



Appeal Decision

Hearing held on 21 March 2000

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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03 APR 2000

Appeals 1 & 2: T/APP/L2820/C/99/1033070-1033071

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeals are made by Mr and Mrs C Smith against the decision of Kettering Borough Council.
- The site is located on land at Park Lane, Braybrooke.
- The Council's reference is EN/99/0403.
- The notice was issued on 21 October 1999.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, change of use of the land from agricultural use, to a use for the siting and occupation of a caravan and the use of the land as a residential caravan site, and the carrying out of works as part of the unauthorised change of use.
- The requirements of the notice are:
 - 1) Cease the use of the land as a residential caravan site.
 - 2) Remove the caravan and all associated vehicles from the land.
 - 3) Remove from the land all machinery, equipment, and personal items brought onto the land in connection with the unauthorised use.
 - 4) Remove the deposited hard core and fencing from the land.
 - 5) Restore the land to its former condition by re-seeding it with grass.
- The time for compliance with the requirements is one day for steps (1) and (2), one month for steps (3) and (4), and six months for step (5).
- The appeals were made on the grounds set out in Section 174(2) (a), (f) and (g) of the 1990 Act.

Decision: It is directed that the enforcement notice shall be varied by substituting "six months" for "one day" as the time for compliance with steps (1) & (2); substituting "six months" for "one month" as the time for compliance with step (3); and substituting "seven months" as the time for compliance with steps (4) & (5) of the notice.

Subject thereto the appeals are dismissed, the notice upheld as varied, and planning permission refused on the applications deemed to have been made under S177(5) of the amended Act.

Appeal 3: T/APP/L2820/A/99/1032779

- 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 and Mrs C Smith against the decision of Kettering Borough Council.
- The site is located on land at Dingley Road, Braybrooke.
- The application (Ref: KE/99/1637), dated 20 September 1999, was refused on 19 October 1999.
- The development proposed is site for one gypsy family (mobile home).

Decision: The appeal is dismissed and planning permission for site for one gypsy family (mobile home) is refused.

Procedural matters

1. It was confirmed at the hearing that Park Lane and Dingley Road refer to the same road and the enforcement and Section 78 appeals relate to the same site.
2. The Council served a stop notice on 21 October 1999 requiring the use of the land for the siting and occupation of a caravan and use of the land as a residential caravan site to cease on 29 October 1999. A subsequent application by the Council for an injunction to restrain the appellants from using the land for the siting and occupation of a caravan and use of the land as a residential caravans site in breach of both the enforcement notice and the stop notice was dismissed by the County Court on 15 December 1999. The appellants gave an undertaking to the Court to proceed with their planning appeals with all reasonable diligence and not to use the site other than for single residential use by a static caravan or storage of plants nor to erect further structures on the site.

Ground (a) and Section 78 Appeal

Main Issues

3. The main issues are whether the development would harm unacceptably the visual amenity and character of the Special Landscape Area in which the site is situated, and if so, whether the special circumstances claimed by the appellants on medical grounds having regard to their status as gypsies, and the apparent lack of an alternative site, are sufficient reasons to override the planning policy objections to the development.

The Development Plan

4. The development plan for the area is the approved Northamptonshire County Structure Plan and the adopted Kettering Borough Local Plan. The County Structure Plan is under review and the Deposit Draft County Structure Plan 1996-2016 has been through the stage of an Examination in Public. Insofar as the relevant policies reflect current Government policy I accord them considerable weight.
5. The site lies in open countryside within the Braybrooke Special Landscape Area defined in the Local Plan. The relevant policies in the approved County Structure Plan, Policies RES 10 and ENV 4 seek to protect the open countryside and the special environmental qualities of areas designated as Special Landscape Areas. In the open countryside planning permission will not normally be given for residential development except where essential for the purposes of agriculture or forestry or the re-use of redundant buildings. In Special Landscape Areas planning permission will not normally be given for development except where it relates to the appropriate re-use of redundant buildings, it comprises agricultural, forestry, recreation or tourism development, or relates to towns and villages within these areas.
6. These policies are largely reflected in the adopted Local Plan where Policy 7 provides that planning permission for development within the open countryside will not be granted except where otherwise provided for in the plan; and Policy 9 provides that proposals for development which would have an adverse impact on the visual character and amenity of the Special Landscape Areas and the Special Landscape Area of Braybrooke will not be granted planning permission. These policies are largely reflected in the emerging County Structure Plan. In particular, Policy AR1 reaffirms the concept of Special Landscape Areas as

landscapes which are distinctive in terms of their special character and quality. These will be identified in local plans which will also set development control criteria which will seek to protect, conserve and enhance the special character and quality of each area. Planning permission will not be granted for development which will have an adverse effect on the special character and quality of the Special Landscape Area as defined in the Local Plan.

7. There was considerable discussion at the hearing on the origin of the definition of the Braybrooke Special Landscape Area, and its status having regard to the guidance in para 4.16 of PPG 7, which was published in February 1997 after the approval and adoption of the existing County Structure Plan and the Local Plan.
8. Para 40 of PPG 1 affirms the Government's commitment to a plan-led system of development control, a commitment re-emphasised in the recently up-dated version of PPG 12. This is given statutory force by Section 54A of the 1990 Act. Where an adopted or approved development plan contains relevant policies, Section 54A requires that an application for planning permission or an appeal shall be determined in accordance with the plan, unless material considerations indicate otherwise.
9. Although not specifically included as a Special Landscape Area in the existing County Structure Plan, the Braybrooke Special Landscape Area was proposed in the draft Local Plan. Following consultations with the County Council at the adoption stage of the Local Plan it was agreed that although accorded the same status as the Special Landscape Areas identified in the County Structure Plan it would be separately identified in the Local Plan as the Braybrooke Special Landscape Area. The allocation of the Braybrooke Special Landscape Area is therefore formally defined in the adopted Borough Local Plan with its accompanying policy.
10. As a material consideration I have considered the guidance in PPG 7. Para 4.16 refers to the multiplicity of local countryside designations introduced by local authorities over the years and advises that local planning authorities should only maintain or extend local countryside designations where there is good reason to believe that normal planning policies cannot provide the necessary protection. They should state in their development plans what it is that requires extra protection and why. When they review their development plans, they should rigorously consider the function and justification of existing local countryside designations and should ensure that they are soundly based on a formal assessment of the qualities of the countryside. Taking into account the guidance in PPG 12 I conclude that this process is a matter for the Borough Council to examine as part of its review of the Local Plan in the context of the emerging replacement County Structure Plan. In this respect I attach weight to Policy AR1 in the emerging review of the County Structure Plan as it largely reflects the guidance in para 4.16 of PPG 7 and proposes that the existing Special Landscape Areas will be considered against the criteria set out in the policy as part of the local plan reviews.
11. The parties do not dispute the status of the appellants as gypsies. The existing County Structure Plan contains a policy for the provision of a limited number of permanent gypsy caravan sites in the County. However, this predates the coming into force of the Criminal Justice and Public Order Act 1994 when the statutory duty of local authorities to provide accommodation on caravan sites for gypsies residing in or resorting to their area was repealed. The revised guidance on the planning aspects of gypsy caravan sites is contained in Circular 1/94. It requires local planning authorities to assess the need for gypsy accommodation in their areas and make suitable locational and/or criteria-based policies

against which to decide planning applications. Structure Plans should set out broad strategic policies and provide a general framework for site provision. Local plans should provide detailed policies. The Circular advises that with such policies in place in plans, there will be more certainty for all concerned when planning applications are determined by local planning authorities or appeals considered by the Secretary of State.

12. Reflecting the guidance in Circular 1/94, the Local Plan was reviewed to include Policy 119 (Housing: Gypsy Sites). This was formally adopted in 1997 following consultations with local gypsy families as part of the Council's Gypsy Review. This is a criteria-based policy and provides for planning permission to be granted for gypsy sites which cater for gypsies who conform to the definition of a gypsy residing in or resorting to the Borough. Criterion i. requires that the site should not have more than 10 caravans on any one site; criterion iii. requires that the site is not located in Special Landscape Areas; and criterion v. requires that the site, either on its own or in conjunction with other sites within the area, does not result in an overconcentration of gypsy sites. Also reflecting the guidance in Circular 1/94, the emerging review of the County Structure Plan includes Policy H10, a criteria based broad strategic policy which seeks to provide a general framework for the local planning authorities to consider the housing needs of gypsies when preparing local plans. Amongst the criteria included is the impact on local amenity and the environment. The guidance in Circular 1/94 is affirmed in the recently up-dated version of PPG 12.

Effect on Special Landscape Area

13. The appeal site forms part of a large open field on the east side of Park Lane (otherwise known as Dingley Road) just north of the main line railway which runs on an embankment nearby, a short distance north-east of the village of Braybrooke. The site has been divided off from the remainder of the field by open wood fencing that encloses an area of mainly hard core on which is stationed a mobile home, and by single wire fencing to the rear enclosing a grassed area of the field on which a small pony was grazing at the time of my visit. Plants were on display in storage containers on the hard core part of the site.
14. A strip of grassland separates the appeal site from a paddock to the south adjacent to the railway embankment where retrospective planning permission has recently been granted for the change of use and erection of paddock fencing and shelter for the keeping of horses. The permission is limited to a period of 10 years as the Council considered that temporary buildings should not be permitted on a permanent basis in the interests of visual amenity. On the north side of the appeal site is Park Hill Farm, which is primarily in residential use. Planning permission was granted in 1995 for the change of use of a former agricultural building at the Farm to the storing and valeting of motor vehicles. An unauthorised car sales use on the site has ceased. A short distance south of the railway embankment on land outside the Special Landscape Area is an authorised gypsy site at Braybrooke Crossroads, which has developed from an amalgamation of three gypsy caravan sites with associated brick built buildings. It is currently at capacity with 10 units in situ.
15. I consider that although not spectacular in quality, the Braybrooke Special Landscape Area is an attractive area of open countryside characterised by rolling fields which descend from the ridgelines on the A6 to the north and east of the site and form the countryside setting of the village of Braybrooke. The appeal site forms part of a large open agricultural field between the self-contained buildings of Park Hill Farm and the railway embankment. While the main line railway is in regular use with trains running along it, this is a transitory occurrence. The railway line and the embankment are well screened by trees and in my

view form an unobtrusive part of the landscape. Although screened to view from several points, the appeal site is clearly open to view from the wide open access on to the highway. I therefore conclude that to allow the change of use of this agricultural land to residential development, encompassing the mobile home with the accompanying paraphernalia of home living and ancillary items associated with the appellant's landscaping business and the extensive area of hard core, would appear as an intrusion into this large open agricultural field, harming unacceptably the visual amenity and open rural character of the Special Landscape Area contrary to the relevant planning policies in the development plan.

16. In addition, as the site is intended for occupation by a gypsy family, the development fails to meet criterion iii. of Policy 119 in the adopted Local Plan by virtue of being located within a Special Landscape Area. Insofar as criterion i. of Policy 119 is concerned I am satisfied that the site is intended solely for occupation by the appellants, Mr and Mrs Smith, and a condition restricting the use of the land to one mobile home only could in my view be imposed on any planning permission granted for the development. I am however concerned about criterion v. The site is located less than 250 metres from the three gypsy sites amalgamated at Braybrooke Crossroads and I note that there are other gypsy sites, authorised and unauthorised, in the general locality of Braybrooke. I therefore conclude that the granting of planning permission for the development would result in an over-concentration of gypsy sites in this area. The development therefore fails to meet criterion v. of Policy 119.

Special Circumstances

17. Representations were made that Mrs Smith suffers from arthritis and therefore amongst other requirements, needs to keep warm. The representations on health grounds were supported by case notes from Dr M F Vaal of the Rothwell & Desborough Health Care Group. It was contended that to have a static caravan on a permanent site enables Mrs Smith to have electric heating as required and thus facilitates a better standard of living than being on the road.
18. In accordance with the guidance in Circulars 1/94 and 18/94 and PPG 18 the Council made enquiries about the circumstances of the appellants before taking enforcement action and issuing a stop notice. The report by the Health Visitor from the Stockburn Memorial Home, who visited the site on 13 October 1999 on behalf of the Rockingham Forest NHS Trust, refers to Mrs Smith having arthritis but not registered with a doctor. The report states that she was urged to do so. The letters accompanying the case notes received from Mrs Smith's medical practitioner, Dr Vaal, make no reference to her medical condition or to required treatment.
19. I conclude that while it may well be advantageous for Mrs Smith to reside in a static caravan on a permanent site, I have no evidence that this is an essential requirement on health grounds. While therefore I note that the appellants wish to continue living in a caravan/mobile home but on a permanent site, I find no justification for this preference on medical grounds of sufficient strength to override the strong planning policy objections to the development on the appeals site.

Conclusions

20. Para 21 of Circular 1/94 advises that private applications should not be refused on the basis that public provision in the area is adequate or because alternative accommodation is available elsewhere on the authority's sites. The Council acknowledge that there is no

accommodation available on sites in the area at the present time. However, bearing in mind the guidance in para 20 of Circular 1/94 I note that the appellants did not consult the Council before buying the appeal site and moving on to it. Para 22 of the Circular states that as with any other planning applications, proposals for gypsy sites should continue to be determined solely in relation to land-use factors. Whilst gypsy sites might be acceptable in some rural locations, the granting of permission must be consistent with agricultural, countryside and environmental policies amongst others. Reflecting this approach para 13 of the Circular states that as a rule it will not be appropriate to make provision for gypsy sites in areas of open land where development is severely restricted, for example, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, and other protected areas. The strong planning policy objections to the development are consistent with this advice.

21. However, bearing in mind the advice in Circular 1/94, I consider that it is a matter of general concern that if the appeals are dismissed and the enforcement notice takes effect, the appellants will be required to move off the site and seek accommodation elsewhere. As gypsy appellants they have an important right, protected by the European Convention on Human Rights, to respect for their home and family life. However, while it would appear that there is no accommodation available on gypsy sites in the area at the present time, this situation could change over time. I have considered this issue further under ground (g) below. Weighing all the matters in the balance I conclude for the above reasons that the special circumstances claimed by the appellants are not sufficient to outweigh the strong planning policy objections to the development which I have considered on its merits.
22. I have considered whether the planning objections could be overcome by the imposition of conditions. However, because of the nature of the objections I do not consider that the problems identified could be overcome in this way. For the same reasons and bearing in mind the advice in Circular 11/95, I do not consider that granting a temporary and/or personal planning permission would be appropriate in this case. The appeals on ground (a) and under Section 78 therefore fail and planning permission will not be granted for the development.

Ground (f)

23. The appellants contend that as the land is currently identified as agricultural land, the hard core and fencing on the site is permitted development as it is allowed for agricultural purposes. Therefore it is excessive and inappropriate for the Council to demand its removal from the site. It is therefore not necessary for the appellants to restore the land to its former condition by reseedling the land to grass.
24. The hard core was laid and the fencing erected to facilitate the change of use of the land from its previous lawful use for agriculture to an unlawful use for the siting and occupation of a caravan and the use of the land as a residential caravan site. No claim has been made that the land is being used for agricultural purposes. I therefore conclude that the hard core and the fencing do not benefit from permitted development rights relating to agriculture under the terms of the General Permitted Development Order 1995. Having regard to my conclusions on the impact of the development on the visual amenity and character of the Special Landscape Area, I conclude that the requirements of the notice are reasonable and necessary to remedy the injury to amenity caused by the breach of planning control. The appeals on ground (f) therefore fail.

Ground (g)

25. The appellants state that their attempts to find an available authorised site in the Borough has been fruitless and there are no vacancies within the Borough. They also sold their mobile caravan and bought a static caravan and invested the majority of their savings in buying the land. In order to move away from the site it would be impossible for them to buy a mobile caravan and move off the site within one day. To move off the site they would have to purchase a mobile caravan. This would require the disposal of the site for them to purchase a caravan. A period of six months is therefore requested.
26. The notice requires the use of the land as a residential caravan site to cease and the caravan and all associated vehicles to be removed in one day (steps (1) & (2)). All machinery, equipment and personal items and the deposited hard core and fencing are to be removed in one month (steps (3) & (4)). The land is to be restored to its former condition by reseedling it with grass in six months (step (5)).
27. Taking into account my concerns expressed in para 21 above and the need for the appellants to search for an alternative site and/or purchase a mobile caravan, I consider that a reasonable time for compliance with the requirements of the notice would be six months for steps (1), (2) & (3); and seven months for steps (4) & (5). To this extent the appeals on ground (g) succeed and I will vary the notice accordingly.

Conclusions

28. I have considered all the other matters raised at the hearing and in writing including the representations made by Phil Sawford MP and the Northamptonshire Branch of the Council for the Protection of Rural England (CPRE), but I find nothing of sufficient importance to outweigh the considerations that have led me to my conclusions on these appeals. For the reasons given above I conclude that the appeals should not, on balance, succeed and I shall exercise the powers transferred to me accordingly.

Rights of Appeal

29. Particulars of the rights of appeal to the High Court are enclosed for those concerned.

E. C. Anne Parkhill

Miss E C A Parkhill

APPEAL DECISION

APPEARANCES

FOR THE APPELLANTS:

Mr B M Waine DipTP MRTPI CMS	Town Planner, Shoosmiths Solicitors, The Lakes, Northampton.
Mr J Smith	Appellant.
Mrs C Smith	Appellant.
Mr A Miles	Travellers Liaison Worker, CVO, Northamptonshire.

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Shields	Senior Monitoring & Enforcement Officer, Kettering Borough Council.
Mr A Cornock	Planning Policy & Enabling Manager, Kettering Borough Council.

INTERESTED PERSONS:

Mr C Ford	Chairman, Braybrooke Parish Council, 15 Latymer Close, Braybrooke.
Mr K Jack	Borough Councillor, Welland Ward, c/o Kettering Borough Council.
Mrs K Downs	The Hawthorns, Park Lane, Braybrooke.
Mr M Downs	The Hawthorns, Park Lane, Braybrooke.

DOCUMENTS

Document	1	List of persons present at the hearing.
Document	2	Letter dated 8 March 2000 from M J Sides, Braybrooke Lodge, Park Lane, Braybrooke, Mkt Harborough.
Document	3	Notice of Approval dated 7 March 2000 for change of use and erection of paddock fencing and shelter for the keeping of horses, land off Park Lane, Braybrooke (App No KE/99/0731).
Document	4	Notice of Approval dated 12 December 1995 for change of use: Redundant former agricultural storage shed to storing and valeting of motor vehicles, storage shed at Park Hill Farm, Park Lane, Braybrooke.
Document	5	Extract from Kettering Borough Local Plan: Policy 29. Environment: The Railway Environment.
Document	6	Extract from Deposit Draft Northamptonshire County Structure Plan 1996-2016: Policy H10 Gypsy Accommodation.
Document	7	Extract from Deposit Draft Northamptonshire County Structure Plan 1996-2016: Chapter 14. Environmental Assets and Natural Resources.
Document	8	Letters dated 28 February 2000 from Dr M F Vaal, Rothwell & Desborough Health Care Group re Christine Smith.
Document	9	Health Assessment of Mr and Mrs Smith by R Doggett, Health Visitor following visit on 13 October 1999.
Document	10	Schedule and location plan of gypsy sites in Kettering Borough.

PLANS

Plan	A	Plan accompanying enforcement notice.
Plan	B	Plan accompanying planning application.
Plan	C	Plan showing the appeals site and nearby land uses.