



Department for
Communities and
Local Government

Phillip Brown Associates
74 Park Road
Rugby
Warwickshire
CV21 2QX

Our Ref: APP/R4408/A/12/2180999

Your Ref: 12/119

23 April 2014

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR KEVIN ROGERS
WHITEGATE STABLES, COMMON ROAD, BRIERLEY, BARNSELY
APPLICATION REF: 2011/1157**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Bern Hellier BA(Hons) MRTPI who held a hearing on 30 January 2013 into your client's appeal. The appeal was against condition 1 of the planning permission granted by Barnsley Metropolitan Borough Council ("the Council"), on 9 February 2012, for the siting and use of residential caravans/sectional buildings and associated vehicles and equipment. This limited permission to a temporary period ceasing on 1 November 2015.
2. On 3 July 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation that the disputed condition should be retained. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Communities and Local Government
Jean Nowak, Decision Officer
Planning Casework
1/H1, Eland House
Bressenden Place
London
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Procedural matters

4. Given the time that had elapsed since the hearing, the Secretary of State wrote to the interested parties on 21 January 2014 to invite representations on any relevant and material changes in circumstances since then. A response was received from the Council which he circulated to the other parties. This indicated that the Council has moved away from pursuing a Development Sites and Places draft Development Plan Document to the preparation of a new Local Plan which will contain proposed changes to parts of the adopted Core Strategy, as well as proposed policies and site allocations; and the adoption of which was cited as due in November 2015. A copy of the representation is not attached to this letter but will be provided on application to the address at the bottom of the first page of this letter or to PCC@communities.gsi.gov.uk. No comments on this response were received from any other party.
5. Following publication of new planning guidance on 6th March 2014 the Secretary of State invited representations from interested parties, but no representations were received.

Policy considerations

6. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Barnsley Local Development Framework Core Strategy (CS) (September 2011), the Barnsley Education Sites Development Plan Document (2009), the Barnsley, Doncaster and Rotherham Joint Waste Plan (2012) and the saved policies of the Unitary Development Plan (2000).
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework), the Planning Policy for Traveller Sites (PPTS), the planning guidance referred to in paragraph 5 above, the Written Ministerial Statements on Planning and Travellers of 1 July 2013 and 17 January 2014 and the South Yorkshire Gypsy and the Traveller Accommodation Assessment 2011 (GTAA).

Main Issues

8. The Secretary of State agrees (IR4) that it is common ground that the appeal scheme would be inappropriate development in the Green Belt and that the main issues are those listed in that paragraph.

Openness and visual amenity

9. For the reasons given at IR5-7, the Secretary of State agrees with the Inspector's conclusion at IR7 that the proposal has a significant adverse effect on visual amenity and, even with landscaping, a development of this type and scale, situated in the open countryside, would remain an incongruous and prominent feature and would harm the appearance of the area.

Other harm

10. The Secretary of State notes (IR8) that there are no gypsy sites in Barnsley within the urban area, that the Council has not been able to identify any suitable sites to meet their objective of locating them there, and that the appeal site is in a reasonably sustainable location. He therefore agrees with the Inspector (IR9) that the location of the site, although in open countryside, would not conflict with the PPTS policy in that regard. He also agrees (IR10-11) that there is no evidence to suggest that tension in community relations should count against the proposal or that there would be any significant harm caused in relation to road safety.

Other considerations

General Need

11. For the reasons given at IR12-13, the Secretary of State agrees with the Inspector's conclusion at IR14 that there is a very significant existing shortfall in gypsy site provision and that the Council is unable to demonstrate a five year supply of deliverable sites.

Future Provision

12. Taking account of both the Inspector's comments at IR15-18 and the Council's submission in response to the letter of 21 January 2014 referred to in paragraph 4 above, the Secretary of State agrees with the Inspector (IR18) that the failure of the development plan process to bring forward sites in a timely fashion and the associated lack of available sites adds significant weight in favour of the appeal proposal.

Personal circumstances

13. The Secretary of State agrees with the Inspector (IR19) that the fact that the family needs a settled base and the appeal site is currently their only option represents a further significant consideration.
14. The Secretary of State agrees with the Inspector that the reasons set out at IR20-22, and having particular regard to the needs of the children, add some further weight to the case for the creation of a permanent permission. However, he notes that the present temporary consent allows health and education services to be accessed and that it represents an extension of the original temporary consent by another three years, by the end of which time the family would have been living on the site for over ten years. By this time, also, the council's Local Plan should be nearing adoption so that all parties will have a clearer indication of potential relocation opportunities.

Overall balancing

15. For the reasons given at IR23-24, the Secretary of State agrees with the Inspector that the proposal would be inappropriate development in the Green Belt which, by definition, is harmful, added to which there would be a significant loss of openness and detriment to visual amenity, so that the total amount of harm

must be given substantial weight. On the other side of the balance the Secretary of State agrees with the Inspector that, for the reasons given at IR23, the general need for gypsy sites, future site provision, and the accommodation needs of the appellant and his family all attract significant weight in support of the proposal, to which the continued uncertainty associated with a further temporary condition adds some additional weight.

16. Overall therefore, the Secretary of State agrees with the Inspector's conclusion that the considerations put before him do not outweigh the harm to the Green Belt to a sufficient degree to justify granting a permanent consent. Nevertheless, taking account of the Council's timetable for the preparation of their Local Plan and having particular regard to the needs of the children, the Secretary of State agrees with the Inspector that the decision of the Council to extend the temporary permission to November 2015 is reasonable. It relates to a specific development plan timetable and, by limiting the harm to the Green Belt, is proportionate under the circumstances and having regard to the appellants' rights under Article 8 of the European Convention on Human Rights.

Overall conclusion

17. The Secretary of State concludes that the appeal proposals are inappropriate development in the Green Belt and he attributes substantial weight to this harm. He considers that the totality of harm arising from the development would not be clearly outweighed by other considerations, and he considers that the very special circumstances necessary for the granting of a permanent permission do not exist, but that the extension to November 2015 granted by the Council is reasonable and justified.

Formal decision

18. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation to dismiss the appeal and retain the disputed condition 1 which limits permission to a temporary period ceasing on 1 November 2015 in accordance with planning application ref: 2011/1157 which was granted on 9 February 2011.

Right to challenge the decision

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged.
20. A copy of this letter has been sent to Barnsley Borough Metropolitan Council.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by B Hellier BA(Hons) MRTPI

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

Date 3 July 2013

TOWN & COUNTRY PLANNING ACT 1990

BARNSLEY METROPOLITAN BOROUGH COUNCIL

APPEAL BY MR KEVIN ROGERS

Hearing held on 30 January 2013

Whitegate Stables, Common Road, Brierley, Barnsley, S72 9DS

File Ref(s): APP/R4408/A/12/2180999

File Ref: APP/R4408/A/12/2180999

Whitegate Stables, Common Road, Brierley, Barnsley, S72 9DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Kevin Rogers against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2011/1157, dated 6 September 2011, was approved on 9 February 2012 and planning permission was granted subject to conditions.
- The development permitted is siting of residential caravans/sectional buildings and the use of caravans/sectional buildings for residential purposes, together with associated vehicles and equipment.
- The condition in dispute is No.1 which states that: The use hereby permitted shall be for a limited period ceasing on 1 November 2015.
- The reason given for the condition is: In the interests of the visual amenities of the Green Belt and in accordance with PPG2 and Barnsley LDF Core Strategy Policy CS34 Green Belts.

Summary of Recommendation: The appeal be dismissed

Background

1. The appeal site has been occupied by the appellant since about 2004. Following enforcement action planning permission was granted on appeal¹ in 2007. Condition 1 limited the consent to a temporary period of five years. Condition 3 restricted the number of caravans to three of which no more than two should be static caravans. An application was made for Condition 1 to be removed in order to make the permission permanent and to vary Condition 3 to allow five caravans of which no more than two would be static.
2. In response to this application the Council issued a new permission (Ref 2011/1157). Condition 1 extends the temporary period to 1 November 2015. Condition 3 permits an increase in the number of caravans as requested. The outstanding matter in dispute, therefore, is whether Condition 1 of the new permission should be deleted so as to make the permission permanent.

Gypsy status

3. The appellant is a Romany Gypsy with a background of travelling with his family as a scrap dealer. He settled on the appeal site to provide for the education and health needs of his children. His son in law Barry travels away to deal in scrap. His married son Kevin works locally but the family also breed and keep horses and travel and stay away at fairs in the summer. There is no dispute that the occupiers of the site have gypsy status for planning purposes and I agree from the evidence before me that this is the case.

Main issues

4. It is common ground that the proposal would be inappropriate development in the Green Belt. I consider there are four main issues.
 - The effect of the development on the openness and visual amenity of the Green Belt.

¹ Appeal Ref: APP/R4408/C/07/2048651 Allowed 5 November 2007

- Whether there is any additional harm including the effect on gypsy planning policies and highway safety.
- Whether there are other considerations which favour the proposal including the general need for gypsy sites and future provision, the accommodation needs of the present occupiers and their personal circumstances.
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify a permanent permission.

Reasons

Openness and visual amenity

5. The site used to be used for stabling horses but by the time it was acquired by the appellant there was a considerable amount of tipped material and scrap which was cleared. Currently on the site are two mobile homes, three touring vans, a small amenity block and a storage building clad in corrugated iron sheeting. Whilst the previous use would have had some impact on openness the present use comprises more substantial structures and buildings which result in a significant loss of openness.
6. The site lies in relatively flat open countryside slightly divorced from a bungalow marking the edge of the village. The cluster of development on the site, particularly the mobile homes, is clearly visible approaching the village from the south along Common Road. From here it appears out of keeping in the open agricultural landscape. At close quarters from the public footpath running alongside the site the boundary fence, the block paving surface, caravans and ancillary buildings are also visually intrusive.
7. Setting the fence along the south east boundary back and introducing some planting would soften the visual impact. Nonetheless I agree with the conclusion of the Inspector in the 2007 appeal that *even with landscaping a development of this type and scale, situated in an open rural environment, would remain an incongruous and prominent feature that would harm the appearance of the area.* I conclude that the present site has a significant adverse effect on visual amenity.

Other harm

8. Core Strategy Policy CSP18 requires that, in terms of their broad location, sites should be located primarily within urban areas. However, limited land availability and residential land values mean that in practice there are no gypsy sites in Barnsley within the urban area. Furthermore in seeking potential land allocations and a site for public sector investment the Council has not been able to identify any suitable sites that meet this objective. However the policy does not preclude sites outside the urban area and the site is otherwise in a reasonably sustainable location.
9. There is an acknowledgement in the PPTS² that gypsy sites may be appropriate in rural areas although in the open countryside, away from existing settlements, new sites should be strictly controlled. In this case the site is in the open

² Paragraph 23

countryside but I do not consider it to be away from the village in the sense intended in the PPTS and I find no conflict with this policy.

10. The sustainability criteria in the PPTS³ include a requirement that policies should promote peaceful and integrated co-existence between a site and the local community. The Town Council put it to me there is a nuisance caused by loose horses and dogs which roam the village and that residents feel uncomfortable using the public footpath. However it is unlikely that the appellant is responsible for all the horses involved and the Council is able to take action to control dogs. There is no evidence that people are prevented from using the footpath. There may be some tension in community relations associated with different cultures but I do not find it to be of such a scale to become a planning issue or count against the proposal.
11. Residents also express concern over the safety of the access onto Common Road and the number of vehicles that use the access. However visibility at the access point is good and traffic on the main road is slowing as it enters the 30mph speed limit. The current permission does not permit commercial use of the appeal site and the access track is adequate for normal residential traffic which might include horse boxes and pickup trucks. There would be no significant harm caused in relation to road safety.

Other considerations

General need

12. The South Yorkshire Gypsy and Traveller Accommodation Assessment published in 2007 (2007 GTAA) identified a need for 48 pitches in Barnsley in the five year period from 2006 to 2011. This work has been recently refreshed for the period 2011 to 2016 (2011 GTAA). It arrives at a five year target of 39 pitches over and above existing provision. However it was agreed that households on temporary sites should be added to give a revised total of 49 pitches. Further sites would be needed to accommodate natural growth for a five year supply up to 2018.
13. This is very much a minimum figure because the supply assumptions include 17 pitches on the private Ings Lane site in Wombwell. This site is on occasion subject to severe flooding. Whatever the intentions of the owner it would not appear prudent to expect it to form part of the long term supply of sites whilst this flood danger persists.
14. I conclude that there is a very significant existing shortfall in gypsy site provision and that the Council is unable to demonstrate a five year supply of deliverable sites.

Future provision

15. The Council is preparing a Development Sites and Places Development Plan Document (DPD) which will include gypsy site allocations. A consultation draft which was issued last year identified two potential gypsy sites and sought suggestions for others, including suggestions from existing gypsy site occupiers

³ Paragraph 11

with whom it has liaised directly. The DPD will be published in draft form in May or June this year with a view to its final adoption in November 2014.

16. There are uncertainties associated with this process.

- There should be a robust evidence base upon which to establish accommodation needs and yet the present DPD proposals rely on the 2011 GTAA figures which have shortcomings as noted above.
- Neither the deliverability nor the availability of the draft allocations have been determined and there has been considerable local opposition to one of the sites.
- The soundness of future proposals still has to be subject to public examination.

17. In 2012 the Council bid for and received a grant allocation of £800,000 from the Homes and Communities Agency to deliver a local authority managed site. However the identified site proved to be unsuitable because of contamination and the Council is actively seeking an alternative site.

18. The Council is making some progress. Nonetheless at present there is little prospect of sites being available before 2015. Furthermore, the preference in Core Strategy Policy CS18 for locations within the urban boundary has proved to be too restrictive. This failure of the development plan process to bring forward sites in a timely fashion and the associated lack of available sites adds significant weight in favour of the proposal.

Accommodation needs of the appellant

19. The appellant and his sons and son in law work in the locality. Living as an extended family is part of the gypsy culture. The appeal site is a relatively narrow, tapering strip of land currently occupied by three households. It is approaching capacity. Nonetheless the family needs a settled base and at present the appeal site is their only option. This is a further significant consideration.

Personal circumstances

20. The appellant has two children who attend the village primary school and two grandchildren who are under school age. One of the children has a debilitating dietary complaint and is under the care of the local GP. At present the temporary consent allows health and education services to be accessed although there would be potential disturbance to this provision at the end of the temporary period.

21. When temporary permission for five years was granted on appeal in 2007 it was on the understanding that an alternative site would become available through the development plan process. The present permission now extends this temporary period for another three years by the end of which time the family would have been living on the site for over ten years. Even then there is uncertainty about this new timeframe.

22. The stress to the family associated with an extended period of uncertainty together with the effect on the education and health care of the children at the end of this period adds some further weight to the case for the creation of a permanent permission.

Balancing harm against other considerations

23. Inappropriate development in the Green Belt is by definition harmful⁴ and must be given substantial weight. Added to this is the significant loss of openness and detriment to visual amenity. On the other side of the balance the general need for gypsy sites, future site provision, and the accommodation needs of the appellant and his extended family all attract significant weight in support of the proposal and the continuing uncertainty associated with a further temporary permission adds some additional weight.
24. I do not find that these other considerations are such as to clearly outweigh the harm to the Green Belt. I find the decision of the Council to extend the temporary consent to November 2015 to be reasonable. It relates to a specific development plan timetable which, although ambitious, would be deliverable. By this means the harm to the Green Belt is time limited. During this period the Council will have to consider whether the site, when considered against the availability of other options and notwithstanding the harm to the Green Belt, should be brought forward as an allocation in the Development Sites and Places DPD.

Conclusion

25. I conclude that the considerations that have been put before me do not outweigh the harm to the Green Belt arising from inappropriateness, loss of openness and visual intrusion sufficient to justify a permanent permission. Very special circumstances do not exist and the proposal would be contrary to national Green Belt policy. The disputed condition should be retained.

Recommendation

26. I recommend that the appeal be dismissed.
27. In the event that the Secretary of State takes a different view I recommend the variation of the existing conditions as set out in Annex 1.

Bern Hellier

INSPECTOR

⁴ National Planning Policy Framework. CLG March 2012. Paragraphs 87 and 88

Annex 1

Recommended variation of conditions if the appeal is allowed.

1. Planning permission Ref 2011/1157 for the siting of residential caravans/sectional buildings and the use of caravans/sectional buildings for residential purposes, together with associated vehicles and equipment at Whitegate Stables, Common Road, Brierley, Barnsley, S72 9DS, approved on 9 February 2012, should be varied by deleting Conditions 1 and 5 and substituting for them the following condition:
 - 1) The use hereby permitted shall cease and all caravans, structures, 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 the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a landscaping scheme for the boundaries of the site shall have been submitted for the written approval of the local planning authority and shall include a timetable for its implementation;
 - ii) within 11 months of the date of this decision the landscaping scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the 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 landscaping scheme shall have been approved by the Secretary of State;
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown	Philip Brown Associates
Mr Kevin Rogers	Appellant
Mr Danny Rogers	Son of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Woodward	Planning Officer
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INTERESTED PERSONS:

Mr Pat Doyle	Brierley Town Council and nearby resident
Mr Frank Hardy	Brierley Town Council

DOCUMENTS

- 1 Relevant extracts from the 2011 GTAA
- 2 Council response to PINS gypsy questionnaire
- 3 Schedule of permanent/temporary traveller sites
- 4 High Court Judgement 120121 EWHC 3660(Admin) AZ v SSCLG and South Gloucestershire District Council
- 5 Development Sites and Places DPD Consultation Draft. Site GT2
Additional sites for gypsies, travellers and travelling showpeople.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.