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## Appeal Decision

Hearing Held on 12 March 2019

Site visit made on 12 March 2019

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 29<sup>th</sup> March 2019

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Appeal Ref: APP/C3430/W/18/3214818

New Acre Stables, Wolverhampton Road, Penkridge, ST19 5PA

- 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 Martin Ward against the decision of South Staffordshire Council.
  - The application Ref 17/00435/VAR, dated 11 May 2017, was refused by notice dated 12 September 2018.
  - The application sought planning permission for material change of use of land to travellers site for 5 plots with associated hard standing, access, fencing, utility blocks and cesspools without complying with a condition attached to planning permission Ref 15/00001/FUL, dated 12 April 2017.
  - The condition in dispute is No 4 which states that:
    - (4) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependents:  
John and Fanta McCarty  
Winnie, Philomena and Lucy Ward  
Ann McDonagh
  - The reason given for the condition is:
    - (4) Conditions stating that the site shall be occupied only by gypsies and travellers, and detailing the occupants and their dependents, are necessary in view of the personal circumstances that have been taken into account in granting a temporary planning permission.
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### Decision

1. The appeal is allowed and planning permission is granted for 5 plots with associated hard standing, access, fencing, utility blocks and cesspools at New Acre Stables, Wolverhampton Road, Penkridge, ST19 5PA in accordance with the application Ref 17/00435/VAR dated 11 May 2017 without complying with condition No 4 set out in planning permission Ref 15/00001/FUL granted on 12 April 2017, but otherwise subject to the conditions set out in the attached schedule.

### Main Issue

2. The main issue is whether the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

## Reasons

3. Planning Policy for Traveller Sites (PPTS) states that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. In this regard, Paragraph 143 of the National Planning Policy Framework (**'the Framework'**) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. The proposal is to vary a condition that was attached to a previous appeal Decision<sup>1</sup> at the site, that restricts the occupancy of the pitches. That Decision states that the disputed condition is necessary in view of personal circumstances that were taken into account in granting a temporary permission. In this regard, the previous Inspector gave significant weight to health and educational needs of the occupants, with particular reference to the children, **in finding that 'very special circumstances'** existed. The disputed condition is therefore necessary, as without it, the justification for permitting harmful development in the Green Belt would be significantly diminished.
5. It is common ground that the occupation of an existing pitch by the appellant and his daughter has not resulted in any greater loss of openness than the development approved by the previous Inspector in 2017. Moreover, were the appeal to be dismissed then the pitch could remain in its current state, unoccupied, until the temporary permission expired. The effect of the proposal on the openness of the Green Belt is therefore neutral.
6. It is also common ground that the Council is unable to demonstrate a 5 year supply of traveller sites, as required by PPTS. However, the balance towards granting permission set out at Paragraph 11 of the Framework does not apply in this case as policies in the Framework relating to the Green Belt indicate that development should be restricted.

## *Gypsy status*

7. The gypsy status of the appellant is not in dispute, and at the hearing Mr Ward confirmed that he travels for economic purposes for around 2-3 months of the year (in total). From the information before me, I am satisfied that both Mr Ward and Ms Ward **fall within the definition of 'gypsies and travellers' set out in the Annex to the PPTS. The Government's PPTS is therefore a material consideration.**

## *Personal circumstances*

8. Both Mr Ward and Ms Ward have severe and longstanding health conditions that are confirmed by letters from a local medical practice. Ms Ward, in particular, relies heavily on the close support of family members who live on the neighbouring pitches, which allows Mr Ward to travel for work. Whilst Mr **Ward's conditions** are mostly treated with medication, Ms Ward has had a regular programme of therapy with healthcare professionals at a nearby hospital. At the hearing it was stated that these sessions are scheduled to recommence shortly. The letters from the local medical practice also confirm that Ms Ward has been referred for treatment.

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<sup>1</sup> APP/C3430/W/15/3033377

9. Prior to moving onto the site, Mr and Ms Ward did not have a settled base and moved regularly between unauthorised and roadside locations in the West Midlands. At the hearing, it was stated that they usually did not stay in any one location for more than 2 weeks before being moved on. This meant it was not possible to register with a local GP or to receive regular treatment and medication for their conditions. Moreover, when Mr Ward travelled for work, he had to leave Ms Ward alone in unauthorised locations where there was a likelihood of being moved on by the authorities. This restricted his ability to seek work.
10. Since moving to the site both Mr and Ms Ward have been able to register with a local medical practice and are now receiving treatment. Both Mr and Ms Ward have clearly benefited from a more stable base and the support of close family members, as is acknowledged by the letters provided by the local medical practice. It has also allowed Mr Ward to travel more frequently for work. These personal circumstances, outlined in brief, are clearly important matters to which I attach substantial weight.

#### *Alternative sites*

11. The Council adopted its Site Allocations Document in September 2018. This allocated 20 gypsy and traveller pitches, mostly through the intensification of existing sites. That level of provision was based on the requirement set in the 2012 South Staffordshire Core Strategy, which in turn drew on the findings of an earlier needs assessment published in 2008. More recently however, a 'Black Country and South Staffordshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment' (GTTSAA) was published in 2017. This identified a significantly higher need of 87 additional pitches over the period 2016-36. It is common ground that the 2017 GTTSAA forms the most up-to-date assessment of need within the Borough.
12. The Council does not monitor the availability of the pitches identified in the Site Allocations Document. However, it stated that it is aware that many of these were put forward by gypsies/travellers with family members or other individuals in mind. The Statement of Common Ground also states that it is unclear whether any of those sites would be available for the appellant, and the Council did not seek to argue that alternative sites were currently available at the hearing. In any case, even if those sites were available, they would not provide the close family support that exists at the appeal site. Moreover, the appellant asserted that the majority of sites in South Staffordshire are occupied by English Gypsies, who do not allow Irish Travellers such as the appellant to reside there, due to cultural and other differences.
13. The Council is currently working on a Local Plan Review that will eventually replace both the adopted Core Strategy and Site Allocations Document. This will seek to identify the residual shortfall of pitches unless a neighbouring authority indicates a willingness to meet those needs in its area. However, the Local Plan Review is at an early stage of preparation and the Council do not expect to adopt it until late 2022. Any new allocations would also require an additional lead-in time in which to secure planning permission, discharge conditions, and be built out. Any availability of new gypsy/traveller sites is therefore somewhat off. At the hearing, it was also confirmed that most new gypsy and traveller sites identified in the Local Plan Review are likely to be on land currently in the Green Belt.

### *Intentional unauthorised development*

14. On 31 August 2015 the government introduced a policy statement on Green Belt protection and intentional unauthorised development. This states that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. In this case, the appellant has already occupied the appeal site without permission. This clearly represents intentional unauthorised development.

### Other Matters

15. The accessibility of the appeal site was discussed at the hearing. In this regard, it is located on the edge of Penkridge, which is identified in the South **Staffordshire Core Strategy as a 'Main Service Village'**. **Such settlements are at** the top of the settlement hierarchy in the Borough, which does not contain any larger towns. The appeal site is within walking distance of shops and facilities in Penkridge, and near to a train station with regular services to Birmingham, Stafford, and Wolverhampton. Penkridge also contains schools at both primary and secondary level, **doctors'** surgeries, and 2 small convenience stores. In view of the proximity of these facilities, I consider that the appeal site is in a relatively accessible location.
16. The safety of the access point onto Wolverhampton Road was also raised at the hearing. However, this access was approved in the previous appeal Decision and is currently used by all 5 pitches. This proposal would not result in any additional use of the access over and above that envisaged by the previous Inspector.

### Conditions

17. I have varied condition No 4 to include both Mr Ward and Ms Ward, and to remove Lucy Ward who has now left the site. This is necessary in view of the personal circumstances I have taken into account in varying this condition. I have also adjusted the time limit condition to state that permission will expire on 12 April 2020, which is the same end date as under permission Ref 15/00001/FUL.
18. With regard to the conditions not in dispute, Planning Practice Guidance states<sup>2</sup> that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. At the hearing, it was confirmed that all of these conditions remain relevant, and that the condition relating to amenity blocks has not been discharged. I have therefore imposed all of the undisputed conditions from permission Ref 15/00001/FUL.

### Overall Balance and Conclusion

19. The development is inappropriate development in Green Belt that requires the demonstration of very special circumstances. In addition, the intentional nature of the unauthorised development must be added to the harm due to inappropriateness. The proposal would not harm the openness of the Green Belt and this is a neutral consideration in the planning balance.

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<sup>2</sup> Paragraph: 031 Reference ID: 21a-031-20180615

20. Set against this are the weighty personal circumstances of both Mr Ward and Ms Ward. Moreover, given the lack of suitable alternatives, it is likely that they would have to resort to an unauthorised site or roadside living were the appeal to be dismissed. This would significantly undermine current and on-going health care arrangements and would limit the immediate family support that they (and particularly Ms Ward) currently benefit from. In addition, there is a significant unmet need for gypsy and traveller sites in the Borough more widely that is unlikely to be resolved in the near future. The appeal site is also in a relatively accessible location. Together, these considerations carry substantial weight in favour of the proposal.
21. PPTS advises that personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, the personal circumstances described above are unusual and both Mr and Ms Ward have benefitted significantly from a settled base and the support of immediate family members. In this case, I consider that these matters clearly outweigh the harm to the Green Belt on a temporary basis. I therefore conclude that very special circumstances exist to justify varying the disputed condition. This would not conflict with Policy H6 of the South Staffordshire Core Strategy (2012), PPTS, or guidance in the Framework relating to Green Belts.
22. For the reasons given above I conclude that the appeal should be allowed.

*Thomas Hatfield*

INSPECTOR

### Schedule of Conditions

- 1) The use hereby permitted shall be for a limited period being the period from the date of this decision until 12 April 2020. At the end of this period, the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
- 2) The development shall be carried out in accordance with the approved drawings: Plan 1 Revised Location Plan received on 13/01/2015; Plan 2 Revised Proposed Layout Plan received on 13/01/2015; Proposed Utility Blocks received on 05/01/15.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in the National Planning Policy for Traveller Sites.
- 4) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependents:  
John and Fanta McCarty  
Winnie, Philomena, Martin and Mary Ward  
Ann McDonagh
- 5) No more than 6 amenity blocks may be constructed and, prior to their construction, details of the external materials shall be submitted to and approved in writing by the local planning authority. The blocks shall be erected in accordance with the approved details.
- 6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 8) No commercial activities shall take place on the land, including the external storage of materials.
- 9) No more than 12 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 6 shall be static caravans or mobile homes) shall be stationed on the site at any time.

## APPEARANCES

### FOR THE APPELLANT:

Alison Heine	Planning Consultant
Martin Ward	Appellant
Mary Ward	

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Turner	Planning Consultant
Ed Fox	South Staffordshire Council

### INTERESTED PERSONS:

Cllr Victor Kelly

## DOCUMENTS SUBMITTED AT THE HEARING

- 1 The approved plans for permission Ref 15/00001/FUL.
- 2 Policy SAD4 of the South Staffordshire Site Allocations Document (2018).
- 3 **The Council's notification letters confirming the time and date of the hearing.**