views on correcting the notice to address this point and the Council has confirmed that it has no objections.

15. I shall therefore correct the notice to describe the allegation set out in 3(i) as follows:

> Without planning permission, the material change of use of the Land to a mixed use comprising the use of the Land for the keeping of horses and the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles.

16. The importation of materials to form a hardstanding is set out as a separate breach and it does not require correction.

17. The allegation is in three parts and in effect part (ii) replicates part of part (i) because both parts refer to the stationing/siting of caravans on the land. This repetition is unnecessary, and I sought comments from the parties regarding the deletion of part (ii). Neither of the parties had any objections to this correction and it would not lead to injustice.

18. The allegation relates to a mixed use of the land, however in terms of the works to set out in part 3(iii) of the notice, reference is only made to use as a gypsy and traveller site. I raised this matter at the Hearing and neither party had any concerns about the correction of the notice so that the works relate to the mixed use. There would be no injustice to either party and I shall correct the notice accordingly.

19. The requirements of the notice must flow logically from the allegation. In this case the allegations, as amended, relate to a mixed use but requirement 5(i) refers to the use of the Land as a gypsy and traveller site only. I can correct requirement 5(i) to refer to the mixed use without causing injustice to the parties.

20. Requirement (v) specifies the use of wildflower mix or a combination of wildflower and grass seed in relation to the restoration of the site. However, there is no evidence before me to demonstrate that the land sustained such plants. For that reason, requirement (v) is excessive and a straightforward requirement to return the land to its condition prior to the breach taking place

is more appropriate. Injustice would not be caused to either party if requirement (v) is varied accordingly.

21. The notice includes several instances of the word 'unauthorised' which is unnecessary and shall remove these words.

Appeal A – ground (d)

22. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

23. In order to achieve success under ground (d) the appellant must show that the MCU occurred on or before 14 June 2012 and has continued without interruption since that point in time.

24. The appellant has submitted what he has described as a statutory declaration (SD) by the previous owner of the site (Witness A). The veracity of the SD is limited because it does not make reference to the provisions of the Statutory Declarations Act 1835 (the SDA) or contain any sanctions for failure to tell the truth. Furthermore, the person completing the SD has also signed as a witness to his signature. As such the document cannot be classed as a SD and I have regarded its status as a signed statement which attracts limited weight.

25. However, Witness A does provide information about how the site has been used including over the time period between 14 June 2012 and when the notice was served.

26. Witness A says that he brought a caravan onto the land in 1994 and another caravan in 2000. He says that the second caravan provided all the facilities necessary for day to day living. Witness A says that he occupied a caravan on the land for residential purposes continuously for the past 30 years. However, this does not correlate with the date when he said that he brought the first caravan on, which would equate to 28 years use at the time when he wrote his statement.

27. Nevertheless, Witness A says that, whilst the site was not his sole residence, he slept in the caravan several nights a week, most weeks of the year and for more than 10 years. He says that he used to keep, breed and train horses on the land and that it was convenient for him to live close to the horses to look after them.

28. A second document which is described as a SD has been provided from the accountant and friend of the previous owner (Witness B). Again, the SD does not refer to the SDA and contains no sanctions. In this case the SD contains a witness signature, but the date of the signature by the witness is not compatible with the date of the declaration. As above, this document cannot be classed as a SD and the weight afforded to it is limited.

29. Witness B refers to Witness A keeping horses on the land and often staying overnight and at weekends in the mobile home. However, he does not say that he visited Witness A at the site and as such he does not provide first hand evidence of residential occupation.

30. A local resident stated in writing that there has been a caravan on the site for 33 years and a static home for 26 years and that Witness A spent most of his life there. Another local resident also wrote in to say that he had seen people living on the land, on and off, over the last 10-15 years in a caravan.

31. The observations by Witness B and local residents provide support for Witness A's and the appellant's description of the use of the site prior to the notice being served. Drawing these points together I find that there is evidence of some residential use taking place on the site alongside the keeping of horses. However, the evidence before me regarding a continuous occupation of the caravans is very limited at best and in the light of the limited weight which can be attached to it, is not convincing.

32. The Council argues that the primary use of the land has been for the keeping of horses/agriculture and that the use of the caravans was ancillary to this use and not a primary use of the land. The Council also says that the ancillary use could only reasonably be considered to relate to the limited footprint of the caravan and not the wider site used for the keeping of animals.

33. The residential use of a caravan is not a use which is ordinarily incidental to a primary use for either agriculture or the keeping of horses. Furthermore, even if the residential use were an ancillary element of the primary use it would not be restricted in terms of its location on the site where the development concerns a single planning unit as is the case here. In these regards the Council's position is unsound.

34. Notwithstanding the limitations of the Council's arguments, the onus of proof lies with the appellant and the evidence which he provides must be sufficiently precise and unambiguous. In this case the appellant is reliant principally on the evidence provided by Witness A because the role of Witness B and the local residents is to support what Witness A says about his occupation of the site.

35. Witness A does not provide any evidence in support of his written statement. He says that he lived on the site several nights a week most weeks of the year, but this description implies an intermittent level of occupation. In that respect evidence of an ongoing and continuous use of the caravans either since 2000 or for the ten year period prior to the notice being issued is both imprecise and ambiguous.

36. The appellant says that it is clear from Witness A's evidence that the caravan contained all of the facilities required for day-to-day living. However, there is no evidence of this beyond Witness A's statements and the appellant does not provide any first hand evidence himself of how the site was being used when he bought it. To that extent the evidence is limited. Furthermore, the appellant argues that the caravan was available for occupation. That is not the same as being occupied on a permanent basis and as I have found above Witness A refers to intermittent occupation.

37. The occupation of the caravan could have been suspended for several weeks of the year without conflicting with Witness A's evidence of occupation 'most weeks of the year'. There is no evidence to demonstrate that such periods would not have been significant breaks in what the appellant needs to establish as a continuous residential use of the caravan. At those times when Witness A was not living in the caravan it is reasonable to assume that the Council could

not have taken enforcement action against the residential use of the caravan, because it was not being used for that purpose.

38. Whilst the evidence before me shows that there has been some residential use taking place on the site alongside the keeping of horses, it has not been demonstrated on the basis of the evidence and the balance of probabilities that such a use has become immune from enforcement action by virtue of the passage of time.

39. For the reasons set out above the appeal under ground (d) fails.

Appeal B

Main Issues

40. The main issues are:

- Whether the change of use to a gypsy and traveller site is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
- The effect of the proposal on the openness of the Green Belt.
- The effect of the proposal on the character and appearance of the site and the surrounding area and Mansty Wood which is an ancient woodland.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

41. In making my decision I must have regard to the rights of the appellant and his family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the ability of Romany Gypsies to enjoy the particular lifestyle which is shared by their ethnic group. However, this is a qualified right which involves balancing the fundamental rights of individuals against the legitimate interests of others and the wider public interest. The concept of proportionality is crucial because a disproportionate or unjustified interference can result in the violation or breach of the appellant and his family's rights.

42. As required by the public sector equality duty (PSED) under the Equality Act 2010, I will also have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. The families are Romany Gypsies which is an ethnic minority, and they have the protected characteristic of race under section 149(7) of the 2010 Act. I am also aware from the evidence that there are persons on the site with the protected characteristics of age. Therefore, the PSED is engaged in these appeals and the decisions must be proportionate to achieving legitimate planning aims.

Reasons

Inappropriate development in the Green Belt?

43. There is no dispute between the parties that the occupiers of the site are gypsies and that under Policy E of the Planning Policy for Travellers Sites (PPTS) the development is inappropriate development in the Green Belt.

44. The Statement of Common Ground (SOCG) sets out and the Council confirmed in the Hearing that the most relevant policies in the Development Plan, in respect of the Green Belt, are Core Policy 2, Policy GB1 and Policy H6 of the South Staffordshire Local Plan Core Strategy DPD (2012) (the Local Plan). These policies address the protection of and development within the Green Belt and Policy H6 in particular addresses development to meet the needs of gypsies, travellers and travelling showpeople in the Green Belt. The relevant policies are broadly in accordance with the National Planning Policy Framework (the Framework).

45. On the basis of the PPTS and in the light of the Framework and relevant development plan policies I conclude that the use of the site constitutes inappropriate development in the Green Belt. As such it is development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on openness

46. The Council explained that 80% of its area is Green Belt and that Policy H6 allows a selective approach to be adopted in relation to the harmful effects of gypsy and traveller sites in the Green Belt in terms of openness.

47. The appropriate starting point for the consideration of the effect of a development on openness, is the appearance of the site before the subject development took place and what features could be on the site in accordance with its lawful use.

48. There is no dispute between the parties that there was a building on the land before the appellant bought it and brought his family on in their caravans. Whether this building has been used as stabling for horses or not, it is part of the baseline condition of the land in terms of the assessment of openness.

49. There were also two caravans on the land before the appellant began to use it. My conclusion on the ground (d) appeal (Appeal A) is that the use of the land as a whole for a mixed residential caravan site and agricultural use has not been conclusively established. Consequently, the appellants argument that such a lawful use of the land could result in an unlimited number of residential caravans falls away and the assessment of the effect on openness has to be made on the basis of the existing two caravans only.

50. The presence of caravans on the site and the works which have been carried out to facilitate the use of the land in the form of the hardstanding and the toilet building give an indication of the effect of the proposed layout and works on openness.

51. The hardstanding which is shown on the 'existing site layout' plan is limited to a track and turning area directly adjacent to the mobile home and stable building. By contrast the hardstanding which has been laid already is more

expansive and the 'proposed layout' plan shows this extending even further across the site. The use of the hardstanding for siting caravans and parking vehicles inevitably leads to a significant loss of openness.

52. The proposed site layout includes an area of tree planting within the site. Whilst this may ensure the protection of this undeveloped part of the site, given its small size the contribution towards the retention of openness would be limited.

53. The proposed dayroom occupies roughly the same position close to the end of the access track as the existing unused caravan on the site and in this respect, there would be a neutral effect on openness.

54. The appellant owns land to either side of the proposed caravan site, but this land is not included in the application site and its future use is not shown on the plans nor has it been stated by the appellant. Therefore, it's continued contribution to openness is unknown.

55. The current use of part of the wider site for the stationing of caravans demonstrates that the introduction of caravans already has a significant visual impact on the site in comparison with its prior largely open appearance. The expansion of the hardstanding and the introduction of four larger static caravans will have a greater visual impact on openness than the current arrangements and the previous condition of the land.

56. Drawing all of these points together I find that the development would have a significantly harmful effect on the openness of the Green Belt.

Character and appearance

57. Policy H6 of the Local Plan requires that gypsy and traveller sites be sited and landscaped to ensure that any impact on the character and landscape of the locality is minimised. The Council confirmed that this is a relevant policy for the consideration of character and appearance, along with, in its view, Core Policy 2 and Policies EQ4, EQ11 and EQ12.

58. Core Policy 2 concerns the protection and enhancement of the natural environment, Policy EQ4 deals with the landscape, EQ11 refers to local character and distinctiveness and EQ12 addresses landscaping.

59. The appellant considered that conflict with general policies such as Core Policy 2 should not be used to frustrate consideration of specific policies such as Policy H6. However, the development needs to be assessed against all relevant policies in the development plan which are those identified by the Council and in any event the 'general' policies allow for the flexibility required by the PPTS in relation to the development of gypsy and traveller sites in sensitive locations.

60. Mansty Wood is a dominant feature in the area comprising a densely treed space with roadside and field edge boundaries. It is an area of ancient woodland which is referenced in Policy EQ1 and EQ4 and this designation is also recognised as being of importance by the Framework.

61. The area around the site is rural in character with sporadic development which appears to be associated with its countryside location such as agricultural buildings and stables. There is some residential development associated with

these uses, but this is limited, and it does not detract from the natural environment. Although within the Green Belt, the site and the area around it does not fall under any landscape designation.

62. The appellant owns a triangular area of land at the junction of Micklewood Lane with Cannock Road and the site occupies the middle section of his land. It is accessed via a track which runs along the boundary with Mansty Wood.

63. Micklewood Lane is a meandering country road, in contrast to Cannock Road which has a straight alignment and carries more traffic. Neither Micklewood Lane nor Cannock Road have pavements or street lighting and neither highway would be an attractive walking route. The site is largely screened from view by the trees and hedges on the roadsides, which are particularly dense alongside Cannock Road. The clearest view of the site is from the access onto Micklewood Lane and most likely from passing cars.

64. Both parties are in agreement that there are gaps in the screen planting which afford views of the site and that the caravans and other features would be more visible when there are no leaves on the trees and hedges. The Council confirmed at the Hearing that its concern was in respect of views within and from the site edges as opposed to longer views from the surrounding area. From my observations during the site visit, particularly the characteristic flat landscape, I concur with the Council's view that the site is not readily visible within the countryside around it.

65. The previous development on the site, comprising the stables and two caravans, was positioned alongside the boundary with Mansty Wood and the stable in particular would have blended in with its densely treed backdrop. The restricted amount of hardstanding would have prevented any vehicles or caravans from occupying those parts of the site clear of the boundary with the wood and to that extent would have contained the views of development from Micklewood Lane. There is no evidence before me to demonstrate that the other parts of the site would have been other than open grassland consistent with the character and appearance of the wider area.

66. The existing caravans on the site are clearly visible from the access on Micklewood Lane. Their appearance is at odds with the otherwise green and natural characteristics of the site and surrounding land. As a consequence of their position on the site and finish, the caravans and associated vehicles are in stark contrast to Mansty Wood and do not merge with the natural backdrop of densely packed trees.

67. The proposed layout would lead to a further incursion into the site and would position caravans and vehicles at a significant distance from the edge of Mansty Wood. As such the development would dominate the site and the characteristic relationship between the wood and the field edge would be significantly undermined.

68. The proposed post and rail fencing and hedge planting which would differentiate the site from the adjacent land would be consistent with boundary treatment in the surrounding area.

69. Proposed tree planting is shown on the layout plan. However, there are no details regarding the size or species of trees, nor any evidence to demonstrate that the tree screen would soften views of the caravans. Thus, it has not been

shown that the development has been sited and landscaped so as to ensure that any impact on the character and landscape of the locality is minimised.

70. Even if this were to be shown it is reasonable to assume that the use of the site would give rise to frequent comings and goings of residents along the access and necessary domestic paraphernalia such as letter-boxes and refuse bins. These activities and facilities would fall outside the tree screen and would form part of the change in character of the site which would be at odds with the rural nature of the surrounding area.

71. I conclude that the change of use of land to use as a residential caravan site would have a significantly harmful effect on the character and appearance of the site and the surrounding area. The development is therefore contrary to Core Policy 2 and Policies H6, EQ4, EQ11 and EQ12 of the Local Plan which seek to protect the natural environment, landscape and local distinctiveness.

Mansty Wood

72. Mansty Wood is an ancient woodland. Although the site is not within the wood itself it shares a boundary with it and the proposed dayroom would be within the 15 metre buffer zone recommended by government guidance.[1]

73. Policies EQ1 and EQ4 of the Local Plan require that ancient woodland is protected from damage and that new development will not cause significant harm to natural assets including ancient woodlands. The Framework also states that the loss or deterioration of irreplaceable habitats such as ancient woodland should be refused unless there are wholly exceptional reasons, and a suitable compensation strategy exists.

74. The Council's concerns relate to both the effect of the proposals on the ancient woodland as part of the character of the area, which I have addressed above, and the potential for direct effects on it arising from the construction of the dayroom and connections to services.

75. The appellant argues that works have already been carried out within the buffer zone in the form of hardstanding and the concrete base for the mobile home and that they have not affected the woodland. However, there is no comparative information to show how those works relate to the proposed works necessary to provide the dayroom. On that basis it has not been demonstrated that the further works to form foundations for the dayroom and connections to services would not have an adverse effect on the woodland.

76. Furthermore, although a service run has been laid to join the toilet building to the treatment plant which has been installed on site, it has not been shown that these works would provide sufficient capacity for the day room.

77. There is potential for the woodland to be affected by the works. However, the dayroom has not yet been constructed and the Council has agreed that the means of its construction and connection to services could be the subject of a planning condition. Such a condition could be drafted so as to meet the tests for conditions set out in Planning Practice Guidance and I am satisfied that it would address the potential harm to the ancient woodland in this case.

[1] Natural England and Forestry Commission Ancient woodland, ancient trees and veteran trees: advice for making planning decisions January 2022

78. I conclude that subject to the imposition of a planning condition, the change of use of land to use as a residential caravan site would not have a harmful effect on Mansty Wood. The development is therefore in accordance with Core Policy 2 and Policies EQ1 and EQ4 which seek to protect the natural environment including ancient woodlands and with the Framework.

Other considerations

Local Plan Policy H6 – other criteria

79. I have found that the development would not accord with Policy H6 of the Local Plan. However, this is in respect of criterion 8 only. The Council has confirmed that in this case the use as a gypsy and traveller site would accord with the other criteria in Policy H6. To that extent the location could be said to be a good one for a gypsy and traveller site.

80. The appellant submitted two appeal decisions, one of which he subsequently confirmed was not relevant to this case. The second decision related to appeals at Shadowbrook Lane, Hampton in Arden[2] in which the Inspector assigned substantial weight to her assessment that when read against the relevant criteria based policy the development performed reasonably well. The approach which I have adopted in respect of the other criteria in Policy H6 concurs with this Inspector's approach.

Intentional Unauthorised Development

81. There is no dispute between the parties that the change of use of the land and some of the operational development which is the subject of the appeal was carried out in advance of planning permission being granted.

82. At the Hearing it was established that the appellant thought he could bring his caravans on because there had previously been caravans on the site. However, he did take advice and a site visit with his agent was carried out before any caravans were stationed or other works commenced. As a consequence of the advice he received, the appellant submitted a planning application which was dated 8 May 2022. The caravans were brought onto the site by 14 June 2022 when the enforcement notice was served. This was before the planning application had been determined, therefore the use and associated works which have been carried out amount to Intentional Unauthorised Development (IUD).

83. A Written Ministerial Statement (WMS) dating from August 2015 establishes that IUD is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just that relating to gypsy and traveller sites and places particular emphasis on IUD in the Green Belt.

84. The appellant was clearly aware of the need for planning permission as he had submitted a planning application. However, he says that he had no alternative site available to him and he wanted to keep his family together. The appellant has not constructed the day room and the facilities available to him and his family on the site are the minimum necessary to provide for a habitable environment for its residents.

[2] Appeal Refs: APP/Q4625/C/13/2209742 and APP/Q4625/C/13/2209777

85. Bringing all of these points together I find that IUD has occurred but the weight which I attach to this is reduced by the fact that the appellant had no alternative site and that he has limited the amount of development which he has carried out. Consequently, IUD attracts moderate weight against the appellant's case that planning permission should be granted.

The need for and supply of gypsy and traveller sites

86. The Council is not disputing that there is a need for gypsy and traveller sites in the district. Policy H6 of the Local Plan sets out a need for 85 pitches based on the Gypsy and Traveller Accommodation Assessment (GTAA) 2004 for the period 2007 to 2028. At the Hearing the Council confirmed that the GTAA 2021 sets out a need for 121 pitches and that there is a need for 72 pitches in the current 5 year period. The appellant's figure was slightly higher for the five year period 2022 to 2027 at 76 pitches. Notwithstanding the precise figure there is an agreement that there is a significant need for new pitches.

87. Since the appeal was submitted the Lisa Smith judgement[3] has been published which relates to the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The GTAA 2021 sets out the need for households meeting the definition set out in the PPTS and also needs generated by undetermined households and those which do not meet the definition. Taking these additional households into account increases the need to a total of 154 pitches over the period 2021 to 2038.

88. In terms of the supply of pitches the Council produced a Site Allocations Document (SAD) in September 2018 which identified sites for 20 new gypsy and traveller pitches. The Council says that additional provision will come through its Local Plan Review DPD. However, it is unlikely that any sites will be brought forward as part of the review until 2025 at the earliest if the Council's anticipated programme is achieved.

89. The Council also points to its approach of using the most up to date information it has on the need for sites when it determines planning applications against the criteria in Policy H6. It also identifies 11 permanent pitches which have been granted in the Green Belt since the adoption of the SAD. This is an indication that the Council has not adopted an overly restrictive approach to supply.

90. Taking all of these points together, it has been shown that there is a need for gypsy and traveller sites in the Council's area and that the Council cannot currently identify a 5 year supply of deliverable sites. These factors, taken separately, weigh significantly in favour of the development.

Availability (or lack) of alternative accommodation

91. The appellant says that there are no suitable, affordable and acceptable sites available to him as an alternative to the appeal site. He has submitted letters from gypsy and travellers sites in the area which state that there are no vacant pitches available. His only option if he and his family were not able to stay on the site, would be to occupy an unauthorised, roadside site. The Council does not dispute the information provided by the appellant and is not aware of any sites which may provide alternative accommodation.

[3] Lisa Smith v SSLUHC [2022] EWCA Civ 1391

92. On this basis there is no evidence of any alternative accommodation being available which weighs significantly in favour of the development.

Personal circumstances of the appellant and his family

93. The development allows for a family to live together enabling them to provide support for each other, which is acknowledged as of importance to the gypsy and traveller community. The site also provides a stable base from which the residents can access essential services such as education and healthcare.

94. There are eight adults and eight children who would be residents of the site. Two of the oldest children are being home-schooled and the County Council has confirmed that they are receiving a suitable and effective education. Three of the children attend a local primary school where an advisory teacher says they have settled and integrated well and are making good progress. It is hoped that one of the two youngest children will start school in January 2023 and the youngest is a baby. Two of the children have access to a speech therapist for support.

95. The appellant says that all residents of the site are registered with the doctor, and this is corroborated by the County Council. Three adult residents have health conditions which require regular treatment. In general terms it would be beneficial for all of the residents to be able to access healthcare from a settled base.

96. On the basis of the lack of any identified available, alternative accommodation there is at least a possibility that the family would have to resort to life on the road in the event that it was unable to stay on the site. Such an existence in itself presents challenges in terms of maintaining a good standard of health and wellbeing and is not in the best interests of the children.

97. The Council did not have any comments to make on the personal circumstances of the appellant and his family.

98. Taking account of all of these factors, the personal circumstances of the appellant and his family, including the best interests of children, weigh significantly in favour of the development.

Other appeal decisions

99. The Council referred to three appeal decisions at New Acre Stables[4], 122 Streets Lane[5] and Doveleys Farm[6] which were issued in 2014, 2019 and 2022. The decisions all relate to sites within the South Staffordshire district and also within the Green Belt. I do not have the same detailed information before me as was before the other Inspectors and it is essential that each decision is made on its own merit. I can also see from the appeal decisions that there are differences in terms of the personal circumstances of the appellants. For these reasons the appeal decisions submitted by the Council are not determinative and have a neutral effect on the balance in favour of the appeal scheme.

[4] Appeal Ref: APP/C3430/A/13/2210160
[5] Appeal Ref: APP/C3430/W/18/3201530
[6] Appeal Refs: APP/C3430/C/21/3274332, APP/C3430/C/21/3274333, APP/C3430/C/21/3274334 and APP/C3430/W/21/3287902

The Local Plan review

100. The Council provided an update at the Hearing in respect of its Local Plan Review DPD (the DPD) which has reached the Regulation 19 consultation stage. Given that this document has not been examined or found sound, the policies which it contains currently carry no weight. I have had regard to the GTAA 2021 which is a background document to the DPD. I have already assigned weight to the issues of need and supply of gypsy and traveller sites and the lack of availability of alternative sites. Therefore, the lack of progress on the DPD which contributes to these circumstances attracts neutral weight so as to avoid any double-counting.

Green Belt balance

101. I have found significant harm to the Green Belt in relation to openness and that the development would have a significantly harmful effect on the character and appearance of the site and the surrounding area, contrary to Core Policy 2 and Policies H6, EQ4, EQ11 and EQ12 of the Local Plan. I am mindful that, by virtue of paragraph 148 of the Framework substantial weight should be given to any harm to the Green Belt.

102. In accordance with the WMS, I have also found that intentional unauthorised development (IUD) has taken place and I have concluded that in this case the IUD factor attracts moderate weight against allowing the appeal.

103. In favour of allowing the appeal, I attach significant weight individually to the need for gypsy and traveller sites, the lack of supply of sites particularly given the timescale of the DPD, the lack of available alternative accommodation for the appellant and his family and the personal circumstances of the appellant and his family.

104. The best interests of the children are a primary consideration, and no other consideration is inherently more important, however, they are not a determinative factor. In this case the best interests of the children who reside on the site weigh significantly in favour of allowing the appeal.

105. My conclusion that, subject to the imposition of a planning condition, the development would not have a harmful effect on Mansty Wood and my findings in relation to the other appeal decisions which were brought to my attention by the Council are neutral the Green Belt balance.

106. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS states that, subject to the best interests of the child, unmet need and personal circumstances, are unlikely to clearly outweigh harm to the Green Belt and any other harm.

107. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case I find that although there are some matters which weigh in favour of the appellant, the cumulative weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt in combination with the harm to the character and appearance of the surrounding area and the IUD.

108. Consequently, my initial conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case. Accordingly, the development is contrary to Core Policy 2 and Policies GB1, H6, EQ4, EQ11 and EQ12 of the Local Plan and to the Framework.

Planning permission on a temporary/personal basis

109. The appellant is clear that he is seeking planning permission on a permanent basis, however it is necessary for me to consider whether a grant of temporary and/or personal permission is justified.

110. The substantial weight attached to any harm to the Green Belt is the same for a temporary as for a permanent permission. In this case the effect on openness and the harm to the character and appearance of the surrounding area would be moderated if the permission was of a limited duration.

111. The Council requested that if planning permission was granted it should be subject to a condition limiting the duration of consent until 31 March 2025. At the Hearing it confirmed that this timescale reflects the programme for its expected adoption of the DPD.

112. There is no certainty that the DPD will be delivered in accordance with the Council's ambitions and even if it were in place by that time there is no information before me regarding the likelihood that there will be an available site for the appellants in that timescale. On that basis it cannot be said that there is a reasonable expectation of a change in planning circumstances within a two year period and throughout that period and potentially beyond the harm which I have identified would endure.

113. There is no appeal under ground (a) in relation to the enforcement appeal (Appeal A) and the upshot of dismissing Appeal B is that the appellant and his family would have no alternative but to comply with the enforcement notice and leave the site. In the absence of any evidence to suggest otherwise they would end up on the roadside.

114. A temporary consent would enable the appellant and his family to remain on the site for a longer period. However, the positive outcome for the appellant and his family of such action is outweighed by the harm to the Green Belt and to the character and appearance of the site and the surrounding area in this case.

115. Similarly, a personal consent based on the occupation of the site by the appellant and his dependents would result in a continuation of the harm to the Green Belt and the character and appearance of the site and the surrounding area. In this case such an impact even of limited duration outweighs the benefits to the appellant and his family.

116. I conclude that granting permission on a temporary and/or personal basis does not change the Green Belt balance such that planning permission should be granted on either or both of these bases.

Human Rights including the Best Interests of the Children

117. There is at least a possibility that dismissing the appeal would result in the appellant and his family becoming homeless given that I have concluded that

there is no suitable alternative site for them to move to. This would amount to significant interference with their rights under Article 8.

118. I have taken into account all of the matters raised by the appellant including the lack of availability of alternative accommodation and the personal circumstances of himself and his family. I have also given particular consideration to the best interests of the children on the site who would benefit from a settled base from which to access education and therapeutic support. The potential of a roadside existence would have significant implications for family life and could lead to separation of parts of the family from one another.

119. However, the interference with the rights of the appellant and his family would be a proportionate response in pursuance of the well-established and legitimate aim of the protection of the Green Belt.

120. Turning to the PSED, I am not aware of any local residents raising concerns about the development and letters have been submitted by local people in support of the appellant's appeal under ground (d). To that extent the relationship between the family and the settled population is a positive one. Further evidence of this is that the children have settled well at the local school. Enabling the family to remain on the site, with the benefit of planning permission to establish a lawful use of the land has the potential to continue to foster good relations between the family and other people in the local community and to eliminate discrimination.

121. Allowing the appeal and granting planning permission would also advance equality of opportunity by taking steps to meet the particular needs of the family both in terms of their ethnicity and the shared protected characteristic of age. It would also provide a settled base for the children to access education, which is in their best interest.

122. I have had due regard to the PSED and found that the development would provide the opportunity to advance its aims, however set against the well-established and legitimate aim of the protection of the Green Belt dismissing the appeals is a proportionate response in this case.

Other Matters

Cannock Chase Special Area of Conservation

123. There is no dispute between the parties that the site lies within the zone of influence of Cannock Chase Special Area of Conservation (SAC) which falls within the definition of a European Site. The appellant has provided a unilateral undertaking (UU), in a form which the Council find to be acceptable. The UU secures the payment of a financial contribution towards Strategic Access Management and Monitoring Measures to mitigate the adverse effect of recreational activities on the integrity of the SAC.

124. Cannock Chase is designated as a SAC because of the extent of European Dry Heath habitat. The evidence base document provided by the Council[7] sets out that the SAC contains important vegetation communities, supports populations of several scarce invertebrates and is an important breeding site for the European Nightjar.

[7] Evidence Base relating to Cannock Chase SAC and the Appropriate Assessment of the Local Authorities Core Strategies by Footprint Ecology 2009

125. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in view of that site's conservation objectives. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Conclusion

126. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed. This action would not unacceptably violate the family's human rights and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

Appeal A – ground (g)

127. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The issue of proportionality is also of relevance in this case given the consideration of human rights.

128. The notice as served the Council sets out a stepped approach to compliance with the requirements of the notice. These include a compliance period of two months for the cessation of the use and removal from the land of all caravans and vehicles. The appellant considers that the compliance periods are too short because compliance with the notice would result in homelessness and place a disproportionate burden on the appellant's family and children. He suggests a compliance period of 12 months for all of the requirements of the notice.

129. During the Hearing the Council indicated that it would be content for the compliance period to be extended to 12 months in accordance with the request of the appellant. This has been confirmed in writing.

130. It will be seen from the foregoing that I have accepted that there is a current lack of supply of gypsy and traveller sites in the district and a lack of any alternative sites being available to the appellant and his family. In this context a compliance period of two months to cease the use and remove the caravans is impractical and unreasonable. It is also a disproportionate response in terms of the appellant's human rights.

131. In the light of my finding that the development has a harmful effect on the Green Belt and given the emphasis placed in the Framework on such harm I find that extending the compliance period to 12 months would be reasonable. This would allow the school age children to complete the current academic year which would be less disruptive to them and is a proportionate response in terms of the appellants' human rights.

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

Sarah Dyer

Inspector

APPEARANCES

For the appellant:

Philip Brown

Brian Rogers (appellant)

Carl Woollaston (local resident)

Peter Jones (local resident)

Simon Fowler (local resident)

For the Council:

Catherine Gutteridge

Paul Turner