
Appeal Decisions

Inquiry held on 15-18 December 2015

Site visit made on 18 December 2015

by Paul Dignan MSc PhD

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

Decision date: 14 April 2016

Appeal A: APP/J1860/C/14/2223436

Land to the west of the M5 at Baughton, Earls Croome, Worcestershire, WR8 9DX.

- 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 Gary Smith against an enforcement notice issued by Malvern Hills District Council.
 - The Council's reference is 14/01382/ENF.
 - The notice was issued on 20 June 2014.
 - The breach of planning control as alleged in the notice is the construction of driveways, service areas and hardstanding on the land and the installation of a septic tank; the positioning on the land of amenity buildings; and the laying and installation of water drainage and electricity supplies.
 - The requirements of the notice are: Cease constructing driveways, service areas and hardstanding on the Land; and Permanently remove the driveways, service areas, hardstanding, septic tank, amenity buildings and water drainage and electricity supplies, and associated fencing from the land and all materials and debris arising there from and restore the Land to its former condition as level grassland.
 - The periods for compliance with the requirements are 24 hours for the first requirement and 5 months for the second requirement.
 - 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal B: APP/J1860/C/14/2223438

Land to the west of the M5 at Baughton, Earls Croome, Worcestershire, WR8 9DX.

- 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 Gary Smith against an enforcement notice issued by Malvern Hills District Council.
- The Council's reference is 14/01375/ENF.
- The notice was issued on 20 June 2014.
- The breach of planning control as alleged in the notice is the use of the land for the stationing of caravans for residential purposes.
- The requirements of the notice are: Permanently cease the use of the Land for the stationing of caravans for residential purposes; Permanently remove from the Land all caravans used for residential purposes together with associated services and all amenity buildings with associated drainage; Permanently cease the use of the land for the purposes of residential purposes.
- The period for compliance with the requirements is 5 months.

- 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal C: APP/J1860/W/15/3005906
Land near Baughton, Worcestershire, WR8 9DX.

- 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 Gary Smith against the decision of Malvern Hills District Council.
 - The application Ref. 14/00628/FUL, dated 23 May 2014, was refused by notice dated 19 February 2015.
 - The development proposed is Change of use of land to 12 No. Traveller Family Pitches and associated works including 12 No. mobile homes, 12 No. touring caravans, 12 No. day rooms, 12 No. septic tanks and hardstanding.
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Decisions

Appeal A

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 24 hours for the first requirement and 5 months for the second requirement, and the substitution of 9 months as the period for compliance. Subject to these variations the enforcement notice is upheld and planning permission is refused for the construction of driveways, service areas and hardstanding on the land and the installation of a septic tank; the positioning on the land of amenity buildings; and the laying and installation of water drainage and electricity supplies, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is allowed insofar as it relates to the use of the land shown as Pitches 1-6 on Drawing No. 1429/02D (Document 9 submitted at the Inquiry) and the land to the west of Pitches 1-6, 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 use of the land for the stationing of caravans for residential purposes subject to the conditions set out in the Schedule to this decision.
3. The appeal is dismissed and the enforcement notice is upheld as insofar as it relates to the land to the east of Pitches 1-6 on Drawing No. 1429/02D, and planning permission is refused for the use of the land for the stationing of caravans for residential purposes on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

4. The appeal is allowed insofar as it relates to the land shown as Pitches 1-6 on Drawing No. 1429/02D (Document 9 submitted at the Inquiry) and the land to the west of Pitches 1-6 and temporary planning permission is granted for Change of use of land to 6 No. Traveller Family Pitches and associated works including 6 No. mobile homes, 6 No. touring caravans, 6 No. day rooms, and hardstanding at Land near Baughton, Worcestershire, WR8 9DX in accordance with the terms of the application, Ref. 14/00628/FUL, dated 23 May 2014, and
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the plans submitted with it, so far as relevant to that part of the development hereby permitted, and subject to the conditions set out in the Schedule to this decision. For clarity, planning permission is not granted for any septic tank shown on the approved drawings.

5. The appeal is dismissed insofar as it relates to the land to the east of Pitches 1-6 shown on Drawing No. 1429/02D.

Application for costs

6. At the Inquiry an application for costs was made by Mr Smith against Malvern Hills District Council. This application is the subject of a separate Decision.

Background and preliminary matters

7. The appeal site is a former agricultural field outside Baughton. In May 2014 some hardstanding was laid, fencing erected, services installed and caravans moved onto the site for residential purposes. The Council was granted an injunction to prevent further development. That leaves 6 pitches formally laid out at the western end of the site, 3 either side of the access road, with caravans stationed on them. The remainder of the site has road access, fencing and services installed, but it is not formally laid out and has no caravans stationed on it. The original application was for a total of 16 gypsy/traveller pitches, but this was subsequently reduced to 12 by agreement with the Council prior to determination of the application. I have used this revised description in the banner above. A revised layout plan, Drawing No. 1429/02D, has also been submitted, showing the proposed children's play area at the western end of the site rather than at the eastern end. I am satisfied that determining Appeal C on the basis of this revised layout causes no injustice.
8. Although there are caravans stationed or in use on only 6 of the 12 pitches shown on the Appeal C revised layout plan, I have determined the deemed planning application in Appeal B on the basis of a 12-pitch site. The principal difference therefore between the Appeal C and Appeal B developments is that Appeal C includes a proposed dayroom on each pitch, whereas the Appeal B deemed planning application is for what is there already.

National Planning Policy

9. The Government's Planning Policy for Traveller Sites (PPTS) aims, amongst other things, to ensure that local planning authorities develop effective strategies, to meet gypsies' and travellers' needs, promote more private traveller site provision, increase the number of sites in appropriate locations, address under-provision and maintain an appropriate level of supply, and enable gypsies and travellers to access education, health and other services. It requires that local policies on these matters be fair, realistic and inclusive. It includes advice on traveller sites in rural areas and the countryside, which indicates that they can be acceptable in principle. However, local planning authorities are also advised that they should very strictly limit new traveller site development in open countryside that is away from existing settlements (paragraph 25). PPTS was first issued in March 2012, but the word "very" was only added to paragraph 25 (previously paragraph 23) in August 2015, following public consultation. The change is intended to give greater protection to the countryside¹.

¹ Planning and travellers: proposed changes to planning policy and guidance.

10. PPTS advises that development plan policies should be consistent with the National Planning Policy Framework (NPPF) and PPTS. Development management policies should be based on robust evidence of local needs and should identify at least a 5-year supply of specific, deliverable sites, along with developable sites or broad locations for years 6-10 and beyond. Where there is no identified need, criteria-based policies should be used to provide a basis for decisions in case applications nevertheless come forward.

Development Plan

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the time of the Inquiry the development plan included the saved policies of the Malvern Hills District Local Plan (LP), which was adopted in 2006. Relevant policies were Policy DP1, which applied strict control on development in the open countryside, Policy DP2, which required development to reflect the principles of sustainable development, and Policy DS3, which sought, amongst other things, to ensure that development provided a satisfactory level of amenity for occupiers. The LP had no saved policies specific to gypsy or traveller site provision, and was thus inconsistent with national policy in that respect. The emerging South Worcestershire Development Plan (DP), which by then had reached an advanced stage, set out in Policy SWDP17 an approach to traveller site provision consistent with PPTS. Policy SWDP 17 sought to direct traveller sites to within, or to the edge of, towns or designated rural villages with at least one key service, such as a shop or primary school, and access to a minimum level of public transport service. There remained outstanding objections to Policy SWDP 17 in respect of the evaluation of need for gypsy and traveller pitches, but in all other respects, including the criteria to be used to assess sites required to meet identified need and sites coming forward as planning applications, the Inquiry proceeded on the basis that Policy SWDP 17 could be accorded substantial weight.
12. The SWDP was subsequently found to be sound, subject to modifications, and was adopted, effective from 25 February 2016. It now carries full development plan weight and supersedes the LP policies. Policy SWDP 17 was adopted in the form considered at the Inquiry. Other relevant policies include Policy SWDP 1, which sets out sustainable development principles, SWDP 2, which sets out the development strategy and settlement hierarchy, based on principles including safeguarding the open countryside and focusing most development in areas with good access to services, Policy SWDP 21 which seeks a high quality of design, Policy SWDP 25, which aims to protect landscape character, Policy SWDP 29 which seeks to minimise flood risk and protect water quality, and Policy SWDP 31, which seeks to avoid adverse impacts from pollution. In view of the change in the development plan position after the close of the Inquiry the main parties were given an opportunity to comment on the implications, but made no further submissions.

Main Issues

13. The main issues in this case are as follows:
- whether the site can be considered as sustainably located, having regard to access to services and facilities, and the location of the site in the open countryside;

- Whether the development provides, or can provide, satisfactory living conditions in terms of noise and disturbance;
- whether adequate provision can be made for foul water drainage; and
- whether there are any material considerations to outweigh any harm identified.

Reasons

Location

14. The appeal site is approximately 1 ha of former agricultural land adjoining the M5 to the east and an embanked section of A4104 to the south. It is in the countryside about 100m outside the settlement of Baughton, a small hamlet of approximately 50 houses. Baughton has a pub, but nothing in the way of shops or other services. The nearest settlement with a range of key services is Upton-upon-Severn, over 4 km away, and the nearest bus stop is 2.1 km away. Children living at the site attend a primary school in Defford, 4.7 km away, and a special needs school in Evesham, some 19 km away. For the Evesham school, a school bus collects the children from the site, and I understand that there is also a school bus service to Defford. Otherwise, day-to-day travel to access services is likely to be reliant on private cars, although there is car sharing on school trips and some shopping can be incorporated into school runs. The village pub is within easy walking distance, but there are no footways on the busy A4104 between the site and the edge of the village, and the walk is likely to be intimidating for pedestrians, particularly at night.
15. The proximity of the site to Baughton means that it is not in an isolated position in the open countryside, and hence attracts some support from paragraph 25 of PPTS, insofar as it relates to protection of the countryside. Nonetheless, the DP does not regard Baughton as a sustainable location for development due to the lack of key services and poor public transport links. Sustainability is not just a consideration of distances to services and facilities, and whether the site is within or on the edge of a settlement with key services or public transport options is just one of the assessment criteria for traveller sites set out in Policy SWDP 17. The wider benefits of the provision of a settled base that reduces the need for long distance travel and provides easier access to health and education services benefits must be put in the balance, as must the potential for the promotion of peaceful and integrated co-existence between the site and the local community.
16. It is acknowledged by the Council that there are no alternative sites at present that would be available to the current or prospective site occupiers, and it is evident that the site has provided the occupants with good access to health services, schools and employment in the locality. The children currently on the site appear to have integrated exceptionally well in their schools, and access to medical services has been demonstrated. The Defford primary school is welcoming and supportive, and the families on the site have registered with local GP and dental practices. Those with health problems have also already been able to benefit from having a settled base from which to access appropriate services. However, given the scale of the development proposed, I consider that the lack of sustainable transport choices for what would probably be a considerable number of people could not be considered as sustainable in

the long term. It would not amount to a sustainable pattern of development as sought by Policies SWDP 2 and SWDP 17, and by the NPPF.

Residential amenity and drainage

17. Noise from traffic on the M5 has the potential to significantly harm residential amenity on the site. The planning application reasons for refusal focus on the plots nearest to the M5, plots 11 and 12. Briefly, the detailed noise assessment provided by the Council indicates that the internal noise environment in the mobile homes/static caravans on those plots would be likely to be well below acceptable daytime and night-time standards. The outdoors noise environment on those plots would also be sub-standard. Even accepting the appellant's noise consultant's proposed relaxations of the standards, which, had the development been in a more sustainable location, might be justified having regard to the alternative prospect of roadside encampments, the noise environment would be likely to be sub-standard. As such, without adequate mitigation it would fail to satisfy criterion (vi) of Policy SWDP 17, which requires consideration of whether there is any significant impact on residential amenity for site residents.
18. It is agreed that a satisfactory noise environment could be achieved at the site by the provision of an acoustic fence between the motorway and the residential plots. In the absence of sufficiently detailed ground survey data upon which to base noise mitigation calculations, I agree with Mr Hunter's conclusion that a full line of sight solid fence would probably be required along the eastern and part of the northern boundaries to provide a satisfactorily residential environment. Even if I were to accept Mr Olver's suggestion that a marginal line of sight fence would possibly suffice, it was accepted by the parties that this would probably need to be higher than 2m.
19. In respect of foul water drainage, the application was for 12 septic tanks. The 6 occupied plots currently share 2 septic tanks. However, a drainage report prepared for the appellant in November 2015 found that the ground conditions are not suited to septic tank drainage, and it is no longer proposed. Two solutions are suggested, the installation of a cesspool or a package treatment plant. The latter is the preferred solution and the land in the south-west corner of the site, between the A4104 and the site access driveway, is proposed as a suitable location.
20. The proposed solutions to both noise and drainage are operational development which requires planning permission.

Need for additional sites for gypsies and travellers

21. The most up-to-date assessment of the need for gypsy and traveller site provision in the district is the Worcestershire Gypsy and Traveller Accommodation Assessment (GTAA). The main report was published in November 2014, based in part on surveys conducted between August 2013 and March 2014. It covers the six Worcestershire local planning authority areas and was carried out by arc4. At publication the need identified for Malvern Hills for the period 2014/15 to 2018/19 was minus 3, an oversupply in other words. For Worcestershire as a whole the need identified for that period was minus 7.
22. In the arc4 GTAA model, a significant driver of the estimate of supply is the rate of turnover on existing authorised sites. This is derived from survey data on when occupants moved on to their current pitch. The GTAA assumed rate of

turnover of pitches within the first 5 years of the prediction period is directly derived from the number of households on authorised pitches who had moved to their pitch from within the study area, or who had connections with the area, in the 5 years before the GTAA survey. For Malvern Hills this was 91%. The Inspector examining the DP found most aspects of the GTAA to be sound, but felt that the Malvern Hills turnover rate of 91% was unusually high. He considered that it would be unsafe to assume that this rate would be sustained over the next 5 years and recommended a reduction to a 60% turnover rate, based on turnover over a 7 year period at the only public site in the district, a small 5 pitch site. This rate is still far higher than the county-wide rate, and the 5-year turnover on this site was 1 pitch, which would have given a turnover rate of just 20%. He also found fault with the treatment of existing households who expressed an intention to move to another pitch in the area in the next 5 years, which were not factored in to the total need.

23. The adjustments he recommended resulted in the revision of the minimum requirement for permanent traveller pitches in Malvern Hills, now set out in the adopted Policy SWDP 17, to 4. In the context of the number of authorised sites in the district, 20, this is a substantial adjustment which results from what I would characterise as a non-contextual application of the turnover component of the GTAA methodology. Having said that, the robustness of the arc4 approach to the turnover component of its model will be most appropriately assessed at the end of the relevant 5-year period.
24. The coverage and accuracy of the GTAA survey was also queried at the Inquiry. A number of the authorised site/pitches included in supply have either personal permissions or lack a gypsy/traveller restrictive condition, and it is argued that they should not be included in supply. However, if the households occupying such sites are, as here, included in total need, then to exclude the sites from the supply side of the balance would result in a distorted picture. Nonetheless, there is substance in a number of the matters raised.
25. A mobile home on one site turns out to have been replaced by a bungalow. Regardless of whether or not this was occupied by a gypsy or traveller, it is not a gypsy or traveller pitch and should not therefore appear as contributing to the current supply of pitches. A number of other sites were identified where the number of pitches on the site authorised by planning permission or lawful development certificate was less than the number used in the GTAA. It seems that the information on the number of pitches on the authorised sites was provided to arc4 by the Council, but upon examination it appears that the pitch numbers have more of a basis in the DCLG bi-annual Caravan Count numbers than in planning history. Looking solely at the relevant planning history, which I consider to be the more robust approach, the 14 households on authorised sites should be 8. There are implications both for the current supply of authorised pitches in the GTAA, which I consider to be clearly overestimated, and for the turnover component, which must be in error.
26. There is also the question of how the current occupiers of the appeal site are accounted for. The GTAA survey period finished just before the occupants moved onto the site, and hence their absence from the GTAA model and output is justifiable. The GTAA output represents a point in time. However, when it comes to Policy SWDP 17, which draws directly from the 2014 GTAA, it is difficult to see why they should not be seen as adding to need.

27. As it stands, the Council cannot identify a 5-year supply of deliverable sites to meet its local minimum requirement of 4, which indicates a failure of policy, and that requirement is derived from a GTAA that may be based upon inaccurate data. The 6 families at the appeal site represent additional need above that estimated by the GTAA in any case. Hence there is a clear and unmet need for additional pitches to accommodate gypsies and travellers in the district. That there is a need for additional pitches in the wider area is not disputed.

The personal needs and circumstances of the site occupants

28. The site has been laid out as 6 demarcated pitches at the western end with some infrastructure installed for the other six. There are 6 families on the site, including 18 children, 15 aged 16 or under. The older children work with their parents, and the younger children of school age attend the Defford primary school or the special school in Evesham. Letters from the schools attest to how well they are doing and how important the settled base is for their continuing progress. The harmonious relations with the Defford and Evesham schools reveal significant positive integration with the local community.
29. Three of the children in one family have an incurable and life-limiting condition associated with severe learning difficulties and high care needs. Two of the adults have serious, or potentially serious, health problems which have proved difficult to manage without a settled base.
30. Five of the families on the site are related, three of the adults are sisters and another is a first cousin. The families provide mutual support. These living arrangements, whereby related families live together for mutual support, is characteristic of the gypsy way of life, and the proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
31. Dismissing the planning appeal and upholding the enforcement notices would mean that the six families would have to leave the appeal site. In the absence of alternative sites there must be a significant likelihood that the families would have to resort to roadside camping. That is the only option open to them at the moment. Roadside camping has very significant adverse social and environmental impacts, and it is known to create disharmony between the travelling and settled community. There are also general health problems associated with roadside living, which are well documented, and the education opportunities of the children would be seriously compromised, with potentially very negative implications for their life prospects. The children have clearly benefited greatly from having a settled base, and it would be in their best interests to continue living at the appeal site provided that the environmental shortcomings could be overcome. In the case of the children with disabilities, roadside living would be extremely harmful to their well being, and almost impossible to countenance.

Conclusions

Appeals B and C

32. I have found that the site is not in a sustainable location for its purposes. In addition, the site would not provide a satisfactory residential environment because of the impact of noise from the M5 and the lack of a sustainable foul drainage solution, which also has significant environmental implications. There

is conflict with Policy SWDP 17 in that the amenity provided to occupiers of the development would not be adequate, and with Policy SWDP 31 in terms of the risk to their health and wellbeing, and to the environment, in the absence of proper drainage.

33. There is no doubt that these matters could be resolved by the erection of acoustic screening and the installation of appropriate sewage plant. These are matters that crop up occasionally in applications or appeals concerning gypsy or traveller sites, and they are often dealt with by means of conditions requiring the submission of further details. I have been directed to a recent decision² in respect of a 4-pitch site where such a condition was used to overcome a similar drainage issue, and I am aware of other cases where the approach was considered appropriate. In this case however I consider that these are not matters that should be dealt with in this way.
34. The Council has drawn my attention to the case of *Wheatcroft*³, which established the principle that where a development under consideration is different in some way from that applied for, the main criterion in determining whether a grant of conditional planning permission would be to grant permission for a development that was not in substance that for which permission has been applied for is whether to do so would deprive those who should have been consulted on the changed development of the opportunity of such consultation. The required size of the acoustic fence has not been established, but it is accepted that it could well be up to 3m high and of considerable length. A 2m high fence could be erected without the need to apply for planning permission, but a 3m high solid fence would be a much more substantial structure which could have significant visual and landscape impacts well beyond that of a 2m fence. Similarly, a sewage package treatment plant or cesspool capable of meeting the needs of a 12 pitch site is likely to be a substantial structure. Located in the position suggested, close to the A4104 on visually exposed land, I consider that it could well have a significant visual impact.
35. There is no power to modify an application or appeal, but a degree of alteration can be achieved by the use of conditions provided that it does not substantially alter the nature of the development applied for. In my view the considerable additional built development on the site that would be likely to be necessary to provide a satisfactory long term residential environment would substantially alter the nature of the development. I consider that it goes beyond what can reasonably be dealt with by condition.

Planning Balance

36. Material considerations in favour of the development are the identified unmet need for gypsy and traveller sites, the lack of alternative sites, a failure of policy and the lack of a five year supply of sites, personal circumstances, including the best interests of the children, human rights considerations, and the public sector equality duty. These carry substantial weight, particularly since a consequence of dismissing Appeal B is that those living at the appeal site would become homeless. However, my findings on noise and foul drainage means that the site is simply not suitable for permanent residential occupation as it stands. It follows that they do not outweigh the harm identified and a permanent planning permission should not be granted.

² Appeal Reference APP/X1355/C/14/2222375

³ *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1982) 43 P&CR 233

37. In the context of a temporary permission for the site as a whole, the overall harm is time-limited and therefore considerably less. Nonetheless, within the *Wheatcroft* constraints I see no way of overcoming the residential and environmental harm. However, those who are at risk of becoming homeless only occupy the furthest part of the site from the M5, where the noise environment would be better, and a package treatment plant half the size of that required for a 12-pitch site would suffice, with greater scope within the site for positioning it so as to avoid visual impact. The currently occupied 6 pitches are both physically and functionally severable from the other 6 pitches at the eastern end, and it is open to me to consider granting planning permission for part of the development only. In this case I consider that that approach is justified. Residential use of pitches 1-6, at least on a temporary basis, would not require the provision of an acoustic screen that would itself require planning permission, and I consider that incorporating the provision of a package treatment plant of this smaller scale in the development on a temporary basis by condition would not prejudice anyone's interests, and hence it would not fall foul of the *Wheatcroft* test. Further, PPTS advises that the absence of a 5 year supply of deliverable sites, as is the case here, should be a significant material consideration when considering applications for a grant of temporary planning permission, and there are very significant personal considerations, including the best interests of the children.
38. Regarding temporary permission for pitches 1-6, therefore, I consider that the very substantial overall weight of the considerations in favour of the appeal outweighs the time-limited harm. To justify a temporary permission, there must also be a reasonable prospect of alternative sites coming forward by the end of the temporary period. I consider that this requirement is met in this case. A site allocations development plan document is in the early stages of preparation and is expected to be in place by 2017. The district requirement of 4 pitches by 2019 is expressed as a minimum, but in the light of the evidence before me it would not suffice to meet the actual current unmet need, and hence should not be treated as a target. However, there is ample time to address contemporary need through the site allocations document. To allow for possible timetable slippage and the inevitable lag between allocation and delivery of sites with planning permission, I consider that an appropriate temporary period would be 5 years. Restricting permission to a temporary period would still represent an interference with the rights of the occupants under the Human Rights Act 1998. However, taking into account all material considerations, I am satisfied that this interference is necessary and proportionate in the circumstances.
39. This is not the outcome that the appellant sought, but the alternative would be to refuse planning permission altogether, and it is still open to him in any case to make a more comprehensive application for the larger site. No injustice arises from this approach.
40. I shall therefore grant temporary planning permission for pitches 1-6, that is those currently occupied, on Appeals B and C. The personal circumstances of the occupants have been decisive and hence a condition restricting occupancy to the current occupiers is necessary, as is a condition to restrict the use to gypsies and travellers, in view of the weight attached to PPTS. The permission is for a temporary period of 5 years and a condition shall be imposed to reflect this and to ensure removal of the caravans and other items, and to secure the restoration of the site, at the end of the period. In the interests of the character and appearance of the site and surrounding area, and to safeguard residential

and visual amenity, I shall impose a condition requiring the submission of a Site Development Scheme, covering the internal layout of the site, including the position of the caravans and any ancillary structures, the extent of hardstanding, parking and amenity areas, external lighting, surface water and foul sewage disposal, landscaping and boundary treatments, including details of all trees to be retained on the site and measures for their protection during construction works, and the restoration of the site. For the same reasons I shall limit the number of pitches and the number of caravans on each pitch, preclude commercial activity and regulate the keeping of commercial vehicles on the site. A condition requiring the provision and maintenance of a safe site access is also necessary in the interests of highway safety, and it is necessary to ensure that the development provides a safe pedestrian evacuation route in case of flooding, in accordance with the submitted Flood Risk Assessment. In respect of Appeal C I shall require that the development be carried out in accordance with the submitted plans, so far as they are relevant, for the avoidance of doubt, and that the Council approve the external materials of the dayrooms, to safeguard the character and appearance of the area.

Appeal A

Ground (a)

41. This concerns the enforcement action against the operational development that has taken place. In view of my conclusions above, there is no justification for the retention of the operation development at the eastern end of the site, that is on the land to the east of Pitches 1-6. It is also undisputed that the existing septic tanks serving plots 1-6 must be removed. The grant of planning permission for the developments comprising plots 1-6 on Appeals B and C includes a condition requiring the provision and approval of details of the infrastructure necessary for the development. Hence there is a grant of planning permission for the details approved. Section 180(1) of the 1990 Act provides that where, after the service of a notice, planning permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. In this case, because some of the works enforced against must be removed, rather than specify them at this stage it is better to uphold the notice and rely on section 180(1) to provide clarity on what should be retained. I shall therefore dismiss Appeal A on ground (a).

Ground (g)

42. That part of the requirements of the operational development notice that is not inconsistent with any details approved under the permissions granted, and the requirements of the change of use enforcement notice relating to pitches 7 to 12, must still be complied with. The 5 months set out in the notice may not be enough to ensure that the necessary approvals are in place, so I shall extend the time for compliance for all of the requirements to 9 months. I consider this to be reasonable in the circumstances.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Timothy Jones	of Counsel, instructed by Ruston Planning Ltd
He called	
Trevor Olver	SLR Consulting
Fallon Miller	Appeal site resident
Anthony Lamb	Appeal site resident
Jane Buckland	Appeal site resident
Dr Simon Ruston	Ruston Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant	of Counsel, instructed by the Solicitor for Malvern Hills District Council
He called	
Dr Michael Bullock	arc ⁴ Ltd
David Hunter	Hunter Acoustics
Paul Sedgwick	Sedgwick Associates

INTERESTED PERSONS:

Jim McBride	Earls Croome Parish Council
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DOCUMENTS

- 1 Council's letter of notification, plus addressees.
- 2 Statement of Common Ground
- 3 Bullock - supplementary proof of evidence, plus appendices
- 4 Hunter - rebuttal proof of evidence
- 5 Application plan - site location
- 6 Addendum sheet - appellant
- 7 Email exchange re planning history at The Paddocks
- 8 Appeal decision APP/X1355/C/14/2222375
- 9 Revised site layout plan - Drawing No. 1429/02D
- 10 Local Plan 1996-2011 (July 2006) Policies
- 11 South Worcestershire Development Plan submission document (tracked changes version to 7 October 2015)
- 12 Opening submissions - Council
- 13 Bundle of letters of support - appellant
- 14 Caravan panel sound reduction test results - Olver
- 15 Bundle of maps - Council
- 16 South Worcestershire Development Plan (Draft) Annex D Settlement Hierarchy
- 17 Letter of support - NHS Health Visitor
- 18 Draft costs application - appellant
- 19 Explanatory Note - Bullock
- 20 Traveller site allocations DPD timetable plus consultation note - Council
- 21 Appellant's revised supply table plus need and supply calculations
- 22 Email re occupancy of Malvern Meadows traveller site - Council
- 23 Suggested noise condition - Council
- 24 Closing submissions (plus legal cases) - Council
- 25 Closing submissions (plus legal case extract) - appellant
- 26 Costs application response - Council
- 27 Bundle of letters of objection

28 D Wickens – written submission

29 Appellant’s post-inquiry comments on documents 27 and 28

Schedule of Conditions

Appeal B - APP/J1860/C/14/2223436

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1:Glossary to Planning Policy For Traveller Sites, or any subsequent revision or replacement.
- 2) The use hereby permitted shall be carried on only by Mr Gary Smith, Ms Lacey Brazil, Mr Anthony Lamb, Mrs Charmaine Lamb, Mr Rueben Buckland, Mrs Jane Buckland, Mr Dean Jones, Mrs Marie Jones, Mr Jordan Miller, Mrs Fallon Miller, Mr Lou Ayres, and Mrs Rose Ayres, and their resident dependent children, and shall be for a limited period being the period of 5 years from the date of this permission, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) When the land ceases to be occupied by Mr Gary Smith, Ms Lacey Brazil, Mr Anthony Lamb, Mrs Charmaine Lamb, Mr Rueben Buckland, Mrs Jane Buckland, Mr Dean Jones, Mrs Marie Jones, Mr Jordan Miller, Mrs Fallon Miller, Mr Lou Ayres, and Mrs Rose Ayres, or at the end of the specified 5 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition.
- 4) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 shall be a static caravan, shall be stationed on any pitch at any time, and no more than 12 caravans, of which no more than 6 shall be a static caravan, shall be stationed on the land at any time.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure, along with details of existing fencing, means of enclosure and hardstanding to be removed; tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities; and the restoration of the site, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
- 6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
 - 7) No commercial activities shall take place on the land, including the storage of materials.
 - 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected, and no areas of hardstanding installed, other than those approved under condition 5 above.
 - 9) Within 3 months of the date of this permission, a scheme shall be submitted to the local planning authority for approval in writing showing how a safe pedestrian evacuation route can be provided in case of flooding. The approved scheme shall be implemented within 2 months of written approval.
 - 10) Within 3 months of the date of planning permission, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres to the west, and 160m to the east along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
 - 11) Any new access gates/doors shall be set back 10 metres from the adjoining carriageway edge, and shall be made to open inwards only.

Appeal C - APP/J1860/W/15/3005906

- 1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary to Planning Policy For Traveller Sites, or any subsequent revision or replacement.
- 2. The use hereby permitted shall be carried on only by Mr Gary Smith, Ms Lacey Brazil, Mr Anthony Lamb, Mrs Charmaine Lamb, Mr Rueben Buckland, Mrs Jane Buckland, Mr Dean Jones, Mrs Marie Jones, Mr Jordan Miller, Mrs Fallon Miller, Mr Lou Ayres, and Mrs Rose Ayres, and their resident dependent children, and shall be for a limited period being the period of 5 years from the date of this permission, or the period during which the premises are occupied by them, whichever is the shorter.
- 3. When the land ceases to be occupied by Mr Gary Smith, Ms Lacey Brazil, Mr Anthony Lamb, Mrs Charmaine Lamb, Mr Rueben Buckland, Mrs Jane Buckland, Mr Dean Jones, Mrs Marie Jones, Mr Jordan Miller, Mrs Fallon Miller, Mr Lou Ayres, and Mrs Rose Ayres, or at the end of the specified 5 years, whichever shall first occur, the use hereby permitted shall cease, all

materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition.

4. Insofar as it relates to the land for which planning permission is granted, the use hereby permitted shall be carried out in accordance with the submitted plans; location plan scale 1:2500 reference GS14-SLP date stamped 5 June 2014, proposed site layout plan 1429/020D, proposed day room plan and elevations ref 1429/03.
5. No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 shall be a static caravan, shall be stationed on any pitch at any time, and no more than 12 caravans, of which no more than 6 shall be a static caravan, shall be stationed on the land at any time.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure, along with details of existing fencing, means of enclosure and hardstanding to be removed; tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities; and the restoration of the site, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
7. The amenity blocks hereby permitted shall not be erected until samples of the materials to be used in the construction of the external surfaces of the amenity blocks and full details of their finished floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
8. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

9. No commercial activities shall take place on the land, including the storage of materials.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected, and no areas of hardstanding installed, other than those approved under condition 6 above.
11. Within 3 months of the date of this permission, a scheme shall be submitted to the local planning authority for approval in writing showing how a safe pedestrian evacuation route can be provided in case of flooding. The approved scheme shall be implemented within 2 months of written approval.
12. Within 3 months of the date of planning permission, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres to the west, and 160m to the east along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
13. Any new access gates/doors shall be set back 10 metres from the adjoining carriageway edge, and shall be made to open inwards only.