
Appeal Decisions

Hearing held on 30 March 2022 and 23 May 2023

Site visit made on 31 March 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21/08/2023

Appeal A Ref: APP/L2820/C/20/3262337

Plot 24B Greenfields, Braybrooke Road, Braybrooke, LE16 8LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Patrick Gavin against an enforcement notice issued by Kettering Borough Council.
 - The enforcement notice, numbered ENFO/2020/00013, was issued on 2 October 2020.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission granted on 13 February 2017 on appeal ref APP/L2820/W/15/3139293 (local planning authority ref KET/2015/0500).
 - The condition in question is No 1 of the planning permission which states that:

“The development hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place in accordance with a restoration scheme submitted to the local planning authority within 28 days of the date of this decision and subsequently approved in writing.”
 - The actual wording of the notice concerning the matters which appear to constitute a breach of planning control is reproduced in Appendix 1 to this decision. However, in short, it alleges that condition No 1 has not been complied with in that the use of the land as a residential caravan site has not ceased and the land has not been restored in accordance with the approved restoration scheme.
 - The requirements of the notice are:
 1. In accordance with condition no.1 cease the use of the land as a residential caravan site; and
 2. In accordance with the approved restoration scheme AOC/0500/1501 remove from the land:
 1. all hardcore/other stone or base material and all concrete bases laid;
 2. (resulting debris to be properly disposed of to an authorised waste site);
 3. all domestic paraphernalia/ or other objects,
 4. all caravans/vehicles;
 5. all structures including the amenity building, the lights, the Klargestor or other apparatus including fixings and supporting bases, pipes or wires etc;
 6. all fencing shall have been removed from the land;
 7. the site to be returned to its natural state as a grassed field, ie bare ground to be re seeded with grass or new turf once the ground has been cleared.
 - The period for compliance with the requirements is 5 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/L2820/W/20/3262332

Plot 24B Greenfields, Braybrooke Road, Market Harborough, LE16 8LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Patrick Gavin against Kettering Borough Council.
 - The application Ref KET/2020/0373, is dated 9 June 2020.
 - The development proposed is the change of use of land to use as a residential caravan site for one gypsy family with two caravans, including the laying of hardstanding and erection of an amenity building without complying with condition 1 of planning permission granted on appeal on 13th February 2017 under reference APP/L2820/W/15/3139293.¹
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - (a) deleting the postcode LE16 9LX wherever it appears and substituting LE16 8LX;
 - (b) by deleting the first 5 lines of section 3 beginning, "On the 13th February" and ending "in that:", and substituting:

""On 13 February 2017 temporary planning permission was granted on appeal Ref APP/L2080/W/15/3139293 (local planning authority reference KET/2015/0500) for the material change of use to a residential caravan site for one gypsy family with two caravans, including the laying of hard standing and erection of an amenity building. The development does not accord with that planning permission and condition No.1, and the restoration scheme approved in accordance with that condition under reference AOC/0500/1501, in that:"; and
 - (c) by deleting the notice plan and substituting the plan attached at Appendix 2 to this decision.
2. Subject to the corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Preliminary and Procedural Matters

4. These appeals were submitted in October 2020 but have been dogged by delay resulting from a series of unfortunate events. They were deemed suitable for hearing in person, rather than virtually, and so the Covid 19 pandemic delayed opening until 30 March 2022. In the event two key members of the Council's team became unwell shortly beforehand, meaning little progress could be made on that day. I formally opened the hearing in a virtual format on 30 March, but merely agreed a resumption date and arranged the accompanied site inspection. I conducted that inspection on 31 March 2022, having viewed the area unaccompanied on 29 March.

¹ This is taken from the application form rather than the appeal form which refers to "the removal of condition 1."

5. Resumption was fixed for 20 July 2022, being the first convenient date for all witnesses, but further illness meant this was postponed until 16 December 2022. Then, shortly before that date, a key member of the Council's team had an accident and needed emergency surgery. The hearing was therefore postponed again to the next available date, being 23 May 2023.
6. Although the enforcement notice was issued by Kettering Borough Council, on 1 April 2021, that became part of a new unitary authority, namely North Northamptonshire Council. This had implications for the way in which the need and supply of gypsy and traveller sites was assessed, after the submission of initial statements.
7. I was aware of a change in the appellant's circumstances following a conviction in December 2022 but, until the hearing, I had very little information regarding the current circumstances of his wife and children. A signed statement from Mrs Gavin was provided on 23 May 2023 and she attended and spoke at the hearing. I also asked the parties to consider the implications of *Lisa Smith v Secretary of State* [2022] EWCA Civ 1391 and my own decision Ref APP/L2820/C/19/3240989.

The Notice

8. Although the appellant cited ground (b), there is no dispute that the matters alleged in the notice have occurred and therefore this ground cannot succeed. The appellant merely used it to draw attention to errors in the notice, which he accepted were capable of correction without injustice.
9. Those errors in the notice are as follows: (i) the postcode of the site is stated as LE19 9LX, when it is in fact LE16 8LX (ii) it states the date of the planning permission as 13 February 2015, when it was in fact 13 February 2017; (iii) it cites local planning authority reference KET/2020/0500, when it should be KET/2015/0500; and (iv) the notice plan shows a larger area edged red than that covered by the planning permission. I also noted an additional, minor typographical error and, in my Pre-hearing Note of 8 March 2022, I suggested a corrected form of words for the allegation. The parties agreed this along with a substitute notice plan. I confirmed all this in my Resumption Note of 18 May 2023 and I will therefore correct the notice, being satisfied no injustice will result.

APPEAL A

Ground (b)

10. For the reasons already given, ground (b) fails.

Ground (a)/the deemed application for planning permission

11. The deemed application is for the material change of use of land to use as a residential caravan site for one gypsy family with two caravans, including the laying of hardstanding and erection of amenity building, without complying with condition 1 of the planning permission granted on appeal on 13 February 2017 under reference APP/L280/W/15/3139293 (the 2017 appeal decision).

Main Issues

12. The main issue is whether condition 1 is necessary and reasonable, having regard to:

- the effect of the development on the character and appearance of the landscape;
- whether occupiers of the site would have adequate access to services and facilities, having regard to Planning Policy for Traveller Sites;
- if harm is identified, whether that is outweighed by other considerations, such as: the general need for gypsy and traveller sites; the supply of deliverable sites; the availability of suitable alternative sites; any failure of policy; animal welfare; the personal needs, circumstances and accommodation options of the appellant and his family, all in the context of Human Rights implications, the best interests of the children and the Public Sector Equality Duty.

13. These matters will be considered in the light of any material changes in circumstances that have occurred since temporary planning permission was granted on appeal on 13 February 2017.

The character and appearance of the landscape

14. The overall Greenfields site comprises two fields covering an area of about 15 hectares. In or around 2000 this was divided into approximately 50 plots for sale, though there have been subsequent subdivisions and amalgamations. The two fields are separated by a hedgerow and gate, and the appeal site, which has an area of some 0.07 hectares, is one of the plots in the northern field. The appeal site boundaries are marked by a mixture of fencing and conifer hedging, and access is via an existing track off Braybrooke Road. To the east of the appeal site is a larger enclosure surrounded by a higher conifer hedge.
15. Temporary planning permissions for residential gypsy and traveller pitches were previously granted at Greenfields. These have expired but some plots remain developed. The Council sets out the history of enforcement action in its rebuttal statement and I understand there are no extant planning permissions for plots on Greenfields. The access track is the subject of a separate enforcement notice, which has taken effect, but the Council awaits the outcome of this appeal before considering further action. Further to the south, on the other side of Braybrook Road, lies the Golden Stables Gypsy site, which has the benefit of planning permission for 9 caravans, of which up to 7 may be static caravans.
16. The site is in the open countryside, outside any settlement boundary. As the crow flies, it is approximately 1.3km from the nearest settlement, namely the village of Braybrooke.
17. Policy 3 of the North Northamptonshire Joint Core Strategy 2011 – 2031, adopted July 2016 (JCS) requires development to be located and designed in a way that is sensitive to its landscape setting, retaining and where possible, enhancing the distinctive qualities of the landscape area which it would affect. Among other things, Policy 3 also states that development should conserve and where possible, enhance the character and qualities of the landscape through appropriate design and management.
18. JCS Policy 31 specifically concerns gypsy and traveller sites. It says sufficient sites will be identified in line with a robust evidence base, but all new allocations and applications should satisfy specified criteria. These include criterion (h), which is that development should not have a significant adverse

impact on the character of the landscape and should take account of the Landscape Character Assessment of the area.

19. Paragraph 174 of the National Planning Policy Framework (the Framework) is also relevant. It states at sub paragraph (b) that planning policies and decisions should recognise the intrinsic character and beauty of the countryside. Sub paragraph (a) says they should contribute to and enhance the natural and local environment by protecting and enhancing, among other things, valued landscapes, in a manner commensurate with their statutory status or identified quality in the development plan.
20. Planning Policy for Traveller Sites (PPTS) indicates that the government's aims include increasing the number of traveller sites in appropriate locations, but that local planning authorities should have due regard to the protection of local amenity and the local environment. PPTS also requires regard for the Framework and that new traveller site development in the open countryside away from existing settlements or outside areas allocated in the development plan should be very strictly limited. Furthermore, it provides that sites should be well planned or soft landscaped to positively enhance the environment and increase openness.
21. The area is not nationally or locally designated. Indeed, the JCS does not include any local landscape designations. However, the appeal site is located within the Northamptonshire Vales National Character Area, identified as an area of gently rolling, limestone hills and valleys capped by ironstone-bearing sandstone and clay Lias, with many long, low ridgelines. More locally, the Northamptonshire Current Landscape Character Assessment places the site within the Geddington Chase Character Area, which is associated with the Wooded Clay Plateau Landscape Type. This is characterised by extensive views, a sense of exposure and a deeply rural quality. Indeed, the published strategy for this landscape says the intrinsic sense of remoteness and tranquillity is of particular significance.
22. The site itself is located on an exposed upper slope of a valley which has pasture and arable fields, hedgerows, scrubland and woodland. There are long views of it from distant fields and open spaces, especially on the facing valley slopes and ridge. For the purposes of the 2017 appeal, the Council commissioned Mr Dudley, a landscape architect, to prepare a Landscape and Visual Impact Assessment (LVIA). He gave evidence in this appeal on the basis of the LVIA.
23. From the site, electricity pylons can be seen to the west and south, and beyond those, some 500m to the west of the appeal site, lies Wooden House Farm and Kennels. Ritches Lodge Farm is located about 250m to the northeast of the site, and the main Midland railway line runs some 1.6km to the north, beyond Desborough Road. The Golden Stables gypsy site to the south is separated from the appeal site by some 450m, the intervening Braybrooke Road and 2 hedgerows.
24. Given these factors and the local topography, the LVIA concludes there is no landscape or visual relationship between the appeal site and the Golden Stables site, and I am satisfied they are not appreciated in the same context. Whilst the pylons and railway are detractors, neither these features nor the nearest farm buildings or the Golden Stables site prevent the area being generally representative of the landscape type described above.

25. The LVIA concluded that the development of the appeal site would have a major/moderate adverse impact on 3 key landscape receptors of the site and its setting. These were the exposed location on the upper slopes of a pastoral valley; the small, improved and semi-improved pastoral fields with well-managed hedgerows; and the deeply rural landscape quality with settlement concentrated on lower valley slopes.
26. In terms of visual receptors, the LVIA also identified a major adverse impact on users of public footpath GC7, which runs from east to west, to the south of the site, and on the residents of Ritches Lodge Farm. It found a major/moderate adverse impact on the users of the Midshires Way, Macmillan Way and Jurassic Way long distance recreational routes to the north.
27. Taking account of other considerations, the Inspector granted temporary planning permission in 2017. Nevertheless, having regard to the LVIA, he concluded that the change of use to a gypsy site would result in the introduction of alien features into this part of the landscape which would harm the landscape character of the area. He said they would be visually intrusive, especially given the exposed nature of the appeal site and the footpath to the south, which runs from east to west, and from which there would be prominent views of the site. I saw this for myself and reach the same conclusion. Although I was unable to view from Ritches Lodge Farm, I went to all the other vantage points referred to above and in the LVIA. Views from footpath GC7 are the most significant, given the distances involved with the others, but the site is anomalous in some long views.
28. The appellant has not submitted evidence from a landscape architect and Mr Green accepts that the development causes significant harm to "the appearance" of the area. However, he notes that the area around the appeal site is also characterised by shrubs and bushes of various sizes and suggests the harm could be reduced to a moderate level with appropriate landscaping.
29. The 2017 appeal Inspector acknowledged that planted hedgerows could screen the development in the longer term. However, he noted that whilst hedgerows are a feature of the landscape, this is mainly in the context of enclosing larger areas. By contrast, landscaping to enclose a developed plot would appear artificial and out of place, especially with a profusion of evergreen species to ensure winter screening. Planting had become more established by the time of my visit, but I share the previous Inspector's view that established planting cannot overcome the significant harm. The larger, hedged compound to the east was already a feature but does not set a precedent which should be followed at the appeal site, which is a much smaller enclosure anyway.
30. As it has a significant adverse impact on the character and appearance of the landscape, the development conflicts with JCS Policies 3 and 31(h) in any event. However, the 2017 appeal Inspector also found that the site caused harm to a valued landscape, in conflict with the Framework.
31. My attention has been drawn to *Stroud DC v SSCLG & Gladman Developments Ltd* [2015] EWHC 448 (Admin) and *Forest of Dean DC v SSCLG* [2016] EWHC 2429 (Admin). Indeed, I considered these authorities at some length in my decision Ref APP/L2820/C/19/3240989 & /W/20/3249281 (the Cransley Road appeal), to which reference has been made in this appeal. I am satisfied that a landscape does not have to be nationally or locally designated to be a valued landscape for the purposes of the Framework. It is a matter of planning

- judgement and depends on whether the area is more than mere countryside, having physical attributes which take it out of the ordinary.
32. The appellant refers to another appeal decision Ref APP/L280/W/16/3144399 concerning other plots in the southern part of Greenfields. Despite finding significant detriment to the character and appearance of the surrounding area, contrary to JCS Policies 3 and 31(h), the Inspector in that appeal briefly concluded that the sites were not in a valued landscape, because of “several discordant elements.”
33. However, the current appeal site is in a more prominent and remote position on the convex valley side, about 215m north-east of the plots considered in appeal Ref 3144399. The site before me is more disassociated from the road to the south, as well as the Golden Stables site to which I have referred. It is in a spot where the deeply rural quality of the landscape identified in the LVIA is marked. There are relatively few detractors, and the topography allows for long views over the remote, tranquil landscape, which is beyond the ordinary. I judge the site to be within a valued landscape and this is consistent with the conclusion of the 2017 appeal Inspector who considered the very same site.
34. As the development has a significant adverse impact on character and appearance, it clearly does not protect or enhance this valued landscape. This conflict with the Framework exacerbates that with JCS Policies 3 and 31(h).
35. The appellant contends that JCS Policy 31 is inconsistent with the Framework because criterion (a) requires sites to be closely linked to an existing settlement with an adequate range of services and facilities. However, ‘closely linked’ is not defined in the policy and I am not persuaded this necessarily precludes rural sites when the Framework does not. Furthermore, it is not incompatible with PPTS, which seeks at paragraph 25 to very strictly limit new traveller site development in open countryside that is away from existing settlements.
36. My attention is drawn to appeal Ref APP/L2820/W/20/3247096 where the Inspector said it is reasonable to consider the term “closely linked” with reference to that paragraph 25 and I adopted that approach in my decision on the Cransley Road appeal, mentioned above. In any event, there is no suggestion that criterion (h) of Policy 31, which is key to the issue of character and appearance, is not consistent with the Framework.
37. The appellant also contends that JCS Policy 3 is inconsistent with the Framework because it seeks conservation and, where possible, enhancement, whereas the Framework only requires the protection *and* enhancement of valued landscapes. However, the words “where possible” are important. There is no blanket requirement to enhance and, in any event, I have found that this site is within a valued landscape.
38. Local policies need not precisely reproduce the wording of national policies. I do not find Policies 31 and 3 to be inconsistent with the Framework to any significant degree, such that their weight should be reduced.
39. For all the reasons given, I conclude on this issue that the development causes significant harm to the character and appearance of the landscape. It therefore conflicts with JCS Policies 3 and 31(h), which the parties agreed are the most

relevant policies. As the site is within a valued landscape, the development further conflicts with the Framework. This harm carries substantial weight.

Access to services and facilities

40. On the appellant's and Council's evidence respectively, the appeal site is 1.93km or 2.4km from Braybrooke by road. In any event, the roads are narrow, unlit and without footways, such that walking will not always be attractive, especially with children, after dark, or in bad weather. Braybrooke is about 1.6km from the site by the footpath across the fields. However, though good for a fit person's recreational walk, given the nature of the terrain and some styles, that path is unlikely to be used for regular routine access to Braybrooke, even without cattle in the fields, and certainly not after dark. In any event, Braybrooke's facilities are limited to a village hall, church and public house.
41. For the majority of day-to-day needs, anyone living at the appeal site would need to travel at least to Desborough, where there are shops, primary schools, a medical centre, library and leisure centre. By road, that is about 4km from the site on the Council's evidence or 3.24km according to the appellant. Again, the narrow unlit roads and lack of footways mean walking is unlikely. Whilst there is an hourly bus service from Braybrooke from Monday to Saturday, Braybrooke is not readily accessible on foot, for reasons already given. Moreover, the Council says the bus stop itself is actually 2.7km from the appeal site by road and 1.9km via the footpath across the fields. Cycling to Desborough would be an option, but not attractive for all trips, for example with small children or with heavy shopping.
42. Occupants of the site are likely to be largely reliant on private motor transport. Indeed, the appellant's wife said she would not be able to move back onto the site until she passed her driving test, as she would need a car.
43. I have already referred to JCS Policy 31(a) and said it is reasonable to consider the term "closely linked" in that policy with reference to the requirement in PPTS paragraph 25 to very strictly limit new traveller site development in open countryside that is away from existing settlements. The issue is not simply one of distance. However, the combination of the distances in this case and the difficulties in achieving access by means other than private motor transport satisfies me that the site is away from existing settlements. It is not closely linked to an existing settlement with an adequate range of services and facilities. It is clearly within open countryside and there is conflict with JCS Policy 31(a) and PPTS paragraph 25.
44. That said, it is implicit in paragraphs 14 and 25 of PPTS that traveller sites may be located in rural areas, and this will lessen opportunities for sustainable travel. Moreover, the intended site occupants will, by definition, travel with caravans. Paragraph 13 of PPTS sets out criteria for generally assessing the sustainability of traveller sites. In that regard, whilst the location of the site away from a settlement is unlikely to promote an integrated co-existence with the local community, it is not in an area at high risk of flooding, or where local environmental quality is poor. There is also no evidence that undue pressure would be placed on local infrastructure and services as a result of this development alone. Furthermore, there are benefits associated with a settled base over a transient existence, in particular, easier access to health services

and education and reducing the need for long-distance travel and travel to work journeys.

45. In all the circumstances I attach limited weight to the harm arising from the lack of close links to services and facilities.

Other considerations

The general need for and supply of gypsy and traveller sites

46. No new gypsy and traveller sites are allocated in the current development plan. Paragraph 74 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement. However, footnote 38 indicates that, "For the avoidance of doubt, a five year supply of deliverable sites for travellers - as defined in Annex 1 to Planning Policy for Traveller Sites - should be assessed separately, in line with the policy in that document."
47. PPTS provides that local planning authorities should make their own assessment of need for the purposes of planning. They should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets for gypsies and travellers who meet the definition in Annex 1 of PPTS.
48. Although the case of *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391 did not involve a direct challenge to the policy in PPTS, the Court of Appeal held that the definition of gypsies and travellers in Annex 1 was discriminatory in excluding those who have ceased to travel permanently. This was more likely to affect the elderly, disabled, and women, particularly those from single families, without family connections and this discrimination had no legitimate aim. Assessing need solely on the basis of people who meet the definition in Annex 1 is likely to be discriminatory. People who have ceased to travel on grounds only of their own or their family's or dependants' educational or health needs or old age temporarily or permanently, should not be excluded when assessing need.
49. When granting temporary planning permission in the 2017 appeal decision, the Inspector concluded that there was an unmet need and an absence of a 5-year supply for gypsies and travellers in the former borough of Kettering. He attached significant weight to this, by reason of the extent of identified deficiencies.
50. Similarly, in the Cransley Road appeal, I was not satisfied on the balance of probability that the Council could demonstrate it had a 5-year supply of deliverable sites for travellers, as defined in Annex 1 to PPTS. Notwithstanding the creation of the new unitary authority, the parties accepted, in that case, that need and supply should be assessed in relation to the Kettering Borough Council area. However, I now need to consider the whole North Northamptonshire area.
51. I had sought to restrict the submission of new evidence on this issue when the hearing was postponed again in December 2022, given the extensive delays up to that point. In the event, I was presented with a considerable amount of new evidence at the start of the resumed hearing on 23 May 2023. This comprised

the parties' evidence² on need and supply relating to the entire North Northamptonshire area, which had been submitted for another appeal Ref APP/M2840/W/22/3307410 concerning a site at Thrapston Road, Woodford (the Thrapston Road appeal). The hearing of that appeal was scheduled to commence the day after mine. It would have made no sense to have two Inspectors considering the same issue on consecutive days but based on different evidence. I therefore accepted the new evidence and did the best I could to explore it on the day.

52. The Inspector in the Thrapston Road appeal issued her decision more quickly, namely on 21 July 2023.³ I had asked the parties to inform me when that decision was issued and to submit a copy without comment. I have had no discussion with the Inspector who heard that appeal, but her decision is clearly an important material consideration and consistency is desirable.
53. In the Thrapston Road appeal, the Inspector noted that whilst the North Northamptonshire Gypsy and Traveller Accommodation Assessment (GTAA), published in March 2019, represents the most up to date reference when assessing need, it is quite old, with GTAA's having a "shelf life of perhaps 3-5 years." She also found, based on the same material that is now before me, that the appellant had "provided evidence to suggest that the Council's baseline figure is too low and that the difference between the parties is based on calculations of concealed households, those living in bricks and mortar and new household formation."
54. The Thrapston Road Inspector also noted that several sites had been discounted from the Council's supply in previous appeals, including my own decision concerning the Cransley Road site. I had focussed partly on conditions attached to existing planning permissions restricting occupation to gypsies and travellers as then defined. Some of my conclusions in that appeal about whether certain sites would be available for gypsies and travellers who meet the August 2015 PPTS definition would now be affected by the *Smith* judgment referred to above. However, I remain concerned about sites which will only be available if successful enforcement action is taken. I am also concerned about the site at Stoke Albany Road, where 10 pitches were permitted in 2009, but no progress has been made and compulsory purchase proceedings may be required to bring it forward.
55. In any event, like the Thrapston Road appeal Inspector, I note that, following *Smith*, households who have been discounted in the 2019 GTAA as not meeting the definition under Annex 1 of PPTS, may now fall to be considered as having a need. I heard no clear or convincing evidence that the number of such households would necessarily be small.
56. In all the circumstances, I cannot be satisfied on the balance of probability that the Council can demonstrate an up to date 5-year supply of deliverable sites. Whilst I heard detailed criticism from the parties about each other's approach to these issues, I see no reason to reach a different conclusion to that arrived at by the Thrapston Road Inspector on the same written evidence, namely that current need is likely to be greater than that anticipated in the 2019 GTAA. I am not satisfied on the balance of probability that the Council can demonstrate

² HD15, 16 and 18 – 21.

³ HD24.

it has a 5-year supply of deliverable sites for gypsies and travellers, having regard to the *Smith* judgment.

The availability of suitable alternative sites

57. There is no suggestion that there are any available, suitable, alternative sites. The appellant and his family are not currently living on the appeal site, but I will discuss this later.

Failure of policy

58. In my Cransley Road appeal decision last year, I found that the Council could not demonstrate a 5-year supply, albeit specifically for the former Kettering borough, and there was an on-going policy failure. The evidence before me then was that adoption of a new Traveller Site Allocations Development Plan Document was not anticipated until December 2024. This has now been revised to February 2025. There is an on-going failure of policy and, there was no dispute that, even after adoption of the Development Plan Document, it could take 12 to 18 months for sites to come forward.
59. As a matter of government policy, PPTS indicates only that the inability to demonstrate a 5-year supply should be a significant material consideration when assessing an application for temporary planning permission. Ultimately, weight is a matter for the decision maker and I find that, when taken together with the failure of policy, the inability to demonstrate a 5-year supply and the lack of available alternatives carries significant weight in favour of the appeal, even when considering a grant of permanent permission.

Animal welfare

60. The appellant's statement of case indicated that the family's culture is closely intertwined with their dogs and horses. It was said that horses were kept at the site, and it was important for the appellant to be close to his animals for care, supervision and security purposes. No details of the animals have been provided, nor any real explanation of why living on site would significantly improve their welfare. The appellant suggested that limited weight should be attached to that factor in any event but, given that he and his family are not living on the site, which I discuss next, I attach no significant weight to the issue of animal welfare in this case.

The personal needs, circumstances and accommodation options of the appellant and his family

61. The appellant's circumstances have changed significantly since temporary planning permission was granted through the 2017 appeal decision. At that time, the appellant, his wife, and son (aged 18 months) were living at the appeal site.
62. In her statement⁴, the appellant's wife, who I will refer to as AG (as per that statement) said that they left the site in December 2020, mainly because of problems with the boiler in their hired mobile home, while she was heavily pregnant. AG's statement says they moved to sites in Morecombe and then Lutterworth, before moving back to the appeal site in March/April 2021. However, the Council says that, during numerous visits, officers have not seen

⁴ HD17.

the appellant on the site since October/November 2020 and they have never seen his wife and children there during the period 2019 to date. When I visited the site on 31 March 2022, I saw no compelling signs of occupation and I find the history of occupation somewhat unclear.

63. In any event, in December 2022, the appellant was sentenced to 5 years and 1 month in prison. AG attended the resumed hearing and explained that, before the appellant's arrest, they had been back together, after a period of separation. She thought he could be released by February 2026 but was unsure. AG explained that she and her 4 children, aged 8, 5, 3 and 2 were living with her parents in their 2-bedroom house in Leicester, and had been doing so for 4 months.
64. Whilst AG wants to move back to the appeal site, she said she would not be able to do so until she can drive, though she is now having lessons. Two of the children are of school age and AG is currently home schooling them though, for a time, the eldest previously attended school in Rothwell, south of Desborough. If planning permission is granted and she moves back to the site, AG says she would enrol the children in school. They are all currently registered at Rothwell Medical centre.
65. The appellant would not be able to live at the appeal site for some years. Whilst AG has lived in bricks and mortar accommodation for periods in her life, she says she was brought up in the travelling community and, based on her evidence at the hearing, the Council said it would not dispute that she is Gypsy and Traveller. I accept that.
66. AG's circumstances are not ideal. She is in cramped, culturally inappropriate accommodation, and says she has nowhere else to go. However, it does not appear that the appeal site has consistently been a settled base for AG and the children in recent years. Dismissal of the appeal would prevent her and the children establishing a settled base at the appeal site at some future point, but it would not displace them from it or force them into a roadside existence now. It would also remove the prospect of a settled base for the appellant on his eventual release, on land which he owns, and make it more difficult for the family to reunite and follow the Gypsy way of life.
67. Dismissal of the appeal would therefore result in an interference with the appellant and his family's right to respect for their private and family life, their home and correspondence under Article 8 of the European Convention on Human Rights. This was incorporated into UK law through the Human Rights Act 1998. However, in this case, the interference would be to a much lesser extent than if they were currently living on the appeal site. It would also be for a legitimate aim, namely safeguarding the countryside landscape.
68. Having regard to Article 3(1) of the United Nations Convention on the Rights of the Child, the best interests of the children in this case must also be a primary consideration, such that no other consideration is inherently more important. It is likely to be in their best interests to have the prospect of a settled base at which they could follow the Gypsy way of life with their parents. However, there is no immediate prospect of this; the future is uncertain for all the reasons covered above, and whilst their current circumstances are difficult, the children do at least have the benefit of extended family support in Leicester.

69. As noted in the 2017 appeal decision, the family are persons with a protected characteristic under the Equality Act 2010. In this regard, I also note the information in AG's statement concerning the appellant's health, which is likely to constitute a disability. I must have due regard to the aims of the Public Sector Equality Duty (PSED), namely, to eliminate discrimination, harassment, victimisation; advance equality of opportunity; and foster good relations between those who share a relevant protected characteristic and those who do not.
70. Modest weight was attached to personal circumstances in the 2017 appeal decision. Whilst there are now more children involved, given that the family has not been living on the appeal site for some time and may not be able to do so for some time to come, personal circumstances carry limited weight in favour of the appeal in this case.

The planning balance and overall conclusion on ground (a)/the deemed application for planning permission

71. I have attributed substantial weight to the harm to the character and appearance of the landscape and limited additional weight arises from the lack of close links to services and facilities. Against this, the inability to demonstrate a 5-year supply, the lack of available alternatives and the failure of policy together carry significant weight in favour of the appeal, and personal circumstances carry additional limited weight.
72. I conclude that condition 1 is reasonable and necessary. To grant planning permission for the material change of use without complying with that condition would conflict with the development plan as a whole. Other material considerations are insufficient to indicate that the appeal should nevertheless be allowed, and no conditions would overcome the harm identified.
73. I need to carry out a separate balancing exercise in relation to the possibility of allowing the appeal subject to a temporary planning condition. At the hearing, the appellant suggested 3 ½ years.
74. PPTS indicates that the failure to demonstrate a 5-year supply should be a significant material consideration when considering temporary planning permission, and I note that a 3-year temporary planning permission was recently granted in the Thrapston Road appeal. However, given the number of people actually living on that site, including 5 children (1 attending a local school) and an older adult with a number of health conditions requiring regular hospital attendance, moderate weight was attached to the appellant's personal circumstances and significant weight attached to the best interest of the children. There was the immediate threat of an uncertain roadside existence, which does not apply here, and I have attributed only limited weight to personal circumstances, including the best interests of the children.
75. Furthermore, in this case, there has already been a grant of temporary planning permission and the Planning Practice Guidance advises that, unless the circumstances provide a clear rationale, it will rarely be justifiable to grant a second temporary permission. I am not satisfied that a clear rationale exists in this case and conclude that dismissal of the appeal and refusal of planning permission, whether permanent or temporary, is a proportionate response in the context of duties imposed upon me by the Human Rights Act 1998, the

United Nations Convention on the Rights of the Child and the Equality Act 2010.

Ground (f)

76. This ground is at the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury immunity caused by the breach.
77. The purpose of the notice appears to be to remedy the breach of planning control and the sole basis of the appellant's case on ground (f) is that requirement 2(7) of the notice goes beyond the scope of the restoration scheme approved under condition 1. However subject to the correct plan being substituted, as discussed above, requirement 2(7) appears to replicate the relevant part of the approved restoration scheme. The appeal on ground (f) therefore fails.

Ground (g)

78. This ground is that the 5-month period for compliance specified in the notice is unreasonably short.
79. The appellant sought a period of at least 3 years, primarily to enable him to find alternative accommodation. However, this would be tantamount to a grant of temporary planning permission which I have already considered and rejected. No specific arguments were put to me as to why 5 months would be insufficient to achieve compliance with the requirements. I acknowledge that the appellant's own circumstances are difficult at present, but no obvious and reasonable alternative period for compliance would address that. The Council will have to consider its options but of course, under s173A(b), it retains the power to extend the period for compliance if it sees fit.

Conclusion on appeal A

80. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL B

81. Section 73 of the 1990 Act concerns applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The Council refused to validate the application for what it describes in its statements as 'the removal of condition 1' because it was made on 9 June 2020, whereas the 3-year temporary period imposed by condition 1 had expired on 13 February 2020. I would avoid references to removing the condition or varying the permission. Given the wording of s73, an application under that section provides for a new standalone permission.
82. The Council contended in its Statement of Case and Rebuttal Statement that the appeal cannot be decided under s73 because there is "no extant planning permission to vary." In support of this contention, it drew my attention to an extract from the Inspector's Training Manual and a previous appeal decision

Ref APP/L3815/W/20/3257259⁵. In that appeal, the Inspector did not have the benefit of representations from the appellant whereas, in the case before me, the appellant has provided counsel's opinion⁶. Though the local planning authority was represented by counsel on the final hearing day, no further representations were made on this preliminary matter, as it had been agreed I could determine the point based on the written representations already received.

83. Planning permission was granted for a material change of use. That change having occurred, there was no further material change of use when the 3-year temporary period expired. The Council's enforcement action relied on the existence of the planning permission and condition 1; all it could do was seek to enforce that condition, as there was no unauthorised act of development. The material change of use was authorised by the planning permission, but continuation of the use would be in breach of condition 1.
84. It seems to me that, just as the deemed application under appeal A is for permission for the material change of use without complying with condition 1, application could be made under s73 in the same terms. Furthermore, s73A provides that application may be made for planning permission for development carried out before the date of the application, and this applies to development carried out in accordance with planning permission granted for a limited period.
85. Notwithstanding the appeal decision and Training Manual extract referred to by the Council, I am not persuaded that the appellant had no legal right to apply for permission for the change of use without complying with condition 1, even though application was made after the expiry of the temporary period.
86. However, even if I am wrong on this point, it is entirely academic. The same issues fell to be considered under ground (a) of Appeal A and neither party could identify any reason to approach them differently in appeal B.
87. For the same reasons given in relation to appeal A, ground (a), I conclude that appeal B should be dismissed.

J A Murray

INSPECTOR

⁵ Hearing Document (HD) 9.

⁶ HD2.

APPEARANCES

FOR THE APPELLANT:

Matthew Green
Michael Rudd of counsel (day 1 only)

Mrs A Gavin

FOR THE LOCAL PLANNING AUTHORITY:

David Lintott of counsel (day 2 only)
Stephen Jupp BA, LLM, MRTPI
Steve Jarman BSc, DipTP, PGC
Ian Dudley BSc (Hons), MICFor, CEnv, CMLI

DOCUMENTS SUBMITTED DURING THE HEARING

1	Appellant's email of 22 June 2022 agreeing notice corrections & main issues in Pre-Hearing Note
2	Appellant's submissions in response to Adjournment Note of 31 March 2022 (opinion of Michael Rudd of counsel)
3	<i>Avon Estates Ltd v The Welsh Ministers & anor</i> [2010] EWHC 1759 (Admin)
4	<i>Avon Estates Ltd v The Welsh Ministers & anor</i> [2011] EWCA Civ 553
5	<i>Lawson Builders Ltd & anor v SSCLG</i> [2015] EWCA Civ 122
6	<i>Lambeth LBC v SSHCLG</i> [2019] 1 WLR 4317
7	<i>Pioneer Aggregates (UK) Ltd v SSE</i> [1985] 1 AC 132
8	Council's response to Adjournment Note of 31 March 2022
9	Appeal Decision Ref APP/L3815/W/20/3257259
10	Substitute plan for the enforcement notice
11	<i>Wenman v SSCLG & Waverley BC</i> [2015] EWHC 925 (Admin)
12	Wenman High Court Redetermined Appeal Decision 2206225
13	Revised Statement of Need (Shortened)
14	Council's rebuttal to draft witness statement of Mrs Gavin and response to queries in Inspector's note
15	May 2023 Update to appellant's Statement of Need for Gypsy and Traveller sites in North Northamptonshire submitted in connection with appeal Ref APP/M2840/W/22/3307410 concerning land adjacent to Farm Buildings, Thrapston Road, Woodford, Northamptonshire NN14 4HY

16	The Council's appeal statement for appeal Ref APP/M2840/W/22/3307410 concerning land adjacent to Farm Buildings, Thrapston Road, Woodford, Northamptonshire NN14 4HY
17	Signed witness statement of the Appellant's wife (AG)
18	Appeal decision Ref APP/U2805/W/20/3258705 & /21/3270912 re Oakley Park, Ashley Road, Middleton, Leicestershire, LE16 8YP
19	Appeal decision 3268247 (appendix C41 for appeal Ref 3307410 Thrapston Rd Woodford)
20	Appeal decision 3248911 (appendix C42 for appeal Ref 3248911 Warley St Great Warley)
21	Summary of appellants' appendices for appeals 3262337 & 3307410
22	Approval of site restoration scheme, amenity building materials, lighting and foul drainage under conditions 1, 7, 8 & 9 dated 19 January 2018 and referenced AOC/0500/1501
23	Approval Ref AOC/0500/1501 of amenity building roof tiles under conditions 7 dated 6 July 2018 and referenced AOC/0500/1501
24	Appeal decision Ref APP/M2840/W/22/3307410 concerning land adjacent to Farm Buildings, Thrapston Road, Woodford, Northamptonshire NN14 4HY and dated 21 July 2023, submitted after the close of the hearing, at my request

APPENDIX 1

The notice states the matters which appear to constitute a breach of planning control as follows:

"On the 13th February 2015 *[sic]* temporary planning permission was granted for the material change of use to a residential caravan site for one gypsy family with two caravans, including the laying on *[sic]* hardstanding and erection of an amenity building. The development does not accord with that planning permission KET/2020/0500 *[sic]* and condition No. 1 and condition

AOC/0500/1501 restoration scheme in that:

(1) At variance with condition No1, that at the end of its period, the use permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, erected on the land, works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place in accordance with its restoration scheme approved by the local planning authority **has not been complied with.**

(2) At variance with discharged restoration scheme Condition 1 AOC/0500/1501 the steps below **have not been complied** with:

(a) Removal from the land:

1. all hardcore/other stone or base material and all concrete bases laid; (resulting debris to be properly disposed of to an authorised waste site);
2. all domestic paraphernalia/or other objects,
3. all caravans/vehicles
4. all structures including the amenity building, the lights, the Klargestor or other apparatus including fixings and supporting bases, pipes or wires etc;
5. all fencing shall have been removed from the land

6. the site to be returned to its natural state as a grassed field, ie bare ground to be re seeded with grass or new turf once the ground has been cleared.”

APPENDIX 2

