

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL 1

APPEAL BY MR DREW PRICE AND MR JAMES BALL AGAINST A REFUSAL BY SOUTH CAMBRIDGESHIRE COUNCIL TO ISSUE A CERTIFICATE OF LAWFULNESS UNDER SECTION 192 OF THE TOWN & COUNTRY PLANNING ACT 1990 FOR THE USE OF LAND FOR THE STATIONING OF 2 MOBILE HOMES FOR RESIDENTIAL PURPOSES

PINS REF: APP/W0530/X/22/3308443

GPS REFERENCE: 21_1161A

LPA APPEAL REFERENCE: 22/01574/CL2PD

APPEAL 2

APPEAL BY MR DREW PRICE AND MR JAMES BALL AGAINST A REFUSAL BY SOUTHCAMBRIDGESHIRE COUNCIL OF AN APPLICATION FOR A MATERIAL CHANGE OF USE OF LAND THROUGH APP/W0530/W/22/3308444 INTENSIFICATION TO THE STATIONING OF CARAVANS FOR RESIDENTIAL PURPOSES, NINE DAYROOMS AND THE FORMATION OF HARDSTANDING ANCILLARY TO THAT USE

PINS REF:

GPS REFERENCE: 21_1161B

LPA APPEAL REFERENCE: 22/01703/FUL

LAND AT CHEAR FEN BOAT CLUB, TWENTYPENCE ROAD,
COTTENHAM, CAMBRIDGESHIRE, CB6 8PX

**STATEMENT OF CASE ON BEHALF OF THE
APPELLANT**

1. In the Proof of Evidence and at the Inquiry the following submissions will be made on behalf of the appellant.
2. The site will be described.
3. The planning history of the site will be considered.
4. The Development Plan and relevant Supplementary Planning Documents will be referred to and discussed.
5. The National Planning Policy Framework, Planning Policy and Traveller Sites, and National Planning Policy Guidance will be referred to and discussed.

Appeal 1 - APP/W0530/X/22/3308443

6. These grounds of appeal are submitted against the refusal of South Cambridgeshire Council to issue a certificate of lawfulness under section 192 of the Town & Country Planning Act 1990 for '*for the use of land for the stationing of 2 mobile homes for residential purposes*'. This was refused on 5th September 2022.
7. GPS are not currently in possession of the full delegated authority report for this matter, however we have been sent by the LPA the text of the report. Once we are in receipt of the full delegated report, these grounds may be expanded upon.

The Decision Notice

8. In summary, the decision notice sets out:
 - *The previous lawful development certificate S/1346/16/LD (2016 Certificate) did not identify a wider planning unit operating only as a caravan site. The wider use of the land was likely to have been in mixed use as part of an agricultural feed business and not solely a caravan site. The scope and effect of the 2016 Certificate was therefore limited to its terms and geographical remit. With the boundaries of the 2016 Certificate drawn as they are, the change of use of the land from being partly used for a single mobile home to the entire land being used for 2 mobile homes would constitute a material change of use of the land at the very least because the planning unit is different and because the Council is aware that the previous lawful*

use of the land was in all likelihood a mixed use. That notwithstanding, the lawful use as defined in the 2016 Certificate was subsequently, and in all likelihood, abandoned based on the information available to the Council; the mobile home being first abandoned and then dilapidated and derelict.

- Even if the applicant is correct that the 2016 Certificate pertained to the entire portion of land the subject of the current application and the residential use had not been abandoned, the proposed use would still not be lawful because it would amount to intensification of the use as a matter of fact and degree and taking account of the planning impacts of the more intensive use.*

Relevant Planning History and Planning Unit

9. A Lawful Development Certificate reference S/1346/16/LD dated the 11th October 2016 confirms the lawfulness of the existing use of land for the siting of a residential mobile home.
10. The land identified by the Council on the OS plan by a thick black line only covered where the mobile home was understood to be sited.
11. The submitted application had rightly identified the site with a red line around the whole site which is the same as that shown on the Location Plan (Ref: 21_1161A 001) for this application. However, the Council incorrectly amended the plan to a reduced area around the mobile home.
12. The planning unit is the whole site as identified on the Location Plan (Ref: 21_1161A 001). The site is well defined by obvious boundaries and there is a single access point. From a physical and ownership perspective it is clear that the whole site is the planning unit.
13. It is noted that that Enforcement Notice dated 21st June 2021 (Ref: S/1346/16/LD) served by the Council but subsequently withdrawn identifies the whole site. This suggests that the whole site is viewed as the planning unit.

14. The identification of planning units was set out in the judgment of ***Burdle v Secretary of State for the Environment and another*** [1972] 3 All ER 240 where Bridge JJ set out the following categories:

1) *"Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered"*

2) *"It may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land."*

3) *"It may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit"*

15. In accordance with the first test of Burdle, due to the occupier's ownership and uses within the application site, the whole unit of occupation must be considered.

Intensification

16. The Town and Country Planning Act 1990 (TCPA) controls development and imposes a requirement to obtain a planning permission for the development of the land. Development is defined in section 55, which provides, in so far as is material: *'...development', means the carrying out of...any material change in use of any buildings or other land...'*
17. As the appeal site has planning permission for 1 mobile home an additional 1 caravan cannot amount to development as there has been no material change of use of land, the additional caravan for residential use does not require planning permission.

18. There is no change in the definable character of the use of the land, and it cannot therefore be development, and therefore planning permission is not required.
19. The Appellant will refer to the following leading case law: ***Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited* [2012] EWCA Civ 1473** ("MWRL-CoA") and ***Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council* [2014] EWCA Civ 241**.
20. Due to not being in receipt of the officer's report as of yet, GPS are unaware if the Council have taken into account the relevant case law on intensification in the decision making process. The Inspector will be aware that acting contrary to, or not following, well established case law is one of the types of behaviour that may give rise to a substantive award of costs against a local planning authority.
21. In order for the proposal to constitute 'development' in this case there must be a 'material change of use'. The test is not whether there has been a material change in the character of the area, but a material change in the character of the 'use' of the site, and a site for 1 caravan is a caravan site, as is one for 10 or 15, it is still the same use, a caravan site. There has to be something significant which changes about the use itself that creates the material change in the character of the use.
22. Green Planning Studio Ltd accepts that the proposal for an additional caravan is intensification of the use of land. However, as case law shows, the intensification of the number of caravans on the site is unlikely to constitute a material change of use.
23. In considering the extent to which the number of caravans on the land could be increased without there being a material change in use it is necessary to determine the current definable character of the land and the impact, if any on that definable character of any change in the number of caravans.

24. Currently, a residential mobile home is permitted to be sited on the land identified by a application reference S/1346/16/LD, granted on 11.10.2016.
25. Increasing the number of caravans that can be stationed within the whole site from 1 to 2 is an intensification of the existing use. However, the applicant asserts that the intensification is not such that it would constitute a material change of use, and therefore would not fall into the definition of 'development' as described above.
26. As the proposal is not defined as 'development' a Lawful Development Certificate can be granted for the siting of two residential mobile homes on the land as identified on the Location Plan.

Conclusion

27. It is concluded that the LPA's reasons for refusing to issue a certificate of proposed lawful use are not sound.

Appeal 2 - APP/W0530/W/22/3308444

28. These initial s.78 grounds of appeal are submitted against the refusal of an application by South Cambridgeshire Council ("**the LPA**") for '*a material change of use of land through intensification to the stationing of caravans for residential purposes, nine dayrooms and the formation of hardstanding ancillary to that use.*' This was refused on 5th September 2022.
29. This section 78 appeal has been linked to a refusal by South Cambridgeshire Council to issue a certificate under Section 192 of the Town and Country Planning Act 1990 '*for the use of land for the stationing of 2 mobile homes for residential purposes*' (Appeal 1). This appeal will therefore follow the timetable for the section 195 appeal.
30. The decision notice sets out 8 reasons for refusal, raising 9 points, which can be summarised as follows:
- Principle of development
 - Locational Sustainability
 - Character and appearance
 - Amenity and health concerns in relation to dust and noise due to the Mitchell Hill Quarry
 - The absence of a statement demonstrating safeguarding of the Sand and Gravel Mineral Safeguarding Area
 - Biodiversity concerns
 - Contaminated land concerns
 - Flooding concerns
 - Highway concerns

Principle of development

31. The decision notice states:

'The site is located outside of the development framework boundary of Cottenham. The proposal would result in the encroachment into the open countryside and incremental growth in an unsustainable location. To access local services/facilities the future occupiers of the site will have to travel a significant distance via a car. The proposed development would represent encroachment of the open countryside, incremental growth in an unsustainable location and a need to travel, particularly by car. The proposal is therefore contrary to Policies S/3, S/7, H/22 & TI/2 of the South Cambridgeshire Local Plan 2018 and fails to comply with the provisions of the National Planning Policy Framework.'

32. The South Cambridgeshire Local Plan 2018 policies cited will be assessed in line with the NPPF 2021 for their consistency with national policy. It will be demonstrated that, on balance, the basket of most important Local Plan policies, is out of date and therefore the weighted balance in paragraph 11 of the NPPF is engaged, and that the development complies with National Policy.
33. As a matter of principle gypsy sites are acceptable within the countryside, as per Policy C of the Planning Policy for Traveller Sites, provided they do not dominate the nearest settled community. It will be demonstrated that the proposed development will not dominate the nearest settled community.
34. It will be demonstrated that the proposed development is not in open countryside pursuant to paragraph 25 of Planning Policy for Traveller Site which sets out: *'Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.'*
35. There are two elements to this test to be engaged for proposed development to be strictly controlled. The first is that development has to be in open countryside, and the second is that development has to be away from existing settlements. These have to be engaged in combination to enable new development to be "very strictly limited" in accordance with paragraph 25. It is not sufficient for new development to be very strictly limited when it is either

in open countryside, or away from existing settlements. It must be considered as a whole. It will be demonstrated that the proposal is neither in open countryside, or away from existing settlements.

Locational Sustainability

36. It will be demonstrated that the proposed development is not in an unsustainable location. The Council have based their assessments upon walking distances only, have failed to take into account any distances using bicycles or public transport. Cycling distances are acceptable up to 5km from the appeal site; the Council set out in their officer's report there is a doctor's surgery, a Co-Op, and a primary school within 5km of the appeal site. The settlement of Cottenham is within 4km of the appeal site, and the settlement of Wilburton within 3km.
37. GPS will undertake a detailed assessment of the site's sustainability in relation to existing nearby settlements and their services and facilities.
38. It will be shown with reference to the requirements of the NPPF and the PPTS that the site is sustainably located for a gypsy and traveller family.

Character and appearance

39. It will be shown, with reference to the existing character in the area that the development would not have an urbanising effect on the character of the area.
40. In terms of appearance, it will be shown that there will be a limited impact which can be mitigated with appropriate landscaping.

Amenity and health concerns in relation to dust and noise due to the Mitchell Hill Quarry

41. It will be demonstrated that the proposed development will not affect the Quarry and that the appeal site is set back far enough from the road and the Quarry as not to warrant any amenity or health and safety concerns.

42. Evidence submitted within the application for the Quarry in 2018 (ref: S/0088/18/CM) will be relied upon.

The absence of a statement demonstrating safeguarding of the Sand and Gravel Mineral Safeguarding Area

43. It will be demonstrated that the proposed development will cause no harm to the Sand and Gravel Mineral Safeguarding Area

Biodiversity

44. It will be shown that any impact on local wildlife can be successfully mitigated, if necessary, and that biodiversity can be enhanced.

Contaminated land

45. It will be shown that if there is any potential contamination of land, it can be adequately addressed for the development to remain appropriate.

Flooding

46. The Council appear not to have taken consideration of their sustainable drainage engineer consultant, who found that the proposed development was acceptable pursuant to conditions.

Highways

47. Highway safety at this site's entrance is not a matter that should form a reason for refusal. It will be demonstrated that the development is acceptable in terms of highway safety.

Material considerations in favour of the development

48. If it is concluded that there is harm, either by departure from the Development Plan (where relevant) or for any other reason, then it is contended that any harm identified is outweighed

by the general material considerations that would apply to any gypsy family, such that a permanent planning permission can be granted.

49. Those material considerations are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply, failure of policy, and if necessary, the personal circumstances of the site occupants (personal need, health and education).

Need

50. Taking into consideration the latest available estimations of need for gypsy and traveller sites in the District, GPS Ltd are of the view that the relevant GTAA underestimates the level of need in the district. This is a material consideration of significant weight.
51. The Appellant will also refer to the recent Court of Appeal judgement in ***Lisa Smith v SSLUHC [2022] EWCA Civ 1391***, specifically only meeting the accommodation needs of those identified as meeting the PPTS definition is discriminatory, without legitimate aim or justification and is therefore unlawful. The approach that ought to be taken will be set down within the Appellant's statement of need, that provision of pitches for all gypsy and travellers needs to be addressed through any gypsy and accommodation assessment and that the Council in requiring elderly and disabled gypsy and travellers to rely on general planning policy are in breach of both the European Convention on Human Rights and Section 19 of the Equality Act 2010.

Lack of suitable, acceptable, affordable sites

52. Alternative sites must be available, acceptable and affordable (*Angela Smith v Doncaster MBC*). It appears from all the available information that there are no alternative available sites for the Appellant and other site occupants to move to and there seems little likelihood that there will be in the foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Five-year land supply

53. The LPA are unable to demonstrate a five-year land supply of deliverable land for gypsy and traveller sites. A lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission. The lack of a five-year land supply is a material consideration of significant weight in favour of the appeal.

Failure of policy

54. The LPA do not currently have a policy capable of delivering the required amount of pitches. The LPA are working towards too low a figure and will inevitably fail to meet the actual level of need in the District. Failure of policy is a material consideration of significant weight in favour of the appeal.

Personal circumstances

55. Personal circumstances only need to be considered if the Inspector finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary personal circumstances can be added into the pot to clearly and substantially outweigh any harm. These will be set down and appropriate weight indicated.
56. The appellant's second position therefore is that the general material considerations and personal circumstances outweigh the harm and a permanent consent can be granted subject to a personal condition.

Gypsy Status

57. The Officer's Report states '*No evidence has been provided that the occupiers of the site fall within the definition of the Gypsies and Travellers set out in Annex 1 of the Planning Policy for Traveller Sites (PPTS)...*'

58. Gypsy status of the occupiers is only relevant if it becomes necessary to take into account personal circumstances. It will be shown that the Appellant and his family clearly meet the definition at Annex 1 of the PPTS.
59. Evidence will be submitted through witness evidence to confirm the proposed site applicant's meet the planning definition of Gypsies and Travellers.

Planning balance

60. The Appellant's first position is that the development does not constitute a departure from the Development Plan and National Policy and, as a result should be granted a permanent, non-personal, consent.
61. If the Inspector decides the Development either departs from policy, and/or there is other harm, then the Appellant's second position is that the tilted balance at paragraph 11(d) of the NPPF is engaged. This is either through the most-important policies being, on balance, out-of-date; or through the absence of five-year supply of traveller sites. In these circumstances, any adverse impacts of granting permission, do not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
62. If it is concluded that the paragraph 11 'tilted balance' does not apply and some conflict with the development plan is identified, the Appellant will demonstrate that, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted.
63. If necessary, personal circumstances of all site occupants and the best interests of the children who occupy the site, can be taken into account. If this is where the Inspector feels the balance leads to a consent then a permission with a condition limiting the occupation to named persons and their resident dependents should be granted.

Permanent or temporary consent

64. If the Inspector concludes that the material considerations do not outweigh any identified harm sufficient to justify a permanent consent, then clearly consent with a condition limiting the use to a temporary period, falls to be considered consistent with paragraph 12 of the NPPG. It is common sense as well as case law Court of Appeal judgment **Moore v SSCLG and London Borough of Bromley [2013]** EWCA Civ 1194 that a temporary consent means the harm is reduced. The appropriate time frame for a temporary consent will be considered.

Possible conditions

65. A landscaping condition may be considered appropriate.
66. Clearly given the nature of the appeal, a condition limiting the occupation of the caravans to gypsy and travellers is appropriate, including those gypsies and travellers who have ceased to travel permanently.
67. A personal condition can only be appropriate if it is necessary to include personal circumstances as material considerations in order to allow the development to proceed.
68. The issue of a temporary condition is dealt with above, if applied it should be for five years to give the LPA the longest possible period to allocate land for alternative pitches.
69. A condition limiting the number of caravans to two per pitch, one of which can be a mobile home, would be appropriate.

Human Rights Article 8 considerations

70. This is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was not crystallised upon in the publication of **AZ v**

SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin), but has existed for a number of years.

Best Interests of the Child

71. The best interests of the children are to enable them a safe environment where they have access to education and healthcare. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests.
72. There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed.
73. The welfare and wellbeing of the children on the site can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

Appeal 3 - APP/W0530/C/22/3308447 (Withdrawn)

74. The Appellant appealed an Enforcement Notice issued by South Cambridgeshire Council on 9th September 2022 alleging: *'Material change of use of the land to residential use as 9 caravan pitches'*.
75. The Council withdrew the Enforcement Notice on 20th October 2022.
76. It is understood the Council intend to issue another Enforcement Notice shortly.

Witnesses

77. The appellant is likely to call the following witnesses:

- Unless otherwise withdrawn, the appellant may call professional witnesses relating to the following matters:
 - Ecology
 - Highways
 - Contaminated land
 - Minerals safeguarding area
 - Flooding
 - Noise
 - Dust emissions
-
- nine non-professional witnesses (site occupants).

Documents

78. Documents that may be referred to include:

- a. PPG
- b. NPPF
- c. The LDC Application (22/01574/CL2PD) and all supporting evidence submitted 29th March 2022
- d. The officer's report or comments for the LDC application.
- e. The LDC (22/01574/CL2PD) refusal notice, dated 5th September 2022.
- f. The Planning Application (22/01703/FUL) and all supporting evidence submitted 7th April 2022
- g. The officer's report for the planning application.
- h. The application (22/01703/FUL) refusal notice, dated 5th September 2022.
- i. The s.195 appeal form and s.78 appeal forms dated 6th October 2022.
- j. The withdrawn Enforcement Notice and Plan (S/1346/16/LD) dated 21st June 2021.
- k. The officer's report for the enforcement notice (S/1346/16/LD).

- l. The withdrawn Enforcement Notice and Plan (22/01703/FUL) dated 9th September 2022.
- m. The officer's report for the enforcement notice (22/01703/FUL).
- n. The two s.174 appeal forms submitted in relation to the withdrawn enforcement notices dated 23rd July 2021 and 6th October 2022
- o. Any relevant correspondence between the LPA and the appellant's agent.
- p. Evidence pertaining to the history and use of the land.
- q. Witness statements and written evidence from third parties if appropriate.
- r. Aerial photography.
- s. Relevant case law.
- t. Any other documents that may need to be referred to in response to the LPA's evidence.

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22nd November 2022