



Appeal Decisions

Hearing held on 30 August 2016

Site visit made on 30 August 2016

by **D E Morden MRTPI**

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

Decision date: 28 October 2016

Appeal A: APP/Y3940/C/15/3139663

Sunnyside, Yarnbrook Road, West Ashton, Trowbridge, Wilts, BA14 6AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Gammell against an enforcement notice issued by Wiltshire Council.
- The enforcement notice, Ref 15/00923/ENF, was issued on 3 November 2015.
- The breach of planning control as alleged in the notice is, engineering operations comprising the excavation of the land and the deposit of material, including hard-core, rubble and tarmacadam to create a hard surface.
- The requirements of the notice are (a) remove from the land, other than the land shown hatched in black on the plan attached to the Notice, all material used to create the unauthorised hard surface; (b) reinstate the excavated areas of the land to their original form and levels using soil and (c) reseed the reinstated area of the land detailed in requirement (b) with grass seed.
- The periods for compliance with the requirements are six months for (a) and (b) and for (c) the next planting season following compliance with the first two requirements and in any event within 12 months of the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the Notice upheld as set out in the Formal Decision at paragraph 34 below.

Appeal B: APP/Y3940/W/16/3147108

Sunnyside, Yarnbrook Road, West Ashton, Trowbridge, Wilts, BA14 6AR

- 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 J Gammell against the decision of Wiltshire Council.
- The application Ref 15/10492/FUL was refused by notice dated 11 March 2016.
- The development proposed is use of land as a private gypsy and traveller caravan site consisting of 2 No. pitches each with 1 mobile home, 1 touring caravan and 1 utility dayroom; stabling.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out in paragraph 35 below.

Procedural Matters

1. The s78 appeal is for the use of the land for two travellers' pitches and includes a dayroom for each pitch. It also concerns a stable block to be erected on the site. The s174 appeal however, is only for the operational development set out in the allegation. I will, therefore, deal with the s78 appeal and the s174(a) appeal separately and in those circumstances it is logical to consider the s78 appeal first.

The s78 appeal – Appeal B

Background

2. Planning permission was granted on 18 June 2014 for two pitches on a smaller part of the overall area that forms the land the subject of this appeal; the whole area was in the appellant's ownership at the time of that earlier application. That smaller part is closer to the road; the hard surfaced area specifically excluded from the enforcement notice equating to roughly the total area on which permission was granted to site the caravans, parking areas and other ancillary development. A previous owner/occupant had originally been granted permission for one pitch on that smaller rectangular area of land.
3. This appeal concerns a modified proposal by the appellant to include a dayroom for each pitch (in addition to the mobile home and touring caravan approved in 2014) and also a stable building close to the northern boundary of the land on an area shown as paddock.
4. The Council acknowledged firstly, that it considered the appellant still satisfied the definition of 'gypsy/traveller' as set out in the August 2015 updated version of Planning Policy for Traveller Sites; Annex 1, paragraph 2. A local resident questioned whether this was in fact the case but from the information contained in the representations and from what was stated by the appellant's agent at the Hearing concerning the appellant's lifestyle, I am satisfied that he and his family are gypsies/travellers and will determine these appeals on that basis.
5. Secondly, the Council acknowledged that there was a shortfall of provision for gypsies and travellers in the area (as there had been when the 2014 application had been approved) and in those circumstances there was no objection in principle to two pitches being granted permission. There was no discussion therefore on the question of need (either generally or for this appellant) or his personal circumstances at the Hearing.

Main Issue

6. I consider that the main issue in this case, having regard to the prevailing policies in the adopted Development Plan and the objection set out by the Council, is the impact of this development on the rural character and appearance of the site.

Reasoning

7. The Council acknowledged both in its written representations and orally at the Hearing that views of the site from outside were almost non-existent other than when immediately outside the entrance (even then they were very limited unless the solid gates were open) and from one neighbouring property to the north when on the first floor in that property. I confirmed when on site and when walking several footpaths in the area that there were virtually no views of the site whatsoever from either medium or long distance viewpoints.
8. At the entrance, the existing mobile home near the front of the site can be seen even though the land rises quite steeply from the road but if, as proposed the caravans and other buildings are sited at the rear of the site, they will not be seen over the entrance gates. Very little would be seen even with the gates open if the caravans and other buildings are sited as proposed.

9. The appellant also proposed various landscaping features on the site that would restrict even further views of the development from Yarnbrook Road. The Council accepted the opinion of the appellant's landscape architect that the development would have no material impact on the wider landscape and that an objection could not be sustained on that basis. Its objection simply concerned the fact that more land was being used in total and more proposed as hard surface than had previously been approved. That would, argued the Council, radically change the character of the site and was objectionable; in its view that was sufficient to justify refusal of the proposal.
10. The Council accepted that the stable block and hard surfaced apron in front of it were acceptable. Altogether about 40% of the land is shown as hard surface on the layout plan but as stated by the appellant this could be reduced considerably. In particular, the two 'plots' for the caravans/dayrooms are shown as completely hard surfaced areas whereas they could be mainly soft landscaped areas.
11. I noted that whilst the hard surfaced area that has permission is to be reduced by about half, the access from the entrance gates is still shown to be 7 metres wide and this could be halved. Similarly the track running across the front of the two plots could be much reduced in width.
12. The character of the overall site has already been changed by the permission that has been granted for the siting of two plots for travellers. Whilst this proposal increases the area of hard surfacing that would be on the land, I do not consider that increase to be significant now that the principle has been established. Further, the proposal would move the location of the caravans to the rear of the site; from there they would not be seen from Yarnbrook Road and its footways as is currently the case.
13. From immediately outside the site there would be an improvement visually and any change in character, which the Council is concerned about, would, therefore, be less obvious. Also the approved hard surface area immediately inside the entrance which is clearly seen every time the gates are open would be reduced to just an access track to the rear of the site and lined with trees. In that way it would appear no different to any other long driveway access.
14. Taking all these factors into account, whilst I acknowledge that the appearance of the site will change and will do so differently to what has been approved, I do not consider that it is so different that it would materially harm the character of the site and justify not allowing this development. Clearly the layout needs to be amended from what was submitted – reducing the hard surfaced areas – and the appellant stated his willingness to do so and this can be achieved by submitting a new detailed layout to be approved and also amending the proposed landscaping details.
15. A number of other matters were raised by the Council and nearby residents who were at the Hearing. Dealing with matters raised by residents, firstly, there were concerns regarding access on to what was a busy, fast road. There were no objections raised by the highway authority and indeed it has already been approved for two pitches in 2014. Leaving the site I noted that there was good visibility in both directions for those waiting to exit the site and any vehicle waiting in the middle of the road to turn into the site would be clearly seen from both directions. Objections on highway grounds cannot be substantiated in this appeal.

16. Secondly those nearby were concerned about drainage and that works carried out by the appellant had caused flooding from the site on to Yarnbrook Road. The Council also raised its concerns about an increased area of hard surfacing increasing the run off from the site. It was satisfied, however, that this was a technical issue and the imposition of a condition requiring drainage details to be agreed would resolve any possible problems. The appellant stated that he did not object to connecting to the mains system as had been suggested by the drainage officer in the pre application advice response if that proved necessary.
17. The other point made by local residents (and indeed it was also set out in the Council's reasons for issuing the enforcement notice) was that what had happened was an example of what the Government had, on 31 August 2015 in a change to national policy advice sent out in a letter from its Chief planner, termed intentional unauthorised development (IUD). The change in policy made IUD a material consideration that would be weighed in the determination of planning applications and appeals received from that 31 August date onwards.
18. Whilst the Government is primarily concerned with such development in the Green Belt, the policy applies to all developments and one of the main reasons given for the policy is that 'In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place.' The Council argued that following the pre application advice that had been given, the appellant was fully aware that he needed planning permission before undertaking what he has started to do on the site and in fact he has carried out more than was shown in those pre application proposals.
19. The land forming the planning unit already has permission for two traveller's pitches and the Council does not object in principle to that aspect of the development or to the proposed stables. As argued by the appellant, this is a case where mitigation is included in the scheme by virtue of a considerable amount of landscaping and the layout can be set out in a manner that does not harm the rural character and appearance of the area or the site.
20. I acknowledge that work was carried out before permission was obtained and that weighs against the appellant but this is not a finely balanced case. It is one where the objections raised cannot be sustained and where, subject to conditions, the development should be permitted. By itself the fact that the development was commenced before there was any planning permission does not carry sufficient weight to justify dismissing this appeal.

Conclusions on the s78 appeal – Appeal B

21. Taking all the above facts into account I consider that the subject to appropriate conditions the development should be approved and I, therefore, allow this appeal.

The s174 appeal – Appeal A

The appeal on Ground (a)

22. This appeal concerns firstly, excavation works at the rear of the site to level the land and secondly, the large amount of hard-core, tarmac and rubble that has been spread over a considerable area of the site. In places the piles of material were over 0.5m in height and from what I saw on the site there is

considerably more there than is needed to complete what is shown on the layout plan; and that will be much reduced in area.

23. The volume of material spread over such a wide large area has significantly changed the character and appearance of the site to its considerable detriment and should not be permitted to remain. The land has been levelled at the rear (adjoining the copse of trees owned by the appellant but outside both the land the subject of the enforcement notice and the planning appeal) but a level site is needed on which to site the caravans and dayrooms. Also lowering the land means that the development (which I have permitted) is less likely to be seen from outside the site.

Conclusions on the s174 appeal – Appeal A

24. Taking these factors into account I consider that the development is materially harmful to the character and appearance of the rural nature of the site and should not be allowed. I therefore dismiss this appeal.

The appeal on Ground (g)

25. The appellant stated that six months was insufficient in respect of requirements (a) and (b) and firstly argued that two years should be allowed to enable him to raise the money to carry out the necessary remedial works. Following a short discussion about his time frame for carrying out the landscaping works and other matters to be covered by conditions on the s78 permission to be granted, he revised the two years down to 12 months.
26. The Council stated that the physical work should take no more than a couple of months to carry out and six months was more than sufficient to undertake requirements (a) and (b). The works were carried out over a few days and it would be relatively straightforward to put things right.
27. In my view 6 months is sufficient time to undertake the works necessary and the time set out in the Notice is not unreasonable and I shall, therefore, dismiss this appeal.

Planning conditions

28. The Council put forward a list of planning conditions that it considered ought to be imposed should the s78 appeal be successful. There were a number of fairly standard conditions for this type of development that were suggested and, I agree, should be imposed. These conditions limited occupation of the development to gypsies/travellers; restricted the number of caravans on site; prohibited any commercial activity taking place on the site; restricted the use of the stables to non-commercial use; listed the approved plans and restricted the weight of vehicles that could be used by the appellant.
29. Other suggested conditions are, in my view, justified and were agreed by the parties. These were conditions requiring landscaping, surface water drainage, foul drainage and external lighting to be submitted for approval. The last condition concerns waste from the stables and I agree that there should be a condition prohibiting the burning of that waste and details should be submitted for approval as to how it is to be disposed of.
30. Finally a local resident queried whether the earlier permission needed to be revoked or referred to in any way by condition as the pitches approved in that

2014 permission would not have to be removed to enable the two contained in this proposal to be sited where proposed. The question of whether the development permitted in 2014 had commenced was not raised at the Hearing but in the appellant's final comments (sent in on 1 July 2016) it was stated that he had misunderstood that his permission did not cover the whole area that he owned and he commenced work on a wider area.

31. From what I saw on site it appeared to me that work had been undertaken on altering the hard surface area both within as well as outside the 2014 application red line area. In my view, therefore, that development has commenced and in those circumstances it is not possible to impose a condition on this permission that would state that the permissions are in the alternative.
32. There are conditions to be attached to the permission granted here that limit the number of caravans on the whole area to four and also require that the layout be submitted for approval so there are in my view adequate controls and restrictions. Also, the Council could make a Revocation Order taking away the earlier (2014) permission and in the circumstances (of a permission granted by this decision for the same number of pitches and caravans) there would not be any liability for compensation.

Overall conclusions

33. The proposed development in the s78 appeal is acceptable subject to a number of planning conditions and I shall allow that appeal (Appeal B). The development enforced against (Appeal A) is unacceptable; I shall dismiss that appeal and the Notice will be confirmed. Where the requirements of the Notice are inconsistent with the permission granted, then by virtue of s180(1) of the Town and Country Planning Act 1990, the Notice will cease to have effect; those requirements will only come into effect if the appellant decides not to implement the permission granted in this decision.

Formal Decisions

Appeal A: APP/Y3940/C/15/3139663

34. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/Y3940/W/16/3147108

35. The appeal is allowed and planning permission is granted for use of land as a private gypsy and traveller caravan site consisting of 2 No. pitches each with 1 mobile home, 1 touring caravan and 1 utility dayroom, and stabling at Sunnyside, Yarnbrook Road, West Ashton, Trowbridge, Wiltshire, BA14 6AR in accordance with the terms of the application, Ref 15/10492/FUL, dated 16 October 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites published August 2015.
 - 2) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of

which no more than two shall be static caravans) shall be stationed on the site at any time.

- 3) No commercial activities shall take place on the land, including the storage of materials used in connection with any business operated by the occupiers of the site.
- 4) No vehicle over 3.5 tonnes 'gross unladen' weight shall be stationed, parked or stored on this site.
- 5) No commercial use of the stables hereby permitted shall take place on the land; they shall only be used as shelter for the appellant's own horses and/or ponies.
- 6) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the development of the site (hereinafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The scheme shall include (a) details of external lighting (if any); (b) details of foul and surface water disposal; (c) details of waste disposal from the stables; (d) details of the site layout including the siting of the caravans, day rooms, stable block, hardstandings, access track(s) and amenity areas; (e) details of hard and soft landscaping including all new tree, hedge and shrub planting.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Site Development Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
 - iv) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Site Development Scheme specified in this condition, that scheme shall thereafter be retained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) All planting, seeding or turfing proposed in the approved details of landscaping shall be carried out in accordance with the approved Site Development Scheme. Any trees or plants which within a period of 5 years from the completion of the scheme die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

- 8) The development hereby permitted shall be carried out in accordance with the following listed plans except in so far as they are amended by virtue of the details submitted and approved by condition 6 above. The approved plans are as follows:- 01312/2C: Rev 4, dated 15/12/15 entitled Development Scheme; 01312/5: Rev 1 dated 03/01/15 entitled Proposed Stable Block; and 01312/7C: Rev 2, dated 15/12/15 entitled Alternative Day Room/Amenity Block.

D E Morden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch MRTPI
BA(Hons) MA, MSc, PhD
Mr R Crandon
BA(Hons) DipLA

Principal, Murdoch Planning Limited, PO Box 71,
Ilminster, Somerset, TA19 0WF
Director TDA, Canna Studio, Llangan, Vale of
Glamorgan, CF35 5DR

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Perks	Senior Planning Officer, Wiltshire Council
Mr S Williams	Team Leader, Planning Enforcement, Wiltshire Council
Ms N Rivans	Planning Enforcement Officer, Wiltshire Council

INTERESTED PERSONS:

Mr R Covington	West Ashton Parish Council
Mr F Morland	Local resident
Mr R Hill	Local resident
Ms P Hume	Local resident

DOCUMENTS

- 1 Email and correspondence between the Council and appellant from 2014
- 2 Extracts from Wiltshire Core Strategy (Core Policies 47, 50, 51 & 57)
- 3 Legible copies of photographs in Council's Appendix 9
- 4 Legible key to Council's plan at Appendix 1 of its Revised statement

PHOTOGRAPH

- 1 Mr Crandon's set of photographs of landscaping at a site in Bridgend.