The Planning Inspectorate

# Appeal Decisions

Hearing Held on 10 October 2017

Site visit made on 10 October 2017

**by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

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

**Decision date: 15 December 2017**

## Appeal A: APP/Z4718/C/17/3170386
## Land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT

- 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 Thomas Ward against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice, numbered COMP/14/0171, was issued on 12 January 2017.
- The breach of planning control as alleged in the notice is without planning permission engineering operations consisting of the excavation of land and deposit of crushed rock/stone and road planings to create a hard surface and access.
- The requirements of the notice are within four weeks from the date this notice takes effect remove all crushed rock/stone and road planings from the site and restore the land to its previous condition.
- 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 allowed, the enforcement notice is quashed, and temporary planning permission is granted in the terms set out below in the Formal Decision.**

## Appeal B: APP/Z4718/C/17/3179961
## Land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT

- 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 John Ward against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice, numbered COMP/14/0171, was issued on 1 June 2017.
- The breach of planning control as alleged in the notice is without planning permission: The material change of use of land from agriculture to caravan site.
- The requirements of the notice are within six months from the date that this Notice takes effect cease the use of the land as a caravan site and remove from the site all caravans and other vehicles associated with the use of the land.
- 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 allowed, the enforcement notice corrected and quashed and temporary planning permission is granted in the terms set out in the Formal Decision.**

## Appeal C: APP/Z4718/W/17/3176204
## Land to the South Side of New Hey Road, Scammonden, Huddersfield,

**West Yorkshire, HD3 3FT**

- 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 Thomas Ward against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2017/62/90562/W, dated 17 February 2017, was refused by notice dated 26 April 2017.
- The development proposed is described in the application as the "change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building. Retention of hardstanding and earth embankment."

**Summary of Decision: The appeal is allowed, and temporary planning permission is granted in the terms set out below in the Formal Decision.**

## Procedural and preliminary matters

1. The Council's letter to notify interested parties of the hearing arrangements was sent on 4 October 2017, just 6 days before the hearing, although the Regulations indicate that not less than 2 weeks' notice should be given. Nonetheless, some interested parties attended the hearing and others who had previously made representations were given a further opportunity to make written comments after it closed.

2. Those representations received after the hearing closed are referred to in the list of documents at the end of this decision. For the avoidance of doubt, I have taken account of all of the oral and written evidence. I am satisfied that interested parties were not prejudiced by the late notification of the hearing.

3. The notice the subject of appeal B simply alleges a change to use as a "caravan site." However, it is clear that the use is as a residential caravan site and the appeals have been argued on that basis. I will therefore correct the allegation to insert the word "residential" and this will necessitate a consequential variation of the requirement. No injustice will result from this.

4. The description of the development in the planning application included: "Retention of hardstanding and earth embankment." As retention is not an act of development, I shall treat the application as being for "the change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building and the laying of hardstanding and construction of an earth embankment."

## APPEALS A and B on ground (a)/the deemed applications for planning permission and APPEAL C

### *Main Issues*

5. The appeal site lies within the Green Belt (GB), as allocated in the Kirklees Unitary Development Plan (UDP), adopted March 1999. No saved UDP policies controlling development in the GB have been drawn to my attention but it was common ground that, under paragraph 16 of Planning Policy for Traveller Sites (PPTS), the change of use to a traveller site constitutes inappropriate development in the GB.

6. Furthermore, having regard to the National Planning Policy Framework (The Framework), it is clear that a material change of use to any residential caravan site will constitute inappropriate development. It was further agreed that the

engineering operations the subject of appeals A and C are inappropriate development, given that they involve some loss of openness and encroachment on the countryside. The construction of the proposed amenity buildings would also be inappropriate development.

7. The Framework states that inappropriate development is, by definition, harmful to the GB and that substantial weight should be given to that harm.

8. Accordingly, the main issues are:
   - Whether there is any additional harm, over and above the harm by reason of inappropriateness, in terms of:
     - The impact on openness and the purposes of including land in the GB;
     - The impact on the character and appearance of the area;
     - The accessibility of the site; and
     - The impact of the development on the South Pennine Moors Special Area of Conservation (SAC)/Special Protection Area (SPA);
   - Whether the development amounts to intentional unauthorised development, having regard to the Written Ministerial Statement (WMS) of 17 December 2015 and, if so, what weight should attach to this;
   - 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 required to justify the development, with regard to the case for temporary and/or personal planning permission; Human Rights and the best interests of the children; and the Public Sector Equality Duty. (Considerations put forward in favour of the appeals include: the need for and supply of gypsy and traveller sites; economic, social and environment benefits of the appeal traveller site; and the personal needs and circumstances of the appellants and their families).

## Reasons

### *Openness and GB purposes*

9. The operational development the subject of appeal A has been completed, and the material change of use subject to appeals B and C has taken place. The only element of the overall scheme which has not been undertaken is the erection of 4 proposed amenity buildings.

10. The laying of some 3000 $m^2$ of hard surface on what was previously an open, undeveloped grass field on rising land has reduced the openness of the GB, in its own right and by facilitating the residential use of the land. The 2 – 3 m high earth embankment hides much of that surface from public view, but that does not alter the physical reality of openness being diminished. Moreover, given its square formation, short steep slopes and uniform height, the embankment is itself clearly a man-made feature which reduces openness.

11. The existing operational development was undertaken by the previous owner, rather than the current occupiers, but there is no indication that it was carried out for any agricultural purpose suitable to the location. Its purpose is now simply to serve and enclose the caravan site.

12. The residential use of the site is facilitated by the stationing of 4 static caravans. Caravans are moveable by definition, even if they cannot be towed, and so such structures can have less impact on openness than permanent buildings. However, in practice under this scheme, static caravans are always likely to be present on the site. It could also be expected that 4 touring

caravans and vehicles such as transit-sized vans would be there for much of the time. The residential use itself therefore also reduces openness and the amenity buildings would add to this impact, along with general residential paraphernalia and activity.

13. As confirmed in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466, openness has a visual dimension. The embankment and access road are visible from the A640 New Hey Road. Whilst the impact could be softened by native tree planting on the slopes of the embankment and the area between it and the road, this would not prevent roadside views of the caravans and other structures within the site; indeed it would not be intended to hide them. The existence of development on previously undeveloped and open land would remain apparent.

14. There are longer views of the site from higher levels on the A640 and close views from the public footpath which leads up the hill, immediately to the west and south of the appeal site. Even if it were entirely hidden from view, the development would reduce openness as a matter of fact, but that impact is also experienced visually in this case. I also find that development in this area is sparse and the appeal scheme extends into the rising open land comprising mixed grazing fields and moorland to the south of New Hey Road. It therefore conflicts with one of the purposes of GB, namely to assist in safeguarding the countryside from encroachment.

15. The area is not entirely free from development. Immediately to the north-east of the appeal site are the rubble remains of a dwelling which was destroyed by fire. Planning permission Ref 16/91327 has been granted to reconstruct the building as 2 dwellings. There are farm buildings and a farm house further to the east and, immediately to the west of the appeal site, there is a hard-surfaced car park, with a wide frontage to New Hey Road. This served the former Nont Sarahs public house opposite, which is now being converted to a dwelling, with the benefit of planning permission granted in April 2017. To the west of that car park, but separated from it by a field, lies the Moorland Lodge restaurant, which also has a sizeable car park on its west side.

16. In this context, I conclude that the loss of openness and encroachment into the countryside caused by the development is moderate. Nevertheless, there is still harm to the GB, and the Framework is clear that any harm to the GB carries substantial weight.

***Character and appearance***

17. Notwithstanding the impact of the A640 and the other nearby development, the site does lie in a picturesque, predominantly open moorland landscape and caravans are by their nature highly visible. Notwithstanding, the earth embankment, the upper sections of the appellants' caravans are visible from the road when passing the site. They can also be seen in longer views from higher ground on the road. Of course the man-made earth embankment itself is apparent and the proposed amenity buildings would add to the impact. From the nearby footpath, there are more significant views into the site, such that all of the structures, hard surface, residential paraphernalia and activity are apparent.

18. All of these elements result in some detrimental intrusion into the open countryside. However, PPTS accepts that gypsy and traveller sites may be

located in the countryside and they should not be hidden from view by hard landscaping, high fences or walls; a degree of visibility is therefore to be expected.

19. The appellant suggests that planting could create the impression of a copse and that, without trying to hide the development, this would enable it to blend into the landscape. PPTS acknowledges that soft landscaping can positively enhance the environment and increase openness. Landscaping could soften the appearance of this development to a degree, but it would still constitute an intrusion onto the formerly open hillside. In any event, whilst other buildings in the vicinity have some limited and often non-native tree and shrub planting around them, copses are not especially characteristic of this particular location, compared to lower down the valley slopes. I am not persuaded that the proposed landscaping, on and in front of the earth embankment, would positively enhance the environment and increase openness in this case; it could even reinforce the prominence of the site.

20. I conclude on this issue that the development causes moderate harm to the character and appearance of the area, contrary to saved UDP policies BE1, BE2 and D2. In broad terms, these policies together seek to safeguard visual amenity and the character of the surroundings.

***The accessibility of the site***

21. The Council's reasons for refusing the application included that the site was considered to be in an unsustainable location due to remote access to public transport, amenities and services, contrary to saved UDP Policy T1 and PPTS.

22. The site is in the open countryside outside any existing settlement. On a day-to-day basis, the occupants have to travel: some 2 miles to the nearest shop on New Hey Road; about 4 miles to the nearest large supermarket; 6 miles to the children's primary school; 4 miles to the GP surgery; 6 miles to the hospital; and 7 miles into the centre of Huddersfield. There is no easily accessible bus service and they are inevitably dependant on the private car.

23. Policy T1 seeks to minimise the need to travel and to locate new development where it can best be served by public transport, while Paragraph 17 of the Framework looks to focus significant development in locations which are or can be made sustainable. Paragraph 34 states that developments which generate significant movement should be located in areas where travel can be minimised and the use of sustainable modes maximised, taking account of the rural context where necessary. However, I find that a gypsy and traveller site with 4 pitches could not be said to constitute significant development or generate significant movement.

24. More importantly, and notwithstanding the presumption against such development in the GB and the very strict limit advocated by PPTS on development in the open countryside, PPTS accepts that gypsy and traveller sites can be in rural locations. In this context, it is relevant that paragraph 29 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Daily travel of the kind undertaken by the site occupiers is common in rural areas.

25. Paragraph 13 of PPTS also seeks to ensure that traveller sites are sustainable economically, socially and environmentally and, in respect of transport issues,

this means developing policies to provide settled bases which reduce the need for long-distance travelling. By definition, gypsies and travellers are nomadic and travel is part of their way of life. However, a settled base would reduce the need for frequent long distance travel, not least in order to find places to stay.

26. During the hearing, the Council accepted that, having regard to Government policy, the location of the site did not harm the objectives of sustainable development, so as to form a separate justification for refusal of permission. However, it contended that the distance from the school meant that access to it should not contribute to the existence of very special circumstances. I share that view, but will return to the other aspects of sustainability set out in PPTS later in this decision.

27. I conclude that the development would be liable to generate travel by private vehicle on a day-to-day basis, in conflict with UDP Policy T1. However, it would not result in greater harm in this respect than another rural development of the same size permitted by PPTS or the Framework, and so the location of the site in relation to shops and services would not count against or for the appeals.

***The impact on the South Pennine Moors SAC/SPA***

28. Though this was not a reason for refusal of the planning application or for issuing either enforcement notice, the Council says the site lies about 1.2 km from the South Pennine Moors SAC/SPA. This was also a concern raised by local people and, in commenting on the planning application, a Halifax resident referred to the South Pennine Moors' designation as a Site of Special Scientific Interest (SSSI).

29. Whilst the Council's Conservation and Design (Biodiversity) Officer did not attend the hearing, he did comment on the planning application. He said that, though the level of additional human activity was not considered sufficient to result in impacts to the habitats for which the SAC is designated, it has "the potential to disturb foraging birds and result in a detrimental effect on the SPA." At the hearing, the Council's officers said, having consulted with the Biodiversity Officer, the SPA was classified because it provides a habitat for an important assemblage of moorland breeding birds, particularly golden plover, which can travel up to 7 km to forage.

30. Before deciding to give permission for any plan which is "likely to have a significant effect" on a European Site, such as an SPA, a competent authority, must make an "appropriate assessment" of the implications for that site. The Council's evidence is that the development "has the potential to disturb foraging birds" and it says the first stage is to screen the project for "likely significant effects." For this, it is said that an ecological consultant should provide a statement. However, the applicant was not requested to provide one with the application.

31. The Framework says local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife areas will be judged. Furthermore, development in or outside a SSSI which is likely to have an adverse effect on it should normally be refused. The Council did not dispute the appellant's planning consultant's evidence that increases in residential activity will often be prevented within 400m of the designated area and, beyond that, policies may require contributions to the provision of Suitable Alternative Natural Greenspace. However, no criteria based policies

are in place. Furthermore, the Council also did not dispute the appellants' evidence that, where they do exist, the aim of policies is to prevent use of the protected areas as recreational areas and avoid disturbance from pets.

32. Golden plover may forage in the vicinity of the appeal site and indeed much further afield, so there is the potential for human activity on the appeal site to disturb foraging birds. However, the evidence before me does not indicate that this development on this site, some 1.2 km from the designated area, is "likely to have a significant effect" on it. I am therefore satisfied that an appropriate assessment is not required and that any impact on the SAC/SPA/SSSI would not require refusal of planning permission under the Framework.

***Intentional unauthorised development***

33. I have had regard to the WMS, which indicates that intentional unauthorised development is a material consideration. However, the Council did not urge me to attach significant weight to it. In any event, I note that in this case, the operational development was not carried out by the current occupiers. Whilst they were aware that they did not have planning permission for the use of the site, they submitted a planning application soon after occupying it and before the change of use enforcement notice was issued.

34. Furthermore, I find below that there is not only a general shortage of traveller sites in this borough, but also that the occupiers have personal needs for such a site. It is also common ground that there are no available authorised sites in the area. In all the circumstances, the fact that the unauthorised change of use was deliberate carries very limited weight against the appeals.

***Other considerations***

*General need for and supply of gypsy and traveller sites*

35. The planning application the subject of appeal C was for a gypsy site and the appellants' cases on appeals A and B ground (a) also depend on this being a gypsy site. PPTS paragraph 10 requires local planning authorities to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets.

36. The Council's targets are derived from the Kirklees Gypsy and Traveller and Travelling Showperson Accommodation Assessment, August 2015 (GTAA).This indicates that 10 pitches are needed for the first 5 years, which includes provision for travellers who currently live in conventional housing, but might be expected to require a site from which to pursue their traditional way of life.

37. There is clearly an unmet need for gypsy and traveller sites. The Council concedes that it cannot identify any pitches to meet the need identified in the GTAA or demonstrate that it has a 5 year supply of specific deliverable sites. It follows that the Council has an immediate need for at least 10 pitches to meet the needs of the traveller community and has failed to identify a supply of sites to meet its 5 year needs as required by PPTS. I am satisfied that these factors carry moderate weight in the balance in favour of the appeals.

*Alternative accommodation*

38. The Council did not dispute the appellants' claims that the availability of caravan sites in West Yorkshire as a whole is very low and that sites in Barnsley are full, as is the only public site in Leeds (Cottingley Fields).

39. The appellants also said that Barnsley and Wakefield Councils have approved sites in the GB, at Royston and Pineapple Farm respectively, as they were the only sites available. However, I was not provided with any other information regarding the background or circumstances and I do not attach significant weight to those particular decisions.

40. Nevertheless, that there is a lack of any suitable and available alternative sites also adds moderate weight to the case for the appeals.

*Policy*

41. The 1999 UDP did not allocate any gypsy and traveller sites. Furthermore, since UDP Policy H14 was not saved in 2007, there have been no criteria-based development plan policies to facilitate the provision of such sites, as now required by PPTS paragraph 11. The development plan fails to include any mechanism by which the shortage of traveller sites could be redressed, or a 5 year supply of sites could be identified, in conflict with Government policy.

42. On the day of my hearing, the Examination in Public opened into the Kirklees Local Plan. The appellants noted that the Publication Draft Local Plan again contains no criteria based policies, contrary to PPTS, but it is not for me to make a judgement on the soundness of the plan. The Publication Draft proposes to allocate 12 permanent pitches and 8 transit pitches at a site in Bankwood Way. The appellants expressed some concerns about the suitability of that site, but again that matter is outside my remit.

43. I am satisfied that there is a reasonable prospect of a Local Plan being adopted with an allocation for sufficient sites to meet the Council's current 5 tear land supply needs. However, the Council accepted that it could be some 2 years or more before a site is available. I conclude that there is no existing development plan policy to equip the Council to meet its needs for traveller sites and that problem will not be redressed in the short term. I also attach moderate weight to this policy failure as a consideration in favour of the appeals.

*Economic, social and environmental benefits*

44. I have already alluded to PPTS paragraph 13. The appeal development provides pitches for 4 traveller households to have a settled base. It could thereby reduce not only the need for long-distance travelling, but also possible environmental damage caused by unauthorised camping by 4 households. With a registered address on the site, its occupiers could also have better access to health services and school attendance is facilitated for children.

45. In terms of both paragraphs 13 and 25 of PPTS, there is no suggestion that the site is of sufficient scale to dominate the settled community and there is no evidence that it is placing undue pressure on local infrastructure.

46. However, there are no site specific benefits of the appeal development in economic, social or environmental terms and so the lack of conflict with PPTS paragraph 13 carries little weight in favour of the appeals.

*Personal circumstances*

47. The appellants said that the family are Irish Travellers and they are now, and always have been, of nomadic habit of life. Although, because of difficulties with others on a gypsy and traveller site in Bolton, they were forced to live in houses in Leigh, West Manchester for about 18 months before coming to this site, the men have continued to travel for work. They typically travel for 6 – 8 months of the year, and the wives and children have travelled with them during school holidays. Their work includes: property maintenance and construction; block paving; laying tarmac; painting and decorating; buying and selling vans and caravans; and horse trading.

48. Over the last year, they have travelled throughout the UK to Birmingham, London, Coventry, Cardiff and Glasgow, as well as to Holland, Belgium, France, Italy and Ireland. Thomas Ward went to the Appleby Horse Fair in June and, whilst the appeal hearing prevented him going this year, in October 2016, he attended the Ballinasloe Horse Fair in Galway. Having heard the evidence at the hearing the Council was content that the appellants meet the definition of gypsies and travellers in PPTS. I am also satisfied of this.

49. Seven adults live on the site, namely Thomas Ward, his 3 adult sons and their wives. At the time of the hearing, there were 10 children living there, ranging in age from about 1 to 13 years. At such young ages, all of the children would patently benefit from the stability derived from living on a settled base and would be likely to experience acute disruption if they are required to leave the site with their parents, in accordance with Notice B.

50. The eldest child is not currently in school, but 4 of the children are. Two of them attend a Catholic Primary School, some 6 miles away. The extended family regularly attends the associated Church, where the parish priest is helping to get more of the children enrolled at the primary school. No special educational needs were drawn to my attention. However, when living in Leigh, the children went to a Church of England Primary School, because there were no spaces at the Catholic School, and the family felt this did not provide a suitable education for Catholic children. I am satisfied that living on the site enables and has improved school attendance.

51. There is no evidence that any occupier of the site has specific health problems, but again the children could be expected to particularly need ready access to medical services. Indeed, a health visitor regularly comes to the site to check on the youngest children and, very significantly, 2 more babies are due over the course of the next few months. Their mothers are receiving antenatal care at Huddersfield Hospital, some 6 miles from the site; they and their babies will be at vulnerable stages of life in the immediate future.

52. Aside from providing a settled base from which to travel and enabling access to education and health services, the appellants value the opportunity this site provides for the extended family to live together, offering mutual support. This is very much part of the traditional way of life of Irish Travellers. They have also engaged in other ways with the community, including commitment to a local amateur boxing club.

53. The Council indicated in its statement that, since the family had recently lived in conventional housing, it would not be unreasonable to expect them to revert to that lifestyle. However, this was before it heard and accepted the evidence

of the family's gypsy status. PPTS paragraph 3 expects local authorities to facilitate the traditional and nomadic way of life of travellers. That follows the ruling in *Chapman v UK* [2001] concerning the interpretation of the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR).

54. Since there is a lack of available, alternative sites, it is likely that dismissing these appeals would force the family to resort to roadside camping. With 10 young children and 2 more babies on the way, I attach significant weight to the appellants' and their family's personal circumstances.

*Other matters and the planning balance*

55. The appellants drew my attention to a July 2015 appeal decision under Ref APP/G4240/A/13/2208161, in which a 4 year temporary and personal planning permission was granted for a site for two gypsy families in the GB in Denton, Tameside. However, I attach little weight to that decision as it predates the current version of PPTS.

56. The Framework indicates that inappropriate development in the GB is harmful by definition. In accordance with the Framework, I attach substantial weight to the harm caused to the GB through inappropriateness, detriment to openness and encroachment into the countryside. I also attach moderate weight to the harm caused by the development to the character and appearance of the area.

57. My findings that the development does not cause unacceptable harm in relation to accessibility or the SAC/SPA, or by being intentional unauthorised development do not count for or against the appeals in the overall balance.

58. In favour of the appeals, I attach moderate weight to the general need for and lack of a 5 year supply of traveller sites, moderate weigh to the lack of any available alternative sites and moderate weight to the failure of the Council to provide for traveller sites in the development plan. I attach little weight to the economic, social and environmental benefits of the development, but substantial weight to the personal circumstances of the site occupiers.

59. Paragraph 16 of PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm, so as to establish very special circumstances. There are additional factors in favour of these appeals but, even when taken together, they do not clearly outweigh the harm caused by the development so as to justify a grant of permanent planning permission.

60. Paragraph 27 of PPTS states that, where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration when considering an application for a grant of temporary permission. That provision does not apply in the GB, but other considerations beyond the lack of a lack of a 5 year site supply weigh in favour of these appeals and, although the application was not specifically for temporary permission, the appellants invited me to consider this as an option.

61. In this case, I find that the personal circumstances of the site occupiers taken with the overall need for sites and the absence of any suitable alternative accommodation would justify a grant of temporary and personal planning permission. The Council agreed that, if I were to grant a temporary permission, a period of 2 – 3 years would be appropriate. Given the difficulties involved in

delivering gypsy and traveller sites and a degree of uncertainty over the draft Local Plan allocation, it would be appropriate to grant permission on a 3 year basis.

62. If the development were only to continue for a temporary period of 3 years, this would reduce the harm by way of encroachment on the countryside and the impact on both openness and the character and appearance of the area. It would also remove the imminent risk of this family having to resort to roadside camping with 10 children and 2 more on the way. Looking at the case as a whole, in accordance with the Framework and PPTS, and with regard to all other matters raised, I conclude that other considerations clearly outweigh the harm identified so as to constitute very special circumstances justifying a grant of temporary and personal planning permission and to override the conflict with UDP Policies BE1, BE2, D2 and T1.

63. It is necessary to have regard to the appellants' and the site occupiers' rights under the *Human Rights Act 1998* (HRA). Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial.

64. A decision which will lead to the appellants having to leave their home base will constitute a serious interference with their human rights under Article 8 of the ECHR. However, these are qualified rights. So long as it is proportionate, interference with those rights may be justified if it is in accordance with the law and is necessary in a democratic society in the interests of, for example, the economic well-being of the country, or for the protection of the rights and freedoms of others. The interference would be in accordance with the law and pursuance of a well-established and legitimate aim: the protection of the GB.

65. The human rights assessment must involve regard to the best interests of any children on the site. *ZH (Tanzania) v Secretary of State for the Home Department* [2011] and *Elizabeth Collins v SSCLG* [2013] EWCA Civ 1193 establish that the need to safeguard and promote the welfare of children is a primary consideration[1]. Where, as here, rights under Article 8 of the ECHR include those of children, they must be viewed in this context. The best interests of the child are not determinative, but no other consideration must be regarded as more important, or given greater weight, merely by virtue of its inherent nature, apart from the context of the individual case.

66. If the appeals were dismissed, and notwithstanding that I would have some discretion under ground (g) to extend the periods for compliance with the notices, the appellant and other site occupiers would be required to leave the site shortly before or after two babies were born. They and their mothers would experience considerable upheaval and impaired access to health services at crucial and highly vulnerable times.

67. In relation to the older children on the site, access to the Catholic Primary School, some 6 miles away, is not necessarily dependant on continued residence at the appeal site. However, there appears to be no readily available suitable alternative site or accommodation and a settled base clearly eases access to education, as well as health care facilities. It would also be in the

[1] The appellant's statement had referred to *AZ v secretary of State and South Gloucestershire DC* on this point, but it was accepted during the hearing that the 2 cases to which I refer are more apt.

best interests of the children to live on a settled base, instead of the roadside, and to enjoy the mutual support of the extended family, in accordance with the gypsy way of life, facilitated by a grant of planning permission.

68. Given the circumstances overall, I find that a grant of temporary and personal permission would be proportionate and necessary. It would protect the Green Belt in the long term whilst meeting the best interests of the children and avoiding a violation of the occupiers' rights under the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

69. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appellants and other occupiers are Irish Travellers, they have a protected characteristic for the purposes of the PSED.

70. Whilst the Equality Act 2010 does not demand a particular outcome, I find in this case that a refusal of temporary permission for the development when it is acceptable in planning terms, on the basis of very special circumstances, would fail to foster good relations between the site occupants and the settled community. It could also lead, when there are no alternative sites, to the occupiers suffering continued disadvantages in terms of access to education and health services.

71. Thus, the PSED adds weight to my conclusion that Appeals A and B should succeed on ground (a), and the deemed planning applications should be granted and Appeal C should be allowed, all on a temporary and personal basis. The ground (g) appeals against the enforcement notices do not therefore fall to be considered.

**Conditions**

72. The Council's list of suggested conditions related only to landscaping, land contamination and drainage. A requirement for a full landscaping scheme is unreasonable in the context of temporary permissions. The Council was concerned that material imported to create the hard surface could have been contaminated, but I was satisfied with the appellants' evidence that this is unlikely, because of the regulatory framework in place governing the disposal and recovery of road planings. This was not actively disputed by the Council. Accordingly, I consider the suggested condition unnecessary.

73. The proposed drainage condition would require the submission of a scheme for connection to the main sewer, whereas the application envisaged cess tanks. During the hearing, the appellants said connection to the main sewer would actually be easier. However, given that I am only granting temporary permissions, it would be more reasonable simply to require the submission of a scheme for the disposal of foul water.

74. Other conditions were discussed during the hearing. Given that, apart from the amenity blocks, the development has been carried out, it is not necessary to specify a time limit for commencement or general compliance with the submitted plans. However, to safeguard the character and appearance of the area and minimise the impact on the openness of the GB, the amenity

buildings would need to be constructed in accordance with the submitted plans and any caravans should be sited within the area indicated on those plans.

75. I have found that permission should only be granted for a 3 year temporary period and so conditions will need to provide for that as well as for the submission of a site restoration scheme. Gypsy policies apply so occupancy should be limited to persons who satisfy the planning definition. Furthermore, the appellants' and their families' particular personal circumstances form a major part of the justification for the development. The permissions should therefore be personal to them.

76. In the interests of visual amenity, caravans should be limited to the number and type applied for, commercial activities should be prohibited, the size of vehicles should be limited to 3.5 tonnes and a scheme for lighting should be submitted.

77. As the development has already been undertaken, the requirement for the submission of an overall scheme will need to provide for the use to cease if it is not submitted or ultimately implemented as approved. Having regard to the terms of the enforcement notice the subject of appeal B, 6 months is a reasonable period for this, bearing in mind that further enforcement action will be required if the conditions are not complied with.

78. Even the operational development the subject of appeal A is only justified to facilitate the appellants' occupation. A condition on that permission should therefore require its removal at the end of that occupation and restoration of the land in accordance with an approved scheme. The conditions in all 3 permissions will need to be consistent, such that a single overall scheme can satisfy the requirements of each. Given the range of matters to be covered in the overall scheme, 3 months is a reasonable period for its initial submission.

## Formal Decisions

### *Appeal A: APP/Z4718/C/17/3170386*

79. The appeal 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 engineering operations consisting of the excavation of land and deposit of crushed rock/stone and road planings to create a hard surface and access on land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT referred to in the notice and edged in red on the plan attached to that notice, subject to the following conditions:

    1) The hard surface and access hereby permitted shall only be retained as long as the site is occupied by no one other than Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants and as long as they are gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) and in any event for a maximum of 3 years from the date of this decision and thereafter they shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority in accordance with condition 2) hereof.

2) The hard surface and access hereby permitted shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iii) below:

   i) Within 3 months of the date of this decision, a scheme for the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period of 3 years from the date of this decision, or at the end of the period during which the site is occupied only by those specified in condition 1) hereof, whichever is the shorter, (hereafter referred to as the restoration scheme) shall have been submitted for the written approval of the local planning authority and the restoration 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 restoration 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 restoration scheme shall have been approved by the Secretary of State.

   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/Z4718/C/17/3179961*

80. It is directed that the enforcement notice be corrected in sections 3 and 5 by insertion of the word "residential" before "caravan." Subject to these corrections the appeal is allowed and the enforcement notice is quashed. 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 as a residential caravan site of the land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT and edged in red on the plan attached to that notice, 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 (or its equivalent in replacement national policy).

   2) The use hereby permitted shall be carried on only by the following: Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

   3) No more than 8 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 4 shall be static caravans) shall be stationed on the site at any time.

4) The caravans shall be sited in accordance with plan no. PBA2 submitted with planning application Ref 2017/62/90562/W, dated 17 February 2017.

5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

6) No commercial activities shall take place on the land, including the storage of materials.

7) 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 6 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: the means of foul water drainage of the site; proposed and existing external lighting on the boundary of and within the site (which shall provide for the removal of any existing lighting which is not approved pursuant to this condition); and the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or at the end of the period during which the site is occupied by those permitted to do so, as appropriate (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the site development 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 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, the approved foul drainage and external lighting shall be maintained throughout the life of the permission.

   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 C: APP/Z4718/W/17/3176204*

81. The appeal is allowed and planning permission is granted for the change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building and the laying of hardstanding and construction of an earth embankment at land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT in accordance with the terms of the application,

Ref 2017/62/90562/W, dated 17 February 2017, 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 (or its equivalent in replacement national policy).

2) The use hereby permitted shall be carried on only by the following: Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

3) The hardstanding and earth embankment hereby permitted shall only be retained as long as the site is occupied by no one other than Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants and as long as they are gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) and in any event for a maximum of 3 years from the date of this decision and thereafter they shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority in accordance with condition 9) hereof.

4) No more than 8 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 4 shall be static caravans) shall be stationed on the site at any time.

5) The caravans shall be sited in accordance with plan no. PBA2.

6) The amenity buildings hereby permitted shall be constructed in accordance with the following approved plans: PBA2 and PBA4.

7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

8) No commercial activities shall take place on the land, including the storage of materials.

9) 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 together with the hardstanding and earth embankment hereby approved within 6 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 and notwithstanding any details shown on the submitted plans, a scheme for: the means of foul water drainage of the site; proposed and existing external lighting on the boundary of and within the site (which shall provide for the removal of any existing lighting which is not approved pursuant to this condition); and the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate

(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the site development 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 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, the approved foul drainage and external lighting shall be maintained throughout the life of the permission.

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.

*J A Murray*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

Philp Brown BA(Hons) MRTPI
Michael Ward
Donna Ward
Ellen Ward
Anthony Ward
Tom Ward
John Ward
Margaret Ward

FOR THE LOCAL PLANNING AUTHORITY:

Julia Steadman, Team Leader (Development Management), Kirklees Council
Paul Wood, Planning Enforcement Officer, Kirklees Council

INTERESTED PERSONS:

Mr S Kaye
Mr A Crowe

DOCUMENTS SUBMIITED AT AND AFTER THE HEARING

1 The Council's notice of the hearing in relation to the enforcement appeals dated 15 September 2015
2 Bundle of correspondence comprising letters from: the children's primary school; a local amateur boxing club; the occupiers of Watermans House, Scammonden; friends and family of the occupiers of Watermans House
3 Kirklees Unitary Development Plan Policies BE1, BE2, D2, G6, T1, and EP11
4 Officer's report concerning application Ref 16/91327 to rebuild the fire damaged building on land adjacent to the appeal site as 2 dwellings
5 Correspondence received from interested parties after the close of the hearing in response to the Council's further notice, comprising emails from Nicola Black and Mark Jordan, both dated 10 October 2017.

The Planning Inspectorate

# Appeal Decision

Site visit made on 16 January 2018

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 February 2018**

**Appeal Ref: APP/Z4718/W/17/3185051**
**1 Yew Green Avenue, Lockwood, Huddersfield, HD4 5EW**

- 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 Inderpaul Singh Birk against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2017/62/90078/W, dated 16 December 2016, was refused by notice dated 23 March 2017.
- The development proposed is construction of an end of terrace dwelling.

## Decision

1. The appeal is dismissed.

## Main Issue

2. I consider that the main issue in this case is the effect of the proposal on the living conditions of neighbouring residents, with particular reference to outlook and light.

## Reasons

3. The Council has confirmed that it is unable to demonstrate a 5-year supply of deliverable housing sites, contrary to the requirements of the *National Planning Policy Framework* (the Framework). In such circumstances, the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

*Living conditions*

4. No. 1 is a semi-detached house, the northern side elevation of which faces towards the rear elevation of a row of terraced dwellings. The terrace includes Nos. 23, 25 and 27, each of which has habitable room windows that face towards the appeal site. The gap between No. 1 and that neighbouring terrace comprises part of the side garden of the appeal property, which includes a pitch roofed single garage, and the adjoining gardens/yards of a number of the terraced properties.

5. The appellant has indicated that the appeal scheme has been designed to overcome the reasons for refusal that led to the dismissal in 2016 of appeal Ref. APP/Z4718/W/15/3133875, which involved a proposal to erect a detached

dwelling adjacent to No. 1. Whilst I have had regard to the findings of my colleague, the current appeal scheme differs from the previous proposal in a number of respects and I have considered it on its own merits. The scheme involves the construction of a new dwelling, which would adjoin the northern 2-storey sidewall of No. 1 and would have a hipped main roof. A single-storey annexe, with a mono-pitch roof, would project from the 2-storey rear wall of the proposed house and would be set back from the alignment of 2-storey northern sidewall of the proposed building.

6. Policy BE12 of the *Kirklees Unitary Development Plan, 1999* (UDP) indicates that new dwellings should be designed to provide physical separation from adjacent property and the minimum acceptable distance between a habitable room window of a dwelling and a blank wall will normally be 12 metres. Whilst the appellant has indicated that the majority of the proposal would meet this requirement, part would not. The 2-storey rear corner of the development would be closest to the neighbouring terrace.

7. I understand that No. 23 is a back-to-back dwelling with a single aspect, facing towards the appeal site. Whilst it appears, from the evidence presented, that the ground floor habitable room window of No. 23 would face more directly towards the proposed single-storey rear annexe, views from that window of the proposed 2-storey building would not be oblique. Notwithstanding that the separation distance may slightly exceed the 12 metre guideline, I consider that, due to its proximity and scale, the proposed dwelling would dominate the outlook from the room served by that neighbouring window. I regard it as overdominant and unneighbourly.

8. The proposal would be sited to the south of Nos. 23, 25 and 27 and the appellant has provided a solar shading diagram to indicate the likely impact on the sunlight those properties receive. I agree with the Council, it appears to indicate that whilst the neighbouring garden/yard areas of Nos. 23, 25 and 27 are already overshadowed to some extent by No. 1, the adverse impact of the proposal would be even greater. Given the limited size of those neighbouring external amenity areas, I regard the adverse impact as significant.

9. In my judgement, neither the planting within the garden of No. 23, which appears to be limited in height and density, nor existing boundary fencing is likely to overshadow the garden/yard areas of Nos. 23, 25 and 27 to as great an extent as the proposal. I give little weight to the appellant's contention that those neighbouring external amenity areas were overshadowed in the past by trees within the appeal site, given that the trees referred to were apparently removed a number of years ago.

10. The appellant has indicated that he discussed his proposal with neighbouring residents and they do not object to the scheme. However, I have not received any correspondence in support of the scheme from the residents of the neighbouring terrace. I consider that the propensity of local residents to object to a proposal can be influenced by a number of factors and a lack of objection cannot automatically be interpreted as a sign of support. Furthermore, even if the existing occupiers of the neighbouring terrace do not object, it is also important to have regard to the interests of future residents. Under the circumstances, the lack of objections from neighbouring residents does not weigh heavily in favour of the proposal.

11. I conclude overall, that the proposed development would cause substantial harm to the living conditions of occupants of neighbouring dwellings, with particular reference to outlook and light. In this regard it would conflict with UDP Policies D2 and BE12, which are consistent with the aim of the Framework to secure a good standard of amenity for all existing and future occupants of land and buildings, and so I give those conflicts significant weight.

*Other matters*

12. Given that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, I give the small contribution that the proposal would make to housing land supply and the housing stock in the area moderate weight.

13. Whilst I note the appellant's concerns regarding the manner in which the Council has handled the planning application subject of this appeal, they do not alter the planning merits of the proposed development upon which my decision is based.

*Conclusions*

14. I conclude on balance that the likely adverse impacts of the appeal scheme would significantly and demonstrably outweigh the benefits and it would conflict with the Development Plan taken as a whole. Furthermore, it would not amount to sustainable development under the terms of the Framework. For the reasons given above, I conclude that the appeal should be dismissed.

*I Jenkins*

INSPECTOR

The Planning Inspectorate

# Appeal Decision

Site visit made on 11 December 2017

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 20 December 2017**

**Appeal Ref: APP/Z4718/W/17/3183266**
**3 Grange Avenue, Birkby, Huddersfield HD2 2XJ**

- 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 Ghulam Rasool against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2017/62/90463/W, dated 31 January 2017, was refused by notice dated 12 June 2017.
- The development proposed is the demolition of existing single storey garage and erection of one detached dwelling.

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. I understand that the Council has submitted its Local Plan to the Secretary of State on 25 April 2017 for Examination in Public. However, the Council do not rely upon any policies in the Local Plan. While the Council suggest that the Local Plan policies do not vary from those saved in the Kirklees Unitary Development Plan (UDP), I do not know if there are any unresolved objections to the policies or whether they are consistent with the policies in the National Planning Policy Framework (the Framework). Thus, I give them little weight.

## Main Issues

3. The main issues are whether the proposed development would: (i) preserve or enhance the character or appearance of the Birkby Conservation Area (BCA), with particular regard to its siting, scale and relationship with nearby properties; and (ii) result in an overbearing impact on the living conditions of occupants of 174 and 176 Birkby Hall Road.

## Reasons

*Character or appearance*

4. The appeal site is part of the side and rear garden that forms one half of a semi-detached pairing in a residential area. A detached timber garage is in the side garden. The driveway in front of the garage is next to the driveway of No 174 and a path to No 176. They form a visual and physical break between the two storey dwellings on Grange Avenue and Birkby Hall Road.

5. Ground levels rise to the rear of the site which shares common boundaries with the rear gardens of properties on Birkby Hall Road and Elmfield Road. Timber

fences line the boundaries at the rear, while a low wall extends from the garage to Grange Avenue. Dwellings in Grange Avenue typify the varied design, style and form that characterises the BCA. There are detached and semi-detached dwellings as well as terraced properties. Each property is two storeys high with a gable or hipped roof. They are finished in brick, smooth render or pebble dash or a combination of them.

6. The proposed two storey dwelling would change the semi-detached pairing into a terrace resulting in an interface distance of about 10 metres between the rear elevations of Nos 174 and 176 and their habitable rooms. Thus, the proposal would not accord with the minimum standard in saved UDP Policy BE12. Although the existing garage is closer than the proposal, it is single storey in height and thus the two forms of development are not the same.

7. Despite the high density form of development on the opposite side of Grange Avenue, the proposal would reduce the physical separation between Nos 3 and 174 and 176; a characteristic on the south-west side of Grange Avenue. Even though suitable materials would be used, and the appellant has sought to respond to the comments of the Council's Conservation and Design Officer, the proposal would not be a sympathetic addition to Grange Avenue or the BCA due to its size and layout. It would result in a cramped form of development.

8. While saved UDP Policy BE12 does indicate that the separation distance can be lowered, the proposed dwelling is not an innovative design nor would landscaping along the boundary mitigate for the loss of the physical separation. In fact, if the landscaping was particularly high, it would compound the harm.

9. Despite the proposed layout, building line and dormer window, the harm to the BCA would be less than substantial, with regards to Framework paragraph 134. This still amounts to a harmful impact which adversely affects the significance of the BCA as a heritage asset. Public benefits would arise from: the efficient use of a sustainable site for a new dwelling that would help tackle climate change and make a modest contribution to the supply of housing in the area; an internal and external layout that would benefit the occupants' wellbeing; off-street car parking provision that would reduce reliance on-street car parking; and short-term economic benefits through skilled construction jobs for local people and the purchase of building materials in the area. I accept different design options have been looked at and the appellant tried to engage with local ward councillors. However, the harm to the BCA and the site would, to which I attach considerable importance and weight, in my view, clearly outweigh these modest public benefits.

10. I conclude, on this issue, that the proposed development would not preserve or enhance the character or appearance of the BCA, with particular regard to its siting, scale and relationship with nearby properties. The proposal would not accord with saved UDP Policies D2 (ii, vi and vii), BE1 (i, ii and iv), BE5 and BE12 (ii) and paragraph 134 of the Framework. Together, among other things, these seek good quality design that is in keeping with the identity of the surrounding built environment in respect of physical separation, design and layout so that schemes are visually attractive; in character with their surroundings and avoid being an over-development.

11. While the appellant refers to Planning Policy Statement 5: Planning for the Historic Environment, this document was revoked by the Framework.

*Living conditions*

12. The north facing rear elevations of Nos 174 and 176 are side on to the appeal site. They have windows at ground and first floor serving habitable and non-habitable rooms. Of the habitable rooms, there is a dining/activity room in the ground floor of No 174. At first floor there is a bedroom. In No 176 there is a kitchen/diner at ground floor and a bedroom at first floor.

13. The purpose behind saved UDP Policy BE12 (ii) is to ensure privacy and open space for neighbouring occupants. The physical separation between No 3 and Nos 174 and 176 ensures that the built form does not have an overbearing or oppressive effect on residents living conditions. The proposed blank two storey gable elevation would be far closer to the habitable windows in Nos 174 and 176. This would be a dominate form of development.

14. Although the appellant refers to criterion iii) of saved UDP Policy BE12, the appeal site is not undeveloped land. Furthermore, the existing distance between Nos 174 and 176 exceeds the standards sought by the UDP. The respective houses also pre-date the UDP. I recognise the distance can be reduced if there would be no detriment caused to existing occupiers through permanent screening. Evergreen conifer trees would help screen the proposal. However, very tall trees would shorten the interface distance further and amplify the overbearing nature of the proposal. I am also not certain that the trees would stay in place in perpetuity.

15. I note the relationship to the rear of 180 Birkby Hall Road, but as I do not have any details of whether the properties were built after the UDP was adopted or what rooms the windows serve, I attach this example little weight. In terms of privacy, given the proposed front and rear outlook and the proposed use of obscure glazing for the bathroom and attic, no harm would be created.

16. I conclude, on this issue, that the proposed development would result in a significant overbearing impact on the occupants of Nos 174 and 176. The proposal would not accord with saved UDP Policy D2(v) and BE12(ii) and paragraph 17 of the Framework. Jointly, among other things, these seek to secure a good standard of residential amenity for all existing and future occupants of land and buildings.

**Conclusion**

17. The Council are currently unable to demonstrate a five-year supply of deliverable housing sites as required by Framework paragraph 47. Even so, footnote 9 to the fourth bullet point of Framework paragraph 14 indicates that specific policies include those relating to designated heritage assets such as the BCA. This means that the tilted balance of paragraph 14 does not apply as there are specific policies in the Framework that indicate development should be restricted and planning permission refused.

18. For the reasons set out above, I conclude that the appeal should be dismissed.

*Andrew McGlone*

INSPECTOR

The Planning Inspectorate

# Appeal Decision

Site visit made on 28 November 2017


**by Susan Wraith Dip URP MRTPI**

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



**Decision date: 04 January 2018**


**Appeal Ref: APP/Z4718/C/17/3171811**
**220 Manchester Road, Thornton Lodge, Huddersfield, West Yorkshire HD1 3JF**

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Cooper [hereafter "the appellant"] against an enforcement notice issued by Kirklees Council [hereafter "the Council"].
- The notice was issued on 27 February 2017.
- The breach of planning control as alleged in the notice is: Without planning permission:- The erection of a front and side extension.
- The requirements of the notice are: Within 3 months of the date that this notice takes effect demolish the side and front extension, remove the resultant debris from the land and reinstate the land and building to its condition prior to the unauthorised development.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in s174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

## Decision

1. It is directed that the enforcement notice be varied, in paragraph 5, by the deletion of "Within 3 months" and the substitution of "Within 6 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

## The appeal on ground (a) and the deemed application

*Planning policy*

2. I have been referred to policies D2, BE1, BE2 and T10 of the Kirklees Unitary Development Plan. Taken together these policies seek to ensure that development is of good quality design that is in keeping with its surroundings and which provides for (amongst other things) safe highway conditions.

3. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.[1]

4. The National Planning Policy Framework ["the Framework"] sets out Government's national planning policy for England and how it expects planning

[1] S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

to be delivered at the local level. Section 7 provides advice on requiring good design. Whilst the cited development plan policies pre-date the Framework they are in general conformity with it and, therefore, carry substantial weight.

*Main issues*

5. When having regard to the planning policies and submissions made by the parties I consider the main issues in the appeal are:

   i. Effect upon the character and appearance of the area.
   ii. Effect upon the interests of highway safety.

*Character and appearance of the area*

6. There is a mix of development within the surroundings of the appeal site including large industrial buildings along the valley bottom and the ribbons of development which front Manchester Road to both sides. The character area within which the appeal site is located is contained by the viaduct which crosses Manchester Road immediately to the west of the appeal property.

7. To its south side Manchester Road is fronted by flat faced, stone built residential terraces. Its north side is more commercial in character ranging from rows of shops to larger business premises.

8. Whilst there is some variation in style and design, a prevailing characteristic of the surrounding architecture is its robust simplicity reflecting the local distinctiveness of this industrial Pennine town.

9. The appeal property is at the end of a small terrace and appears as a flat roofed side addition to an earlier pitched roof property. Its stone built front elevation is to the same plane, having similar aligned window openings with stone cills and its parapet feature aligning with the eaves of the adjoining property. In these respects it reinforces the strong, simple character of the buildings which line Manchester Road.

10. The appeal extension, whilst of matching stonework to the front, does not respect these characteristics. It has a variety of roof slopes and form, the roof to the side rising steeply to almost eaves level and being particularly prominent. The extension projects forwards, detracting from the distinct building line, and wraps around the corner of the building thus loosing the integrity of the building form at this part. Being located at the end of the terrace and at the edge of the character area, and being set back only a short distance from the public realm, it is clearly seen in a range of views from Manchester Road from where it appears as a contrived and unnatural addition.

11. For these reasons I consider the development to be harmful to the character and appearance of the area and to detract from the sense of local identity. It is, in these respects, contrary to the aims of policies D2, BE1 and BE2.

*Highway safety*

12. There is no clear demarcation between what might be considered to be the curtilage of the property and the access road. However, at its point of access to Manchester Road the width of the access road is constrained by the railway viaduct and street lamp to the west and a substantial stone pillar to the east. There is insufficient width for two vehicles to pass.

13. The access road serves a number of business premises including a vehicle repair garage. I have no doubt that, on occasions, vehicles turning into the access (which could include large commercial vehicles) will have to wait on Manchester Road for a departing vehicle(s) to egress. This gives rise to unsatisfactory highway conditions in Manchester Road which is a busy "A" classified road connecting Manchester and Huddersfield. However, that is the pre-existing situation.

14. As to whether the appeal development has made matters worse, there was already an external stairway in the position of the extension. A raised manhole to the rear of the extension also constrains the space available for vehicles using the access as do the protruding vehicles that are parked/stored under the railway arches.

15. The extension takes up a little more space than the external stairway. However I cannot see that it has added materially to the difficulties that would have already existed for vehicles using the access road. There may be a little less manoeuvring space but, even so, there would only have been sufficient width for one vehicle to pass through at this pinch point along the access road. At its junction with Manchester Road the situation remains unchanged.

16. The Land Registry plan indicates that the appellant's title extends to the centre, or thereabouts, of the access road. The appellant says he could enclose the land with a fence thus making the access road even narrower. However, it is not for the planning system to be involved in an individual's rights concerning land which he owns against the rights of others (should they exist) to pass over it. These are private legal matters. My assessment is made, therefore, on the situation on the ground as it presently subsists and as I saw it at my site visit.

17. I conclude, on the matter of highway safety, that the development does not materially change the situation for the worse. I do not find the development to offend policies D2, BE1, BE2 and T10 insofar as they concern highway safety.

*Other matters*

18. The development is adjacent to and, thus, within the setting of the Paddock Railway Viaduct which is a grade II listed building. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) there is a statutory duty upon me to have special regard to the desirability of preserving the setting of this listed building. The viaduct is of historic significance to the development of the railway being a fine example of C19th engineering with its tall pillars and arches constructed in rock faced stone. It spans the valley and is particularly appreciated in mid to longer distance views. The appeal development, which sits alongside it, when seen against the enormity of the viaduct and in the context all the other surrounding development in the valley bottom, does not in my view impact either negatively or positively upon setting of this listed building. Its effect is neutral and, thus, this consideration weighs neither for nor against the proposal in the overall planning balance.

19. I acknowledge that the extension has provided for improved living conditions for the residents of the property. However, there is nothing to suggest that the extension is the only way to achieve satisfactory living conditions. This consideration does not weigh heavily in the development's favour.

20. I note that, on its removal, it is likely the extension will be replaced with an external stairway as before[2]. On balance I consider this would be preferable in terms of effect upon the character and appearance of the area. Whilst being of utilitarian appearance and not, in itself, contributing positively the built form and integrity of the building would be more clearly detectable than with the extension in situ. This is not, therefore, a consideration which I weigh in favour of the development.

21. I have taken into account all other matters raised but none outweigh the harm I have identified arising from the effect of the development upon the character and appearance of the area.

*Conclusions on ground (a) and the deemed application*

22. Whilst I do not find that the development is materially detrimental to highway safety I find that it has a harmful effect upon the character and appearance of the area. For that reason the appeal on ground (a) fails and the deemed application will be refused.

**The appeal on ground (g)**

23. On ground (g) it is argued that the works to remove the extension will impact upon existing tenants and give rise to the need to terminate their tenancies. A period of twelve months is requested.

24. I acknowledge that there may be arrangements the appellant will need to make with his tenants and that a longer time period would be helpful in that respect. An appellant is entitled to assume success of an appeal whilst ever it is pending. It would not be right to take into account the appeal timescale when considering a reasonable time period for compliance.

25. On the other hand, I must consider the wider public interests arising from this enforcement action which are best met through timely compliance with the notice.

26. When weighing these conflicting public and private interests I consider a period of six months would strike a reasonable balance and would be an appropriate timescale for remedying the identified harm without placing a disproportionate burden upon the appellant and his tenants.

27. I shall, therefore, vary the notice accordingly. To this limited extent the appeal on ground (g) succeeds.

**Conclusion**

28. For the reasons given above I conclude that, except to the limited extent identified under ground (g), the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

*Susan Wraith*

Inspector

[2] The enforcement notice, at paragraph 5, makes it a requirement that the land and building is reinstated to its condition prior to the unauthorised development.