



Appeal Decisions

Hearing held on 23 March 2023

Site visit made on 23 March 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal A Ref: APP/Y2430/C/21/3277030

Paddock Land, Barkestone Lane, Plungar, NG13 0JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shawn Follows against an enforcement notice issued by Melton Borough Council.
- The notice was issued on 17 May 2021.
- The breach of planning control as alleged in the notice is use of the site as a residential caravan site and construction of hardstanding area without the benefit of planning permission, and in conflict with the decision to refuse planning permission for these purposes taken on 30 August 2019 (Planning Application ref. 19/00225/FUL).
- The requirements of the notice are to: 1. Remove all of the mobile homes from the Site; 2. Not place or permit to place further mobile homes on the Site without the requisite planning permission; 3. Remove all hardstanding and return the site to its condition prior to development taking place.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Appeal B Ref: APP/Y2430/W/20/3246224

Land North of Plungar Lane, Plungar, Nottinghamshire, NG13 0JN

- 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 Shawn Follows against the decision of Melton Borough Council.
- The application Ref 19/00225/FUL, dated 8 February 2019, was refused by notice dated 30 August 2019.
- The development proposed is use of land for the stationing of caravans for residential purposes and the erection of a stable

Decisions

1. It is directed that the enforcement notice is varied by the insertion of the words 'and cease the use as a residential caravan site' at the end of paragraph 5(i).
2. Subject to this variation, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the site as a residential caravan site and construction of hardstanding area at Paddock Land, Barkestone Lane, Plungar, NG13 0JN as shown on the plan attached to the notice and subject to the conditions set out below in the Schedule of Conditions.

3. Appeal B is allowed and planning permission is granted for use of land for the stationing of caravans for residential purposes and the erection of a stable at Land North of Plungar Lane, Plungar, NG13 0JN in accordance with the terms of the application, Ref 19/00225/FUL, dated 8 February 2019, and the plans submitted with it (other than the plan titled 'Proposed Site Plan 003') and subject to the conditions set out below in the Schedule of Conditions.

Preliminary Matters

4. The site address is described differently in the two appeals, the application refers to Plungar Lane and the enforcement notice refers to Barkestone Lane (the road links the villages of Plungar and Barkestone) but the postcode and site plans are the same.

Appeal B

5. The main parties did not agree on which description of development should be used in Appeal B. The description in the application was for the 'Use of land for the stationing of caravans for residential purposes and the erection of a stable.' This was changed in the decision notice to 'Use of land for 2 residential gypsy pitches (each pitch comprising the siting of one static caravan and 1 touring caravan and the erection of a dayroom) and the erection of a stable'.
6. The difference in the descriptions does not have much practical effect as the details of the permitted use would need to be secured by the imposition of conditions to regulate the extent, layout and type of use. Indeed, there may be locations where a more unrestricted use for the stationing of caravans would be appropriate, and in those cases it would not therefore be correct to reference a gypsy use in the description. I have therefore used the description preferred by the appellant as this is the description of development as it appeared on the application form.
7. The Council accept that drainage and power had been provided on site and that any necessary details could be adequately secured through the imposition of a condition. They are therefore satisfied that the basic human needs referred to in the decision notice in Appeal B could be provided and this was no longer an issue in dispute between the main parties. I understand that the Parish Council still have concerns about this but I am satisfied that a condition to require the details of the drainage arrangements to be submitted and agreed by the Council and thereafter maintained should overcome any issues.
8. It was accepted by the parties that there was a discrepancy between the elevational and floor plans and the overall block plans submitted in the Appeal B application. The appellant suggested that this could be remedied by the removal of the drawing entitled 'Proposed Site Plan 003' from those to be considered as part of the appeal and I have therefore considered Appeal B on that basis.

Site access

9. The site access as built, and therefore part of the deemed application in Appeal A, and the proposed access in Appeal B are different (the access as built is closer to the western site boundary). The Council confirmed that neither access arrangement was better or worse in terms of the highway safety or any other planning matters, and there was nothing before me to show otherwise.

Fallback

10. The appellant argues that the notice allows a 'fallback' position as it does not require the whole of the alleged development to cease.
11. The allegation states that the matters which appear to constitute the breach of planning control are 'the use of the site as a residential caravan site and construction of hardstanding area.' Paragraph 5(i) requires the appellant to 'Remove all of the mobile homes from the Site' and 5(ii) 'Not to place or permit to place further mobile homes to be placed (sic) on the Site without the requisite planning permission.' Taken together these would require the use to cease for the stationing of mobile homes.
12. However, the appellant argues that the notice would not prohibit the stationing of touring caravans as only mobile homes are specifically referred to in the requirements – the fallback position would therefore be that the stationing of touring caravans would be permitted. Against this, the Council argues that the term 'mobile homes' encompasses caravans, and that it was clear from the face of the notice as to what was intended (i.e. the removal of all caravans and mobile homes from the site)
13. Factually, the appellant confirmed that at the date that the notice was issued there were only touring caravans on the site, the static caravan that was on the site at the time of the site visit was placed there in 2022. I also note that the appellant is not arguing that the notice is invalid or null because it is so uncertain that he did not know what was required to remedy the alleged breach.
14. The term 'caravan' is defined as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed or being transported on a motor vehicle or trailer)'¹. A caravan is therefore mobile by definition. There is no definition of a mobile home within the planning or caravan acts but the term when used for licensing purposes found in the Mobile Homes Act 1983 has the same definition as for caravan as set out above. I therefore find that as the wider legal definition is the same for 'caravan' and 'mobile home', and also that in this case there were only touring caravans on the site at the date of the issue of the notice, it was understood by the main parties that the purpose of the notice was to secure the removal of the touring caravans from the site. There is not therefore a fallback to permit touring caravans to be stationed on the site.
15. For clarity, I shall also vary the Appeal A notice to add a requirement that the use should cease. I consider that there is no injustice to the parties as the intent of the notice is clear and has been understood.

Appeal A, ground (a) and the deemed planning application, and Appeal B

16. The deemed application for permission in Appeal A is for the use as a residential caravan site and the construction of the hardstanding area – no dayrooms had been constructed on site at the time of the issue of the notice. The development proposed in Appeal B is for the stationing of caravans for residential purposes and also includes the erection of a stable and two day rooms.

¹ Section 29 (1) Caravan Sites and Control of Development Act 1960

17. The main issues in both appeals are:

- i. Whether the appellant and other proposed occupants fall within the definition of gypsies and travellers contained in the Planning Policy for Traveller Sites ('the PPTS').
- ii. The need for pitches;
- iii. Whether the location is sustainable;
- iv. The effect of the development on the character and appearance of the area, countryside and site;
- v. Whether there has been Intentional Unauthorised Development (and, if so, the weight to be attached to it);
- vi. Personal circumstances of the appellant and the other proposed occupiers; and
- vii. Any other considerations.

PPTS Definition

18. The parties agree that the proposed occupants of the site fall within the PPTS definition of gypsies and travellers. It was confirmed at the hearing that the appellant is living on the site with his family in a static caravan, touring caravan and shed, and that the other family which consists of a widow and her three grown up children have 2 touring caravans and a shed on their pitch. I am satisfied from the information provided by the appellant at the hearing that he and the other occupants of the site fall within the definition.

The need for pitches

19. The Melton Borough Local Plan 2011 – 2036 ('the MBLP') sets out a permanent pitch requirement of 3 residential pitches for Gypsies and Travellers between 2016 and 2026 which was being met at the time of its adoption. The MBLP further states that there was no further requirement for pitches between 2026 and 2036 and that further pitches would only be sought if subsequent reviews of the Gypsy and Traveller Accommodation Assessment ('the GTAA') established a need. The GTAA has not been reviewed since 2017 (although a review is currently underway) and Policy C6 of the MBLP states that it will be used as a basis for determining planning applications, together with the criteria within the most up to date national PPTS. Clearly, the MBLP was found to be sound on its adoption in 2017.
20. Whilst Policy C6 sets out the criteria to be considered when assessing windfall sites from Gypsy and Traveller use, in line with the requirement in the PPTS, this is at odds with the provision that the GTAA will be used to determine any such application. As the GTAA has not been updated since 2017 it is unclear as to how accurate the pitch requirements identified by it remain in relation to these appeals.
21. I accept that the pitch requirements relied on by the Council are probably there or thereabouts as there is no compelling evidence before me of a significant increase in the need on the ground, and indeed the appellant's evidence was that there may be a requirement for some additional provision in general terms (not taking account of these appeals). However, there is a need for these two

families to live somewhere and the Council confirmed that there are not any other suitable and available pitches in the borough. This is indicative of an immediate unmet need for sites in the Council area and I therefore attach considerable weight to the need for pitches in favour of the development.

Sustainability

22. The Council argues in both appeals that the development is unsustainable by reason of the location outside of a settlement and therefore contrary to Policy C6 which requires that proposals will be allowed where they are well-related to local infrastructure and services of a nearby town or village, including safe and convenient access to the road network.
23. The nearby villages of Plungar and Barkestone have limited facilities, but they do have a shop, pub, restaurant and bus service, and whilst the road does not have a lit footway, I did see several people walking along it (as was also confirmed in various representation received from interested parties) during my site visit. The national speed limit applies on the road passing the site but in reality the speeds travelled are generally much slower, and the site location has convenient access to the wider road network.
24. I accept that the residents of the appeal site would primarily rely on their private vehicles for most aspects of their day to day life, but this is generally the case with Gypsy sites and reflects the nomadic nature of their lifestyle, and also the reality of where these sites are likely to be located. The PPTS, which is an important material consideration, recognises this when it advises on restricting new traveller site development in open countryside but ensuring that sites in rural areas respect the scale and do not dominate the nearest settled community. The implication is that sites outside of settlements can be suitable. This very small Gypsy site is located close to two rural settlements, and whilst both are small themselves neither can be considered as being dominated by the development.
25. Neither development is in direct conflict with Policy IN2 which relates to transport and states, amongst other things, that all new developments should, where possible be located where travel can be minimised and the use of sustainable transport modes maximised. I have set out above the particular factors to be taken into account when assessing a Gypsy or Traveller site, and in fact this site does allow for some use of sustainable transport modes as it is possible to walk into the nearby villages to which there are some bus links, albeit fairly limited, to larger settlements (including to train services which could also be accessed by car but nevertheless reducing private vehicle use overall).
26. There are other policies relating to sustainability within the MBLP. However, the Framework at FN 27 advises that the PPTS sets out how travellers' housing needs should be assessed for those people covered by the definition. The PPTS requires that local planning authorities make their own assessment of need for the purposes of planning and have criteria base policies to apply in the case of windfall sites such as this. Policy C6 is such a policy and was found by the Local Plan inspector to be sound, and therefore it can be considered to be fair and facilitate the traditional and nomadic life of travellers while respecting the members of the settled community. As such this is the most relevant policy

when assessing these appeals and the criteria includes consideration of sustainability issues within it.

27. Policy SS2 deals specifically with housing delivery and Policy SS3 refers to residential development on unallocated sites. Policy SS3 does not reflect the policy set out in the PPTS as it does not provide for development on unallocated sites in the countryside unless it is within or on the edge of existing settlements. The PPTS takes priority when considering sites for use by defined gypsies and travellers and Policy SS3 does not therefore apply this case.
28. I do not therefore find that the site is in conflict with the PPTS or Policy C6, which is the most relevant policy in the MBLP when assessing this type of development.

Character and appearance

29. The appeal site is located in a rural area between the residential settlements of Barkestone and Plungar with access from Barkestone Lane. There is no previous planning use identified but it is surrounded by agricultural fields. Views into the site are very limited as there is a well-established hedgerow along the road boundary so that it is only possible to see into the site through the access. Gravel hardstanding has been laid across part of the site including the access to the road.
30. The Council do not argue that the development in Appeal A or Appeal B unduly harms the character and appearance of the area in a way which cannot be overcome by appropriate landscaping.
31. The Parish Council argues that the character and appearance of the area is harmed due to the location between two nucleated villages and the location of the site within the gap between these settlements. However, as views are extremely limited they do not impact on the views of the villages or the experience of being between the two settlements, and there is no impact caused by either the existing or proposed development on the views of the prominent church spires. In addition, the proximity to other buildings in the vicinity mean that it does not appear incongruous or out of character. The proposed use to include the siting of caravans and stable is something that would be expected in this type of countryside location, and the proposed design of the stables and dayrooms in Appeal B is likewise unremarkable. Whilst I accept that some harm may be caused if there were more extensive views into the site this possibility can be mitigated through the imposition of a landscaping condition on any permission granted.
32. The Parish Council referred to a previous appeal decision² which refused permission for a new build detached 3 bedroom dwelling on Barkestone Lane. Whilst I have taken account of that decision it was for a different type of development with a different policy context, and every application must be considered on its own specific facts.
33. I find that any harm which might be caused to the character and appearance of the area, either by the development that was on the site when the notice was served or by the development proposed in Appeal B, could be adequately mitigated by landscaping. The development in both cases is modest in scale with extremely limited views into the site or effect on the surrounding area.

² APP/Y2430/W/18/3200706

Intentional Unauthorised Development

34. The appellant accepts that there has been development and that it was not permitted and thus falls within the ambit of the Written Ministerial Statement. However, I accept that the level of harm is limited and not irreversible. In addition, one of the families occupying the site came from a roadside existence and the appellant and his family were required to leave the pitch they were on and had nowhere else to go at that time. The appellant moved into the site around Easter 2021, and I accept that the restrictions on movement and the worry associated with Coronavirus pandemic were significant at that date.
35. I have also taken into account that the appellant had applied for permission before moving onto the site (Appeal B) and has also appealed the enforcement notice on ground (a). In both instances the appellant is attempting to regularise the situation with the opportunity for conditions to be imposed if appropriate, and the statutory framework does allow for the grant of retrospective permission and has a remedial rather than punitive enforcement regime.
36. For these reasons I attached limited weight to this consideration.

Other matters

37. There is no evidence before me to suggest that the site is prone to flooding, and there are ditches to the front and side boundaries which would help water from the road to drain away. The Council has confirmed that it is satisfied that the sewerage and drainage is working and have not raised concerns regarding the impact on ecology or biodiversity or highway safety, and there has been nothing submitted in this appeal to cause me to doubt their assessment. The size of the development and number of people living on the site mean that whilst there will be additional movements onto the road they will be fairly limited in number.
38. Several letters in support of the development were received from residents living in properties in the local area and this is some evidence in support of the successful co-existence of the site and development with the local community although many objections to the planning application were also received.

Planning Balance

39. To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. In this case I have found that both the development in Appeal A and the proposed development in Appeal B are in accordance with the most relevant development plan policy, Policy C6, as well as the Framework and the PPTS and so with the development plan read as a whole.
40. Limited weight must be accorded to the fact that it was Intentional Unauthorised Development, which is a material consideration, but this is outweighed by the lack of alternative pitches and clear need. I am therefore satisfied that permission should be granted, both under the deemed application for permission in Appeal A and for the proposed development in Appeal B.

41. As I have found the development to be acceptable on the basis of the above considerations there is no need to consider the personal circumstances of the appellant and other site occupants.

Conditions

42. There was a discussion regarding conditions at the Hearing starting with the conditions suggested in the Council's statement which apply to Appeal B but rather unfortunately there was not an agreed set of draft conditions provided. However, the parties agreed that the conditions as set out in the Schedule below should be imposed, and that they would meet the statutory and policy test should permission be granted in either or both appeals. As both appeals are retrospective in relation to the material change of use, the sets of conditions mirror each other to provide consistency.
43. In both appeals, Conditions 1 and 3 regulate the number and type of caravans and vehicles on the site (and therefore overall extent and effects of the development). Condition 2 in both appeals restricts the use to Gypsies and Travellers and is required to safeguard the site for this purpose, and having regard to the policy context, but should include those Gypsies and Travellers who have ceased to travel permanently in order to avoid discrimination.
44. Condition 4 in relation to Appeal A and Condition 6 in relation to Appeal B are necessary to protect the character and appearance of the area and ensure that the site access does not adversely affect highway safety.
45. Conditions 4 and 5 in Appeal B are required to overcome the discrepancies in the submitted plans and ensure that the development is carried out in accordance with the approved plans to provide certainty.

Conclusion

46. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice. Appeal B also succeeds.
47. The Appeal A appeals on grounds (f) and (g) do not fall to be considered.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/Y2430/C/21/3277030	Mr Shawn Follows
Appeal B	APP/Y2430/W/20/3246224	Mr Shawn Follows

APPEARANCES

FOR THE APPELLANT:

Matthew Green, Planning Consultant
Shawn Follows, Appellant
Martin Ward, owner of site

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, Barrister
Louise Parker, Planning Development Manager
Tom Pickwell, Solicitor
Steve Jarman, Opinion Research Services

INTERESTED PARTIES:

Peter Tufnell on behalf of the Parish Council, Planning Consultant

DOCUMENTS SUBMITTED AT THE HEARING

1. High Court Order CO/4463/2022
2. Appeal Decision APP/L3625/W/21/3282272
3. Signed witness statement from appellant
4. 4 letters from interested parties
5. Landscape Sensitivity and Green Infrastructure Study for Leicester and Leicestershire

SCHEDULE OF CONDITIONS

Appeal A – APP/Y2430/C/21/3277030

- 1) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' education or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) 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 3 months 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 i) the means of foul and surface water drainage of the site; ii) the site access to include minimum visibility splays of 2.4 metres by 160 metres at the site access in each direction and tarmacking of at least 15 metres behind the highway boundary, and any gates shall open away from the highway; iii) the internal layout of the site, including the siting of caravans, pitches, hardstanding, access roads, parking, turning facilities and amenity areas; iv) landscaping for the site to include all hard and soft landscaping including tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained 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.

Appeal B – APP/Y2430/C/20/3246224

- 1) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' education or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 18_953_001, 18_953_002, 18_953_004 and 18_953_005
- 5) The dayrooms permitted as part of this development should be faced in local stone and details of such shall be submitted and approved in writing prior to building of the Damp proof course level of construction. The development shall be carried out in accordance with the submitted details.
- 6) 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 3 months 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 i) the means of foul and surface water drainage of the site; ii) the site access to include minimum visibility splays of 2.4 metres by 160 metres at the site access in each direction and tarmacking of at least 15 metres behind the highway boundary and, any gates shall open away from the highway; iii) the internal layout of the site, including the siting of caravans, pitches, hardstanding, access roads, parking, turning facilities and amenity areas; iv) landscaping for the site to include all hard and soft landscaping including tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained 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.