The Planning Inspectorate

Appeal Decision

Inquiry held on 29 June and 5 August 2021

Site visit made on 30 June 2021

by Grahame Kean B.A. (Hons), Solicitor HCA

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

Decision date: 26th September 2022

Appeal Ref: APP/T2405/C/19/3226289

Land known as Whitegate Stables, lying to the north-west of Aston Firs Cottage, Rosevale Park, Hinckley Road, Sapcote, Leicester LE9 4LH

- 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 D against an enforcement notice issued by Blaby District Council.
- The notice was issued on 4 March 2019.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the Land to a residential caravan site.
- The requirements of the notice are:
    1) Cease the use of the Land as a residential caravan site,
    2) Remove all caravans, hard surfacing, lamp and camera posts, vehicles, buildings, other structures and any other items associated with the Unauthorised Use from the Land,
    3) Remove the fencing from the north western and south western boundaries of the land [sic]
    4) Restore the levels of the land [sic] to adjacent land levels by the spreading of top soil and then re-seed with pasture seed.
- The period for compliance with the requirements is: 6 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(c) and (f) of the Town and Country Planning Act 1990 as amended (the Act).

Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

Application to add a ground of appeal

3. At the inquiry the appellant formally requested that an additional ground, ground (f) be added to the appeal, to which no objection was taken.

Evidence of appellant

4. I had received an unsigned and undated statement made by the appellant D, in advance of the inquiry which was scheduled for 2 days. He was present on Day 1 but did not speak. His counsel could not confirm whether he would be giving

oral evidence and in the event D was reported as unable to attend on Day 2 due to the Covid-19 virus.

5. In his closing submissions D's counsel said that the onus was on me to investigate the personal circumstances of the appellant, his family and the other site occupants. That is correct only to the extent necessary for me in order to decide the appeal where, as is not the case here, insufficient information is available for the purpose. As experienced counsel would be aware, it is for the appellant to make their case and if it were considered that oral testimony of the appellant was vital to the case, or that its value would be enhanced by them being available for cross-examination, an application for an adjournment would have been made.

6. No such adjournment of the inquiry was applied for. I agreed at the appellant's suggestion, that a completed version of D's statement would be submitted after the inquiry which was done and I have given it appropriate weight. Accordingly, the email under cover of which it was sent should not be misconstrued. I welcomed the suggestion that the statement be signed and sent on, whilst giving no assurances that it would have the status of sworn testimony open to cross examination.

Judgments in Reed and Barton Estates

7. D's counsel had in his opening handed up *Reed v SSCLG and another [2014] EWCA Civ 241*, asking me to note paragraphs [12], [19] and [21]. The upshot of these references was that for intensification to amount to a material change of use there must be a "change in the definable character of the use of the land". Further, a finding of such a material change merely by reference to an increase in the number of caravans would be erroneous. As I will explain, the appellant's case was that the planning permissions relevant to use of the site were extant, therefore as in Reed, any breach of planning control should be considered as a breach or breaches of condition(s). So in the present appeal, if I were thinking of changing the allegation to one of breach of condition, that D's counsel said, would prejudice his client and I simply could not do it.

8. I mentioned a recent case, *Barton Park Estates v. Secretary of State for Housing, Communities and Local Government and Dartmoor National Park Authority [2021] EWHC 1200 (Admin),* to illustrate the principle in Reed, and that land used as a caravan site in a particular way may undergo a material change in that use despite still fulfilling the generic description of a caravan site thereafter. D's counsel took exception to this "bombshell" and requested two weeks' postponement of the inquiry to address the relevance of the judgment, later extended to 3 to 4 weeks after a brief consultation with the agent. I refused.

9. Although the Council thought it an uncontroversial point, D's counsel requested that the appellant's agent prepare an additional statement on the judgment to which I agreed and later accepted and I have considered it. In view of the pending appeal, I also gave both parties the opportunity to comment on the judgment of the Court of Appeal[1] as it applied to the present appeal. The decision confirms the judgment given at first instance.

[1] Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Anor [2022] EWCA Civ 833 (21 June 2022)

Conditions

10. In relation to the ground (a) appeal, neither party had provided proposed conditions by the time the inquiry opened despite my prior request. No explanation was given by the appellant although the Council did state, through the proof of W the enforcement officer, that it would be inappropriate to modify the development that made it substantially different by the use of conditions.

Background

11. The appellant's case on ground (c) was that no breach of planning control had occurred as the planning permissions for a transit site were extant. It was said there was no material change of use to the use alleged in the notice (a residential caravan site) albeit the notice was clearly targeted at the current use of the site, because it provided permanent accommodation for travellers and non-travellers. The occupiers known to be Gypsies or Travellers were stated to be D, the appellant and his immediate family, ie wife and 4 children.

12. The Council's case was that the transit site permissions had never commenced, therefore the current use was without permission, being a material change of use from the pre-existing use which, before the land was used to station caravans for any purpose, was clear and, which was undisputed, grassed over.

13. One issue was whether conditions attached to the transit site permissions were conditions precedent and if so, whether they had been met. In my pre-inquiry note I doubted if the Council could succeed on this basis but said that my focus was also on whether what had been carried on at the site was so different from what had been permitted, that the development was the implementation of a quite different scheme from that for which planning permission was granted.

Planning history

14. Permission One, granted on appeal (APP/T2405/A/10/2137692) on 18 March 2011 was for change of use of the appeal site for eight transit pitches and one warden's mobile home. The conditions attached included:

> *No 1: The development hereby permitted shall begin not later than three years from the date of this decision.*
>
> *No 2: The development hereby permitted shall be carried out in accordance with plans submitted with the application and appeal.*
>
> *No 3: The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.*
>
> *No 4: There shall be no more than 8 transit pitches on the site and 1 mobile home. No more than 16 caravans and 1 mobile home as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.*
>
> *No 5: No gypsy or traveller shall stay at the transit site for a period longer than three months and, following his/her departure, shall not use the transit site again until at least three months have elapsed.*
>
> *No 6: The mobile home shall be occupied by the site warden and resident dependants only. The site warden shall keep a register of site / pitch occupation, including details of the names of the residents and the dates and duration of the stay, which shall be available for inspection by the local planning authority upon request.*

No 7: Within one month of the siting of the warden's caravan on the land the site shall be laid out in accordance with the approved 1:500 site layout plan and thereafter be available for use as a gypsy transit site. The car parking areas shall thereafter be retained for the purposes of parking at all times.

No 8: No development shall take place until details of the materials of the proposed toilet blocks have been submitted to and approved in writing by the local planning authority. The blocks shall be erected in accordance with the approved details.

No 9: No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include hedge planting, including plant type, size and quantities; hard surfacing treatments; details of earth bunds; fencing and boundary treatment. The scheme shall also include a timetable for its implementation.

No 11: No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

15. Permission Two was granted on 13 January 2015 (Ref 14/0871) for change of use of the site for eight transit pitches with associated toilet blocks and one warden's mobile home. The conditions included:

No 1: same as Permission One.

No 2: Unless otherwise agreed in writing by the District Planning Authority, the development hereby approved shall be carried out in strict accordance with the following approved plans: Site Layout Plan - Scale 1:500 Toilet Blocks Plan - Scale 1:50

No 3: This permission conveys approval for the occupation of the site only by persons identified as gypsies when assessed against the definition contained within Annex 1 of Planning Policy for Travellers Sites (March 2012).

Nos 4, 5 and 6: (same as in Permission One).

No 7: Unless otherwise agreed in writing by the District Planning Authority, Within one month of the date of this permission the site shall be laid out in accordance with the approved 1:500 site layout plan and thereafter be available for use as a Gypsy transit site. The car parking areas shall thereafter be retained for the purposes of parking at all times.

No 8: Construction of the toilet blocks shall not commence until details of the materials of the proposed toilet blocks have been submitted to and approved in writing by the local planning authority. The blocks shall be erected in accordance with the approved details.

No 9: Within six months of the date of this permission, a plan showing a detailed landscaping scheme shall be submitted to and approved in writing by the local planning authority. This scheme shall include details of: a) new tree and shrub planting, including plant type, quantities and locations b) the retention of existing boundary hedges and measures of protection during the course of development; c) the position, height and profile of bunding.

No 11: No development shall commence on-site until details of the means of foul and surface water drainage have been submitted to and approved in writing by the District Planning Authority. Once approved the works shall be carried out before any of the development is occupied.

16. More recently, permission was refused on 15 April 2016 (Ref 15/1350) for change of use of the site to form a gypsy caravan site (6 pitches) and erection of communal day/amenity building. The reason for refusal was that although there was a need for additional permanent gypsy sites, the proposal would result in the loss of transit gypsy site accommodation that would unacceptably reduce the district-wide level of transit site provision, for which no acceptable alternative provision is proposed. This was said to be contrary to Policy CS9 of the Blaby District Local Plan (Core Strategy) Development Plan Document 2013 (CS) and the aims of the National Planning Policy Framework (NPPF) both of which seek to meet the needs of all members of the gypsy and traveller community. There was no appeal against that decision.

17. On 31 December 2018 the appellant's application to vary the conditions of Permission Two was rejected by the Council on grounds that the permission had lapsed unimplemented.

Ground (c) - that there has not been a breach of planning control

18. This ground of appeal is that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The onus of proof is on the appellants and the test of the evidence is on the balance of probability. To succeed on this ground either Permission One or Permission Two must be shown to have been "implemented", ie that the use had begun.

19. The appellant's agent asserted that both permissions are extant, each in effect permits a caravan site on the appeal site, so the matters alleged to have taken place in the notice did not amount to a breach of planning control. Conditions 8, 9 and 11 were broadly similar for both permissions and it was accepted that either permission lapses if any of these conditions were found not be complied with, being potentially conditions precedent as on their face they prevented development commencing until certain matters had been performed.

Whether conditions 8, 9 or 11 were conditions precedent.

20. A condition precedent must expressly prohibit commencement of development and go "to the heart of the permission". The timing of the works in conditions 8, 9 or 11 is not in my view fundamental to a permission for this use of the land for transit pitches with the possible exception of the landscaping requirement, although clearly it is important to establish the detail of those works. Local character of the wider area would not have been a significant issue, although experience suggests that soft landscaping is more difficult to maintain on transit sites and it would have been of some importance to ensure that the environment was visually acceptable even for short stays, through a reasonably cost-effective scheme. On balance however I am not persuaded that this was such a crucial issue to have to be determined at the outset. I find that conditions 8, 9 and 11 on both permissions were not conditions precedent.

Whether Permission One or Permission Two was ever begun

21. A change in use is initiated, according to s56(1) of the 1990 Act, at the time when the new use is instituted. And for the purposes of ss91 and 92 development is taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. By s56(4)(e) a material operation includes "*any change in the use of any land which constitutes material development*". It is a matter of judgment on the facts as to

whether sufficient work and change consistent with the planning permission has been done to begin the change of use for which permission is granted.

22. In the appellant's own statement he said that he owned the appeal site and had lived there since 2011 "*when the caravan site was first laid out*". As to the pre-existing use of the site, it was undisputed that the site was grassed over and clear of vans in 2008.

23. However I must deal with a suggestion, in the application form that sought to vary the conditions in 2018, that use as a caravan site began in 2009. The agent misdescribed Permission Two as "*the change of use to use as a residential caravan site for 7 Gypsy families, including site warden*", whereas in fact it was for "*Change of use of land to form 8 transit pitches with associated toilet blocks and 1 warden's mobile home*". The date of 2009 is given in reply to the question when the approved development started, but in answer to the next question: "*has the development been completed*", the agent replied "*No*." Furthermore, a long covering letter sought to justify the proposal as in a suitable location for gypsy caravan sites but failed to mention when the appeal site itself was first in use as a residential caravan site.

24. The assertion in the 2018 application form is not substantiated. The only references to 2009 in the appeal statements are to permissions for sites other than the appeal site. There is no evidential basis to support the assertion that use as a caravan site, or indeed a transit site, began in 2009. Unnecessary confusion has been caused by incorrect completion of this form. In any case, in the appeal statement of the current appeal, the site is said to accommodate 11 mobile homes, appearing to the agent to be occupied residentially and aerial images are said to show that change of use to a caravan site began in 2011. As to Permission One he states that development "*clearly commenced in 2011*".

25. The site is triangular with one corner at a right angle. Condition 2 required the development to be in accordance with the approved plans, which were the same in both permissions. There is a 1:500 site layout plan and a toilet blocks plan at 1:50. To the north-west on the longest side opposite the right angle, should have been situated a mix of pitches (x3 including that for the mobile home which is to be placed more or less centrally within the site); parking spaces grouped in a set of 2 and then 3 spaces together; and a double toilet block. On the shortest side to the north are to be sited parking spaces, in a group of 5. On the remaining side to the east there were to be 6 pitches each with a toilet block, in three groups of two.

26. The appeal decision that granted Permission One explained that condition 2 was for the avoidance of doubt and in the interests of proper planning. These are good reasons. The approved car parking areas were specifically subject to condition 7 requiring them to be retained as such in the interests of highway safety. When one considers the layout, it would clearly have been preferable not to have isolated parking spaces by each pitch, or scattered around the site, for that would not be conducive to proper planning but tend to increase the risk to the safety of occupants and/or vehicle users, including access for emergency vehicles. Furthermore provision on site for ablutions is necessary and desirable in transit stops. The toilet blocks would have been an integral feature of the approved development and should have been provided at the outset in accordance with the approved plans.

27. The 2011 image shows that there was then no formalised parking that resembled the approved layout whatsoever, cars were scattered around the site. Nor had the layout of the pitches been followed, they were irregularly positioned and there was no evidence of a warden's mobile home in the middle of, or anywhere within the site. Transit sites commonly provide for a resident warden or manager. There was no evidence of toilet blocks sited in approved positions or at all. The white structures seen are probably touring caravans, not toilet blocks, having regard to the number and size of openings on the roof and sides, and what appears to be towing apparatus at the front of some of them. If the site were to function properly as a transit site it would have been appropriate to provide, as was required in the form of a "toilet block", amenities with at least a toilet, wash basin and shower with hot and cold water.

28. The appellant submits that the 2011 image shows the change to a caravan site use began then when the site was hard-surfaced and occupied with touring caravans in the approximate positions shown on the site layout plan. It is argued that although the warden's mobile home was not there in 2011, condition 7 did not require the site to be laid out in accordance with the site layout plan until after the siting of the warden's caravan. But on its face each permission unambiguously required the site to be laid out under condition 2 as per the approved plan, which identifies the nature and position of a caravan which is to be a warden's mobile home in connection with the transit pitch use.

29. The Council's aerial images show that in 2008 the site was almost entirely grassed over, which remained the case in 2010 according to the appellant's image of that date. A subsequent image of 21 April 2015 shows most of the structures had been removed and there was one park home on the site, and hardstanding bases appear to be established for 6 pitches. Another aerial image of 2016 shows that 7 static caravans had been positioned on the land.

30. D states he has lived on the site "*continuously*" since the caravan site was first laid out in 2011 other than for short periods when travelling for work. It was not claimed that this manner of occupation complied or was intended to comply with the conditions on either permission, several of which were not complied with from the outset. The Inspector granting permission explained their aim:

> *"To ensure that the site is developed as and remains as a transit site, conditions are required to ensure that the occupation of the mobile home is restricted to the site warden and resident dependants; relating to time limits on the occupation of the site; the keeping of a register of such occupants; that the development is laid out in accordance with the approved layout within 1 month of the siting of the mobile home and that the development is thereafter available for use as a transit site."*

31. The requirements for transit sites set out in the permissions reflect the fact that they are not intended to accommodate use as a permanent base for an individual household. D, as owner of the site has subverted its intended use from the outset to his own purposes of providing permanent accommodation for himself and those of his immediate and wider family. In his own words it now:

> *"accommodates my own family, together [with] my parents and the families of my brother and sister. In 2015 I began to put static caravans on the land and, besides members of my own family, I began renting some of the caravans out."*

32. D's agent notes the Council must have been aware of this as housing benefit was being paid to the tenants from 2015, and his counsel made much of this point, criticising the Council heavily and at length for what he saw as incompetence, although this is irrelevant to the main issue, ie whether the matters alleged in the notice constitute a breach of planning control.[2]

33. Later aerial images of August 2018 and April 2019 show the site occupied by mobile homes (the exact number is unclear), there is no evidence of toilet blocks and cars are parked in various places around the site not in conformity with the approved plan. My own inspection revealed a similar state of affairs at the site. Hardcore has been laid over almost all the site. The landscaping conditions have never been complied with.

34. The site according to D's statement is managed by TC, a relative who collects rents and deals with tenants' queries. Condition 6 of Permission One required the site warden to keep a register of site occupants: names, dates and duration of stay, available for inspection by the Council. There is no evidence that this ever happened or that, if a book of some kind was kept by TC, it was other than associated with rent payments, who was on universal credit and so forth. This emerged from cross examination of the agent who had visited the site when TC and D were present. No documentary evidence of a register, in terms expected by either permission or at all, was supplied.

35. The agent, in the application form for Permission Two was clear that "*my client is happy with the layout previously submitted and so this has been submitted again*". That statement does not sit at all easily with the fact that the approved layout had never materialised, or with D's own statement as to what he has done with the site since acquiring it and how he occupied it.

36. Both permissions describe the permitted development in terms of the use of the site for 8 transit pitches and 1 warden's mobile home. Condition 4 requires there to be no more than 8 transit pitches and 1 mobile home, restricting the overall use to no more than 16 caravans and 1 mobile home. The agent correctly states there is no restriction within that maximum limit, on the numbers of static caravans or the siting of caravans year-round. Clearly however the site has not been operating as a transit site.

37. Next it is argued that although condition 7 requires the site to be laid out as per the approved plan, caravans need not be sited in the same locations thereafter. This point is not critical to my overall conclusions but, whilst a condition usually expressly requires a layout to be retained as such, I see no difficulty in construing condition 7 as similar in effect since what *thereafter* must be *available for use as a Gypsy transit site* is quite reasonably to be construed as the site so laid out. Moreover condition 2 achieves a similar result by requiring compliance with the approved layout on a continuing basis.

38. A transit pitch has no statutory definition but is regarded as a short-term place where Gypsies and Travellers legally stay for a set period, typically, as in the case of the planning permissions in this appeal, up to three months. However there is no evidence that the site operated in accordance with the development actually permitted for transit pitches. It was never laid out as 8 pitches,

[2] In any event housing benefit, which has been undergoing a transition to universal credit, is administered by local government, and reclaimed from central government. It is a misconception to believe that it is funded as such by the Council.

occupied by persons in transit, or with toilet blocks. Conditions relating to parking, landscaping, and maintenance of a register were never complied with. The conditions in their substance, wording and purpose are designed to support and manage a transit site, not a generalised use as a caravan site.

39. "Implementation" in relation to a planning permission is not statutorily defined. It is used variously to refer to the beginning, carrying out or completion of development. In *Butcher v Secretary of State for the Environment (1996) 71 P. & C.R. 337*, it was held that a permission granted on appeal under the then equivalent of s177(1) of the 1990 Act:

"must be implemented before it comes into effect, "just as would be the case with any other planning permission granted under Part III of that Act…Whether in any particular case a permission has been implemented is in every case a matter of fact and degree upon the evidence for the decision maker." (emphasis supplied)

40. The court added, accepting the submissions of Mr Holgate:

"It is axiomatic that planning permission is concerned with the development of land either through operational development or by making a material change of use. Accordingly what occurs on the land in respect of building or other activity or in its use will be likely to be of particular weight."

41. *Butcher* concerned a material change of use and a permission granted on appeal where the use was permitted to continue but there remained the requirement for implementation and "*in such a case the continuance of the use, at least for a material period of time, would generally be sufficient to justify the conclusion that the permission had been implemented and that any condition on the permission had accordingly become binding*."

42. However, although in this appeal, Permission Two might have purported to permit continuance, there was an obvious failure to institute the use in a way referable to either permission, including demonstrating compliance with time limits for stays on the site with an effective registration system or acts in accordance with other conditions that would have confirmed the use.

Summary and conclusion on ground (c)

43. D's counsel berated the Council for failing to allege a breach or breaches of condition in the enforcement notice. But its approach was entirely logical on the basis that the permissions were no longer extant. Key conditions have never been complied with that are fundamental to the subject matter of the permitted development, namely a transit site for Gypsies and Travellers. The development manifestly failed to exhibit the incidents that would distinguish such a use that is materially different in character from the current use.

44. To the contrary it has been used by the appellant who was in control of the site, as a vehicle for letting out pitches to residents, including non-gypsies for permanent accommodation. The requirements in several key conditions were never performed from the outset. In the case of either permission, purported performance of the conditions did not take place sufficiently or sufficiently in combination with one another, to objectively justify a conclusion that use for transit pitches was begun within the three-year time limit, nor were there other acts that would in my view justify a conclusion that the permitted use had been initiated.

45. It has not been proved on the balance of probabilities that there had been a commencement of lawful development whether pursuant to Permission One or Permission Two. The appeal on ground (c) therefore fails.

Ground (a)

Background, deemed application and alternatives, and main issues

46. The site comprises 0.2 hectare of land located north-west of Old Hinckley Road, directly behind an existing gypsy site known as Rosevale Park. Old Hinckley Road is a cul-de-sac, resulting from improvement of the B4669, and runs north-eastwards off Hinckley Road (B4669) via a junction located just to the south of Rosevale House and Rosevale Park. The aerial image of 5 April 2018 clearly shows 13 caravans on the land. The notice was issued in March 2019 and a 2019 image (not more precisely dated) shows they had increased to 15. On the balance of probability they were there when the notice was issued.

47. The deemed application for planning permission derives from the matters alleged to constitute the breach of planning control, ie use of the land as a residential caravan site. In my pre-inquiry note I requested the appellant concisely and exactly to define the nature of the proposal for which planning permission was sought under the deemed planning application, including any alternative proposals, explaining why it or they fall within s177(1)(a). Regrettably, there remained confusion about this matter at the inquiry, and it was necessary to take an adjournment so D's agent and counsel could confer and revert to me with their proposals.

48. What emerged was that I was being asked to consider 3 proposals to allow in effect continued permanent occupation of the site as a residential caravan site. The preferred option was to grant permission for use as a caravan site limiting occupation of up to 5 pitches to those who meet the planning definition of Gypsy and Traveller. This would permit continued occupation by non-gypsy occupants who were on universal credit and thereby, it was said, provide low-cost affordable accommodation in line with planning policy.

49. Alternatively permission was sought to limit occupation to those who would have met the Circular 1/2006 definition of Gypsy, which would be wider in scope than the third option, which was to grant permission only for those who met the current definition in the Planning Policy for Traveller Sites (PPTS), and limiting the use to no more than 15 single unit caravans as defined in Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968.

50. The power in s177(1)(a) to grant permission on appeal is to: *"(a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates*."

51. The Council said that these eventual permissions would substantially differ from what was alleged in the notice, because its view was that there were no Gypsies on site when the notice was issued.

52. The main issues were agreed as:

- Whether the proposed occupants meet the planning definition of Gypsy and Traveller;

- Whether the proposed development is sustainable;
- The need for and provision of accommodation for Gypsies and Travellers including transit sites, and availability of alternative sites; and
- The needs of the proposed occupants for a settled site and their circumstances.

Gypsy status

53. D's agent's sworn testimony was that the appeal site currently accommodated D, the appellant and his immediate family; his parents; his brother S and family; his brother T and family; and his sister. They were all Irish Travellers by ethnicity, the adult males travelled regularly to make their living and D made his living by buying and selling vehicles. The remaining caravans were occupied each by: TC, the appellant's cousin and site warden; and 5 non-travellers on universal credit. D's agent further stated that the remaining occupants locally employed, one being from a gypsy and traveller background.

54. D's agent had his information from a visit to the site on which basis he also drew up D's statement. However W, the Council's enforcement officer also gave evidence on oath. He had visited the site on at least 7 occasions between August 2018 and the issue of the notice, each time interviewing the occupiers and has been in telephone and email contact with some. He stated:

"None of the occupiers of the appeal site identified themselves, or anyone else in occupation of the site, as gypsies, travellers or persons of nomadic habit of life and none were aware of any planning restriction in that respect. Some identified the appellant as their landlord through his name on their tenancy agreement, but none had met him. None of the occupiers had an aversion to bricks and mortar accommodation or a travelling life-style. Most occupied the site because it provided accommodation they could afford and it looked ok in the advert."

55. W wrote to D's agent to clarify responses to a planning contravention notice served on D in December 2018 since on his visits he had been unable to identify D or the mobile home he was said to occupy, and no occupier identified as a gypsy or traveller. There was no reply from the agent and upon being questioned as to this, I was told it had not been his remit to clarify those matters, as he was instructed only to reply to the notice.

Conclusion on gypsy status and eligible alternative planning proposals

56. The Council maintains that no occupant of the site when the notice was issued had gypsy status, hence the unauthorised development the subject of enforcement notice is not and could not include a gypsy and traveller site. It appears from my site inspection that D and his family now occupy the site, his caravan was pointed out to me, and the Council accepts that he is an Irish traveller by ethnicity. I am satisfied on the available information that the site is occupied by non-travellers with other persons in the appellant's own and wider family who, on the balance of probabilities on information presently available, are Irish Gypsies by ethnicity some of whom may well have been there when the notice was issued. Therefore the alternative proposals are in my opinion capable of being included within the overall current use of the site, since they posit in effect variable proportions of Gypsies and Travellers to non-travellers who are said to be occupying the site as their permanent home.

Sustainability

57. By s38(2)(c) Planning and Compulsory Purchase Act 2004 the development plan for an area includes any neighbourhood development plan which has been made in respect of that area. The Development Plan comprises the Local Plan (Core Strategy) Development plan Document 2013 (CS); the Local Plan (Delivery) Development Plan Document 2019 (DPD); and the Fosse Villages Neighbourhood Plan made in June 2021 (NP). NP Policy FV8 allows for small scale housing in the most sustainable locations, assessed against the need to retain land designated as Countryside.

58. The appeal site is within a cluster of caravan sites capable of accommodating more than 100 households. The NP notes there is a large concentration of traveller sites in the Aston Firs area, close to Junction 2 of the M69 in the parishes of Aston Flamville and Sapcote. The area is locally visible in the landscape, however its proximity to Freeholt Wood and Aston Firs Wood provide some screening. It notes that the Gypsy and Traveller community co-exists with local settled communities.

59. The supporting text to CS Policy CS5 acknowledges that smaller villages have limited services and facilities, not generally well served by frequent public transport. Whilst on this site normally active people might walk, cycle or catch a bus to access services, for most journeys and purposes, the transport mode of choice and necessity would be the private car. For these reasons, permanent residential accommodation in this location would conflict with strategic objectives in Policy CS5 and one of the core principles of the Framework; "*to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable*".

60. As to accommodation for the travelling community, DPD Policy SA4 directs provision after priority locations to sites within 2 miles of the settlement boundaries of Medium Central Villages, such as Sapcote. Thus the appeal site might be acceptable in principle for a traveller site under that policy although it is low in the order of preferences and Policy SA4 (a) makes clear that proposals will not be supported if they are contrary to other policies of the local plan.

61. I note also that it was accepted that the criteria in Policy CS9 would generally be met for a residential caravan site. However although it would be reasonably close to a settlement and services, it is not the most sustainable of places.

62. NP Policy FV17, to ensure that the combined scale of the sites does not dominate the settled community and to avoid placing pressure on local services, states that *Aston Firs Development proposals for new sites or the extension or intensification of existing sites at Aston Firs, whether for Gypsies and Travellers or other households, will not be supported*.

63. CS Policy CS18 concerns development in general in areas designated as Countryside where permission will not be granted for built or other development that would significantly adversely affect the appearance or character of the landscape (which it is common ground is not the case here). It seeks also to balance the need to retain Countryside against the need to provide new development (including housing) in the most sustainable locations.

64. In the context of the NP it is significant that a clear majority of respondents to the 2017 questionnaire survey thought that the intensification, expansion or creation of new sites at Aston Firs should be discouraged. A neighbourhood plan must consider national policies and government guidance such that it is appropriate before it goes to a referendum. There is no dispute that these processes have been properly followed. As part of the statutory development plan planning applications must be decided in accordance with policies in the NP, unless material considerations indicate otherwise.

65. The NP read as a whole considers sustainability throughout. It constitutes the neighbourhood's view of what sustainable development in the Fosse Villages means in practice. Policy FV17 is concerned not with landscape character and appearance per se but is predicated on examination of a particular cluster of Gypsy and Traveller sites in a particular area, and the socio-economic effects of its eventual expansion. It is a legitimate expression of planning policy for that area and there is substance in the point about scale and effects on the settled community. The wording reflects the PPTS at paragraph 25 but applies that generalised concern to a particular scenario after examination of the issue in the processes that have led to making the NP. It is thus arguably as prescriptive if not more so, than Policy CS18.

66. Since the site does not have the benefit of any permission for caravan use, and since the lapse of the permissions it has in effect a nil use, the alternative proposals would be "*the creation of new sites, or extension or intensification of existing sites at Aston Firs*". As such they would be contrary to Policy FV17 which is a key development plan policy for the appeal site, in its intention properly to shape and direct development outside the strategic policies. A conflict with NP policies and other parts of the development plan, including housing supply policies, must be resolved in favour of the NP as it is the last document to become part of the development plan, pursuant to Planning and Compulsory Purchase Act 2004.

67. To the extent that there are no relevant development plan policies for accommodating those who prefer to live in caravans/mobile homes (other than non-travelling gypsies), it was suggested that the "tilted balance" in NPFF, Paragraph 11d applied. However, that seemed to be on the basis that the NP was not part of the development plan. The NP policies were technically draft policies when considered by D's agent (although the wording of FV 17 did not change). It was suggested that they did not outweigh other non-strategic policies. However it was not disputed that they were in general conformity with strategic policies. W had given evidence that the NP was the subject of a public referendum on 6 May 2021 and 3,439 voted in favour to 586 against. It attains the same legal status as other documents that form part of the statutory development plan once it has been approved by referendum (s38(3A) PCPA2004). Policy FV17 must be given full weight.

68. Overall I find that for the type of development proposed the appeal site is not among the most sustainable of locations and there would be a conflict with a key development plan policy in seeking new and permanent residential development on the appeal site.

Need for and provision of housing accommodation, and Gypsy and Traveller sites including transit sites

69. As to the general housing stock, CS Policy CS1 states that the Council will monitor and manage its housing land supply (HLS) to ensure delivery in accordance with the housing trajectory shown in Appendix F. Integral to the effectiveness of the CS is monitoring to see if the policies are achieving their aims. An Annual Monitoring Report (AMR) monitors policies as set out in Policies CS1 and CS9.

70. The so called "tilted balance" as applied to housing in NPPF is somewhat reversed where paragraph 14 sets out the implications for conflicts with the neighbourhood plan such that, where paras a) to d) all apply, "*the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits*".

71. The annual housing requirement for calculating the 5 year housing land supply is set out in Policy CS1 as 380 dwellings per year and the district-wide housing land supply position is 5.75 years. The CS has no specific housing provision for each of the Fosse Villages, but the NP sets out the minimum housing provision for each village having regard to housing completions and commitments at 31 March 2017. For Sapcote there is already an over-supply in relation to the minimum provision required over the period 2006 to 2029. Aggregating the figures for all areas considered in the NP, the minimum housing provision required for 2006 to 2029 is 1215. The total number of dwellings built and committed as at 31 March 2017 is 1662. The balance required (2017 to 2029) is therefore (minus) 402. The NP at paragraph 91 seeks to protect the CS settlement hierarchy by ensuring that this discrepancy is not made worse.

72. Clearly therefore, as regards NPPF, paragraph 14: a) the NP became part of the development plan two years or less before the date of this Decision, in May/June 2021; b) the NP contains policies and allocations to meet its identified housing requirement; c) the local planning authority has at least a three year supply of deliverable housing sites against its five year housing supply requirement, including (CS Appendix E, Monitoring Report 1 April 2018 – 31 March 2019) the appropriate buffer as set out in NPPF paragraph 74[3]; and d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.

73. The upshot is that in accordance with NPPF, paragraph 14, the adverse impact of allowing a development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits.

74. The use of the appeal site by non-gypsies would, it is argued, be a small windfall housing provision in line with Part B of NP Policy FV8 which allows for "*small scale housing in the most sustainable locations, assessed against the need to retain the Countryside*" (my emphasis). Due not least to reliance mostly on the car, I doubt the appeal site is among the most sustainable locations and it is questionable whether the policy is intended to cover this form of housing in mobile homes. It is not a settlement in the CS hierarchy.

75. DPD Policy SA4 contains a requirement to review the evidence and work alongside other Leicestershire authorities to identify the need for additional

[3] Over the next 5 years the requirement will be 380*5 = 1900. 60% is 1140. The first 3 years are 21/22: 530; 22/23: 555, and 23/24: 629 = 1714. This is clearly more than 60% of the 5 year HLS.

transit site accommodation, in line with the PPTS that asks local planning authorities to address likely transit site accommodation needs.

76. The Leicestershire, Leicester and Rutland Gypsy and Traveller Needs Assessment Refresh, May 2013 (2013 GTAA), states at paragraph 6.21 that transit accommodation is necessary for those travelling through, and there were respondents in the survey in need of transit accommodation whilst visiting the area. It also warned of a significant risk that privately owned and managed transit sites are made available to those known to site owners/managers or families from particular groups and may not necessarily be available to all those in need of a transit pitch. Indeed the pattern of unauthorised development at the appeal site resembles this type of operation.

77. The evidence submitted does not persuade me that generally the Council has not met the identified requirements for Gypsy and Traveller accommodation and would not continue to respond to identified needs. The Leicester and Leicestershire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment, Final Report (2017 GTAA) estimates a need for up to 29 permanent pitches for "unknown" gypsies and 15 pitches for households who do not meet the planning definition for 2016 – 2036. Despite there being low numbers of interviews with private site occupants, it is not a "meaningless" assessment as suggested and should be considered alongside the targets in CS Policy CS9, but also the DPD policies. The Council identifies broad locations only. DPD Policy SA4, paragraph 3.41 states that the current supply of unimplemented planning permissions means that there is no additional need to allocate specific sites for the period 2016 to 2021 for Gypsies and Travellers meeting the planning definition, as is the case for the 'unknown' households.

78. Both parties relied on CS Policy CS9, in the one case for permanent Gypsy and Traveller accommodation and in the other for transit accommodation. The 8 pitches approved on the appeal site appear to have constituted a significant proportion of total transit provision in the district, meeting the aim of PPTS to address likely permanent and transit site accommodation needs of travellers in their area. I was not presented with robust evidence from the appellant's agent that there was significant unmet need for Gypsy and Traveller accommodation in the district. Although it was put to W that the appeal site was suitable for such provision generally, he stated that there was a preference for this site to be a transit site for which permission had been granted for transit pitches.

79. I was given no details of alternative sites said to be suitable alternatives to use for transit pitches. Neither the appeal statement nor the appellant's evidence dealt in terms with the loss of transit provision, the appellant continuing to maintain there was no material difference between that and the current use.

80. The 2017 GTAA, paragraph 4.4 states that transit sites tend to contain many of the same facilities as a residential site, except that there is a maximum period of residence which can vary from a few days or weeks to a period of months. It defines transit provision as "*Site intended for short stays and containing a range of facilities. There is normally a limit on the length of time residents can stay*."

81. Transit pitches tend to be successful in my experience where, as in the case of the appeal site, they are adjacent or at one end of a main cluster of caravans. A transit site is likely to have a high degree of turnover, and here, the site at the periphery of the general cluster of traveller sites gives directly out onto the

access road leading to the main road. There is no reason to suppose issues may arise between permanent occupiers on adjacent sites. Paragraph 11.3 of the 2013 GTAA states that transit pitches should be located on main travel routes. In my view this is a smaller site, well positioned for travel routes with it being just off Junction 7 on the M69 between Leicester and Coventry.

82. Transit sites fulfil a significantly different function than permanent sites, an important facility for people leading a nomadic way of life who often travel to an area temporarily to work or to see friends and family. They also have a valuable function in reducing unauthorised encampments. The appeal site is located at the edge of a cluster of caravan sites capable of accommodating more than 100 households. Transit pitches would enable travelling families in the area for a short time to access running water, toilets and refuse collection.

83. As to locations for the transit provision across Leicestershire the 2017 GTAA recommends an initial review of potential sites deliverable in the short-term as "*the deliverability of new sites in the short-term should be seen as the most important consideration*". The baseline is September 2016 and in Blaby at this date there were 3 private transit sites with 15 pitches. The 2017 GTAA states at paragraph 7.131:

    It has been suggested that there will need to be an increase in transit provision across the country as a result of PPTS (2015) leading to more households travelling. This may well be the case but it will take some time for any robust evidence to be available to substantiate these claims. As such the use of historic evidence to make an assessment of future transit need is not recommended at this time. Any recommendation for future transit provision will need to make use of a robust post-PPTS (2015) evidence base.

84. I am not satisfied that there is yet in existence that robust evidence base which the 2017 GTAA called for, and this adds to my concern that the appeal site should not be lost to permanent residential development whether by travellers or non-travellers, if the latter development conflicts with key local plan policies.

85. In line with the NPPF at paragraph 62, the CS at paragraph 6.9 sets out a strategy to satisfy housing requirements for the District including a wide range of housing and accommodation needs. It also seeks to meet the needs of specific groups including Gypsies and Travellers, Older people, people with a disability and people requiring affordable housing. I am satisfied from the evidence that the Council generally meets identified requirements for permanent Gypsy and Traveller accommodation and there is no good reason to suppose it will not continue to respond to identified needs. Most affordable housing is delivered as part of larger developments focussed in growth areas and the case for retention of the site for such purposes is not compelling.

The needs of the proposed occupants for a settled site and their circumstances

86. Although D stated he moved onto the land in 2011 he did not state when he became owner. The Permission Two application in 2014 stated that Mr R Finney was the owner. The Land Registry entry shows information as at 4 September 2018, ie that the site was then registered to a Charlie Doherty who gave two addresses, a house in Kirkby-in-Ashfield, and an address in Ireland. The date of the transfer to him was 7 June 2018. This contrasts with the unsworn statement made by the appellant D (Isaac Doherty) and signed by him in August 2021 in which he stated that the land was registered in the name of his

brother Tony Doherty. It is unclear why the land might have been transferred to someone other than the person whom D claims is a joint owner with him. It has not been made clear what other land or accommodation is available to the appellant or his family which they might own, possess or have access to.

87. In his statement D states he buys and sells vehicles for a living and travels extensively. He refers to a son aged 5 in 2011 who attended school locally but who now travels with him for work, and a daughter who attended a special needs school, although it is not stated where that was and the attendance appeared to have ended in 2015. Another daughter 8 years old, attended school locally until 2019. The younger children were kept out of school since the Covid pandemic. They are home educated. There are no health issues referred to in the statement nor that of his agent. The latter focuses on relevant but generalised points about what are the undoubted benefits of Gypsy families having a settled base from which to travel and bring up children, with access to locally provided education and health services.

88. Other socially rented pitches that tend to accommodate Irish families were said to be full, with a long waiting list. The appellant does not state that he or his family would be homeless if they were unable to occupy the appeal site. Nevertheless I accept that the needs of the appellant and his family for a settled base should attract moderate weight in the overall balance.

Other matter: intentional unauthorised development

89. W pointed out in his evidence that the unauthorised development was carried on in the knowledge that it was unauthorised, which was undisputed since even at its highest the appellant's case was to treat his actions as a breach of one or more conditions. The development is unauthorised and was intentional. The suggestion that the land was being used as a transit site was clearly unfounded, the evidence clearly points to a use that from its inception was not at all concerned with beginning or implementing consent for that use but with providing permanent accommodation for the appellant's own family and people from the settled community on a permanent basis, some of whom probably answered advertisements deliberately placed in the local press for the purpose.

90. On 31 August 2015 the government introduced a planning policy making intentional unauthorised development (IUD) a material consideration in the determination of planning applications and appeals. It was laid in the House of Commons on 1 December 2015 as a written ministerial statement (WMS). A concern of the Government was that there may be no opportunity appropriately to limit or mitigate harm that has already taken place. The WMS refers to such development involving local planning authorities having to take expensive and time-consuming enforcement action. The policy applies to all new planning applications and appeals received from 31 August 2015 and to the settled and the traveller community equally.

91. The IUD policy is a consideration in this appeal. If it were truly the case at the time of the Permission Two application, that the appellant had an interest in living on the site permanently (which he stated he has done since 2011), one would have expected that to be the subject of an application accordingly. However there was no attempt to regularise the situation as the Permission Two application was in terms for 8 transit pitches and a warden's mobile home. D never himself fulfilled the function of warden for a transit pitch use whose occupation of the site was the only one permitted in permanent form.

92. Loss of transit pitches can result in adverse planning consequences for the Gypsy and Traveller community as well as undermine the integrity of the planning system. These circumstances do not lead me readily to assume that the appellant then had nowhere else to go to live that would have been suitable in terms of the accommodation needs of himself and his family.

93. Moreover, following the April 2016 refusal of an application which D did however make, nevertheless he continued the unauthorised development until the present day, a considerable period. The IUD is a material consideration that in my judgement weighs significantly against the proposed development.

Other matter: "fall back" argument under s57(4)

94. It emerged during closing submissions that a "fall-back" was said to exist under s57(4) of the 1990 Act. If an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of Part III of the Act) it could lawfully have been used if that development had not been carried out.

95. The way the matter was put appeared to be in essence that reliance is placed on the ability to resume the use under Permission One or Permission Two but in any case, given my findings there is a fundamental flaw in this approach. Permission Two was granted on 13 January 2015. The notice was issued more than 3 years later and as I have found that permission, as with Permission One, had lapsed. Therefore at the time of issue, there was no permission on which to fall back. The permissions not being extant, the Council would not have had the power to seek to make the development comply with the terms of either permission, and nor do I have such power.

96. Insofar as the previous permissions may be a material consideration in assessing the proposals advanced by the appellant, in the first place the actual evidence does not lead me to believe that D currently wishes to operate transit pitches for gypsies and travellers on the site. Secondly and crucially, as a matter of planning judgment in my view there is a significant functional difference between such a use which is a) exclusively for travellers and b) on a limited period basis, on the one hand, and on the other a residential caravan site used for accommodation on a permanent basis for a mix of gypsies and non-travellers. Therefore it cannot be subsumed within the scope of s177(1)(a) as being in relation to the whole or any part of those matters targeted in the notice. Were it otherwise, it would have been pertinent to consider how likely or realistic it would be that the appellant would indeed fall back on that use, and the facts do not support that supposition at all.

97. Therefore I am unable to give the "fall-back" arguments as they were expressed on behalf of the appellant in closing, any meaningful weight.

Human rights and PSED considerations

98. Integral to consideration of the appeal is that a refusal to grant permission to continue to reside at the site engages Article 8 European Convention on Human Rights (ECHR) and Article 1 of the First Protocol. Interference must be proportionate and necessary. Article 3(1) of the United Nations Convention on the Rights of the Child (UNCRC) provides that the best interests of children must be a primary consideration in all actions of public authorities. The best

interests of the children would include being able to continue education and accessing health facilities by having a settled base in the general locality.

99. On the available evidence as to the actual impacts however, I attach moderate weight in respect of those affected by a decision that would interfere with the home and family life of the appellant his family and other occupants. However such interference is necessary and proportionate considering the legitimate land use planning aims of the development plan and other material considerations as described. Therefore to dismiss the appeal and uphold the enforcement notice would not result in a violation of the occupants' rights under these conventions.

100. Also considered in these appeals is the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 that sets out the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However there are no alternatives appropriate to the circumstances with less harmful impacts and weighing the relevant considerations in the balance, I consider that upholding the notice would be proportionate.

Temporary permission

101. I have considered whether a temporary permission should be granted. My conclusions on proportionality are similar, noting that paragraph 27 of PTTS does not apply here. I consider the weight attached to the policy objections to the development, loss of a transit site and IUD still outweigh the benefits of allowing a temporary permission and that interference with the families' human rights and the interests of the children would still be a justified and proportionate response.

Conditions

102. By Day 2 an agreed set of conditions was finally supplied, however as the appellant had by then refined his proposal into several alternative proposals some time was spent discussing what additional or substitute conditions should be attached to each eventual permission. Since the alternatives are, as described above, variants on proportions of permanent traveller and non-traveller accommodation and in light of my findings, it is unnecessary to consider in any detail the way in which the submitted conditions would need to be varied as they do not seek to retain the site as a transit site. As it was put by Simon Brown LJ in *R (Richardson) v NYCC [2004] 1 W.L.R. 1920*, at [80], *"[w]here, as here, a challenge or appeal is pursued in a somewhat scattergun fashion, it is simply not practicable to examine every pellet in detail"*.

Other matters: appeal decisions cited in support

103. Appeal decisions cited in support turned on their own facts. They include Shawbury Heath in Shropshire in 2014 Ref APP/L3245/A/14/2215836 and Slapton in Buckinghamshire Ref: APP/J0405/C/13/2193582 and 2193601 in 2013. Neither relates to transit pitches and in Willows Park there was evidence of a significant unmet need for gypsy sites which is not the case here.

Planning balance

104. Section 38(6) PCPA2004 requires that the application is determined in accordance with the development plan unless material considerations indicate

otherwise. The site may in principle be suitable for the proposed forms of development under development plan policies and the benefits described are consistent with their aims, although it is not the most sustainable of sites.

105. However since the appeal site has no established use for residential development or as a caravan site, development in this vein would be new development and conflict with a key provision of the development plan, NP Policy FV17. The site has had successive permissions for a transit site which is a material consideration but as I have found, the use is functionally a materially different use in the character of the land from the proposed use or its variants. A conflict with NP policies and other parts of the development plan, including housing supply policies, must be resolved in favour of the NP as it is the last document to become part of the development plan, pursuant to Planning and Compulsory Purchase Act 2004.

106. I am not persuaded that unmet need for traveller sites in the district is significant or that there is an undersupply of non-traveller housing or that supply is not on track in accordance with the development plan's strategic aims and policies. Much of the current occupancy of the appeal site is by non-travellers who rent pitches but there is no cogent evidence that such occupants have applied to the Council for housing, will not do so if they have to cease occupation, or have not alternative means of securing accommodation. The fact that they are in receipt of benefits does not imply that the Council has condoned or connived at the unlawful development.

107. The personal accommodation needs of all the site's residents provide some moderate support in favour of the alternative proposals and in the case of those who on the present information I find to have Gypsy status, moderate support also in light of the benefits that may accrue to them in providing a settled base in the locality.

108. The economic and social benefits arising from a small contribution to the housing stock would be a benefit, however, there is no suggestion that the Council is failing to deliver sufficient housing across the District. Accordingly, these benefits carry only modest weight.

109. IUD has occurred. This is not a case where all the occupants of the site demonstratively are of the Gypsy and Traveller community. Whilst it might be argued that those who have Gypsy status and avoid for good reasons bricks and mortar accommodation and may not have an immediately available alternative place to stay, the fact that the appellant has deliberately chosen not to operate the site as a transit site has deprived members of the gypsy and traveller community from availing themselves of this provision. This in turn increases the risk of travellers stopping by the roadside or setting up an unauthorised encampment elsewhere. The weight attached to IUD must recognise these factors and is considerable in this case.

110. The "fall-back" position argued for under s57(4) of the 1990 Act or generally under ground (a) is a chimaera; the transit pitch permissions are no longer extant and it is not realistic currently to suppose that the appellant would institute such use, but in any event given the materially different function such a development would perform, compared with the development enforced against, it is not a use that as I have found as a matter of planning judgement, falls within s177(1)(a) of the 1990 Act.

111. This was not a breach of condition case, the Council had a right to enforce a material change of use. Planning permission has been refused on the merits. The Appellant subverted the use of the site to his own purposes, contrary to the permitted use and it would be disingenuous to pretend otherwise. He says the Council knew what he was doing, and his counsel and agent have doubled down on that allegation, making a case that the Council somehow connived at funding through universal credit/housing benefit, the long-term accommodation of non-travellers on the site. This has nothing to do with whether enforcement action should be taken to remedy a breach of planning control.

112. The ECHR, UNCRC and PSED are engaged but a decision to uphold the notice and refuse permission would be necessary and proportionate considering the aims of the development plan and other material considerations.

113. I find that the benefits of the alternative developments proposed would as far as concerns non-traveller housing, clearly be outweighed by the adverse impacts of allowing development that conflicts with key policies in the development plan, the additional weight given to the IUD which is considerable and the added concern at the potential loss of transit pitches. I make a similar assessment as far as concerns proposals to retain permanent accommodation for Gypsies and Travellers, despite the added weight I attach to benefits accruing to those occupants in being able to retain a settled base in the area.

Conclusion on ground (a)

114. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Ground (f)

115. An appeal on this ground is that the steps required to comply with the requirements of the enforcement notice exceed what is necessary to address the breach of planning control, having regard to the purposes of the notice.

116. In this case the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its original condition before the matters alleged in the notice took place.

117. I have considered on ground (a) the appellant's alternative proposals for the site insofar as they are capable of being granted planning permission under s177(1) of the 1990 Act. There are no other obvious alternatives that would achieve the purpose of the notice at lesser cost. I do not therefore find that the requirements of the notice are excessive having regard to its purpose. The appeal on this ground accordingly fails.

Other matter: compliance period

118. Although there was no ground (g) appeal I have considered the period for compliance in light of representations made. A period of 6 months to vacate the site and comply with the additional requirements is a reasonable one and would avoid the children having to change schools mid-term should that have been necessary.

Overall conclusion

119. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

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

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Alan Masters	Barrister, 1 Pump Court

He called:

Mr Brown MRTPI	Philip Brown Associates Limited

FOR THE LOCAL PLANNING AUTHORITY

Nigel Wicks MRTPI	Director, Enforcement Services Limited

ADDITIONAL DOCUMENTS

CD1 *Reed v SSCLG and another [2014] EWCA Civ 241.*

CD2 Design and access statement for application Ref 10/0014/1/PY.

CD3 Draft Guidance for local housing authorities on the periodical review of housing needs. March 2016.

Documents submitted after the Inquiry

Signed statement of Isaac Doherty.

Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Anor [2022] EWCA Civ 833 (21 June 2022).

The Planning Inspectorate

Costs Decision

Inquiry held on 29 June and 5 August 2021
Site visit made on 30 June 2021

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 26th September 2022

Costs application in relation to:
Appeal Ref: APP/T2405/C/19/3226289

Land known as Whitegate Stables, lying to the north-west of Aston Firs Cottage, Rosevale Park, Hinckley Road, Sapcote, Leicester LE9 4LH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Isaac Doherty for a full award of costs against Blaby District Council (the Council).
- The Appeal was against an enforcement notice alleging the material change of use of the Land to a residential caravan site.

Decision

1. The application for an award of costs against the Council is refused.

The application

2. The application was for a full award of costs, made orally before me. The Council responded orally.

Submissions on behalf of the Applicant

3. The Council should not have issued the notice but should have issued a notice alleging a breach or breaches of condition. The allegation of a material change of use (MCU) without planning permission had not been made out and the Council had erred in law in taking this enforcement action. The applicant should be awarded its full costs.

Submissions of the Council

4. The application is based on the view that the wrong breach of planning control was identified. The Council adopted the planning contravention notice (PCN) procedure and sent PCNs to the 15 or so occupants of the site. No replies were received although the PCNs were hand delivered and posted, save for one reply (made by the agent on behalf of the appellant). That reply stated the use the subject of the PCN was being carried on pursuant to a planning permission that the applicant now says was irrelevant, and stated that the applicant/appellant had moved into a mobile home on the appeal site in 2015.

5. The Council was sceptical of what was claimed as to ownership and occupation of the site and sought to clarify the position. The applicant/appellant chose not to reply and up until the inquiry had chosen not to identify the planning

permission or the conditions attached thereto, that he now acknowledged he had been in breach of. The applicant may not complain in these circumstances that the Council chose to use the broadest terms to address what was an obvious and clear breach of planning control.

6. The notice was intended to address all the issues that might have arisen, and all such issues needed to be addressed because the applicant had chosen not to cooperate with the Council, even today.

7. The Council is unjustifiably criticised for not investigating and proving evidence clearly available to the applicant who chose not to produce comprehensive evidence that might have foreshortened these proceedings. There was nothing unreasonable in the Council's pursuit of enforcement action. If proceedings had to be extended that was entirely the fault of the applicant. The Council had always tried to narrow the issues and avoid unnecessary argument but still seemed to be facing criticism. The application was clearly at odds with guidance on costs awards.

Applicant's reply

8. It was obvious that this was a breach of condition case. It had to be assumed the Council understood this but it contrived to create a breach of planning control by financing non-gypsies to go onto the site and stay there permanently, with the result that they (the non-gypsies) were in breach of the conditions limiting their stay and prohibiting non-gypsy use. The Council was therefore guilty of "cant" and "hypocrisy".

Reasons

9. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or substantive, relating to the issues arising from the merits of the appeal. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviours and actions at the time of the application can be taken into account.

10. Substantive examples of unreasonable behaviour, potentially relevant here, include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

11. The Council had discretion to take enforcement action where it deemed it expedient to do so. The guidance on enforcement was that action is taken in the public interest and to maintain integrity in decision making. The Council's appeal statement showed that proper consideration was given to expediency.

12. In the Appeal Decision I determined that the relevant planning permissions at issue were not extant when the enforcement notice was issued and served on the appellant. In those circumstances a notice that alleged by way of a breach of planning control, a breach of any condition attached to those permissions would not have withstood scrutiny on appeal. For these reasons the decision to issue the notice as an allegation of development without planning permission was reasonable, as indeed was the Council's behaviour in all other respects.

13. The appellant's barrister made a number of wild allegations against the Council in an impassioned speech during closing, as well as in the application for costs. I do not consider them further, except to say that I have concluded that there was no unreasonable behaviour by the Council.

14. The application is refused.

Grahame Kean

INSPECTOR