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## Appeal Decisions

Hearing Held on 21 September 2017

Site visit made on 21 September 2017

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

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

**Decision date: 15 January 2018**

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### **Appeal A: APP/X0360/C/15/3085493**

#### **Land off Blagrove Lane, Wokingham, Berkshire RG41 4BA**

- 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 Richard Coyle against an enforcement notice issued by Wokingham Borough Council.
  - The enforcement notice was issued on 12 May 2015.
  - The breach of planning control as alleged in the notice is the material change of use of the land from agriculture to the stationing of caravans for residential purposes, including the creation of a new access and hard surfacing.
  - The requirements of the notice are (i) cease the use of the land for the siting of caravans for human habitation; (ii) remove all caravans and associated vehicles from the land; (iii) remove the hard standing from the land, shown in the approximate area hatched blue, spread the area with topsoil to a depth of 20cm and sow with grass seed; (iv) remove all portable buildings from the land, including portaloo; (v) remove from the land all materials resulting from compliance with steps (i) to (iv) above.
  - The period for compliance with the requirements is 9 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.
  - This decision supersedes that issued on 26 January 2017. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
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### **Appeal B: APP/X0360/C/15/3085495**

#### **Land off Blagrove Lane, Wokingham, Berkshire RG41 4BA**

- 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 Anne Coyle against an enforcement notice issued by Wokingham Borough Council.
  - The enforcement notice was issued on 12 May 2015.
  - The breach of planning control as alleged in the notice is the material change of use of the land from agriculture to the stationing of caravans for residential purposes including the creation of a new access and hard surfacing.
  - The requirements of the notice are (i) cease the use of the land for the siting of caravans for human habitation; (ii) remove all caravans and associated vehicles from the land; (iii) remove the hard standing from the land, shown in the approximate area hatched blue, spread the area with topsoil to a depth of 20cm and sow with grass seed; (iv) remove all portable buildings from the land, including portaloo; (v) remove from the land all materials resulting from compliance with steps (i) to (iv) above.
  - The period for compliance with the requirements is 9 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
  - This decision supersedes that issued on 26 January 2017. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
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## **Decisions**

### ***Appeal A***

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land off Blagrove Lane, Wokingham, Berkshire RG41 4BA, as shown on the plan attached to the notice, for the material change of use of the land from agriculture to the stationing of caravans for residential purposes, including the creation of a new access and hard surfacing, subject to the following conditions
  - 1) The use hereby permitted shall be carried on only by (1) Mr Richard Coyle and his resident dependants, and (2) Ms Lettie Marie Maughan and her resident dependants, and shall be for a limited period being the period of two years from the date of this decision. When the premises cease to be occupied by those named above, or at the end of two years, whichever shall first occur, all caravans, buildings, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
  - 2) There shall be no more than 2 permanent gypsy and traveller pitches provided, as shown on the submitted plan. On each of the 2 pitches no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only one caravan on each pitch shall be a static caravan or mobile home.
  - 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site and no commercial activities shall take place on the land, including the external storage of materials or burning of waste or any other material.

### ***Appeal B***

2. No action is taken on the ground (g) appeal in Appeal B.

## **Ground (a) & Deemed Planning Application**

### *Main Issues*

3. The planning application is for what is alleged in the notice: the material change of use of the land from agriculture to the stationing of caravans for residential purposes, including the creation of a new access and hard surfacing.
4. The main issue is the effect of the development on the character and appearance of the surrounding area.
5. Other matters include the need for and availability of traveller sites, public sector equality duty, Human Rights, personal circumstances and the needs of children and whether a condition should be imposed limiting the period of the permission or making it a personal permission to the appellants.

## **Reasons**

### *Planning Policy*

6. The development plan includes the Wokingham Borough Core Strategy DPD [CS] and the Wokingham Borough Managing Development Delivery Local Plan [LP]. I have also taken into consideration the Planning Policy for Traveller Sites [PPTS], which notes that applications are to be determined in accordance with the development plan, unless material considerations indicate otherwise, with the PPTS being taken into consideration in decision and plan making.
7. CS Policy CP1 relates to sustainable development requiring amongst other things maintenance of the high quality environment. CS Policy CP2 relates to inclusive communities and proposals should address the requirements of children, young people and families, people with special needs, including those with difficulties accessing services and minority groups, including gypsies, with sites being near to settlements and not disproportionate in scale. CS Policy CP3 sets out general principles of development with high quality design and an appropriate character to the area being noted amongst other things.
8. CS Policy CP11 relates to development outside of development limits, which is not normally permitted, but with some exceptions noted. It notes in order to protect the separate identity of settlements and maintain the quality of the environment, proposals outside of development limits will not normally be permitted except where it contributes to diverse and sustainable rural enterprises within the borough, or in the case of other countryside based enterprises and activities, it contributes and/or promotes recreation in, and enjoyment of, the countryside.
9. LP Policy CC01 relates to sustainable development, noting applications should accord with policy unless material considerations indicate otherwise. LP Policy CC02 relates to development limits and expects new development to be within these. LP Policy CC03 relates to Green Infrastructure, Trees and Landscaping and indicates that development should protect and retain existing trees, hedges and other landscape features.
10. LP Policy TB10 relates to traveller sites. This notes planning permission may be granted for new gypsy and traveller pitches where it can be demonstrated that they are adjacent to a settlement, and unacceptable impacts on the character and appearance of the surrounding landscape will be minimised through sensitive and appropriate design of the scheme. LP Policy TB21 relates to landscape character and proposals shall retain or enhance the condition, character and features that contribute to the landscape.
11. The PPTS indicates that the aim of the Government is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life for travellers while respecting the interests of the settled community. To help achieve this it encourages authorities to plan for sites and promote more private traveller site provision so that plan making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective.
12. The aim is also to increase the number of traveller sites in appropriate locations with planning permission to address under-provision and maintain appropriate supply, with the authority having due regard to the protection of the local

amenity and local environment. Policy notes that when assessing the suitability of sites in rural or semi-rural areas the authority should ensure the scale of such sites does not dominate the nearest settled community.

13. Paragraph 22 of the PPTS notes that authorities should consider the existing local provision and level of need, the availability of alternative sites for the applicants and other personal circumstances. Weight is to be given to the use of previously developed land, well planned sites or soft landscape which positively enhances the environment, increases openness and promotes opportunities for healthy lifestyles. The lack of a 5 year supply is to be a significant material consideration in terms of subsequent planning decisions when considering applications for the grant of temporary planning permission.

#### *Character and Appearance*

14. The appeal site is accessed off Blagrove Lane. Beyond the appeal site at the rear is the electricity sub-station with lines and pylons emerging. To the other side is agricultural land. On the opposite side of Blagrove Lane is a row of residences and these extend further along Blagrove Lane than the appeal site. There is open countryside beyond.
15. To the side of the appeal site is an area of open space accessible from, and separating, the new residential development at The Folly from the appeal site. To my mind this is an important space, providing an important transition between the built development and the countryside. Development in the countryside on the agricultural land would cause development to be extended considerably further out from the existing development beyond the open space and development here would cause substantial harm to its character and appearance.
16. The Folly development was on brownfield land, but there is some question by the appellant as to whether what has been constructed extends beyond the line of the previous built development. Whether or not that is so the development is a prominent built form towards the top of the hill, although it is well separated from the appeal site and what was countryside beyond by the provision of open space, being well designed and confined to a part of the overall site away from the surrounding countryside.
17. There was some discussion about whether the boundary to the road was a hedge or not. To my mind the label used makes little difference; there is clearly a line of trees/shrubs along much of the boundary providing some screening to the site and forming an attractive edge to the lane. Part of this was removed for the access and there is now a clear view into the site and the caravans beyond and the natural boundary is lost in this position. The development has not protected and retained this vegetation and is contrary to LP Policy CC03. The break in the vegetation and view of the caravans is uncharacteristic of the countryside. While there is some vegetation around the site, even with this there are views into the site from along the road and from the adjacent open land and it is likely that these views would be greater in the winter months when leaves are off the trees.
18. There is a long gravel drive into the land with planting on either side and the caravans are clearly seen beyond. I acknowledge that some of the planting is not of native species, but to my mind this is not a significant matter as the planting types and location could be properly controlled by condition, so I

attach no weight to the type of plants currently provided. The caravans as provided, with the long gravel drive, are an incongruous and alien feature in the countryside and cause significant harm to its character and appearance. Even if vegetation was built up to improve visibility, the access would be likely to remain visible and in any case it would still not be an appropriate character. While some further landscaping might help to reduce the impact, I do not consider that it could be minimised to a reasonable degree given the large site, drive and hill overlooking the site from one side.

19. The appeal area identified on the plan, even though reduced within the overall field, is still a large area. The layout of the site is very poor, with the long access and placing of the caravans towards the centre of the field. This means that the extent of land developed for caravans is not only much larger than need be for the units proposed, but is much farther away from the existing built development which on the other side of the road is kept fairly close to the road. The result is that much more of the countryside is taken up by the development than need be and the harm caused is great. I consider that its overall size is disproportionate to the use and does not accord with advice in the PPTS.
20. The PPTS indicates that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure. I acknowledge that this is reasonably close to an existing settlement, would not dominate the adjacent community and would not put pressure on local infrastructure. However, the site is not allocated in the development plan for which the PPTS notes development should be strictly limited, which accords with Section 38(6) of the Planning and Compulsory Purchase Act. The PPTS also notes in paragraph 2 that applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
21. The appeal site is not 'away from' but adjacent to a settlement. It does not dominate the nearest settled community or put pressure on local infrastructure. However, the PPTS and LP Policy TB10 only permit traveller sites in a location where there would be no unacceptable harm impacts on the character and appearance of the surrounding landscape or it cannot be adequately mitigated. The development causes substantial harm to the character and appearance of the countryside, contrary to development plan policies.
22. I acknowledge the presence of the new development at The Folly, but there is good separation from the appeal site and what should be the countryside and a good edge to the current development. Similarly, while there are residences along the opposite side of the road, the road also forms a strong edge to the development and the land opposite has a countryside character and appearance. The existing residences do not justify development of the appeal site. The development is contrary to CS Policies CP1, CP3 and CP11 and LP Policies TB10 and TB21 and causes significant harm to the character and appearance of the area. I acknowledge that if the use were for a temporary or reduced period the harm would be for a lesser period and this goes into the balance in relation to temporary permission considerations.

## **Other Matters and Ground (g)**

23. The Council has recently produced a Gypsy and Traveller Accommodation Assessment. These assessments are very difficult to undertake and gain all the necessary information on the way sites are occupied. The process involved in making the assessment was explained and seen to have been a thorough and in depth assessment. Some concerns were raised by the appellants.
24. The GTAA identifies that, for the five year period 2017/18-2021/22, the Council requires 14 pitches to meet the needs of people identifying as gypsies or travellers ('cultural need'), of which 4 pitches are required for those who meet the planning definition of travellers set out in PPTS. From 2021/22-2035/36, there will be a 'cultural need' for 60 pitches or PPTS need for 18.
25. In relation to Table 7.1 the Council acknowledged that paragraph 7.18 should be 105 and not 103 and 14 not 12 to be consistent with Table 7.1. It is noted that Table 5.17 is a summary of the sub-set responses to the survey relating to why they no longer travel and it would breach confidentiality if respondents were identified.
26. The appellant's concerns are whether need has been adequately assessed, and whether sites that are predicted to supply or meet the need will in fact come forward. On this point In relation to unauthorised sites/overcrowding, the assessment has identified the Model Farm, included in Table 4.5 as Unauth2 and being 2 pitches and it is noted that an appeal has recently been dismissed. Nine Mile Ride site does not have two families doubling up on it, but has a daughter in one caravan and elderly mother who is in need of care in the other.
27. The appellant questions whether Wally's Mobile Home site has been included. The Council confirms that it was in the GTAA as it is a traveller site owned by settled travellers. The Council monitors the site which has been occupied by travellers.
28. The appellant is concerned that there seems to be an over-reliance on vacant pitches on private sites, suggesting an absence of any appraisal/analysis of private owners' intentions or if sites are really vacant. The Council explained that the GTAA endeavours to identify vacant pitches through interviews with residents and site observations and that seems to me to be a robust method to gather the information.
29. The appellant notes that 3 vacancies have been identified on Council sites, while there are families on a waiting list and Ann Coyle was evicted from Carters Hill in 2017. The Council also confirmed in May that there were no pitch vacancies either at Carters Hill or Twyford Orchard and that as of April 2017 when the GTAA was published there were also no pitches available. It is inevitable with this type of situation that sites will come and go so matters will change. That does not mean the assessment is not reasonable or robust or it would have to be updated daily.
30. The Council confirms that at the time the GTAA was being produced the situation was that 3 pitches were available. The assessment has now been updated. I acknowledge that currently there are no Council pitches available. In relation to turnover on public sites, the assessment has only assumed a modest turnover of 1 pitch each year, which is based on site management data. The Council notes this is also corroborated by the survey results indicating that

15% of households plan to move in the next 5 years, which is about 1 pitch per year. The appellant questions reliance on turnover which he considers may be unrealistic. Given the information provided I do not consider the approach to be unreasonable. However, I do accept the point that there is some reliance on Council sites where there are only about 6 families on the waiting list and where there are more families seeking private pitches.

31. I consider that the way in which families that move into the area has been taken into consideration was not explained well and this could have a little impact on the overall long term outcome of pitches available. The Council indicated that an allowance was made based on waiting list information, but that because it is difficult to identify any reasonable figure for families that have moved out of the area an overall net migration figure cannot be accurately derived. It was decided that an additional allowance for net in-migration should not be included in the need assessment model effectively to provide a 'balance'.
32. The emerging household figure was agreed to be low, but again that is what came from the responses to the survey. The appellant was also concerned that the unimplemented permissions of about 18 pitches was wrong; the Council acknowledge in response to the appellant's letter that they had included a number of unauthorised pitches and removing these reduced the figure to about 10.
33. In relation to pitches with planning permissions, I accept that some are awaiting submission and/or agreement of conditions prior to them being able to be used. However, for the purposes of a five year supply it is reasonable for them to be taken into consideration in meeting need identified. I accept that the delay in obtaining the agreements may cause these not to be available to the appellants in the short term. In this respect I also note that the owner of one of these indicates that the sites, even when properly available, would also not be available to the appellants as there is some overcrowding on the lawful area of his land and the new pitches will be most likely used by his family.
34. There was also some question about whether the Highfield site would be implemented, as currently use is for non-gypsy families and the owner is 'staying on the fence'. There was also some question as to whether a permission had lapsed as conditions would not have been approved within the compliance period, but little detail was available to understand the situation to attach much weight to this.
35. I therefore accept that there will be some variation of need and the sites that may become available, which is likely to change a little from that at the time of the assessment, and that some sites that would appear to be likely to become available may not become available, certainly in the short term. I also accept that there is a considerable need for private sites, which may not clearly identify itself through the figures alone.
36. Overall, while the points raised by the appellant need to be taken into account, I consider the GTAA to be a reasonably sound assessment of gypsy and traveller accommodation in the area and, while the Council's calculated supply of about 11 years may need some adjustment, the Council is able to reasonably demonstrate that over the next 5 years the supply and demand will be balanced. However, it is plain that there are no traveller sites now available to the appellants and none are likely to become available in the short term.

37. The appellants identified the considerable educational and medical needs of those at the site, which I accept, and this was not challenged by the Council. There is a strong need for the children to have a stable base and settled upbringing. I consider that in particular the educational needs of the children are important as explained by representatives of the school and it is clear that they are benefiting from this. I attach considerable weight to the personal circumstances of the appellants, with a primary consideration being the needs of the children.

### **Conclusions**

38. I conclude overall in relation to permanent planning permission that there would be substantial harm to the character and appearance of the surrounding area, which is not outweighed by the material considerations raised.
39. However, the considerations in favour of the appeal are sufficient to outweigh the harm on a time-limited basis. Taking account of the site occupiers' pressing personal need for a site, and the lack of any available alternative sites, it is necessary to allow occupation of the site to continue for a sufficient time to allow alternative sites to become available as anticipated through the Council's assessments, taking into account my findings on immediate availability. Traveller site policy and personal circumstances are critical to this conclusion and it follows that permission should be granted subject to a temporary and 'personal' condition, so that it is only for the benefit of the appellant and his resident dependents
40. It was found in the case of *Jane Stevens v SSCLG & Guildford BC* [2013] EWHC 792 (Admin) that, where gypsy families include children, rights under Article 8 of the European Convention on Human Rights must be interpreted in the light of international law. The Supreme Court's judgment in *ZH (Tanzania) v SSHD* [2011] UKSC 4 establishes that the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child.
41. The occupiers of the appeal site would lose their homes if the appeal were to be dismissed. They would also lose their homes at some point if permission is granted on a time-limited basis. That would represent a serious interference in their human rights. While I have taken into consideration the projected supply of sites in the future, I am not satisfied in the short term that there will be sites available and that it is likely that the occupiers would have to resort to a road-side existence with poor consequences, particularly for the children.
42. Given the harm identified, granting a temporary and personal permission is in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation. I shall therefore allow Appeal A on ground (a) to the extent that I shall grant a temporary and personal planning permission with conditions limiting occupation to the site occupiers and to two years and requiring restoration of the site similar to that of the enforcement notice requirements.
43. The public sector equality duty (PSED) contained in the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not

share it. Since the site occupiers are Irish Travellers, they have a protected characteristic for the purposes of the PSED.

44. I find that a refusal of permission for the development on a temporary and personal basis, even with the harm it causes to the countryside, would not help foster good relations between the appellant and the settled community. The PSED adds weight to my conclusion that Appeal A should be allowed, but only for a short period because of the harm caused.
45. Given the temporary nature of the permission it would not be reasonable to impose conditions requiring further landscaping, bin stores and drainage, but it would be reasonable and necessary, to protect the character and appearance of the countryside, to limit the number of caravans on this large site and prevent large vehicles being stationed on it.
46. On this basis there is no need to consider the ground (g) appeals.

*Graham Dudley*

**Inspector**

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mrs A T Heine  
Mr & Mrs Maughan  
Mr C Maughan  
Mrs S Faulkenor  
Maria Ray

### **FOR THE LOCAL PLANNING AUTHORITY:**

Marcia Head  
Dr M Bullock  
Mr J McCabe

### **INTERESTED PARTIES:**

Cllr M Ashwell  
Mr P Bain  
Mr P Bund  
Mr & Mrs Smith  
Karen Hobbs  
Justin Tyrell  
Simon Roffey  
Mr J Lee

## **DOCUMENTS**

Document	1	Notification letter
	2	GTAA Updated Report
	3	School letter
	4	Finchampton Surgery letter
	5	Wokingham Traveller Education letter
	6	Plan of Folly Court development
	7	Plan of site
	8	Photograph of site from Folly Court (under construction)
	9	Planning Policy and Supply position
	10	Form reporting breach of planning control with photographs
	11	Photographs along road frontage
	12	Suggested conditions