The Planning Inspectorate

Appeal Decisions

Inquiry held on 10-13 & 17-19 January 2023

Site visit made on 10 January

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Appeal A Ref: APP/H1515/C/20/3248911
Land lying to the East side of Five Acre Farm, Warley Street, Great Warley, Brentwood, Essex, CM13 3JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Patrick Moran against an enforcement notice issued by Brentwood Borough Council.
- The notice, numbered 19/00103/UNOPDE, was issued on 19 February 2020.
  The breach of planning control as alleged in the notice is a) Without planning permission, the making of a material change of use of the land, shown edged red on the attached plan, to a mixed use of agricultural use and residential use (by the stationing or storage of both static and touring caravans on the land which facilitates the unauthorised residential use) and also storage use (by the parking and storage of motorised or mechanically/propelled vehicles on the land), and the storage of metal containers, wooden sheds/day/utility rooms on the land.
  And also:
  b) Without planning permission, operational development i.e. the carrying out of engineering and other operations on the land, shown edged red on the attached plan, including but not limited to the importation, depositing and levelling of sundry hardcore materials and hardstanding surface materials i.e. road plannings and crushed concrete, which has resulted in a raising of the land level. Also, the erection of wooden fencing and fence posts, and wooden border materials, i.e. railway sleepers (which facilitates the sub-division of each separate residential plot) on the land.
- The requirements of the notice are: 1) Permanently cease the importation and laying of sundry hardcore and hard surfacing materials on the land. 2) Permanently remove the sundry hardcore materials and the associated hard surfacing materials i.e. road planings and crushed concrete materials from the land. 3) Permanently remove from the land all matter arising from compliance with Step 2 above to a place authorised to receive such waste materials. 4) Permanently cease the residential use of the land. 5) Permanently cease the use of the land for the stationing or storage of caravans (both static and touring) associated with the unauthorised residential use. 6) Permanently cease the use of the land for the parking or storage of motorised or mechanically propelled vehicles. 7) Permanently cease the use of the land for the storage of metal containers and wooden sheds/day/utility rooms. 8) Permanently remove the caravans from the land (both static and touring). 9) Permanently remove the motorised or mechanically propelled vehicles from the land. 10) Permanently remove the metal containers, wooden sheds/day/utility rooms from the land. 11) Permanently remove any gas, water, telephone or electric services from the land that may be connected to caravans or other chattels on the land. 12) Permanently remove from the land the wooden fencing, fence posts and wooden border materials which have been erected to facilitate the unauthorised residential use and the sub-division of the land. 13. Make good the surface of the land to EITHER its pre-existing state prior to the above breach(es) of planning control OR to a levelled earthen surface seeded with native grass in order to conserve the openness of the Green Belt

- The periods for compliance with the requirements are: for requirement 1, one day, for all other requirements 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/H1515/C/22/3298928

- Similar appeal by Patrick Moran against the same notice re-issued in April 2022

Appeal C Ref: APP/H1515/C/22/3299803

- Appeal by Mark Thursting against the April 2022 enforcement notice, ground (g) only

Appeal D Ref: APP/H1515/W/20/3248930
Five Acre Farm, Warley Lane, Great Warley, Brentwood, Essex, CM13 3JZ

- 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 Patrick Moran against the decision of Brentwood Borough Council.
- The application Ref 19/01546/FUL, dated 19 November 2019, was refused by notice dated 14 February 2020.
- The development proposed is change of use of land to use as a residential caravan site for 7 gypsy/traveller families, each with two caravans, including no more than one static caravan/mobile home, laying of hardstanding and erection of 7 No. utility buildings.

Decisions

Appeals A and B - 3248911 & 3298928

1. It is directed that the enforcement notices are varied by deleting "6 months" from the Period for Compliance and replacing it with "12 months". Subject to the variation the appeals are dismissed, the enforcement notices are upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C – 3299803

2. It is directed that the enforcement notice is varied by deleting "6 months" from the Period for Compliance and replacing it with "12 months". Subject to the variation the appeal is dismissed, and the enforcement notice is upheld.

Appeal D - 3248930

3. The appeal is dismissed.

Applications for costs

4. An application for costs was made by the Council and is the subject of a separate decision.

Preliminary Matters

5. There is a dispute about ownership of the land, with the land registry recording it as belonging to Mark Thursting. The appellant explains that Mr Thursting sold the land to Mr Tim Coffey Sr, who for a while was resident on the site. Since then all the current eight plot holders have purchased their plots from Mr

Coffey Sr. Mr Coffey Sr, apparently, still owns the rest of the site, including the grazing field and presumably the communal areas such as the entrance drive.

6. The Council point out that land registry details still show that Mr Thursting is the owner and he has yet to transfer ownership to anyone else. There is some legal difficulty involving a restriction on the title of the land that prevents it from being legally transferred. Because of this a second, identical notice was issued in April 2022 as Mr Thursting had not been notified of the original 2020 notice. This notice was appealed by Mr Moran, hence appeal B above and by Mr Thursting, hence Appeal C above. Mr Thursting's appeal is only on ground (g), his argument being that he needs more time to sort out the legal issues.

7. I shall deal with Mr Thursting's appeal later, but for now I should say that I do not think it should have an effect on the outcome of the appeals. There is no suggestion that Mr Thursting is about to exert his landowner rights and evict the occupants, particularly as it seems money has changed hands for the site. But most importantly there are three possible outcomes for this appeal, firstly it is refused, in which case ownership doesn't matter. Secondly it is allowed on its merits as a gypsy site, in which case it doesn't matter who lives there and thirdly it is allowed because of the personal circumstances of the appellants, in which case only they can benefit from the permission. If Mr Thursting resumes ownership in some way he will not benefit from the permission.

Main Issues

8. The main issues in this appeal are the impact of the site on the character and appearance of the area and on the openness of the green belt. Whether the Council can show an up to date 5 year supply of sites for gypsies and travellers, including the impact of the Lisa Smith judgement. Whether there are any alternative sites available. The unauthorised nature of the development, and if necessary, the personal circumstances of the occupants.

Reasons

9. The site lies to the south of Great Warley on the east side of the B186, Warley Street, north of its junction with the A127 dual carriageway. It lies in the green belt and there is no dispute that it is inappropriate development. As the NPPF makes clear inappropriate development is by definition harmful and should not be approved except in very special circumstances. Any harm to the green belt is given substantial weight and very special circumstances only exist if the harm identified is clearly outweighed by other considerations.

10. This is a windfall site, which is covered by policy HP10. This is an oddly worded policy, that has two parts. The first deals with sites on unallocated land outside of the green belt. As virtually all of the district is either built up or green belt, it is not clear where these sites would be. The second part merely explains that sites within the green belt have to demonstrate very special circumstances in addition to the "*criteria in A above*". There is no "A above", but I assume it means the criteria (a) to (e) of the first part of the policy. Of these criteria it was accepted by the Council that only (d) was infringed, that there should be "*no significant adverse impact on the intrinsic character and beauty of the countryside*".

11. However, despite it being accepted the site was sustainably located (criterion (a)), it was often suggested that this was less than optimal. The B186 is quite

busy and although there are pavements, they do not directly link the site to the bus stop, which is only about 50m up the road. It is also quite a long walk to the centre of Great Warley, some way to the north. Nevertheless, it is generally accepted that gypsy sites, by their very nature, will often be in the countryside and given that, this site is pretty well located for using alternative means of travel. In my view it is not contrary to criterion (a).

Character and appearance

12. Great Warley is centred around the junction of the B186 and Warley Road, but straggles down the B186 to the De Rougemont Manor hotel and the church just beyond. Essentially the landscape is then agricultural with pockets of woodland, albeit with small clusters of development along the road until close to the A127 when it becomes more urbanised. For example, there is a cluster of houses around the junction of Codham Hall Lane at the Old Pump House, another at Bird Lane to the north of the site, and to the south at Mangrove Cottages. Then there is a prep school and landscape gardeners depot. However, these developments, and the site, are all surrounded by fields and woodland. Further to the south and associated with the junction with the dual carriageway is a much larger depot and various light industrial uses and a scrap yard.

13. I agree with the Council that the more industrial uses to the south are not visible from the site and even walking south down the B186 beyond the prep school they hardly impinge at all. Mr Brown was keen to suggest they form part of the wider context of the site, and indeed they do, but in terms of character and appearance the site lies squarely within a small block of fields, with low key developments around. Bird Lane is essentially a rural lane with cottages along it, the landscape depot specialises in tree screening and is, perhaps unsurprisingly, well screened by its products, whilst the prep school appears to be housed in a series of attractive barn conversions. Next to the site is a short terrace of what were probably once agricultural workers cottages called Mangrove Cottages, but the gap between them and Bird Lane has partly been filled by the appeal site.

14. The site itself has 8 pitches, all served off a gravelled track that runs down the southern boundary and provides access to the fields beyond. A right of way (PROW) runs along this track and into the countryside. Each pitch is very generous in size and the whole takes up a substantial portion of one of the 2 fields that originally separated Mangrove cottages from Bird Lane. The PROW leads down a gentle hill to a wooded stream valley and then either along the valley or up towards Little Warley Hall Lane that runs parallel with the B186.

15. In my view therefore there was open countryside between Mangrove cottages and Bird Lane, and that has now been interrupted by a large development that takes up more or less half the land in between. It's a larger site than the cottages and it looks as big or bigger than any of the other nearby developments, the prep school, landscapers, groups of houses on either side of Bird Lane or the old Pump works. It is a significant development on a greenfield site in the countryside.

16. I visited the site three times, once accompanied and twice to walk the roads in the area and to see it at night. Warley Street, the B186, itself was moderately busy on my visits but mostly with local traffic. Mr Brown called it an inter-

urban distributor road, but it seems closer to the Council's description of a road through a village.

17. There was some discussion of the blocking of the PROW, although this was denied by the occupiers. There is a stile at the road end of the path and walkers now have to walk down the access drive of the site to the end where there is a 5-bar gate. This is kept shut but could be opened when I carried out my site visit. There is a chain wrapped round it, but again according to the occupiers this was never padlocked. However, there is a padlock on the chain, which seems odd if it is never used. Nevertheless, a five bar gate is not an insurmountable barrier, many a PROW in my experience is blocked by gates that won't open for a variety of reasons. This shouldn't happen but is something that could be controlled by condition.

18. Of greater concern is the fact that the PROW runs through the site. This has two effects, it obviously makes the path less accessible, regardless of how friendly the occupiers might be, walkers would definitely feel they were walking through a private caravan site that was someone's home. Secondly, the experience of the PROW has changed from a path across a field to the road, to one that goes through a large caravan site. I was asked to believe that there was no difference between walking through a caravan site and looking into the yards around the mobile homes and the previous views of the backs of the gardens of the houses in Bird Lane and Mangrove cottages next to the site. There clearly is a significant difference as one is experienced at close hand and the other is more distant. While views of gardens across a field are quite different to views of yards with mobile homes, caravans, utility rooms and hardstanding, regardless of the level of landscaping that might be introduced. There is clearly harm to the PROW in terms of reducing the quality of the experience of using it which adds to the harm to the character and appearance of the area.

19. I agree that the site is large and there is plenty of room for landscaping. If native species are used then views will be less obscured in the winter, but the object is not to hide the site but soften its impact. To an extent this could be achieved, but it would, inevitably, remain a large rectangle of quite intense development, with 8 pitches but over a dozen separate family units. Landscaping would be an improvement, but the site would still stand out as intrusive and out of place.

20. HP10(d) refers to a "*significant adverse impact on the intrinsic character and beauty of the countryside*". This does not mean only areas of beauty are protected, but echoes the wording of NPPF 174(b), that the countryside in general has an intrinsic character and beauty. This countryside was an attractive, if modest, tract of land in a wider area that is otherwise largely dominated by development and roads and its character has been further eroded by the development. Therefore, it does have a "*significant adverse impact*", and so is contrary to HP10.

21. The Rule 6 party quoted extensively from a recent appeal decision from Hampshire[1]. While this was a different case in a different county the Inspector makes a valid point about the PPTS[2] which was argued here as well. He said "*the fact that PPTS clearly envisages some gypsy and traveller developments*

[1] APP/M1710/W/20/3249161, issued 11 November 2022
[2] Planning Policy for Traveller Sites

will be appropriate in rural areas does not mean that all such proposals would be acceptable, or could be made acceptable. In this District I accept that new sites are likely to be located in the countryside, but I consider that this site is fundamentally unsuited to the use proposed…." That is very much the conclusion I have come to in this appeal and therefore the harm I have identified attracts substantial weight.

Green Belt

22. As I have already noted it is agreed it is inappropriate development in the green belt, but it follows from the above conclusions that it also harms openness. In fact this site, it seems to me, is exactly the sort of parcel of land that the green belt was intended to protect. It is obvious from a glance at the map, an aerial photograph, or by walking around the area, that all down the B186 open countryside is punctuated by small clusters of development, housing, school, depots, and closer to the A127 and M25 some large commercial set-ups. The green belt is meant to protect what is left of the countryside from being developed so that clusters of buildings do not merge into one another. By adding such a large portion of development into this already fragmented landscape one of the principal purposes of the green belt, to prevent encroachment into the countryside is offended and openness is significantly harmed.

23. The appellant argues that because any new Gypsy sites will inevitably be in the green belt to hold these issues against the appeal site is a form of double counting. But this particular location would seem to me to be particularly fragile and there are many areas, particularly to the south, where the impact on the green belt would be lessened.

24. To sum up this section therefore there is the harm of inappropriate development, there are further green belt harms to openness and encroachment into the countryside; and as well there is harm to the character and appearance of the countryside which means the development is contrary to HP10.

Intentional unauthorised development

25. A further harm identified by the Council was intentional unauthorised development. This stems from the WMS[3] of 17 December 2015. In it the government announced that intentional unauthorised development would be a material consideration to be weighed when considering all applications and appeals. This was prompted by particular concern over development in the green belt.

26. The appellants argued this WMS should be given little weight as it was now out of date. It had not been incorporated into national policy through a revision of the NPPF (and several have happened or been proposed since), and it also envisaged a review to be undertaken within 6 months which never happened.

27. I agree it would be helpful if the policy was incorporated into the NPPF, but for whatever reason that has not happened yet, but nor has the WMS been cancelled and so remains government policy. The fact that a review never took place says nothing about the continued validity of the policy. Nor am I persuaded by the fact that retrospective planning applications are specifically

[3] Written Ministerial Statement

catered for in the planning acts. The WMs does not outlaw retrospective applications it merely says that in those cases where the development was intentional, weight should be given to that.

28. This development clearly was intentional. The site was occupied on a Friday, and on the next day a temporary stop notice was issued but ignored. The enforcement notice was issued in February 2020 but ignored and an injunction was served in May of that year which was also ignored. The occupants were eventually taken to court and given suspended sentences and fines.

29. Despite the reluctance of any of the occupiers who gave evidence to admit that they knew anything about the need for planning permission, Mr Brown had been instructed before they moved onto the site and he confirmed that he told them they would need planning permission. I was asked to believe that no-one spoke to anyone else about any of these legal issues and that hardly anyone knew about the stop notice or injunction. But I do not believe that on a site with a group of close-knit friends and relations that these were not major topics of discussion or that no-one was really aware of what they were doing. In my experience members of the travelling community are well aware of the difficulties they face with the authorities in trying to find somewhere to live.

30. I agree with the Council, this is a text-book example of unauthorised development that was carried out intentionally and in full knowledge of what they were doing by the occupiers. I shall give considerable weight to the WMS.

Need for Gypsy sites in Brentwood

31. In a similar manner to housing for the settled population, local authorities are required to identify a 5 year supply of deliverable sites for gypsies and travellers. To this end most produce a GTAA[4], which identifies the number of gypsies in the area, where they are, the status of their sites, likely growth of the traveller population and so how many pitches are required in the future. Brentwood is no exception and their most recent GTAA was produced in 2017 but relying on research carried out in 2016. The identification of needs is based on finding sites for those gypsies and travellers who meet the definition in Annex 1 of PPTS. Those who do not, still require culturally appropriate accommodation (that is caravan sites), but those sites are supposed to be met through the housing allocations.

32. It was surprisingly difficult to reach agreement on the actual figures for need in the next 5 years (that is 2023-2027), but, regardless of the actual numbers, it was agreed that if reliance was placed on the definition in PPTS then the Council could identify sufficient sites for 'policy gypsies'. However, that reliance might not be able to be placed on the definition is due to the impact of the very recent Court of Appeal case of Lisa Smith[5].

33. The definition of a gypsy or traveller in the PPTS has always been a person of a nomadic lifestyle. This included those who had stopped travelling because of old age, illness or educational needs of themselves or their dependants. In 2015 this definition was amended by introducing the word 'temporarily'. This meant that the many gypsies and travellers who had stopped travelling but couldn't show that cessation as temporary were no longer counted. This led to GTAA's dividing Gypsies into two types, 'policy gypsies' who met the definition

[4] Gypsy and Traveller Accommodation Needs Assessment
[5] Lisa Smith v Secretary of State LUPH&C and others [2022] EWCA Civ 1391

and whose future need for pitches should be met through the rolling 5 year process and the rest. The Court of Appeal held that the 2015 change was discriminatory. The Secretary of State has accepted this and no challenge to the decision is expected.

34. However, as the Council point out, the Court was at pains to explain they were not striking down the definition itself, nor the PPTS. Also, and more recently, the NPPF has been subject to review and a consultation document issued. Neither reference to the definition in PPTS in the consultation document suggests any change is envisaged by the Government. Nor has there been any announcement or WMS about any change to the definition or the way that pitch needs should be calculated. This suggests that no change is being contemplated and PPTS remains government policy.

35. Nevertheless, this policy is based on a definition that has been held to be discriminatory. Although that judgement turned on the facts of that case, it is clear from the transcript that the Court of Appeal understood this discrimination would affect a very large proportion of non-policy gypsies. What this means in practice is that the Council are required to identify a 5 year supply of pitches for gypsies in their area who meet the definition in PPTS and that definition has been found to be discriminatory. At some point in the future that paradox will be resolved either by further government advice or another court case. In the meantime it needs to be considered on a case by case basis.

36. I was shown two decision letters where it was held the Lisa Smith judgement did not apply because there was no dispute that the appellants were policy gypsies, as is the case here. In the Top Farm[6] case It was argued the appellants were definitely nomadic and the GTAA remained a robust analysis of need as it covered all gypsies, regardless of the definition. The Inspector agreed it did not change the situation before her. However, the most pertinent facts of that decision were that it was a hearing and there was no dispute about the 5 year supply in the first place. In the Lower Park Farm case, again the appellants were definitely nomadic, but it was agreed the Council did not have a 5 year supply, so whether the need increased or not did not affect that decision. Both Inspectors were able to side-step dealing with the ramifications of Lisa Smith.

37. However, in this appeal the appellant provided 3 decisions where the judgement did have an effect. The first at Hillview[7] in Basildon, the Inspector accepted the Lisa Smith judgement meant the definition could no longer be relied on in a condition limiting the occupants of the site, as it was discriminatory. The second at Horton Road[8] in Staines the Inspector considered the whole need identified by the GTAA should be met, one of the reasons being the effect of the judgement. The third was at Mayles Lane in Winchester[9], the Inspector said the judgement "*cast considerable doubt on whether previous needs assessments based on the PPTS definition can be taken as an accurate reflection of need without being tainted by discrimination*". This is certainly my view. It is untenable to carry on as if nothing has been changed. The Brentwood GTAA may well still be an authoritative source for the numbers of gypsies in the area and their future

[6] APP/P0240/W/21/3279803, issued 11 January 2023
[7] APP/V1505/C/20/3265750 etc, issued 16 November 2022
[8] APP/Z3635/W/22/3292634, issued 12 December 2022
[9] APP/L1765/W/21/3271015, issued 14 December 2022

needs (although some of its details are disputed by the appellant), but the 5 year supply itself relies on a definition that is "tainted by discrimination". The effect of the judgement is to increase the need from roughly 11 to a rough maximum of 68 (or more according to the appellant). I do not think all 68 will be in need of a pitch as many, having given up travelling, may well be happy where they area. Many may be older and so household formation will be less, but even so, whatever the actual figures, the Council can only show a supply of 13 pitches and so are likely to be considerably short of the true non-discriminatory figure. I conclude it is unlikely the Council can show a 5 year supply of gypsy sites.

Provision of gypsy sites through the local plan

38. The Council argue that regardless of these arguments there is no policy failure, as alleged by the appellant, because all gypsy needs are to be met through the plan process. HP01 is the main housing policy which states that on developments of over 100 houses the Council "will require" a minimum of 5% self build homes and provision of Specialist Accommodation in accordance with the criteria set out in HP04. HP04 is the specialist accommodation policy. The explanation for this policy says that such accommodation is independent living schemes, housing for the old, frail, disabled, residential institutions and culturally appropriate accommodation for gypsies and travellers. The Council argue therefore they can and will be requiring caravan sites for gypsies on large housing developments. Indeed, they have done so at Dunton Hills. This is how they will be dealing with non-policy gypsies, and presumably also policy gypsies if they accept the need has grown due to the Lisa Smith judgement.

39. However, the text of HP04 at HP04.4 says "*where a need for Gypsy and Traveller pitches are identified by the Council, Policy HP10: Proposals for gypsies, travellers and travelling Showpeople Windfall Sites would apply*". That says to me that although gypsies are included as Specialist Accommodation, they are actually separately provided for by HP10. This is the windfall policy discussed above and has nothing to do with large housing sites. The Council argued that this last sentence was put in HP04 at the behest of the Inspectors who carried out the EIP[10], to make it clear that the criteria of HP10 would be used when assessing potential gypsy sites on large housing developments. This doesn't make sense to me as those large sites would already have been assessed when identifying them for housing. Looking at the Inspectors' report into the EIP, they say at paragraph 103 that gypsies who do not meet the PPTS definition will be dealt with through HP04. But at paragraph 259 which discusses HP04 they say "*changes are required to….clarify that proposals to meet gypsy, traveller and travelling showpeople needs will be determined through HP10*". So it is quite clear to me the EIP Inspectors did not envisage gypsy sites at all large housing developments, but that they would come forward as windfall sites through HP10.

40. This was reinforced during cross-examination when it became clear that the large housing sites identified by the Council as potentially suitable for a gypsy site were nothing of the sort. The larger housing sites are detailed in the DHGV Policies section, each one has an R number. Of those put forward at the inquiry as potentially suitable R01 is Dunton Hills, a new garden village of over 4000 dwellings which already has allocated a gypsy site for 5 pitches and is

[10] Examination in Public. The inquiry held to discuss the policies in the draft local plan.

included in the assessment of need. R02 and R03 already have a care home or other specialist accommodation identified as their HP04 component, with no mention of gypsies. R04 already has planning permission for a care home, but half the site is owned by the Council so could provide a gypsy site, but this could be tricky with various listed buildings on the site and no mention of gypsy need in the policy. R10 is on Brentwood Station car park, in the town itself and so hardly suitable for a gypsy site and similarly R14. Which leaves R16 as a possible candidate, but there is no mention of any specialist accommodation in the policy.

41. I strongly doubt that any of these housing sites are seriously intended to accommodate gypsies as well, and that does not seem to be what the policies are saying. If HP04 was intended to enable gypsy sites to be added to housing allocations then it goes out of its way to say the opposite. Despite the Council's insistence that this is how they interpret the policy there is no evidence of any gypsy sites being considered at any of the housing sites apart from Dunton Hills, which is a massive development that is quantitatively different to the others. It seems to me therefore, the Council are relying on windfall sites, which will inevitably be in the green belt in order to house any gypsies not already specifically accommodated in the GTAA. Which is most of them.

Policy failure?

42. Despite these conclusions I am reluctant to find there has been a failure of policy at the Council. Firstly, I needed to come to a view on the effect of the Lisa Smith judgment, but a definitive answer will not be available until either there is a policy announcement by the government or a further court case. In any event, this change to the definition was only very recently announced and while it means the Council do not have a 5 year supply of sites, that is through no fault of their own. I also note that a new GTAA is in production and the fieldwork has already been completed on this, while the Council have scheduled an early review of the plan to deal with any housing matters, including gypsy issues, and if necessary, the impact of the Lisa Smith judgement.

43. There is also the issue of the general need of the 68 families identified as non-policy gypsies in the GTAA. The appellant argues their needs engage Article 8 of the Human Rights Act. To this end he relies on the Chichester DC[11] Court of Appeal judgement. This seems to me to be a misreading of this case. In the High Court the judge found that Article 8 imposed a duty on the Council to exercise its powers to provide an adequate number of gypsy sites. Failure to do so was a breach of their (all the other gypsies not involved in the appeal but living in the District) human rights. However, the Court of Appeal reversed that finding. Article 8 was clearly engaged for the occupiers of the appeal site and the question for the Inspector was whether infringement of those rights by the Council was proportionate. In order to do this he was entitled to balance the limited harm to the countryside, the personal circumstances of the occupants and the general failure of the Council to provide for gypsy sites. But it was the rights of the occupiers of the site that were infringed disproportionally, not the rights of all the other gypsies in the area. As the Council argue I shouldn't consider the human rights of people not before me at this appeal.

[11] Chichester DC v FSS and others [2004] Civ 1248

44. It also makes sense to consider here the question of whether the appellants should have engaged with the local plan process. There was considerable dispute as to whether, by the time they had moved onto the site, the window for bringing forward new gypsy sites had closed or not. The Council argued that new sites would be considered even when they were technically out of time. I suspect a new site in the green belt would have been given short shrift as the Council had already earmarked sufficient sites to meet their GTAA derived 5 year need. But whatever the truth of the matter, it was accepted there is no onus on the site occupiers to engage with the local plan process and failure to do so is not a material consideration in this appeal.

45. To conclude on policy matters, it is generally accepted there are no suitable, available sites within the District for these families to go to, although whether they were on suitable sites in the past is a matter I shall discuss below. I have found there is no 5 year supply but there is no failure of policy and consequently, no general failure of the Public Sector Equality Duty as alleged by the appellant.

Conclusions on the argument for a general gypsy site

46. As argued by the appellant, if I get to this juncture in the decision and find the positive elements clearly outweigh the harm then very special circumstances will exist and I could grant planning permission for a gypsy site without a personal condition. However, I do not. The harms identified to the green belt, openness and the countryside and the matter of intentional unauthorised development are not clearly outweighed by the lack of a 5 year supply of sites and lack of an alternative site for the occupiers.

Personal circumstances – general issues

47. The personal circumstances of the occupiers of the site were investigated in some detail at the Inquiry. There is no dispute that on the 8 pitches there is a considerable number of children, ranging from the about to be born to older teenagers at technical college. Nor were the serious medical histories of a number of the occupants disputed. The point the Council made was that a number of children seemed to have managed to get an education in the past, despite, allegedly as the Council saw it, being mostly on the road. Similarly the people with illnesses had also managed to receive treatment without the need for a settled base. The Council argued this reduced the need for a settled base now.

48. There was also the issue of the various sworn statements and declarations that had been made. When the appeal was made the occupants of a number of the pitches were different to those who are there now. All of them made statements, and all the current occupiers also made statements. Those who had been to court because of the breach of the injunction had also made statements then. The Council were keen to show how these statements contradicted each other, the clear suggestion being that the occupiers would say whatever would help their cause at the time. Finally, the Council were also keen to show that many of the occupiers actually had alternative B&M[12] addresses they could live at or had been settled on caravan sites and moved off for no good reason. This would weaken their case that this was the only possible site they could stay on.

[12] B&M is bricks and mortar, a colloquialism for houses to differentiate them from mobile homes or caravans.

Personal circumstances - education

49. I accept that there are not detailed educational histories for all the children on site. Various letters were presented from the local schools in Warley and around the area confirming some of the children's attendance. One of the children on plot 1 is old enough to attend pre-school and is documented whereas there are quite a lot of children on plot 2 and we heard nothing about their educational needs at all. Those on plot 3 are documented, but those on plot 4 are not, although their father provided two consistent proofs that they were at school. On plot 5 two of the teenagers were said to be attending a technical college. There is no external evidence for this but I have no reason to disbelieve the consistent evidence of both their parents. The other two children of school age are documented. The children on plot 6 do not attend school. According to their father that is because he needs help to get them there. He himself is very ill (and there is no doubt about that), his wife died just over a year ago and his elder daughter, who was able to help with the children, cannot live on the site as it would be in breach of the injunction. This doesn't explain why none of the others who have children at school could not take them. The children on plot 8 attend school, according to their mother.

50. So there is a mixed bag of evidence, but apart from plot 2, which has a tangled history that I shall come onto later, and plot 6, all the children do seem to attend local schools. But even if there was less evidence, I am still aware of the best interests of the children, which is a primary concern. There are nearly 30 children currently on site and their best interests for both educational and health needs are to have a settled base and that is not seriously in doubt here.

Personal circumstances – previous accommodation

51. It was surprisingly difficult to gather any definite information as to the occupants' previous accommodation. The overall story was they had been travelling and staying on various overcrowded sites or beside the road and had little choice but to come to the appeal site when it became available. If they could not stay here, they would have nowhere else to go and so be forced to live back on the road to the detriment of their and their children's health and educational needs. The Council's case was that this was manifestly untrue in some cases and doubtful in others.

52. When the first tranche of proofs was provided in January 2022, three of the plots were occupied by different families who are no longer resident on the site. Michael Casey was then on plot 2 with his brother and sister and their families, and possibly some other relations, his proof is unclear. He said that if he couldn't stay at the site he would have nowhere else to go and the children wouldn't be able to stay in school. There is still a Michael Casey on Plot 2, but apparently the original Michael was a cousin and none of the people mentioned in his proof are on site now. It seems, according to Mary Moran (mother of the new Michael) that the original Michael fell out with his brother, or possibly his cousin James, it is difficult to be certain as the original Michael has a brother James as does the current Michael. Mrs Moran said her son James and his wife were always on plot 2, but that cannot be true as the original Michael and his brother James were there in 2020 according to the court documents.

53. According to Mrs Moran's proof which dates from late 2022 there was also Michael Buck on the site, the partner of her daughter Krystal. He and new Michael travelled together looking for labouring jobs. By the time of the inquiry Michael Buck had moved on, leaving Krystal on the site and according to Mrs Moran her son, Michael, could not find work as he had no address. There was also confusion about Mrs Moran's travelling history. She explained she had stayed in the garden of a house at Jockey's Farm, but this turned out to be a large gypsy site. She then had a caravan at Orchard View which leaked, but rather than get it repaired she moved to a different pitch, which was overcrowded and so came to the appeal site. Originally she stayed on plot 6 with Bernard Gallagher as she is a friend of his sister, although Mr Gallagher omitted to mention this in his first proof. Unless she had already moved to plot 2 by then, except that can't be true as it was then occupied by cousin Michael and his extended family.

54. All of this suggests to me that Mrs Moran is an unreliable witness. So that when documents suggest she lived in Ireland during this time and her explanation is that this was just a brief holiday it is difficult to know what to believe. It also shows the fluidity of people back and forth on plot 2. We never heard from Mrs Moran's sons, Michael or James, the latter the actual owner of the plot who has his own large family there, so it is difficult to be certain exactly what the situation on plot 2 is. But we do know her partner, James Casey Sr is no longer living there and neither is Michael Buck.

55. Plot 3 was originally occupied by the Ward family, who in January 2022 also explained they had nowhere else to go and needed a permanent plot for educational and health reasons. But sometime between then and now they left and were replaced by Charlie Doherty and his family, according to him in 2020, although in 2022 Mr Ward said he was living there. No-one seemed to know what happened to the Wards, but had the inquiry gone ahead last year presumably he would have given evidence he was living on plot 3. Yet Charlie Doherty produced a TR1 form showing he bought the plot in November 2020 from Nicola Ward. He also claimed to know nothing about his brother's court summons, despite living on his brother's plot for a while. These inconsistencies throw doubt on Charlie Doherty's evidence, but do show how another family, that had nowhere else to go, did go somewhere else.

56. Charlie's brother, Shane Doherty occupies plot 4 with his family. They have been on the site from the beginning. He failed to mention his brother living with him in either of his proofs and his explanation for this was that it was nothing to do with Charlie. He couldn't answer if Charlie had been living with him in 2019. Also somewhat unbelievably, despite being one of the first on site and helping construct the gates and access drive he knew nothing about the stop notice, enforcement notice or the injunction. He also took his children out of school for 3-4 months to go travelling over Christmas.

57. Michael O'Brien occupies plot 5, another one of the original developers, with his family and his adult son and his family. Although there is no evidence for his past travelling activity, his oral evidence was cogent and more or less unchallenged.

58. Bernard Gallagher occupies plot 6 with his family. His history is much more complex. In April 2021 he told the court he lived there with his adult son Michael, Bernard's girlfriend Winnie Connors and his ex-girl friend Mary and her

two children. Michael is very ill, but so also were Bernard Gallagher's parents who he was responsible for getting to and from medical appointments. He was at the time estranged from his wife, Mary Maughan. Tragically she died and in January 2022 there is no mention of either the girlfriends or any step-children, so presumably they have found somewhere else to go. By then he was back with all 5 of his children and was arranging for his parents to join him so his mother could help with the young children. By December 2022 the parents move has been prevented by the injunction (although that was in place and the court case completed before the January 2022 proof). Now his eldest daughter has married but can't live on the site again due to the injunction.

59. In cross-examination he claimed the younger children were with him all the time and attending school in Warley, although that is not what he told the Court. There is no mention in any of the documents that Mary Moran was ever living with him, although she claimed she was. He also was one of the original developers, but like the others denied any knowledge of the legal issues, the stop notice, enforcement notice or injunction. Again, this shows the fluidity of occupation of the plot and casts doubt on the accuracy of his statements.

60. Tim Coffey Jr lives on plot 7 with his partner and two children. His father also Tim Coffey bought the whole site from Mark Thursting and then sold off the plots to the other occupants. Tim Jr's evidence was that he had been on the site almost from the beginning. His recent proof suggests he lived there with his father, Tim Sr, and his family and that they are all still there. In December 2021 Tim Sr gave a proof, saying the same thing. Also on the plot then was Tim Sr's close friend Noel Ryan and his son (also Noel) and daughter Stacey and her children. By 2022 the Ryans had fallen out with Tim Jr, so the plot was split in half, creating a new plot 8 for the Ryans. All the plots, 1-8 are roughly the same size so plot 7 was, conveniently, originally double the size of any other plot.

61. However, in cross-examination Tim Jr explained his father had lived on the site for only a few days at most. In his affidavit to the Court he said his father was living in Ireland and had been for over a year, but he told this inquiry it had only been a temporary stay and he is now on a transit site in Kent. Why he changed his story and contradicted his father's proof is unclear, but again we have people moving on and off the plot and testimony whose accuracy is called into doubt.

62. The Ryans live on plot 8. Stacey with her children, her brother Noel and her father, also Noel. Stacey's original proof said she moved onto the site (plot 7 as it was then) in November 2019, that is close to the time of the original development of the site. She, and others, had been forced to move from their previous site in Southwark due to various incidents, that do not need to detain us here, but are well documented. However, in her later proof she says she moved onto the site in 2020 and provides more information about her involvement with the STAG[13] who tried to help her find alternative accommodation. A letter from February 2020 was produced. This is from STAG to Southwark Council and was written because Stacey was due to meet the Council and she wanted confirmation that she had not made herself intentionally homeless. It ends by asking the Council to consider her housing

[13] STAG = Southwark Travellers Action Group

application. According to Stacey's proof because nothing was on offer except short term accommodation, she had nowhere else to go except the appeal site.

63. For various technical reasons that I do not need to go into here her father, Noel Sr gave evidence at the inquiry. He explained that Stacey was wrong to change her mind, they did move on in 2019 and they were never offered any accommodation. I do not think there is any doubt the Ryans weren't offered any suitable accommodation, but it does look as if Stacey was living in unsuitable short term accommodation in early 2020 and was asking for help with housing in Southwark, in other words she wasn't at the appeal site. Noel Sr's explanation is that the insecure short term accommodation refers to the appeal site. It is possible, because its not exactly clear where Stacey was living then, but unlikely. According to STAG the insecure accommodation was exacerbating her mental health problems, and according to Stacey it was moving to the appeal site that helped with those issues. There is another letter, written for the Inquiry from someone else in STAG which confirms no offers of housing were, to the best of the knowledge of the writer, ever made. The gypsies who had moved off the Southwark site were keen to let the Council know they had relinquished their plots to avoid being charged for them, and this is what several meetings mentioned in the later letter appear to be about. But there is no explanation why the head of Stag in 2020 was wrong to think Stacey was asking for help with accommodation in Southwark and I have no reason to believe she was.

64. I am not sure where this dispute over the moving-in date takes us. It is possible that Stacey would have been happy to live in B&M but that was denied by her father. However, it does show, again, people moving onto the site at different times and throws up some glaring inconsistencies in the evidence.

65. Finally on plot 1 is Patrick Moran with his partner and children, and his brother in a separate caravan. In terms of inconsistencies his evidence was unremarkable, but there was an issue about previous B&M addresses.

Personal Circumstances - alternative addresses

66. B&M addresses took up quite a lot of inquiry time. Many of the medical documents appeared to show the relevant occupiers either owned or had access to houses in the wider region, while the Council's own research had discovered more addresses they said were accessible to the occupiers. I do not intend to go into these in detail for two reasons. Firstly, as was accepted by the Council, B&M does not provide culturally acceptable accommodation, except in a short term emergency, and secondly, the lack of a permanent site means the occupiers have no address from which to register for medical support. I accept it is a typical practice for travellers to use the permanent address of a relative for medical or business reasons; although Tim Coffey had a business registered at an address he accepted was no longer his father's and could be occupied by anyone now. One of the problems is the similarity in names between members of the same family. So in the case of Patrick Moran, the occupier of a house in Islington was, he said, his identically named father not him. The Council had carried out a search using dates of birth and maintained that Patrick Jr was paying council tax, but no details of these searches were provided. However, there were also permanent addresses associated with Tim Coffey, Mary Moran, in Ireland, Bernard Gallagher and the Ryans.

67. However, few if any of these addresses were mentioned in the occupiers' statements or proofs. Most were painstakingly teased out during cross-examination. If the explanations were as innocent as suggested, then it is odd they weren't more forthcoming in the first place. As I say I am not giving any weight to these as credible alternative sites, but they do expose a complex web of movement to and from houses, the use of addresses, possibly unlawfully for credit or business reasons, and a reluctance to admit to any of this, which further undermined the veracity of their testimony.

68. Finally, prior to moving to the appeal site, several of the families had been living at Benskins Lane in Romford. This was variously described as a transit site or a permanent site but overcrowded. We know that at least part of it is owned by James O'Brien, a family friend of the Coffey's. The Council maintained it was a permanent site and they could have stayed there. It was never clear exactly what the status of Benskins Lane is or whether any of the families could have stayed there, but it adds to the general fog (which I have no doubt the Council would characterise as a smoke screen) that covered the past history of the occupiers.

Personal circumstances - conclusions

69. I have concentrated on the discrepancies in the evidence from the occupiers of the 8 pitches but this does not mean I will give disproportionate weight to this. I am well aware of the medical evidence and the best interests of the children. However, what the above analysis shows to me, is that the story of a close knit group, who had no choice but to move onto the site and have nowhere else to go is not as straightforward as the occupiers would have me believe. There has been quite a lot of comings and goings to the site in the last year or so and there are sufficient inconsistencies and problems with the evidence to cast some doubt on the accuracy of the claims being made on their behalf. The medical evidence was more compelling, but again, the occupiers seem to use a network of addresses in order to register with Doctors and receive treatment without needing to live on the site.

70. Also, despite being raised by me prior to the opening of the inquiry, no argument was made for a smaller site if I was not convinced by the overall case. So while some families might have a stronger claim than others it was clear I should deal with this as an all-or-nothing appeal for the whole group.

Conclusions on the Planning Appeal and the Ground (a)

71. I have found the site amounts to inappropriate development in the green belt to which substantial weight should be given. I have found this is a particularly sensitive green belt location and there is also further harm to openness, to which I attach substantial weight. There is also significant harm to the countryside, contrary to policy HP10, and I agree the site is fundamentally unsuited for development. This also attracts substantial weight. Finally, I have given considerable weight to the fact this was a textbook example of intentional unauthorised development.

72. On the other side of the balance is the lack of a 5 year supply of sites and a lack of any suitable alternative sites to which the occupants could go. This attracts substantial weight. I also agree that any gypsy sites are likely to be in the green belt and to some extent would be harmful regardless. The personal circumstances of the occupiers were fully explored and several of them have

serious medical issues, and all the children would benefit from a settled site. However, the weight I can give to the personal circumstances is tempered by the inconsistencies and issues with accuracy I have outlined above. I am also not convinced that all the families will be forced back onto the road, or if they are it would necessarily be a disaster as several families already seem to have left entirely of their own accord and there has been considerable fluidity as to who and how many people occupy which plots.

73. I am aware of paragraph 16 of the PPTS which states that subject to the best interests of the children, unmet need and personal circumstances are unlikely to amount to very special circumstances. I was reminded of the Doncaster[14] case where very special circumstances were found to exist, but that case was quite extreme. That does not mean that all cases must be the same as in Doncaster, but it does suggest that very special circumstances in such cases are set at a high bar.

74. Consequently, while it would be in best interests of the children to stay on the site and it would certainly help with some of the occupants' medical issues, the balance of harm is too great. This simply is not the right place for a large traveller campsite. The article 8 human rights of the occupiers and their families are freely engaged, including their right to a home and a settled family life. There would clearly be an interference with those rights in respect of the children's schooling and various health issues suffered by the occupants as well as the loss of their homes. However, that interference would be tempered by extending the compliance period, as argued by the appellant. As noted above, I have doubts over the quality of the oral evidence and the seriousness of the impact on health issue of being forced to move off the site. I therefore consider it is also a proportionate interference with the article 8 rights of the occupants.

75. The PSED forms the framework to this decision and the occupiers of the site have protected characteristics. I have taken this into account throughout the decision, particularly in considering their requirement for suitable caravan sites.

Conditions

76. A temporary condition was considered, for 4 or 5 years. This would clearly reduce the harm identified as it would be time limited. However, given the scale of the problem potentially facing the Council and the need to find a large number of suitable sites for currently non-policy gypsies, it is difficult to see the situation changing in the next few years. There is a considerable risk a temporary permission would become permanent. This, therefore, is not a solution to the issues I have identified above. None of the other conditions would resolve the harm I have identified sufficient to allow a grant of planning permission.

The Appeal on Ground (g)

77. As discussed above an extension of the compliance period from 6 months to a year would enable some of the youngsters to finish education and allow time for each family to find different arrangements. There has been virtually no evidence to suggest the families need to stay together for any particular reason, rather the opposite, with families and family members coming and

[14] Doncaster MBC v SSCLG [2016] EWHC 2876 (Admin)

going, and no-one apparently talking to anyone else when they are there. It should be easier to find pitches for 1 or 2 family groups rather than all 8.

78. The appellant suggested 18 months, but that would be akin to a temporary planning permission and I do not think it is necessary. I shall leave the period for compliance for the 1st requirement at 1 day as that does not affect the occupiers continued use of the site.

Overall Conclusions

79. I shall dismiss the s78 appeal (appeal D) and vary the compliance period on both notices issued but otherwise dismiss appeals A and B. As to the appeal by Mr Thursting, (appeal C) that was on ground (g) only and was solely to allow more time to complete the transfer of land. That appeal was made in May of last year, and as I am extended the compliance period for another 12 months from the date of this decision, I consider Mr Thursting's wishes have been granted. Mr Thursting was invited to make submissions on the ownership issue to the inquiry but chose, understandably given his lack of interest, not to be represented in person. I therefore consider there would be no unfairness in considering the extension to the compliance period as a determination of his appeal.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters – of counsel
He called
Patrick Moran
Timothy Coffey Jr
Mary Moran
Bernard Gallagher
Charles Doherty
Shane Doherty
Michael O'Brien
Noel Ryan
Phillip Brown – Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Caroline Bolton of counsel
She called
Steven Jarman - ORS
Sian Griffiths - RCA Planning
Andrea Pearson – Brentwood BC

RULE 6 PARTIES:

Simon Bell – of counsel
Representing Great Warley Conservation Society

DOCUMENTS

1a. Court affidavit of Michael Casey
1b. Court affidavit of Beranard Gallagher
1c. E-mails from Southwark Council concerning the incident at a site in their area
2. LPA's opening submissions
3. Investigation report into occupants at 5 Acres
4. Injunction order
5. Order for contempt of Court
6. Tax credits document for Patrick Moran
7. Consultation version of the NPPF
8. Copy of appeal decision APP/M1710/W/20/3249161
9. Aerial photograph of Jockey Farm caravan site
10. Note on 5 year supply in Brentwood
11. Copy of appeal decision APP/P0240/W/21/3279803
12. Letter from Alison Blackwood of STAG
13. Letter of support
14. Email form Havering BC re Mary Moran
15. Letter from Warley Primary School
16. TR1 for Charlie Doherty
17. Letter of support
18. Highways comments on the PROW
19. E-mail from Warely Primary School
20. Mr Gallagher's patient summary
21. Mr Brown's rebuttal on Lisa Smith and 5 year supply
22. Copy of Sian Griffiths' updated proof
23. Copy of Andrea Pearson's updated proof
24. Suggested conditions
25. Suggested Highway Conditions
26. Mr Jarman's rebuttal of Mr Brown's rebuttal on Lisa Smith and 5 year supply
27. Appellant's response to the LPA's costs claim
28. LPA's closings submissions
29. Rule 6 Party's closing submissions
30. Appellant's closing submissions

The Planning Inspectorate

Costs Decision

Inquiry Opened on 10 January

Site visit made on 10 January

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Costs application in relation to Appeal Refs: APP/H1515/C/20/3248911, C/22/3298928 & W/20/3248930

Land lying to the East side of Five Acre Farm, Warley Street, Great Warley, Brentwood, Essex, CM13 3JZ

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Brentwood Borough Council for a full award of costs against Mr Patrick Moran.
- The inquiry was in connection with appeals against an enforcement notice alleging the material change of use of the land to a gypsy caravan site and a refusal of an application for the same development.

Decisions

1. The application for an award of costs is refused.

The case made by the Council

2. The appellant's failure to provide information in advance about the children on the site and the medical histories of the occupants has severely prejudiced the Council, preventing them from carrying out necessary checks and extended the time taken for cross-examination. Documents that were produced were either only a few days before the inquiry started or during the inquiry itself. The statement of common ground (SoCG) was not agreed and that also could have reduced inquiry time, especially when discussing the GTAA. The case was clearly a no-hoper with no very special circumstances and should never have been pursued.

The response by the Appellant

3. The appellant is not required to provide any information at all. How he presents his case is a matter for him. Representatives of all the occupiers of the 8 plots provided personal statements, were offered as witnesses and were cross-examined. Documentary evidence was provided about children and health issues. The SoCG was prepared by the appellant, amended by the Council and amended again by the appellant. It was clear there was little common ground. Clearly not a no-hoper case, the judgement on very special circumstances is for the Inspector. The Inquiry actually finished 1 day ahead of schedule and the first week was prolonged only by the badgering of witnesses by the Council's counsel.

Conclusions

4. I agree that how the appellant presents his case, and what external verification he provides is entirely up to him. However, in this appeal there was no reason why the various letters that were obtained from local schools or the medical records could not have been provided months ago. I accept that many of the occupants were uncomfortable with the written word and did not have large studies where they could store all the various documents that pertain to modern life, but that is not the point. They did have some documents and they did ask for others to be provided. Why that was only done within the last few weeks and not when it was first requested over a year ago at the first pre-inquiry meeting was not explained. The fact that this is typical of gypsy appeals is also not the point. There may be a good reason for not having paper documents but there is no good reason for not providing the ones they do have promptly.

5. Nevertheless, the Council were able to deal with the documentation as it arrived and what adjournments there were, were accommodated within the timetable. I can't see that more investigation would have led to less questioning and the inquiry was not longer than it need have been.

6. The lack of a SoCG is always annoying, but given that it was obvious the parties could agree on very little and in particular the GTAA discussion was needlessly complex and at times opaque, I doubt that further work on the SoCG would have been time well spent.

7. The appeal was not a no-hoper, in a council area that is nearly all green belt and where there is a shortfall of sites green belt appeals are inevitable and can succeed depending on the various factors that come into play.

Conclusions

8. Although the was unreasonable behaviour it did not lead to unnecessary expense and an award of costs is not justified.

Simon Hand

Inspector