



Appeal Decisions

Hearing held on 15 June 2010

Site visit made on 15 June 2010

by **Wendy McKay LLB**

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

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Decision date:
23 July 2010

Appeals A, B, C, D, E, F and G Refs:

APP/Y3940/C/10/2123625/6/7/8/9/30 & 2124063

Land at Rose Field, Hullavington, Chippenham, SN16 0HW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs T Tomney, Ms A Hanrahan, Mr F Reynolds, Mr P Price, Mr J McCann and Mr P Hanrahan against an enforcement notice issued by Wiltshire Council.
- The Council's reference is 09/091/ENF.
- The notice was issued on 25 January 2010.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land, to a use for the siting and occupation of residential caravans.
- The requirements of the notice are: a) Cease the residential use and remove from the land all caravans and any ancillary buildings and fences; b) Remove from the land, to a depth of at least 500mm, all hardsurfacing material that forms the hardsurface area; c) Remove all debris resulting from the requirements of 5a and 5b of this notice from the land.
- The period for compliance with the requirements is six months.
- The appeal made by Mr T Tomney is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
- The appeals made by the other appellants are proceedings on the ground set out in section (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees for these appeals have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal H Ref: APP/A/10/2123624/NWF

Rose Field, Hullavington, Chippenham, SN16 0HW

- 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 T Tomney against the decision of Wiltshire Council.
- The application Ref N/09/01934/FUL, dated 25 October 2009, was refused by notice dated 4 December 2009.
- The development proposed is the change of use to a caravan site for occupation by six Gypsy/Traveller families with associated works (eg hardstanding, utility buildings and package treatment plant).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The appellant points out that the requirements of the notice are for the caravans, hardcore, ancillary buildings and fencing to be removed, but there is no reference to the ancillary buildings or fencing in the alleged breach of planning control set out in paragraph 3 of the notice. Although the ancillary buildings and fencing are not specifically referred to in the alleged breach, S173(5) of the 1990 Act gives power to require the alteration or removal of any buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, so that the land is restored to its condition before the breach took place. Since the ancillary buildings and fencing represent such facilitating works, it is not necessary for them to be referred to in the allegation. I do not find the notice to be defective or requiring correction in this respect.

Appeals A and H - The appeal on ground (a), the section 78 appeal and the deemed application for planning permission

The Main Issue

2. The main issue is the effect that any increased traffic generated by the development would have on the safety of people using the public highway.

Reasons

3. The Council's sole objection to the development is on highway safety grounds. There is no dispute that the appellants are bona fide Gypsies and that they have health and educational needs. The Council accepts that, apart from the matter of highway safety, the site would accord with the locational requirements set out in Circular 01/2006.
4. The site is accessed off a Class 3 road known as the C1n which has a junction with the A429 to the north and the southern leg of the C1 (the "C1s") to the west which, itself, forms a further link south to the A429. The objection relates to the junctions at both ends of the C1n, particularly that with the A429 which is a National Primary Route. Traffic volumes on the A429 are high with a two-way Annual Average Weekday total of 13350 vehicles (2008). In the vicinity of its junction with the C1n, the A429 has a width of about 7m and has double white line central markings. All the roads in the immediate locality are subject to the national speed limit.

The A429/C1n junction

5. The Council relies upon TD 42/95 for guidance in respect of visibility splays. This advises that for a road speed of 100kph (62mph) a 'y' distance of 215m is required. For the 'x' distance, 9m is required, although this may be relaxed to 4.5m or 2.4m "*in exceptionally difficult circumstances*". The Council accepts that given the proximity of the railway bridge on the A429, the latter relaxation is appropriate at this junction. The guidance in 'Manual for Streets' ("MfS") is that "*an 'x' distance of 2.4m should normally be used, as this represents a reasonable maximum distance between the front of the car and the driver's eye*". It goes on to state in paragraph 7.7.7 that "*a minimum figure of 2m may*

be considered in some very lightly-trafficked and slow-speed situations". It explains that using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm. I recognise that vehicles approaching the junction from the right (south) should be able to see this overhang from a reasonable distance. However, I consider that the volume and speed of traffic on the A429 are such that the ability of drivers and cyclists to manoeuvre around any overhanging vehicles is likely to be compromised. I do not believe that a 2m 'x' distance should be applied in this situation, even taking into account the proposed 3.5 tonne limit on vehicles kept at the site. In my view, the appropriate visibility standard for this junction would be a splay of 2.4m by 215m in each direction.

6. The parties have agreed the measured visibility splays at the junction. Whereas visibility to the right (south) meets the required standard, the visibility to the left (north) is seriously deficient, with only 2.4m by 11m being available. This is due to the abutment of Kingway Bridge immediately adjacent to the edge of the carriageway. Even if an 'x' distance of 2m had been adopted the 'y' distance would only increase to 16m. These are the measurements when the 'y' distance is taken to a point on the nearer edge of the major road. The advice in MfS paragraph 7.7.5 is that where it is unlikely that vehicles approaching from the left on the main arm will cross the centreline of the main arm, the visibility splay to the left can be measured to the centreline of the main arm. However, MfS focuses on lightly-trafficked residential streets. Whilst many of its key principles may be applicable to other types of streets, for example high streets and lightly-trafficked lanes in rural areas, the A429 is a very busy road subject to the national speed limit at this point. I do not believe that it would be fitting to apply the MfS relaxation in this situation. Furthermore, although there are double white lines on the main road at this point, there is no physical segregation of the opposing flows. In my opinion, it would not be appropriate to rely on vehicles adhering to the road markings and thus measure visibility from the centreline in this particular location.
7. The appellant contends that the junction and users of it are clearly visible to both north and southbound vehicles and urges the adoption of a practical approach to the available visibility. However, it seems to me that the dip in the vertical alignment of the A429 under the railway bridge and the existing accesses onto the road to north of the bridge make it all the more important that the 'y' distance is measured along the road edge. In any event, even if the 'y' distance is measured from the centreline, only 69m is available to the left with an 'x' distance of 2.4m. In my view, visibility to the left at the junction is so reduced that danger is likely to be caused. The forward visibility available to drivers of vehicles approaching the junction on the main road does not dissuade me from this view.
8. The appellant has assessed the likely traffic generation of a Gypsy site comprising 6 pitches by reference to the TRICS database. The daily traffic (two-way) would be some 42 to 60 vehicles per day with peak two-way flows of 4 to 6 vehicles. The appellant indicates that some 90% of the traffic generated by the development would pass through the A429/C1n junction with 70% going north to and from Malmesbury and 30% towards the south and the M4/Chippenham. The appellant has undertaken a traffic count on the C1n past the site access which indicates typical off-peak traffic flows of 21 vehicles two-

way and p.m. peak traffic flows of 34 vehicles. The addition of two to three vehicles per hour at the peak hours would amount to a 6% to 9% impact. The appellant acknowledges that a 5% impact is normally regarded as 'material' but submits that, given the low traffic flows in this case, the increase in traffic would not adversely effect the operation of the C1n. He contends that the traffic increase can only be regarded as modest with no significant impact on the local highway network.

9. The appellant also points out that the site has been used as a Gypsy caravan site since April 2009, and since then there have been no accidents associated with the site access nor any accidents associated with the occupants of the site or their visitors on the local highway network including at the C1n junctions with the A429 and the C1s. Nevertheless, the recorded personal injury accidents for the last 10 years show that a total of 10 accidents in the vicinity have been recorded, with some being related to turning movements at the junction, and others being related to the bridge or other factors. The analysis of those accidents suggests that the forward visibility for southbound traffic on the A429 may well be adversely affected by the dip in the main road alignment as it crosses under the rail line. The accidents in the vicinity of the junction have occurred even though the side road has been lightly trafficked.
10. Whilst I accept that traffic flows along the C1n would remain at a low level in absolute terms, the traffic generated by the development would indeed represent a material increase in the traffic using that road. I also appreciate that of the 90% of vehicles or thereabouts that would be turning right out of the appeal site, the particular concern would only be with those 30% of vehicles which would be turning right onto the A429 towards the south. Nonetheless, given the inherent deficiencies in the road network in the vicinity of the junction, I consider that any increase in traffic using the C1n at this point would be unacceptable in terms of the increased risk to the safety of people using the public highway.

The C1n/C1s Junction

11. The Council considers visibility splays of 2.4m by 120m would be acceptable at this junction. The measured visibility splays show that to the left (south) the splays would be some 2m by 35m and 2.4m by 33m respectively, when measured to the nearside edge of the carriageway.
12. The appellant submits that approaching vehicles would have adequate visibility of the turning intentions of vehicles waiting to turn left out of the junction from some distance away so that safety would not be unduly compromised. The Council contends that, given the bend in the road to the south of the junction, forward visibility for vehicles approaching from the south would not be nearly as generous as the appellant suggests. TD42/95 advises that it is essential that minor road drivers have adequate visibility in each direction to see the oncoming major road traffic in sufficient time to make their manoeuvres safely. It is clear that whilst visibility at the junction to the right (north) for the minor road driver is of an acceptable standard, the visibility to the left (south) is substandard.
13. The appellant indicates that about 10% of the traffic going to and from the appeal site would use this junction. He contends that the additional impact of

some 2 to 3 vehicles a day would not be significant. However, even if an 'x' distance of 2m is taken as being acceptable for these rural lanes, the visibility to the left for vehicles turning out of the junction is seriously deficient. Whilst there have been no personal injury accidents recorded at the junction, the potential for such accidents to occur must exist where there are such inadequacies in the configuration of the junction and the likelihood of such accidents taking place must inevitably increase as more vehicles attempt this manoeuvre. Although the development would only give rise to modest additional daily vehicle movements at this junction, I believe that the impact would be material in highway safety terms and should be avoided.

Other material considerations

14. The adopted North Wiltshire Local Plan 2011 Policy H9 permits the use of land for the stationing of residential caravans occupied by Gypsies provided that it has reasonable access to local community facilities and services; and it would not unreasonably prejudice the amenities of neighbouring residential occupiers and land. The Council's emerging Gypsy and Traveller Site Allocations Development Plan Document is anticipated to be adopted by late 2011/early 2012.
15. In the light of the Development Plan policy background and national guidance, the Council raises no objection, in principle, to the provision of a Gypsy site in this rural location. This part of the countryside is not the subject of any specific designations such as Green Belt, AONB or character type. The site is well-screened by existing vegetation and further planting could be undertaken pursuant to a landscaping condition to mitigate the impact on the character and appearance of the countryside. At the hearing, the Council confirmed that there was a need for additional Gypsy sites within its area, even in the absence of the Regional Strategy. The available evidence indicates that there is a significant unmet need for Gypsy site provision within the district. Those living on the site would be able to enjoy the wider benefits of easier access to GP and other health services, children attending school on a regular basis and the provision of a settled base to reduce the need for long distance travelling. The site would meet the requirements of national guidance in terms of sustainability. The personal needs and circumstances of the site occupants also need to be taken into account. Those living on the site include people with significant health care issues, an expectant mother and young children. There are children living on the site who already attend a local school and their Head Teacher advises that moving any child to a different school during their primary education is not recommended and is known to have a detrimental effect on their education. There are no pitches on any other Gypsy sites in the district which would currently be available and suitable for the appellant and the other site occupants. The families are of limited means and are unable to buy land elsewhere. If the enforcement notice is upheld, and they are evicted from the appeal site, it is likely that they would be living "on the road".

Human Rights

16. The appellant's rights, and those of the other site occupants, under Article 8 of the European Convention on Human Rights must be taken into consideration. The dismissal of the section 78 appeal, and the upholding of the enforcement notice, would be likely to result in their eviction from the site thus interfering

with their homes and private and family life. In particular, it could result in the loss of their homes with no satisfactory alternative.

17. I have taken into account the interference with the rights of the appellant, his family and other site occupants but this must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. The overall harm to the highway safety which I have identified is a serious objection to the development which could not be overcome by planning conditions and the legitimate aim of restricting development in such circumstances could only be safeguarded by the cessation of the use.
18. There is no site presently suitable and available for occupation by the appellant and other site occupants in the district. The lack of available alternative accommodation makes the interference more serious. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether the dismissal of the appeal would have a disproportionate effect on the appellant and other site occupants in my overall conclusions.

Overall Conclusions

19. Circular 01/2006 advises that "...*projected vehicle movements for Gypsy and Traveller sites should be assessed on an individual basis for each site. Proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant*". However, in this case the junctions at either end of the C1n are seriously deficient in terms of visibility. Even with the fairly low levels of traffic proposed, I believe that the adverse impact on highway safety would be material. Indeed, so far as the A429/C1n junction is concerned, there would be unacceptable harm caused to the safety of people using the public highway.
20. The eviction of the appellant and other site occupants from the site would be likely to result in enforced roadside camping. This would have implications not only for this group of Gypsies, but could also result in adverse environmental and other impacts elsewhere. The unmet need for Gypsy sites and the health and educational needs of this group are factors to which I afford substantial weight. However, the harm to highway safety which I have identified could not be satisfactorily overcome by planning conditions. The particular traffic impacts of the development are such that this would not be an appropriate location for a permanent Gypsy site. This factor, on its own, strongly outweighs the other material considerations in support of this appeal. The dismissal of this appeal would not have a disproportionate impact upon the appellant and other site occupants.

Temporary permission

21. The appellant suggests that, if for some reason the site is not found to be suitable as a permanent base, a temporary permission should be granted. Having regard to the expected timetable for the emerging DPD, he proposes that this should be for a period of 3-4 years to enable the group to pursue the grant of planning permission for another site.
22. Circular 01/2006, paragraph 45, draws attention to Circular 11/95 paragraph 110 which advises that a temporary permission may be justified where it is

expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Circular 01/2006, paragraph 46, explains that such circumstances might arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified.

23. Circular 11/95, paragraph 109, advises that the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenities of the area. I do not believe that the harm to highway safety could be satisfactorily overcome by the imposition of planning conditions. This harm would be unacceptable and strongly outweighs the other material considerations, including the unmet need for Gypsy sites and the personal needs and circumstances of the appellant and other site occupants, even for the temporary period suggested. Although substantial weight must be given to the unmet need, it seems to me that the expected changes to planning circumstances that are likely to occur over the period of the temporary permission do not significantly alter the overall balance in this case. The identified harm to the safety of people using the public highway is so significant that permission should not be granted even on a temporary basis. In the circumstances, the only course open is to refuse planning permission and this represents a proportionate response.

Appeals A, B, C, D, E, F and G - The appeal on ground (g)

24. On ground (g), the appellants propose that the compliance period should be extended from 6 months to at least 12 to 18 months to give them some time to seek another site.
25. Given the advice set out in PPG18: Enforcing Planning Control, it is necessary to balance the harm caused by the unauthorised development to interests of acknowledged importance against the effect that compliance would have on the appellants' activities taking into account the time realistically needed to undertake the necessary tasks. There is no alternative site presently available to this group of Gypsies. The appellants have drawn attention to the particular difficulties that they would be likely to experience in seeking an alternative location that is suitable, available and affordable. If evicted, it is likely that they would be living "on the road" with all the inherent consequences of a roadside existence. The occupants of the site include adults with health needs, an expectant mother and children with general health and educational needs. However, the interests of this family must be balanced against the highway safety implications of the development. Whilst I have sympathy with the appellants' personal circumstances, given the harm to highway safety which I have identified in this case, I do not believe that any extension of the period for compliance could be justified. Having regard to the various relevant factors, I consider that the time for compliance with the notice is entirely reasonable. In my view, the compliance period set out in the notice represents a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individuals in this case. There would be no

violation of the rights of the appellants under Article 8 of the European Convention on Human Rights. The appeal fails on ground (g).

Formal Conclusions

Appeal A

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeals B to G

27. For the reasons given above, I consider that the appeal should not succeed.

Appeal H

28. For the reasons given above, I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A, Refs: APP/Y3940/C/10/2123625

29. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals B, C, D, E, F and G Refs: APP/Y3940/C/10/2123626/7/8/9/30 & 2124063

30. I dismiss the appeal and uphold the enforcement notice.

Appeal H Ref: APP/A/10/2123624/NWF

31. I dismiss the appeal.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alison T Heine BSc Msc MRTPI	Planning Consultant
Mr T Tomney	Appellant
Mark Baker BSc CEng MICE FCIT FILT	Director of Mark Baker Consulting Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Tracey Smith	Area Team Leader, Wiltshire Council
Roger Witt BSc CEng MICE	Senior Development Control Engineer, Wiltshire Council

INTERESTED PERSONS:

Cllr Simon Killane	Local Councillor
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Copy letter sent by the Council notifying local people of the hearing and circulation list
- 2 Count of Gypsy and Traveller Caravans 28 January 2010
- 3 Copy letter dated 14 December 2009 from the Traveller Education Service
- 4 Copy letter dated 11 May 2010 from Wiltshire Community Health Services
- 5 Copy letter dated 6 May 2010 from University Hospitals Bristol
- 6 Bundle of Gypsy and Traveller information in response to PINS letter 4 March 2010