

General Development Applications

(10/e) Application No: PAP/2022/0204

Land South Of Dairy House Farm, Spon Lane, Grendon,

Variation of condition no: 10 of planning permission PAP/2017/0156 relating to landscaping, in respect of outline application for erection of residential dwellings with associated access, for

Vistry Partnerships- East Midlands

Introduction

This application was referred to the Board in December last year, but a determination was deferred. This was for three reasons:

- Members requested evidence to show that the existing bund was suitable for landscaping given reports that it contained builders' rubble and other materials
- Members asked for a reduction in the height of the bund known as Bund A – that in the south-west corner of the site and
- Members wanted to ensure that the proposed surface water proposals were acceptable to the Lead Local Flood Authority.

A copy of the previous report is at Appendix A

Updated Information

Since the last meeting the applicant has been in further discussion with the County Council as Lead Flood Authority and its guidance has been sought in respect of potential drainage issues at the rear of numbers 127 to 133 Watling Street. That advice has been taken and it includes the provision of a filter trench at the rear of these properties within the southern facing bund slope. The County Council has no objection to this arrangement and it is thus considered that this matter is resolved.

The applicant has also undertaken investigative work into the content of the bund in the south-western corner of the site at the rear of numbers 127 to 133. This has shown that there is unsuitable surface cover, but that below this, there are suitable sub-soils for the proposed landscaping. It is now proposed to scrape the top of the bund in order to remove the unsuitable material as well as to then complete stone-picking in advance of laying a new topsoil cover. The overall height of the bund here would reduce by some 0.75 metres. This will incorporate a layer of topsoil.

The applicant's revised Statement is attached at Appendix B

Representations

Grendon Parish Council spoke at the meeting when this item was last considered, and it has been forwarded a copy of the revised Statement, as have the occupiers of numbers 127 to 133. Any comments received will be reported verbally to the Board.

Observations

It is now considered that this application can be supported given this updated information.

Recommendation

That planning permission be **GRANTED** subject to the following conditions:

1. That plan numbers 70743/D00; D100D, 09A, 10A, 11C, 12D, 13D, 14E, 15E, 16D, 17D, 19C, 20D, 21C, 22D, 23D, 201D, L(90)900K, 901P, 902Q, 903S and L9(90)500W together with plan numbers 70743/L/(90) 500W, 906 and A(G)231, L(90)905D, L(91)902R, 1696/111L, 135C and 70743/0203 be approved in full discharge of Condition 1 of PAP/2021/0302 dated 3/8/21.

REASON:

To ensure that the development is carried out strictly in accordance with the approved plans.

2. The development hereby approved shall not be carried out otherwise than in accordance within the redline location plan received on 31 March 2017, the site access layout details shown on plan number WIE11711/001/REVB, the Construction Management Plan Version 3 dated 15/4/19 and its Addendum and plan received on 4 July 2018, the CgMs Written Scheme of Investigation dated June 2019, the Oxford Archaeology Report referenced 7492 dated September 2019, plan number A6W/127779/04/09/11-CY-0101 and the Statement and plan number 70843S(g) received on 1/8/19, the Landscape and Habitat Enhancement and Maintenance Plan – 70743B received on 16/6/21 and plan number 1696/134B received on 16/6/21 and plan numbers 1696/07B and 109B.

REASON

To ensure that the development is carried out strictly in accordance with the approved plans

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended or as may be amended in the future all houses hereby approved that have integral garages shall retain the garage for that purpose at all times.

REASON

In the interests of highway safety so as not to increase the incidence of on-street car parking.

4. For the avoidance of doubt no structure tree or shrub shall be erected, planted or retained within any visibility splay shown on the approved plan exceeding or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.

REASON

In the interests of highway safety

Notes

1. The Local Planning Authority has engaged with the applicant in order to achieve a positive outcome given representations received and to satisfy Statutory Agencies.

General Development Applications

(7/i) Application No: PAP/2022/0204

Land South Of Dairy House Farm, Spon Lane, Grendon,

Proposed Variation of Condition 10 of PAP/2017/0156 dated 3/7/18 through the inclusion of a bund, an updated landscape scheme and relocation of a play area for

Vistry Partnerships (East Midlands)

Introduction

The application is referred to the Board given that it had previously considered and approved a variation to the approved layout and of house types in August 2021 .

The current application relates to the same area of the site as that referred to above.

The Site

This is land immediately to the north and rear of the established residential frontage along the north side of the A5, a couple of hundred metres east of its roundabout junction and Spon Lane. The frontage here is made up of large, detached houses and bungalows which are set well back from the A5 meaning that some have small rear gardens. The application site slopes down from the east towards Spon Lane and is generally at a higher level throughout its whole length, than the rear gardens of the Watling Street properties.

A general location plan is at Appendix A.

Background

A landscaping scheme was approved for the new residential estate as part of the overall layout. This retained a buffer of open and landscaped space along the whole of the common boundary with the rear gardens of the A5 properties which then continued along the whole of the western boundary.

A surface water disposal scheme was also approved, which enabled land drainage from this landscaped corridor to connect to the engineered scheme running along the western boundary of the estate leading to the attenuation ponds towards the north.

A variation to the layout closest to the A5 properties and a substitution of house types was approved by the Board in August 2021. The plans identify separation distances between the new houses and the established rear elevations of the A5 properties. They range from 47 to 35 metres. The report also confirms that the approved ground levels are not to be altered.

The Proposals

The current application does not propose any other alterations to the approved layout, house types or finished floor levels of the new houses which are now nearly completed.

It proposes variations to the approved measures for the open space corridor between the new houses and the A5 properties as well as the location of the play area into the far north-east corner of the site.

The original submission was notified to local residents and as can be seen below, there were a number of objections received. As a consequence, amended plans have been prepared and submitted.

The applicant has provided a summary Statement in order to explain the latest plans. This is included in full at Appendix B.

The proposed variations affect three areas of the site.

The first relates to the west corner of the site at the rear of numbers 131 to 123 Watling Street. The changes proposed are to:

- i) Reduce the height of the present bund from its current highest point by 0.75 metres
- ii) The material used to form the present bund here is to be "stone-picked" and then seeded with grass and trees added. Three additional trees are to be added over the approved scheme – see page 2 of Appendix B. The applicant has since added that the surface would be top soiled prior to planting and seeding.

The second relates to the bund further to the east at the rear of numbers 135 to beyond 143 Watling Street. The changes proposed are to:

- i) This bund is to be capped at two metres high.
- ii) It will be landscaped with grass seed, shrub planting and four additional trees – see page 3 of Appendix B
- iii) A drainage channel has already been provided at the foot of the Watling Street side of this bund. This connects and drains to the established and approved channel at the western end of the site.

The third relates to the far north-eastern corner of the site.

- i) This shows a proposed further re-location for the play area so that it would border the site on the eastern mounding, rather than be on an open area of vacant land surrounded by houses – see page 4 of Appendix B.
- ii) This would comprise a linear play area consisting of a selection of mounds and logs.
- iii) This would be located along the far eastern boundary with tree planting between it and the houses that would face it.

7/127

The applicant has said that these variations are a consequence of:

- i) The bunding is a response to concerns expressed by residents in the Watling Street properties that the new houses were leading to a loss of privacy, but in some instances that the bunding was too high.
- ii) The need to pick up land drainage from this open corridor and connect it to the system to the west.
- iii) The play area was to have been located in the south-west corner of the site, but this would have been on higher ground thus leading to privacy issues.

Consultations

Warwickshire County Council as Lead Local Flood Authority – It has indicated that the channel at the foot of the bund behind numbers 135 to 143 is satisfactory, but it has yet to respond to the position at the rear of numbers 123 to 131.

Representations

As indicated above, the initial submission led to objections as set out below.

Grendon Parish Council – Objection on the following grounds:

- What consultation has taken place about the play area relocation?
- What is the purpose of the bund?
- The capacity of the land drainage at the foot of the bund needs verification
- The land here should be fully planted

Five objections were received from local residents in respect of the bunding, referring to:

- The bund should be removed as people walking here will be able to look into private gardens and this will lead to security issues.
- Some would like to see a higher bund, whereas others would prefer a lower bund.
- The bund is not in keeping
- The drainage issue of water entering rear gardens from the foot of the bund
- More tree planting is needed.
- The standard of the material that makes up the bunding is not appropriate being mainly builder's rubble and some plastic

A letter on behalf of seven residents about the relocation of the play area to the far north-east corner of the site on the vacant open land:

- The relocated play area will lead to anti-social behaviour as the site is not overlooked and this will affect the privacy of residents

7/128

The amended plans as described above, have now been the subject of re-consultation and at the time of writing this report, the following comments have been received.

In respect of the bund at the rear of 123 to 131 Watling Street, no comments have been received.

In respect of the bund at the rear of 135 to 143 Watling Street:

- Satisfied with the bunding and the additional planting
- The bunds are still too high as notwithstanding the additional planting, anyone standing here can overlook the rear of Watling Street properties

In respect of the play area onto the eastern boundary mounding, no comments have been received.

Any further representations received will be reported verbally at the meeting.

Development Plan

The North Warwickshire Local Plan 2021 – LP29 (Development Considerations); LP14 (Landscape) and LP33 (Water Management)

Other Material Planning Considerations

The National Planning Policy Framework – (the “NPPF”)

Observations

Additional landscaping and appropriate bunding in order to reduce possible adverse impacts is welcome in principle, but this has to reflect the detail of its setting.

It is proposed to look first at the two sets of proposals in the corridor between the Watling Street properties and the new houses as described above. The Board is reminded that the separation distances between the existing and new houses is not proposed to be further altered and neither are the finished floor levels of the new properties. The remit of the Board is thus to look at the details of the proposed bunding in this corridor.

The bund at the eastern end of the corridor between numbers 133 and extending beyond 143 Watling Street should strike an appropriate balance between helping to screen the new houses from those in Watling Street, notwithstanding the separation distances, not to create a high visual barrier and to avoid loss of privacy. The additional tree and shrub planting will be of benefit. The drainage channel is in place and has been agreed by the appropriate Agency.

The bund at the far western end is to be reduced in height and will be prepared for grass seeding and tree planting. This is of benefit as it reduces the impact of the existing high bunding here. However even with this reduction the issue of land drainage at the foot of the bund remains an issue. It is known that there can be no connections made for any channel here into the existing arrangements because of the lower levels.

Given the background of flooding issues in this particular part of Grendon it is considered that the advice of the Lead Local Flood Authority is essential.

It is now proposed to look at the relocation of the play area. The approved location was in the south-western corner of the site on the higher ground between the Linden Homes Estate and the completed Bellway Estate to the west. This is not the most appropriate location, because it was on high ground thus leading to a potential loss of privacy. The first alternative was within an open area left at the north-east corner of the site, but this attracted objections because it was fenced off and thus not overlooked. The current option is more appropriate – it is accessible and visible as no houses back onto and surround it; there is a road between the nearest houses and the area, fewer properties are potentially affected but it is still overlooked by them and there is the addition of some planting. Moreover, as Members are aware the land to the east is presently in agricultural use. However, it is included in a Local Plan Reserve Housing Allocation. There is very likely to be a wider open amenity corridor here between the proposed site of the play area and any new housing. As such there may be scope for its subsequent relocation into that larger amenity area.

The representations received do refer to the behaviour of children. This is not a planning consideration as the estate population will change over time and it is the provision of a local amenity that will be of benefit to the resident population as a whole that is the most significant matter.

Members will be aware that consideration of this application will involve balancing a number of different interests and also the differing views of local residents. It is considered that the current amended scheme represents a proportionate response in respect of the play area and the eastern bund. However there needs to be some caution expressed about the far western end of the bunding as explained in this report.

Recommendation

- a) That the applicant be notified that the Board is minded to support the variations to the play area and to the eastern bund, but that it awaits the advice of the Lead Local Flood Authority in respect of the western bund.
- b) That the case is referred back to the Board upon receipt of that advice.



7/131

10e/138

573 Application Addressing Landscaping and Play Equipment
Spon Lane, Grendon.



October 2022

Summary of Proposed Design Changes to the Bunding:

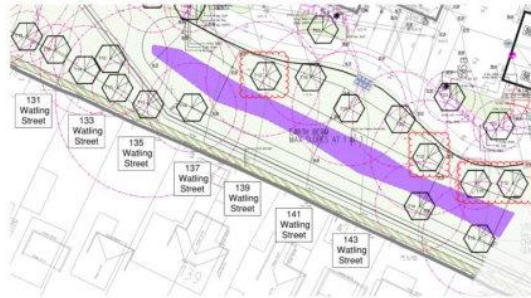
- Bund A, located in the west corner of the site, adjacent to 125 Watling Street, will be reduced in height at the current highest point of the bund by approx. 750mm (2ft 5ins), to levels shown on drawing 1696-135C Berm and Cut-Off Ditch.
- The drainage engineer who designed all drainage for the project, received approval and sign off from the Warwickshire County Council Drainage Team. The engineer has confirmed the bund will not increase flood risk to the adjacent properties. The bund will reduce runoff in the direction of Watling Street.
- The material used to form the current bund is still due to be 'stone picked', a process where the groundworker clears the bund of protruding waste material, and then is due to be prepared with grass seed for a better overall aesthetic.
- The bund will then be planted as per the proposed landscape plan (Drawing: 70743-L(90)902 Rev R). Red clouding indicates trees added in this latest submission.
- The planting includes extra trees at the rear of 125 Watling Street, these are an extension of the planting that was already proposed, to create privacy and act as a 'screen' between the bund and the existing properties. The landscape plan also shows the detail of trees in the surrounding area which will shield the existing properties from the new development.



7/132

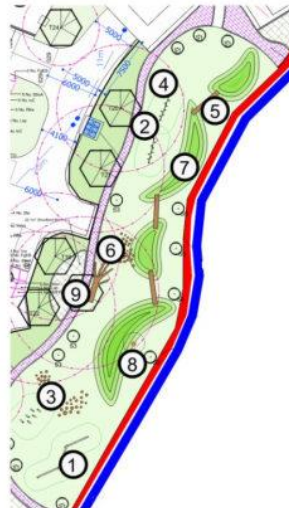
Summary of Proposed Design Changes to the Bunding Continued:

- The southern boundary bund, Bund B, will be capped in height at approx. 2m (6ft 6ins) as per levels on drawing 1696-135C Berm and Cut-Off Ditch.
- This bund will receive planting as per the landscape plans (Drawings: 70743-L(90)902R and 70743-L(90)903S). This includes a Native shrub mix to the side facing Watling Street (indicated by a purple fill), containing Field Maple, Hazel, Holly, Elder and Guelder-Rose.
- The bund will also receive extra tree planting, shown as clouded in red on the landscape plan.
- Examples of tree species proposed are Hazel and Maple with heights ranging from 125-450cm (approx 4ft - 14ft).



Summary of Proposed Design Changes to the Play Area:

- The play area is proposed to be re-located to the area as shown on Landscape Plan 70743-L(90)903S.
- The equipment will be rearranged to form a linear 'trim-trail' style play area as displayed on 70743-L(90)905C Play Area.
- The play equipment will border the edge of the site, and a mixture of trees and hedges have been carefully placed to create a 'screen' between the play area and adjacent houses for privacy.
- A footpath link is to be added from Dairy Way/Green Hill to access the play area.
- Play equipment proposed for this site is a natural play area kind. This consists of a selection of mounds and log style equipment, such as balance beams and stepping stones.





October 2022

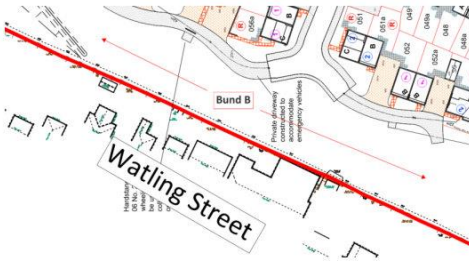
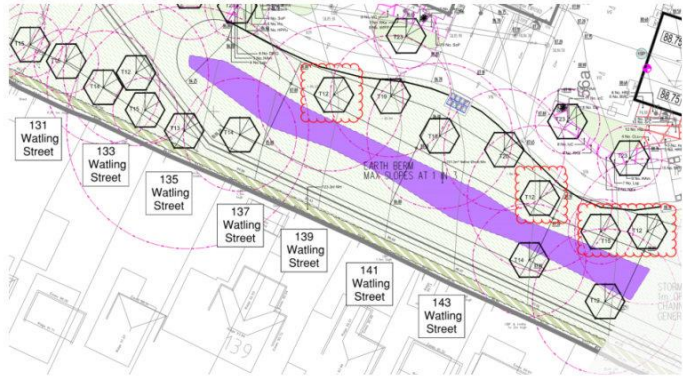
Summary of Proposed Design Changes to the Bunding:

- Bund A, located in the west corner of the site, adjacent to 125 Watling Street, will be reduced in height at the current highest point of the bund by approx. 750mm (2ft 5ins), to levels shown on drawing 1696-135C *Berm and Cut-Off Ditch*, this will incorporate a layer of topsoil being added.
- Our drainage engineer, in agreement with the lead local flood authority at the time of original design, has confirmed the bund will not increase flood risk to the adjacent properties. The bund will reduce runoff in the direction of Watling Street.
- The material used to form the current bund is still due to be scraped back and any areas of waste material found will be cleared and removed from site. This will then be prepared with grass seed for a better overall aesthetic compared to how it currently looks.
- The bund will then be planted as per the proposed landscape plan (Drawing: 70743-L(90)902 Rev R). Red clouding indicates the extra trees added in this latest submission.
- The planting includes extra trees at the rear of 125 Watling Street, these are an extension of the planting that was already proposed, to create privacy and act as a 'screen' between the bund and the existing properties. The landscape plan also shows the detail of trees in the surrounding area which will shield the existing properties from the new development.



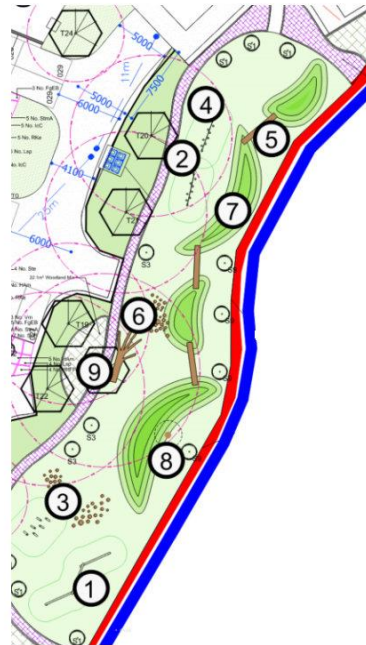
Summary of Proposed Design Changes to the Bunding Continued:

- The southern boundary bund, Bund B, will be capped in height at approx. 2m (6ft 6ins) as per levels on drawing 1696-135C Berm and Cut-Off Ditch. This bund will be formed with clean material containing no waste items.
- This bund will receive planting as per the landscape plans (Drawings: 70743-L(90)902R and 70743-L(90)903S). This includes a Native shrub mix to the side facing Watling Street (indicated by a purple fill), containing Field Maple, Hazel, Holly, Elder and Guelder-Rose.
- The bund will also receive extra tree planting, shown as clouded in red on the landscape plan.
- Examples of tree species proposed are Hazel and Maple with heights ranging from 125-450cm (approx 4ft - 14ft).



Summary of Proposed Design Changes to the Play Area:

- The play area is proposed to be re-located to the area as shown on Landscape Plan 70743-L(90)903S .
- The equipment will be rearranged to form a linear 'trim-trail' style play area as displayed on 70743-L(90)905C Play Area.
- The play equipment will border the edge of the site, and a mixture of trees and hedges have been carefully placed to create a 'screen' between the play area and adjacent houses for privacy.
- A footpath link is to be added from Dairy Way/Green Hill to access the play area.
- Play equipment proposed for this site is a natural play area kind. This consists of a selection of mounds and log style equipment, such as balance beams and stepping stones.



Bund A - Material:

- Since the first application was submitted, discussions have taken place between Vistry and the planning officer and committee regarding the material make up of Bund A.
- Trial pits reveal clean material throughout the bund, please see images below:
- Most material found in the trial pits were indigenous stone.
- Any material found in the bund whilst stripping off proposed layer such as bricks or blocks will be removed and disposed of. The bund, in its final proposed state, will be made up of clean material with a layer of topsoil suitable for planting.



Agenda Item No 11

Planning and Development Board

6 February 2023

**Report of the
Head of Development Control**

Appeal Update

1 Summary

1.1 The report updates Members on recent appeal decisions

<p>Recommendation to the Board</p> <ul style="list-style-type: none">a That the report be noted; andb That the implications of the Kirby Glebe decision be taken into account in the Options and Issues Document reported to the LDF Sub-Committee for the forthcoming Gypsy and Traveller Site Allocations DPD.
--

2 Consultation

2.1 Consultation has taken place with the relevant Members and any comments received will be reported at the meeting.

3 Appeal Decisions

a) Kirby Glebe Farm, Atherstone Road, Hartshill

3.1 The decisions for the two planning appeals and the thirteen Enforcement Notices here have been received. In short, planning permissions have been granted for the 13 pitches the subject of the appeals. The decision letters are at Appendices A, B and C. A and B are the sites of the two planning appeals which together covered 11 of the Notices and C is the site of the additional two pitches, not covered by the two planning appeals.

...

3.2 Looking at the planning appeals the Inspector identified two main issues – the effect of the development on the character and appearance of the surrounding area and landscape with particular reference to the cumulative effects and secondly the effect on the safety and convenience of the access and its junction with Atherstone Road.

- 3.3 In respect of the former she concluded that there would not be a harmful impact based on the sites not being materially visible from the roads, the surrounding footpath network or from Hartshill Hayes and that the site had strong hedgerow boundaries thus “naturally containing” the sites.
- 3.4 In respect of the highway impact, she considered that planning conditions could overcome the concerns raised. In this respect it was noted that the Highway Authority’s objection related more to the actual construction of the works undertaken rather than to matters of road safety or highway impact.
- 3.5 In light of these conclusions the Inspector was satisfied that the proposals fully accorded with Local Plan Policy LP10. As such, she concluded that it was not necessary for her to consider the need for and supply of sites, the availability of alternative accommodation or the personal circumstances of the appellants.
- 3.6 Given that the planning appeals were allowed and planning permissions granted for the two sites the subject of only the Enforcement Notices, all of the Notices have been either quashed or are of limited effect.
- 3.7 Officers have looked at the implications of these decisions.
- 3.8 Firstly, the permissions have been granted under Policy LP10 – effectively the “windfall” Policy for gypsy and traveller pitches. This policy will continue to operate in cases which come forward from the travelling community.
- 3.9 Work on the Gypsy and Traveller DPD will need to continue as this will lead to “allocations” for sites taking into account the wider context as set out in the Gypsy and Traveller Accommodation Assessment 2019. The identification of such sites will be important, as the Council can point to them as being deliverable alternatives when responding to windfall sites. The DPD will also have to address how these appeal decisions are dealt with vis-à-vis the conclusions of the 2019 Assessment.
- 3.10 The timetable for the DPD is set out in the Council’s Local Development Scheme with work commencing early this year. A report for the Local Development Framework Sub-Committee will be prepared in order to identify Options and Issues for the DPD which can then be put out to consultation.

b) Bennetts Road North, Corley

- 3.11 This is the second appeal that has been dismissed on this site for the erection of a dwelling. The Inspector has agreed with a previous Inspector that the site is not “infilling” and that the harm caused to the Green Belt outweighs other considerations. The appeal letter is at Appendix D.

c) Blabers Hall Farm, Fillongley

- 3.12 This was an appeal against the service of an Enforcement Notice alleging unauthorised engineering works at this address involving the extraction of

materials and the creation of earth bunds. The Notice required cessation of these works and removal of the bunds.

3.13 The Notice was quashed.

3.14 The appeal letter deals thoroughly with the content of the Notice, but it also describes what was on site at the time of the Inspection – para 7. Significantly the land had been levelled and the material stockpiles had been removed. Hence although the Notice was quashed, the intended requirements of that Notice have been complied with, prior to the date of the Inspector’s visit.

... 3.15 The appeal letter is at Appendix E.

4 **Report Implications**

4.1 **Environment, Sustainability and Health Implications**

4.1.1 Whilst the Kirby Glebe decisions were found to accord with the Development Plan, there will be sustainability and environmental implications that will need to be taken up in the forthcoming Gypsy and Traveller DPD.

4.2 **Links to Council’s Priorities**

4.2.1 The planning appeal decisions were all found to accord with Development Plan policies which seek to preserve the Borough’s rural character.

The Contact Officer for this report is Jeff Brown (719310).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

Appeal Decisions

Hearing held on 13 and 14 September 2022

Site visit made on 14 September 2022

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal A Ref: APP/R3705/W/20/3251490

Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Thomas Stokes against the decision of North Warwickshire Borough Council.
- The application Ref PAP/2019/0457, dated 30 July 2019, was refused by notice dated 5 November 2019.
- The development proposed is material change of use of land to use as a residential caravan site for 7 gypsy families, each with 2 caravans, including laying of hardstanding and erection of 6 No. semi-detached amenity buildings.

Appeal B Ref: APP/R3705/C/20/3264614 (Plot 10)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Thomas McDonagh against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
 1. Remove the whole of the hardstanding from the Land, including any new access tracks.
 2. Remove from the Land all materials, equipment and debris associated with compliance of 5. (1) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three 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. 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 C Ref: APP/R3705/C/20/3264616 (Plot 11)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by James McDonagh against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:

1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use
 2. Without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land.
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
 - The period for compliance with the requirements is three 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. 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 D Ref: APP/R3705/C/20/3264625 (Plot 12)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Thomas McDonagh against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 6 November 2020.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the importation of materials to create hard surfaced areas.
 - The requirements of the notice are to:
 1. Remove the whole of the hard standing from the Land, including any new access tracks.
 2. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) above. Leave the Land in a clear, clean and tidy state.
 - The period for compliance with the requirements is three 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. 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 E Ref: APP/R3705/C/20/3264626 (Plot 13)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Christopher Torrens against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 4 November 2020
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas.
 - The requirements of the notice are to:
-

1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land including:
the stables;
sheds, buildings and day rooms; and,
any associated electrical hook ups, septic tanks, calor gas tanks or similar apparatus – delete as applicable.
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three 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. 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 F Ref: APP/R3705/C/20/3264627 (Plot 14)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by James O’Driscoll against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 4 November 2020.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan), together with associated electrical installations and similar apparatus.
 - The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all vehicles and equipment from the Land, Remove all electrical hook-ups, and similar apparatus from the land
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
 - The period for compliance with the requirements is three 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. 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 G Ref: APP/R3705/C/20/3264628 (Plot 17)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Oliver Torrens against an enforcement notice issued by North Warwickshire Borough Council.
-

- The notice was issued on 4 November 2020.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan).
 - The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
 - The period for compliance with the requirements is three 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. 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.
-

Decisions

Appeal A

1. Appeal A is allowed, and planning permission is granted for a change of use of land to use as a residential caravan site for 7 No. gypsy families, each with 2 caravans, including laying of hardstanding and erection of 6 No. semi-detached amenity buildings at Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB in accordance with the terms of the application, Ref PAP/2019/0457, dated 30 July 2019 and the plans submitted with it, subject to the planning conditions set out in Annex 1.

Appeal B

2. It is directed that the enforcement notice relating to Plot 10 is corrected by:
 - the addition of the words 'covering the whole site' to the allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
 - Removal of the words 'MATERIAL CHANGE OF USE OF LAND AND' from the title of the notice.
 - Removal of the words 'It appears to the Council that the breach of planning control as stated in paragraph 3 (1) above has occurred within the past ten years' from the reasons for issuing the notice.
 - Removal of the phrase 'paragraph 3 (2)' and substitution with 'paragraph 3 (1)' in the reasons for issuing the notice.
3. Subject to the corrections Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have

been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 2.

Appeal C

4. It is directed that the enforcement notice relating to Plot 11 is corrected by:
 - the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the addition of the words 'covering the whole site' to the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
5. Subject to the corrections Appeal C is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land to a use for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 3.

Appeal D

6. It is directed that the enforcement notice relating to Plot 12 is corrected by:
 - the addition of the words 'covering the whole site' to the allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
 - renumbering of second requirement from (4) to (2)
 - Removal of the words 'MATERIAL CHANGE OF USE OF LAND AND' from the title of the notice.
7. Subject to the corrections Appeal D is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 2.

Appeal E

8. It is directed that the enforcement notice relating to Plot 13 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the addition of the words 'covering the whole site' to the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
 - removal of the phrase 'delete as applicable' from the second requirement.
9. Subject to the corrections Appeal E is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land to a use for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 3.

Appeal F

10. It is directed that the enforcement notice relating to Plot 14 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the removal of '(shown hatched black on the attached plan)' and substitution of the words 'covering the whole site' in the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
11. Subject to the correction Appeal F is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land to a use for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site together with associated electrical installations and similar apparatus at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 3.

Appeal G

12. It is directed that the enforcement notice relating to Plot 17 is corrected by:

- the addition of the words 'to a use' after the word 'Land' in the first allegation
- the removal of '(shown hatched black on the attached plan)' and the addition of the words 'covering the whole site' to the second allegation
- the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
- by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice (Annex 4)

13. Subject to the correction Appeal G is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land to a use for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to this decision and subject to the planning conditions set out in Annex 3.

Preliminary Matters

14. I am also dealing with appeals relating to the change of use of land to use as a residential caravan site for 4 gypsy families and in respect of enforcement notices served on Plots 6 to 9 (inclusive) and Plots 15 and 16 at Kirby Glebe. Those appeals are the subject of separate decisions.¹

15. The Council served two notices in respect of Plot 10; however, an appeal was made against the service of one of the notices only. The appellant confirmed that the appeal was in relation to the notice concerning operational development and I have determined the appeal in relation to Plot 10 accordingly.

16. The Council confirmed that since the planning application (Appeal A) was determined, and the enforcement notices were issued the North Warwickshire Local Plan 2021 (the Local Plan) has been adopted. Consequently, for these appeals the Development Plan comprises the Local Plan and the Mancetter Neighbourhood Plan 2017.

17. Ms MacDonald confirmed that she is no longer employed by the Council but that she was attending the hearing as she had been the enforcement officer responsible for the appeal sites when she was employed at the Council. She is now employed by Cannock Chase District Council.

¹ Appeal Decisions APP/R3705/W/20/3250244, APP/R3705/C/20/3264553, APP/R3705/C/20/3264555, APP/R3705/C/20/3264556, APP/R3705/C/20/3264557, APP/R3705/C/20/3264636, APP/R3705/C/20/3264639

18. There is no dispute between the parties that the residents of the development are gypsies and that they fall into the definition of gypsies and travellers as set out in the Planning Policy for Travellers Sites (PPTS). It was agreed that the PPTS was a relevant consideration for the appeals.
19. In respect of Appeal A, the site is already in use as a residential caravan site and to that extent the proposed development has been implemented.
20. The Court of Appeal issued the Smith v SSLUHC & Ors [2022] EWCA Civ 1391 judgment (the Lisa Smith judgement) after the hearings were closed. The judgment regards the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The appellants and the Council were invited to make comments on the relevance of this judgement to the appeals.
21. The appellants' view is that in the light of the judgement the Council's Gypsy and Traveller Accommodation Assessment (GTAA) can no longer be relied upon as a means of deciding who does and who does not satisfy the PPTS definition. They consider that it is the total need (including 100% of unknowns) which provides the only reliable indicator of need and, of the five year pitch requirement.
22. The Council initially considered that the judgement did not affect its case and confirmed that that remains the case in the light of the response of the appellants.

The Notices (Appeals B, C, D, E, F and G) (Plots 10 to 14 and Plot 17)

23. The Council requested that it be permitted to update its statement given the passage of time between its submission and the date which had been set for the hearing, a period in excess of 12 months. This was permitted by the Planning Inspectorate and the Council sought to make a number of changes to the notices which it describes as 'variations to reflect the position at the time of the submission of its supplementary statement'. This statement was submitted in June 2022 (the Supplementary Statement). The majority of the changes relate to the allegations and requirements of the notices with the exception being a request to make the site smaller in the case of plot 17.
24. In general, the appellants consider that the changes which the Council wished to make to the allegations would be prejudicial to them on the basis that they increased the scope of the notice.

All notices

25. As set out in its Supplementary Statement, the Council seeks to extend its reference to the creation of hard surfaced areas to the creation of a hard surfaced area across the whole of the site in each notice. The appellant had no objection to this change, and no injustice would arise were I to correct all of the notices to refer to a 'hard surfaced area covering the whole of the site'.
26. The requirements of the notices as served and as set out in the Supplementary Statement include the phrase 'Leave the Land in a clear, clean and tidy state'. This phrase lacks clarity and the parties agreed that an amendment to substitute the phrase 'Return the Land to its condition prior to the

commencement of the unauthorised development' would be appropriate. I consider that the revised phrase is sufficiently clear and unambiguous, and I shall make this correction to all of the notices.

Notices in respect of Plots 11, 13, 14 and 17

27. The material change of use can be more precisely worded as 'a material change of use of the Land to a use for the stationing of caravans for a residential use'. I can make this change without resulting in injustice to either of the parties.

Notice in respect of Plot 10

28. There is an inconsistency between the allegation and the header, the immunity period and the reasons for serving the notice, but the requirement aligns with the allegation. I can use my powers of correction to remove the references to material change of use (MCU) in the heading of the notice and the incorrect immunity period. To that extent the corrected notice would tell the appellant in what respect he had developed the land without permission and what steps he had to take to remedy the alleged breach.

Notice in respect of Plot 11

29. The allegation refers to a MCU and operational development in the form of the importation of materials to create hard surfaced areas. The requirements refer to cessation of the MCU and removal of the hardstanding, but they also refer to the removal of structures.
30. An enforcement notice may require the removal of works integral to the unauthorised use. In this case I regard the structures as integral to the use, however it is not necessary for the allegation to refer to such works. The notice does not require any correction in this regard. On the same basis the notice does not need to be corrected to include reference to electric hook-up points as suggested by the Council in its Supplementary Statement.
31. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. The Council has not demonstrated that the erection of means of enclosure form part and parcel of the MCU. Furthermore, I find that the addition of reference to means of enclosure would broaden the extent of the allegation to the point that the appellant would be prejudiced by not having the opportunity to include those works in his appeal under ground (a).
32. The requirements are inaccurately numbered but I can use my powers of correction to resolve this issue.

Notice in respect of Plot 12

33. There is an inconsistency between the allegation and the header, but the immunity period and the requirements align with the allegation. I can use my powers of correction to remove the references to MCU in the heading of the notice. To that extent the corrected notice would tell the appellant in what respect he had developed the land without permission and what steps he had to take to remedy the alleged breach.

34. The Council seeks to add in reference to an MCU and the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. I find that this would broaden the extent of the allegation and injustice would arise because the appellant has not had the opportunity to include the MCU or these works in his appeal under ground (a). For those reasons I shall not make the corrections referred to by the Council.

Notice in respect of Plot 13

35. The allegation refers to a MCU and operational development in the form of the importation of materials to create hard surfaced areas. The requirements refer to cessation of the MCU and removal of the hardstanding, but they also refer to the removal of structures, stables, sheds, day rooms, electrical hook-ups and similar apparatus.

36. The structures, stables, sheds, day rooms, electrical hook-ups and similar apparatus are integral to the use and it is not necessary for the allegation to refer to such works. The notice does not require any correction in this regard. On the same basis the notice does not need to be corrected to include reference to street lamps in the allegation as suggested by the Council in its Supplementary Statement.

37. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. The Council has not demonstrated that the erection of means of enclosure form part and parcel of the MCU. Furthermore, I find that the addition of reference to means of enclosure would broaden the extent of the allegation to the point that the appellant would be prejudiced by not having the opportunity to include these works in his appeal under ground (a). For those reasons I shall not make the corrections referred to by the Council.

38. The notice in respect of Plot 13 does not require any correction, with the exception of the removal of the words 'delete as applicable' from the second requirement on the notice as this is a typographical error.

Notice in respect of Plot 14

39. The allegation refers to a MCU and operational development in the form of the importation of materials to create a hard surfaced area, together with associated electrical installations and similar apparatus. The requirements refer to cessation of the MCU and removal of the hardstanding, but they do not refer to the removal of structures and outbuildings and means of enclosure which the Council seeks to add in.

40. The structures and outbuildings are integral to the use. It is not necessary for the allegation to refer to such works and I shall not make any correction to the notice in this respect.

41. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. In common with my reasoning in respect of the notice relating to Plot 13 I find that the appellant would be prejudiced by not having the opportunity to make an appeal under ground (a) for those works were I to

correct the notice to include them. Therefore, I shall not make the corrections referred to by the Council.

Notice in respect of Plot 17

42. For the same reasons as set out above in relation to the notices in respect of Plots 13 and 14, I do not find that the notice relating to Plot 17 should be corrected to reference structures in the allegation as these are works integral to the use. Similarly, it is not necessary to correct the notice to refer to outbuildings in the allegation or the requirements as requested by the Council in its Supplementary Statement.
43. Also, in common with my reasoning in respect of the notices for Plots 13 and 14 I find that the appellant would be prejudiced by not having the opportunity to make an appeal under ground (a) which included the means of enclosure were I to correct the notice to include them. Therefore, I shall not make the corrections referred to by the Council.
44. However, the revised site plan for a smaller area provided by the Council and accepted by the appellant, more accurately identifies the extent of the alleged unauthorised development which is the subject of the notice. The parties would not be subjected to injustice were I to correct the notice to refer to the revised plan. For those reasons I shall substitute the revised plan for the plan attached to the notice.

Appeal A and Appeals B, C, D, E, F and G (Ground (a))

Main Issues

45. The main issues in all seven appeals are:
- The effect of the development on the character and appearance of the surrounding area and the landscape with particular reference to the cumulative effects of the development of the site together with development on adjacent land.
 - The effect of the development on the safety and convenience of users of the access road, including at the junction with Atherstone Road.
46. Although the main issues are identical for all seven appeals, the proposed development is not the same as that which has been carried out on the site and which is the subject of the enforcement notices. For that reason, I have considered Appeal A separately to the other appeals in respect of the main issues. The material considerations are common for all seven appeals.

Reasons

Character and Appearance (Appeal A)

47. The appeal site is to the north of the access road running through the wider Kirby Glebe caravan site. The layout plan which was submitted to the Council shows seven pitches each accommodating one mobile home, one tourer and two parking spaces. Amenity buildings are on the shared boundaries of six plots amounting to six semi-detached amenity spaces in total. Tree and shrub planting is indicated at the entrance to the site and grassed areas are shown

along the western boundary. There are also details of post and rail fencing but the plan does not show where this would be positioned. A defined route within the site serves the pitches.

48. To the south of the access road and the appeal site are Plots 6 to 9, and to the north Plots 15 and 16, which are currently unauthorised and the subject of separate appeals. To the east on both sides of the access road are 18 authorised gypsy and traveller pitches which benefit from planning permission. The access road continues beyond the appeal site and serves Barn Fishery.
49. In terms of the immediate vicinity of the appeal site the development would be a continuation of the appearance and characteristics of the gypsy and traveller site, which I shall refer to as Kirby Glebe Farm. Kirby Glebe Farm does not front Atherstone Road where the access road to it commences. Instead, the access road runs some distance beside a field used for grazing and other undeveloped land before opening up into the area covered by caravan pitches. From this perspective the development has no visual impact on the street scene.
50. From further afield the appeal site is seen as part of Kirby Glebe Farm, albeit as a result of its location it leads to an expansion of the established gypsy and traveller site. Thus, the cumulative effect of the appeal scheme and the existing development of Kirby Glebe Farm needs to be considered.
51. The landscape character of the countryside immediately surrounding Kirby Glebe Farm is comparatively flat with field hedges which constrain views for instance from the path alongside the canal. However, where the land rises such as towards residential development on the edge of Hartshill there are wider views. Then, the views from Hartshill Hayes Country Park are expansive panoramas extending well beyond the railway line and the A5 Watling Street. From this higher ground Kirby Glebe Farm is visible but it is read against the embankment of the railway line and the appeal site itself coalesces into the established caravan pitch area.
52. There are public footpaths closer to the appeal site and from those locations the expansion of Kirby Glebe Farm as a consequence of the appeal scheme and the plots which are the subject of other appeals is evident. However, even in those locations the views of caravans, amenity buildings and fences would be limited by field edge trees and hedges. Thus, the development would not be out of context with the surrounding area, which although predominately rural in character has clusters of residential and other development screened by roadside vegetation.
53. Kirby Glebe Farm lies adjacent to a railway line, and it would be viewable from the elevated position of the trains. However, this view would be transitory and in any case the presence of the railway and the regularity of trains which appear to use it also contributes to the character of the area. The railway line also provides a visual barrier such that the presence of Kirby Glebe Farm and the appeal site is not evident from the roads to the north or the road junction of Atherstone Road with Woodford Lane and the B4111.
54. The Council referred to the Mancetter Neighbourhood Plan and the importance which it places on longer views of the landscape of the Anker Valley. However,

it confirmed at the hearing that the countryside surrounding the appeal site does not benefit from any statutory designation for example as Green Belt or an Area of Outstanding Natural Beauty. Therefore, whilst I accept that for local residents the countryside and facilities such as Hartshill Hayes Country Park are valued local environments, the landscape surrounding the site is not of such value that it benefits from any statutory protection.

55. Comments were also made at the hearing that when hedges and trees were not in leaf the appeal site would be more visible. It is reasonable to conclude that this would be the case and that during the winter months the previous glimpsed views of the appeal site would be more open. However, the PPTS makes it clear that in terms of landscaping it is not beneficial for occupiers of gypsy and traveller sites to be deliberately isolated from the rest of the community.
56. The Council made the argument during the hearing that granting consent for pitches on Kirby Glebe Farm does not necessarily mean that continuous growth and expansion is appropriate. I accept that point, however the presence of Kirby Glebe Farm inevitably changes the site context. In respect of the appeal site the ponds and planting on the Barn Fishery site would constrain further expansion to the west. Similarly, the railway line beyond Plots 15 and 16 would preclude expansion to the north.
57. I am also dealing with the appeals relating to Plots 6 to 9 which have a similar relationship with Kirby Glebe Farm to the appeal scheme and which if approved would also increase the scale of the authorised development. In that case the former field boundaries which the appellant considered are containing the expansion are less apparent.
58. I anticipate that in the absence of natural containment Kirby Glebe Farm has the capacity to become overly dominant in terms of its impact on the character and appearance of the surrounding area. However, I do not consider that this point has already been reached such that the development on Plots 6 to 9 should be resisted. Consequently, these plots define the edge of Kirby Glebe Farm and limit of expansion of the sites which are the subject of this appeal.
59. Taking those matters into account, and my assessment of the impact of the development on the appeal site above, the cumulative effect of allowing all of the appeals would not have a harmful effect on the surrounding countryside.
60. I conclude that the development would not have a harmful effect on the character and appearance of the surrounding area and the landscape, either singly or cumulatively with existing and proposed lawful development on adjacent land. The use of land as a residential caravan site for 7 gypsy families, each with 2 caravans, including laying of hardstanding and erection of 6 No. semi-detached amenity buildings would accord with Policies LP1 and LP10 of the Local Plan and Policy BE2 of the Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character and specifically in relation to gypsy and traveller sites require that the site can be assimilated into the surroundings and landscape without any significant adverse effect.

Character and appearance (Appeals B, C, D, E, F and G)

61. Not all of the allegations on the notices are the same and this effects the description of development for the Deemed Planning Application (DPA) under ground (a). The development in each case is as follows:
- Plot 10 and Plot 12 - the importation of materials to create hard surfaced areas across the whole site.
 - Plot 11, Plot 13 and Plot 17 - the material change of use of the Land for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas across the whole site.
 - Plot 14 - the material change of use of the Land for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas across the whole site, together with associated electrical installations and similar apparatus.
62. Setting aside the reference to 'electrical installations' in the Notice relating to Plot 14, which have a very limited visual impact, the development of each site can be described as either use of land for the stationing of caravans for residential use and importation of materials to create hard surfacing or importation of materials to create hard surfacing alone.

Character and appearance (Appeals C, E, F and G)

63. The layout of Plots 11, 13, 14 and 17 to which these appeals relate is different from that which is detailed on the layout plan which was submitted with the planning application. Plots 11, 13 and 14 are served by a track which runs perpendicular to the access road serving Kirby Glebe Farm and Plot 17 takes access directly off the access road. Some of the plots have more than two caravans stationed on them and/or more than one shed/amenity building. There is no significant tree or shrub planting at the site access.
64. Despite these differences the impact of the development on the character and appearance of the surrounding area would both cumulatively and on an individual pitch basis be comparable with the Appeal A scheme which I have assessed above. Therefore, I shall adopt the reasoning set out above in relation to Appeal A. It follows that the development which is the subject of Appeals C, E, F and G would not have a harmful effect on the character and appearance of the surrounding area and the landscape, either singly or cumulatively with existing and proposed lawful development on adjacent land.
65. The use of Plots 11, 13, 14 and 17 for the stationing of caravans for residential use and importation of materials to create hard surfacing would accord with Policies LP1 and LP10 of the Local Plan and Policy BE2 of the Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character and specifically in relation to gypsy and traveller sites require that the site can be assimilated into the surroundings and landscape without any significant adverse effect.

Character and appearance (Appeals B and D)

66. Whilst there are currently caravans on Plot 10 and the appellant indicated that Plot 12 has been used for storage of materials, the notice relates to the creation of hard surfacing across the whole of each site. In terms of my assessment of the impact the character and appearance of the area, the development which is the subject of the appeal under ground (a) and the DPA is the laying of hardstanding.
67. Plot 10 lies adjacent to the access road serving Kirby Glebe Farm and Plot 12 is between Plots 11 and 13. I have established that the more intensive development on adjacent plots (Plots 11, 13, 14 and 17) would not be harmful to the character and appearance of the surrounding area. Consequently, it would be illogical to consider the hard surfacing alone on Plot 10 and Plot 12 as harmful. Even without such cumulative impact, the hard surfacing would not appear out of place given the appearance of the lawful pitches nearby on the wider Kirby Glebe Farm site.
68. I conclude that the importation of material to create hard surfacing on Plots 10 and 12 would accord with Policy LP1 of the Local Plan and Policy BE2 of the Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character.

Access, highway safety and convenience (Appeal A)

69. The access road serving the appeal site has a junction with Atherstone Road. At the times of my site visits I noted that Atherstone Road carries a constant flow of traffic of all types. There is a bus stop adjacent to the junction which indicates that buses also use the road.
70. In the direction of Mancetter village and Atherstone there is a complex junction under the railway line and towards Hartshill there are traffic lights which control access across a bridge over the canal. There are also a number of private driveways close to the entrance to the access road. Given the conditions on the highway, it is reasonable to expect that drivers would have a heightened sense of awareness of the potential for other traffic to join the road and of buses and the need to slow down at junctions and traffic lights.
71. The Highway Authority has a number of concerns regarding the use of the access and their advice led to the Council refusing the planning application in part on the grounds that the access was not appropriate to cater for increased use.
72. It was agreed by the Council at the hearing that its concern is in respect of the increased number of vehicles and not any change in the type or size of vehicles. Notwithstanding this position, the appellant expressed a willingness to restrict the size of vehicles on the pitches to 3.5 tonnes.
73. The appellant has carried out works to the access and its junction with Atherstone Road comparatively recently in response to a planning condition which was attached to a consent granted on an application made in 2019. These works which include works within the public highway, were not agreed in

- advance by the Highway Authority or by the Council in order to discharge the condition.
74. The works which have been carried out have resulted in an improvement of the junction of the access road with Atherstone Road in comparison with what is shown on the photographs of the previous access provided by the Highways Authority. Kerbs have been inserted at the bellmouth and hard surfacing has been installed. To that extent the potential for vehicles to block Atherstone Road whilst manoeuvring into the access road has reduced, and the conditions for highway safety and convenience have been improved.
75. There are a number of aspects of the works which have been carried out which are unacceptable to the Highway Authority, and I discussed these with the parties at the site visit. These matters include kerbs which stand proud of the surrounding surface, damage resulting from incorrect kerbs being used, the substructure of the access being unknown, lack of drainage and definition of the extent of the highway. The Highway Authority has suggested a planning condition which has the potential to resolve these matters in the event that the appeal is allowed.
76. In terms of the works to the access, on the basis of my observations on site and the evidence before me I am persuaded that the remedial works are required but that they are comparatively straightforward. These works could be secured through the submission and approval of detailed drawings and the implementation of an approved scheme, which is what should have happened before the works were carried out.
77. On this basis the improvement of the access at its junction with Atherstone Road is capable of being addressed by planning conditions and a safe and efficient access arrangement can be delivered.
78. Although not within the control of the Highway Authority concern was also expressed about the suitability of the access road in terms of its use by pedestrians. There is a bus stop at the junction with Atherstone Road and I acknowledge that it is important for residents to be able to access this facility safely. Access beyond this point by pedestrians is impractical given the absence of footways on Atherstone Road and the volume of traffic.
79. The access road has no lighting and is effectively a shared space having no defined footways or carriageway. It is also unsurfaced for most of its length. Improvements to the access would be desirable however it was explained at the hearing that the access is not in the ownership of the appellant. This makes it problematic to secure any improvements through the planning process particularly in the absence of any tacit agreement from the owner.
80. My experience of using the access leads me to consider that drivers of vehicles, who would mostly be only accessing the caravan pitches, would have a heightened sense of awareness of pedestrians on the access road. The access is also wide enough to provide space for vehicles to pass pedestrians if they are being driven safely. On this basis it is reasonable for me to conclude that whilst beneficial it is not essential to secure improvements to the access road in order to make the development acceptable.

81. Hartshill Parish Council (HPC) highlighted concerns about the size of vehicles already using Atherstone Road, the increase in traffic arising from new development and the capacity of the road network to accommodate additional traffic. However, there is no substantive evidence before me to suggest that the day to day use of the site will result in an increase in larger vehicles or result in capacity problems on the network.
82. HPC also referred to a development of 350 new homes in Hartshill and the potential for increased traffic. However, I have no detailed information about that development and in any event, it will have to address its own effects on the road network. This would also apply as part of any consideration of whether any other unauthorised uses served by the access road should be made lawful.
83. A local resident raised concern about the effect which the recent works to the access have on his ability to access and egress his property and on an adjacent ditch. The condition suggested by the Highways Authority should address the issues relating to the resident's access where they relate to highway land. Effective kerb edging and drainage would reduce the likelihood of water run-off into the resident's garden which would enable improved access to his house over the current situation. With regard to works which effect drainage ditches off the public highway, this would be a civil matter between the owners of the land.
84. The Highway Authority referred me to two appeal decisions and requested that I take them into consideration. One appeal decision relates to a development of nine houses to the rear of 6 to 20 Spon Lane, Grendon (the Spon Lane appeal) and the other to a single dwelling at 5 Willows Lane, Grendon (the Willows Lane appeal).
85. Both of these appeals relate to the introduction of new houses into an area where there was already established residential development served by driveways and where the opportunities for conflict between non-motorised users and vehicles were high. This access environment is not directly comparable with the appeal scheme in this case. Furthermore, there is no indication in the appeal decisions that a practical solution to address the Council's concerns was possible and could be secured by planning condition.
86. I have had regard to the appeal decisions for the Spon Lane appeal and the Willows Lane appeal. However, these have not dissuaded me from the view that subject to compliance with a planning condition, the change of use of the appeal site would not have a harmful impact on highway safety or convenience.
87. I conclude that subject to a planning condition to secure the works recommended by the Highway Authority the development would not have a harmful effect on the safety and convenience of users of the access road, including at the junction with Atherstone Road. The development is in accordance with Policies LP10 and LP29 of the Local Plan which require that safe and suitable access be provided for all users and that new gypsy and traveller sites can be assimilated into their surroundings and the National Planning Policy Framework (the Framework) which promotes safe and suitable access for all users.

Access, highway safety and convenience (Appeals B, C, D, E, F and G)

88. As I have set out above the development for the DPA under class (a) falls generally into two types as either use of land for the stationing of caravans for residential use and importation of materials to create hard surfacing (Appeals C, E, F and G) (Plots 11, 13, 14 and 17) or importation of materials to create hard surfacing alone (Appeals B and D) (Plots 10 and 12). There is no evidence before me to suggest that the traffic associated with the change of use and creation of hardstanding or the creation of hard surfaces only on these plots would be any different than that associated with the development for which planning permission was sought and which is the subject of appeal A.
89. In respect of Appeal A I concluded that the improvement of the access at its junction with Atherstone Road is capable of being addressed by a planning condition and a safe and efficient access arrangement can be delivered. I have considered whether such conditions would meet the six policy tests set out in the Framework and Planning Policy Guidance if they are applied to the individual developments.
90. Such a condition meets the tests of being relevant to either the MCU or the operational development in the form of the hardstanding which it is reasonable to assume will be used by vehicles. It is also relevant to planning, and it is enforceable and precise. A condition is necessary because as it stands the existing access arrangements are not acceptable.
91. The limitations of the current access prevail notwithstanding the number of additional vehicles using the access, be it a single vehicle using one of the new hard surfaced areas or the cumulative increase arising from traffic associated with all of the additional plots. Thus, a condition to secure works to the highway also passes the test of being reasonable.
92. On this basis the improvement of the access at its junction with Atherstone Road is capable of being addressed by planning condition for each of the individual plots. Consequently, a safe and efficient access arrangement can be delivered.
93. Therefore, I shall adopt the reasoning set out above in relation to Appeal A. It follows that subject to a planning condition to secure the works recommended by the Highway Authority the use of the existing access by the traffic associated with change of use and creation of hardstanding on Plots 11, 13, 14 and 17 and the creation of hard surfacing on Plots 10 and 12 would not have a harmful effect on the safety and convenience of users of the access road, including at the junction with Atherstone Road. The development is in accordance with Policies LP10 and LP29 of the Local Plan which require that safe and suitable access be provided for all users and that new gypsy and traveller sites can be assimilated into their surroundings and the Framework which promotes safe and suitable access for all users.

Other Matters

94. Policy LP10 of the Local Plan sets out criteria against which proposals for gypsy and traveller sites need to be assessed. I have found that the development accords with the criteria relating to the assimilation of the sites into the surrounding area and landscape.

95. The other criteria in Policy LP10 concern the relationship of the development to the nearest settlement, access to services, environmental hazards and utilities. The site is served by public transport which provides access to a wide range of shops and services. There is no evidence before me to indicate that there are any environmental hazards on the sites or that essential utilities are not available to residents. On this basis I conclude that the development accords with all of the criteria set out in Policy LP10.
96. The need for and supply of gypsy and traveller sites, the availability or lack of alternative accommodation and the personal circumstances of the appellants were addressed at the hearing. However, as I have found that the development accords with the relevant policies in the Development Plan, it is not necessary for me to consider these matters in any detail, including any implications of the Lisa Smith judgement.
97. Local residents, the Parish Councils and the local Member of Parliament have all made comments regarding the actions of the appellants in advance of receiving planning permission. Notwithstanding any lack of alternative accommodation being available, I agree that such actions do not foster good relationships with local people from the outset. However, intentional unauthorised development is not a determining factor in this case and the appellants have sought planning permission to allow the use of the land as a gypsy and traveller site.
98. Interested parties have also observed that there are far greater numbers of caravans on that part of Kirby Glebe Farm which benefits from planning permission than have been permitted. However, this is a planning enforcement matter between the Council and the occupiers of those pitches and has no bearing on the pitches which are the subject of this appeal.
99. In respect of capacity of local services such as schools and doctors, residents say that these are over-subscribed. However, there is no substantive evidence to support this or to demonstrate that adults or children on the site will be unable to access these services. In contrast I have been provided with letters from local schools and the County Council which confirm that some of the children have settled in well and both adults and children have access to healthcare.
100. The prospects of the appellants and their families developing a close, cohesive relationship with the settled population were discussed at the hearing in the light of comments made by the parish councillors. There was some reference to business activities on Kirby Glebe Farm and issues associated with fly-tipping and anti-social behaviour. However, it was accepted that these problems were not necessarily associated with the occupation of the appeal sites by the appellants. Furthermore, the appellants expressed a willingness to participate in community life locally and connections were made with Hartshill Parish Council at the site visit.
101. A peaceful and integrated co-existence between any gypsy and traveller site and the local settled community is a matter which is highlighted in the PPTS. From the evidence before me and the discussions at the hearing, there is nothing to suggest that the occupiers of the appeal sites could not be successfully integrated into village life in Hartshill or Mancetter. On the same basis there is nothing to suggest that the expansion of the Kirby Glebe Farm

development which would arise from the additional pitches would undermine that process of community cohesion.

102. The interested parties also raised concerns regarding the impact of the development on archaeological remains and the potential for contamination of the water environment in the light of the way in which foul water discharge was being dealt with on the site. There is no substantive evidence of such impacts and I have not been made aware that the Council's consultation process gave rise to any comments from statutory consultees in this regard. Consequently, they carry no weight in my consideration of the appeal.
103. Mancetter Parish Council also referred to the proximity of the development to the railway line and the necessity for consultation with Network Rail. It was agreed by the parties that this issue could be addressed by an informative. However, appeal decisions do not ordinarily include informatives. Thus, by raising the issue in my decision letter I am alerting the appellant to the need to follow this up. It does not have any bearing on my decision.
104. A local resident who lives adjacent to the access road is also concerned about the increase in the volume of traffic using the access. It is reasonable to assume that an increase in the number of pitches on Kirby Glebe Farm would result in the additional traffic, which the resident has experienced. However, the Council has not argued that this change would have a detrimental impact on the living conditions of occupiers of neighbouring properties. Having seen the relationship between the access and the boundary with the neighbour, which is densely planted, I do not consider that the traffic associated with the development would have a significantly harmful effect on the neighbour in this regard.
105. Drawing these points together, the material considerations in these cases do not indicate that my decisions should be otherwise than in accordance with the Development Plan.

Conditions

106. The Council provided a list of conditions which it invited me to consider appending to the planning permissions in the event that the appeals are allowed.

Appeal A

107. It is necessary to attach a condition to secure compliance with the plans submitted with the planning application both for certainty and to control the site layout and design of day rooms (Condition 1).
108. My decision has been made on the basis that the occupiers of the site are gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 2).
109. The Council has suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in Smith held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.

110. In this case there is no foretelling as to whether any occupiers of the site might be forced to cease travelling permanently in the future. Consequently, imposing the suggested condition would be liable to result in unlawful discrimination, because those occupiers would be unable to continue to live on this site. I shall therefore amend the wording of the condition suggested by the Council to ensure that it restricts occupation to Gypsies and Travellers but does not exclude those who have ceased travelling permanently.
111. Since the grant of planning permission is for use of land as a residential caravan site it is necessary to condition the maximum number of pitches, caravans and types of caravans on the site (Condition 3). This condition is also necessary to safeguard the amenity of residents and in the interests of the appearance of the site.
112. In the light of concerns about the effect of larger vehicles using the access road and the agreement of the appellant to restrict the size of vehicles to 3.5 tonnes I have included a condition to limit the size of vehicles stationed, parked or stored on the land (Condition 4). This will not prevent large vehicles accessing the site to deliver mobile homes, but that would be unreasonable given the nature of the use to restrict such vehicles. I have removed reference to 'no commercial activities including storage of materials' from the wording of the condition suggested by the Council because such activities would require express planning permission if they were a primary use and resulted in a change in the character of the development.
113. In order to assimilate the individual pitches into the surrounding area and the rest of Kirby Glebe Farm it is reasonable and necessary to secure new and additional planting on the boundaries of each pitch (Condition 5). I have added a requirement to secure replacement planting as necessary.
114. The Council and the Highways Authority have suggested a condition to secure improvements to the junction of the access road with Atherstone Road. This is necessary to ensure that the works already carried out are brought up to an appropriate standard in the interests of highway safety and convenience. However, as the development has already (Condition 6)
115. It was agreed by the parties at the hearing that a condition to control the details of external lighting within the individual pitches is necessary to ensure that lighting levels are controlled given the site's rural context. I concur with that view. (Condition 7).
116. The development has already commenced and conditions 5, 6 and 7 are imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the planting, improvements to the access road and external lighting before the development takes place.
117. The conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority

or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Appeals C, E, F and G

118. In respect of Appeals C, E, F and G the development has already taken place and conditions are necessary to make the development acceptable in planning terms. It is necessary for conditions to be attached relating to the occupancy of the site, the maximum number of pitches and the size of commercial vehicles for the same reasons as set out above. (Conditions 1, 2 and 3).
119. Conditions securing planting, improvements to the access road and external lighting are also necessary for the reasons given above. However, as the development has already commenced, I have redrafted the wording suggested by the Council (Conditions 4, 5 and 6).
120. The development has already commenced and conditions 4, 5 and 6 are imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the planting, improvements to the access road and external lighting before the development takes place.
121. The conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Appeals B and D

122. In respect of Plots 10 and 12, the notice relates to the creation of hard surfaces only. I have reasoned that, notwithstanding the use of plots 10 and 12, the formation of hard surfacing is likely to give rise to additional use by vehicles of the junction of the access road with Atherstone Road. On that basis it is reasonable and necessary to impose a condition to secure improvements to the junction in line with those required in respect of the surrounding development.
123. As the development has already commenced, in common with my decision on appeals A, C, E, F and G, I have redrafted the wording suggested by the Council (Condition 1) for the same reasons.

Conclusion (Appeals A, B, C, D, E, F and G)

124. For the reasons set out above the proposed development in respect of Appeal A accords with the development plan and there are no other considerations to indicate that the appeals should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal A should succeed, and planning permission should be granted, subject to conditions. Further and for the same reasons I conclude that Appeals B, C, D, E, F and G succeed on ground (a). I shall grant planning permission for use and/or

operational development as described in the notices (as corrected), subject to conditions.

Appeals B, C, D, E, F and G (Ground (g))

125. As I have allowed the appeals under ground (a), the notices (as corrected) will be quashed and the appeals on ground (g) do not fall to be considered.

Sarah Dyer

Inspector

Annex 1 - Schedule of conditions – Appeal A

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

PAP/2019/0457	Location Plan
Site Layout Plan	
PAP/2019/0457	Amenity Building Floor Plan
PAP/2019/0457	Amenity Building Elevations
PAP/2019/0256	Drawing No. PBA 5 Post and Rail Fence

2. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
3. There shall not be more than seven pitches on the site and on each of the seven pitches hereby approved, no more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended and the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
5. Unless within three months of the date of this decision a scheme for planting along the boundaries of each pitch hereby approved, including proposals for the removal of hard standing to accommodate planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within the next available planting season following the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved planting scheme specified in this condition, that scheme shall thereafter be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time

limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track, and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7. Unless within three months of the date of this decision a scheme for the erection of external lighting, including the retention of any existing external lighting to be erected on the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Annex 2 - Schedule of conditions – Appeal B and Appeal D

1. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track, and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Annex 3 - Schedule of conditions – Appeal C, Appeal E, Appeal F and Appeal G

1. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
2. There shall not be more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended and the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
3. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
4. Unless within three months of the date of this decision a scheme for planting along the boundaries of each pitch hereby approved, including proposals for the removal of hard standing to accommodate planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within the next available planting season following the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved planting scheme specified in this condition, that scheme shall thereafter be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track,

and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. Unless within three months of the date of this decision a scheme for the erection of external lighting, including the retention of any existing external lighting to be erected on the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Annex 4



Plan

This is the plan referred to in my decision dated: 19 December 2022

by Sarah Dyer BA BTP MRTPI MCMi

Appeal G Ref: APP/R3705/C/20/3264628 (Plot 17)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

Not to scale



APPEARANCES

FOR THE APPELLANTS:

Mr Philip Brown	Representing the appellants
Ms Katie McGirley	Resident at Kirby Glebe Farm
Ms Lowien Torrens	Resident at Kirby Glebe Farm
Mr Martin Torrens	Resident at Kirby Glebe Farm

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth	Barrister appointed by Annie Ryan Solicitor for the Council
Mr Jeff Brown	North Warwickshire Borough Council
Mr Mike Pitman	North Warwickshire Borough Council
Ms Lucy MacDonald	North Warwickshire Borough Council
Mr David Pilcher	Warwickshire County Council

INTERESTED PARTIES

Mr Trevor Hopkins	Mancetter Parish Council
Mr Harold Blackburn	Mancetter Parish Council
Ms Glenys Roberts	Hartshill Parish Council
Councillor Denise Clew	North Warwickshire Borough Council

DOCUMENTS

Submitted to the Hearing by the Appellants:

Appeal Decision – Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE – Appeal ref. APP/R3705/W/20/3255527

Letter from People’s Directorate Warwickshire County Council dated 12 September 2022

Letter from St Benedict’s Catholic Academy dated 14 September 2022

Letter from Nursery Hill Primary School dated 12 September 2022

Letter from Pinders One Stop undated



Appeal Decisions

Hearing held on 13 and 14 September 2022

Site visit made 14 September 2022

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal A Ref: APP/R3705/W/20/3250244

Land south of Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB

- 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 Jonathan Delaney against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2019/0256, dated 30 April 2019, was refused by notice dated 5 November 2019.
 - The development proposed is change of use of land to use as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings.
-

Appeal B Ref: APP/R3705/C/20/3264553 (Plot 6)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Dennis Torrens against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 4 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the importation of materials to create hard surfaced areas.
 - The requirements of the notice are to:
 1. Cease using any part of "the land" as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the 'land'.
 2. Remove all ancillary structures, vehicles and equipment from the land, including mobile washroom/toilets, outbuildings trailers electric hook ups and septic tanks.
 3. Remove any means of enclosure over two metres in height from 'the land'. Alternatively, reduce the means of any enclosure to a height not exceeding one metre in height
 4. Remove from the land all materials, equipment and debris associated with compliance of 5. (1) to 5. (5) above. Leave the land in a clear state.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Appeal C Ref: APP/R3705/C/20/3264555 (Plot 7)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Thomas Delaney against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use
 2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan).
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land.
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Appeal D Ref: APP/R3705/C/20/3264556 (Plot 8)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by William Delaney against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land including sheds, buildings.
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Appeal E Ref: APP/R3705/C/20/3264557 (Plot 9)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by William McCarthy against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas (shown hatched black on the attached plan).
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land including: the stables; sheds, buildings and day rooms; and, any associated electrical hook ups, septic tanks, calor gas tanks or similar apparatus – delete as applicable.
 3. Remove the whole of the hard standing from the Land, including any new access tracks.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decisions

Appeal A

1. Appeal A is allowed, and planning permission is granted for a change of use of land to use as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings at Land south of Kirby Glebe Farm, Atherstone Road, Hartshill, Warwickshire, CV10 0TB in accordance with the terms of the application, Ref PAP/2019/0256, dated 30 April 2019 and the plans submitted with it, subject to the planning conditions set out in Annex 1.

Appeal B

2. The enforcement notice relating to Plot 6 is quashed.

Appeal C

3. It is directed that the enforcement notice relating to Plot 7 is corrected by:
 - the addition of the words 'to a use' after the word 'Land' in the first allegation

- the removal of '(shown hatched black on the attached plan)' and substitution of the words 'covering the whole site' in the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
4. It is also directed that the enforcement notice relating to Plot 7 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
5. Subject to the correction and variation, the enforcement notice is upheld.

Appeal D

6. It is directed that the enforcement notice relating to Plot 8 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the addition of the words 'covering the whole site' to the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
7. It is also directed that the enforcement notice relating to Plot 8 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
8. Subject to the correction and variation, the enforcement notice is upheld.

Appeal E

9. It is directed that the enforcement notice relating to Plot 9 is corrected by:
- the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the removal of '(shown hatched black on the attached plan)' and substitution of the words 'covering the whole site' in the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
 - the removal of the phrase 'delete as applicable' from the second requirement.
10. It is also directed that the enforcement notice relating to Plot 9 is varied by the deletion of 3 months and the substitution of 9 months as the period for compliance.
11. Subject to the corrections and variation, the enforcement notice is upheld.

Preliminary Matters

12. I am also dealing with appeals relating to the change of use of land to use as a residential caravan site for 7 gypsy families and in respect of enforcement notices served on Plots 10 to 17 (inclusive) at Kirby Glebe. Those appeals are the subject of separate decisions.¹
13. The Council confirmed that since the planning application (Appeal A) was determined, and the enforcement notices were issued the North Warwickshire Local Plan 2021 (the Local Plan) has been adopted. Consequently, for these appeals the Development Plan comprises the Local Plan and the Mancetter Neighbourhood Plan 2017.
14. Ms MacDonald confirmed that she is no longer employed by the Council but that she was attending the hearing as she had been the enforcement officer responsible for the appeal sites when she was employed at the Council. She is now employed by Cannock Chase District Council.
15. There is no dispute between the parties that the residents of the development are gypsies and that they fall into the definition of gypsies and travellers as set out in the Planning Policy for Travellers Sites (PPTS). It was agreed that the PPTS was a relevant consideration for the appeals.
16. In respect of Appeal A, the site is already in use as a residential caravan site and to that extent the proposed development has been implemented.
17. The Court of Appeal issued the Smith v SSLUHC & Ors [2022] EWCA Civ 1391 judgment (the Lisa Smith judgement) after the hearings were closed. The judgment regards the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The appellants and the Council were invited to make comments on the relevance of this judgement to the appeals.
18. The appellants' view is that in the light of the judgement the Council's Gypsy and Traveller Accommodation Assessment (GTAA) can no longer be relied upon as a means of deciding who does and who does not satisfy the PPTS definition. They consider that it is the total need (including 100% of unknowns) which provides the only reliable indicator of need and, of the five year pitch requirement.
19. The Council initially considered that the judgement did not affect its case and confirmed that that remains the case in the light of the response of the appellants.

The Notices (Appeals B, C, D and E) (Plots 6 to 9)

20. The Council requested that it be permitted to update its statement given the passage of time between its submission and the date which had been set for the hearing, a period in excess of 12 months. This was permitted by the Planning Inspectorate and the Council sought to make a number of changes to the notices which it describes as variations to reflect the position at the time of the submission of its supplementary statement. This statement was submitted

¹ Appeal Decisions APP/R3705/C/20/3264614, APP/R3705/C/20/3264616, APP/R3705/C/20/3264625, APP/R3705/C/20/3264626, APP/R3705/C/20/3264627, APP/R3705/C/20/3264628, APP/R3705/W/20/3251490, APP/R3705/C/20/3264636, APP/R3705/C/20/3264639

in June 2022 (the Supplementary Statement). The majority of the changes relate to the allegations and requirements of the notices with the exception being a request to make the site larger in the case of plot 6.

21. In general, the appellants consider that the changes which the Council wished to make to the allegations would be prejudicial to them on the basis that they increased the scope of the notice. They also considered that it was not permitted to enlarge the site which is the subject of the notice.

All notices

22. As set out in its Supplementary Statement, the Council seeks to extend its reference to the creation of hard surfaced areas to the creation of a hard surfaced area across the whole of the site in each notice. The appellant had no objection to this change, and no injustice would arise were I to correct all of the notices to refer to a 'hard surfaced area covering the whole of the site'.
23. The requirements of the notices as served and as set out in the Supplementary Statement include the phrase 'Leave the Land in a clear, clean and tidy state'. This phrase lacks clarity and the parties agreed that an amendment to substitute the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development' would be appropriate. I consider that the revised phrase is sufficiently clear and unambiguous, and I shall make this correction to all of the notices.

Notices in respect of Plots 7, 8 and 9

24. The material change of use can be more precisely worded as 'a material change of use of the Land to a use for the stationing of caravans for a residential use'. I can make this change without resulting in injustice to either of the parties.

Notice in respect of Plot 6

25. There is an inconsistency between the allegation and the header, the immunity period, the reasons for serving the notice and the requirements. I could correct the notice to remove all references to the material change of use (MCU) of the land without causing injustice. However, the requirements do not refer to the removal of materials/hard surfaced areas which is the specified breach of planning control in this case and to expand the requirements in this case would make the notice more onerous to comply with. Similarly, I could not amend the allegation to include the MCU on the same basis.
26. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
27. In these circumstances, the appeal on the ground set out in section 174(2)(g) of the 1990 Act as amended does not fall to be considered.
28. As I intend to quash the notice, it is unnecessary for me to consider the Council's requests as set out in the Supplementary Statement including the expansion of the size of the site to which the notice relates.

Notice in respect of Plot 7

29. The allegation refers to a MCU and operational development in the form of the importation of materials to create a hard surfaced area. The requirements refer to cessation of the MCU and removal of the hardstanding, but they also refer to the removal of structures and outbuildings.
30. An enforcement notice may require the removal of works integral to the unauthorised use. In this case I regard the structures and outbuildings as integral to the use, however it is not necessary for the allegation to refer to such works. The notice does not require any correction in this regard. On the same basis the notice does not need to be corrected to include reference to electric hook-up points as suggested by the Council in its Supplementary Statement.
31. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement both in the allegation and the requirements. The Council has not demonstrated that the erection of means of enclosure form part and parcel of the MCU. Furthermore, I find that the addition of reference to means of enclosure would broaden the extent of the allegation to the point that the appellant would be prejudiced by not having the opportunity to make an appeal under ground (a) for those works. For those reasons I shall not make the corrections referred to by the Council.

Notices in respect of Plot 8 and Plot 9

32. For the same reasons as set out above in relation to the notice in respect of Plot 7, the notices in respect of Plot 8 and Plot 9 do not require correction. An exception is the removal of the words 'delete as applicable' from the second requirement on the notice for Plot 9 as this is a typographical error.

Appeal A

Main Issues

33. The main issues are

- The effect of the development on the character and appearance of the surrounding area and the landscape with particular reference to the cumulative effects of the development of the site together with development on adjacent land.
- The effect of the development on the safety and convenience of users of the access road, including at the junction with Atherstone Road.

Reasons

Character and appearance

34. The appeal site is to the south of the access road running through the wider caravan site. The layout plan which was submitted to the Council shows four pitches subdivided by post and rail fencing, each with an amenity building on the southern edge and accommodating two caravans in the form of one mobile home and one touring caravan. The pitches would rely to some degree on the screening effect of an established hedge, but new hedge planting is shown adjacent to the access road.

35. To the north of the access road and the appeal site are Plots 10 to 17 which are currently unauthorised and the subject of separate appeals. To the east on both sides of the access road are 18 authorised gypsy and traveller pitches which benefit from planning permission. The access road continues beyond the appeal site and serves Barn Fishery.
36. In terms of the immediate vicinity of the appeal site the development would be a continuation of the appearance and characteristics of the gypsy and traveller site, which I shall refer to as Kirby Glebe Farm. Kirby Glebe Farm does not front Atherstone Road where the access road to it commences. Instead, the access road runs some distance beside a field used for grazing and other undeveloped land before opening up into the area covered by caravan pitches. From this perspective the development has no visual impact on the street scene.
37. From further afield the appeal site is seen as part of Kirby Glebe Farm, albeit as a result of its location it leads to an expansion of the established gypsy and traveller site. Thus, the cumulative effect of the appeal scheme and the existing development of Kirby Glebe Farm needs to be considered.
38. The landscape character of the countryside immediately surrounding Kirby Glebe Farm is comparatively flat with field hedges which constrain views for instance from the path alongside the canal. However, where the land rises such as towards residential development on the edge of Hartshill there are wider views. Then, the views from Hartshill Hayes Country Park are expansive panoramas extending well beyond the railway line and the A5 Watling Street. From this higher ground Kirby Glebe Farm is visible but it is read against the embankment of the railway line and the appeal site itself coalesces into the established caravan pitch area.
39. There are public footpaths closer to the appeal site and from those locations the expansion of Kirby Glebe Farm as a consequence of the appeal scheme and the plots which are the subject of other appeals is evident. However, even in those locations the views of caravans, amenity buildings and fences would be limited by field edge trees and hedges and would not be out of context with the surrounding area, which although predominately rural in character has clusters of residential and other development screened by roadside vegetation.
40. Kirby Glebe Farm lies adjacent to a railway line, and it would be viewable from the elevated position of the trains. However, this view would be transitory and in any case the presence of the railway and the regularity of trains which appear to use it also contributes to the character of the area. The railway line also provides a visual barrier such that the presence of Kirby Glebe Farm and the appeal site is not evident from the roads to the north or the road junction of Atherstone Road with Woodford Lane and the B4111.
41. The Council referred to the Mancetter Neighbourhood Plan and the importance which it places on longer views of the landscape of the Anker Valley. However, it confirmed at the hearing that the countryside surrounding the appeal site does not benefit from any statutory designation for example as Green Belt or an Area of Outstanding Natural Beauty. Therefore, whilst I accept that for local residents the countryside and facilities such as Hartshill Hayes Country Park are valued local environments, the landscape surrounding the site is not of such value that it benefits from any statutory protection.

42. Comments were also made at the hearing that when hedges and trees were not in leaf the appeal site would be more visible. It is reasonable to conclude that this would be the case and that during the winter months the previous glimpsed views of the appeal site would be more open. However, the PPTS makes it clear that in terms of landscaping it is not beneficial for occupiers of gypsy and traveller sites to be deliberately isolated from the rest of the community.
43. The Council made the argument during the hearing that granting consent for pitches on Kirby Glebe Farm does not necessarily mean that continuous growth and expansion is appropriate. I accept that point, however the presence of Kirby Glebe Farm inevitably changes the site context.
44. The appellant also considered that the development was following field boundaries which provided a natural containment for the wider site. However, this was not immediately apparent on the ground. Consequently, I anticipate that in the absence of natural containment Kirby Glebe Farm has the capacity to become overly dominant in terms of its impact on the character and appearance of the surrounding area. However, I do not consider that this point has already been reached such that the development on the appeal site should be resisted on the basis of harm to the character and appearance of surrounding area and landscape.
45. I am also dealing with the appeals relating to Plots 10 to 17 which have a similar relationship with Kirby Glebe Farm and which if approved would also increase the scale of the authorised development. In that case there is a defined edge to the development in the form of established planting around ponds off site. Also, these plots are closer to the railway line.
46. Taking these matters into account, together with my assessment of the impact of the development on the appeal site, the cumulative effect of allowing all of the appeals would not have a harmful effect on the surrounding countryside.
47. I conclude that the development would not have a harmful effect on the character and appearance of the surrounding area and the landscape, either singly or cumulatively with existing and proposed lawful development on adjacent land. The use of land as a residential caravan site for 4 No. gypsy families, each with 2 No. caravans, together with laying of hardstanding and erection of 4 No. ancillary amenity buildings would accord with Policies LP1 and LP10 of the Local Plan and Policy BE2 of the Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character and specifically in relation to gypsy and traveller sites require that the site can be assimilated into the surroundings and landscape without any significant adverse effect.

Access, highway safety and convenience

48. The access road serving the appeal site has a junction with Atherstone Road. At the times of my site visits I noted that Atherstone Road carries a constant flow of traffic of all types. There is a bus stop adjacent to the junction which indicates that buses also use the road.

49. In the direction of Mancetter village and Atherstone there is a complex junction under the railway line and towards Hartshill there are traffic lights which control access across a bridge over the canal. There are also a number of private driveways close to the entrance to the access road. Given the conditions on the highway, it is reasonable to expect that drivers would have a heightened sense of awareness of the potential for other traffic to join the road and of buses and the need to slow down at junctions and traffic lights.
50. The Highway Authority has a number of concerns regarding the use of the access and their advice led to the Council refusing the planning application in part on the grounds that the access was not appropriate to cater for increased use.
51. It was agreed by the Council at the hearing that its concern is in respect of the increased number of vehicles and not any change in the type or size of vehicles. Notwithstanding this position, the appellant expressed a willingness to restrict the size of vehicles on the pitches to 3.5 tonnes.
52. The appellant has carried out works to the access and its junction with Atherstone Road comparatively recently in response to a planning condition which was attached to a consent granted on an application made in 2019. These works which include works within the public highway, were not agreed in advance by the Highway Authority or by the Council in order to discharge the condition.
53. The works which have been carried out have resulted in an improvement of the junction of the access road with Atherstone Road in comparison with what is shown on the photographs of the previous access provided by the Highways Authority. Kerbs have been inserted at the bellmouth and hard surfacing has been installed. To that extent the potential for vehicles to block Atherstone Road whilst manoeuvring into the access road has reduced, and the conditions for highway safety and convenience have been improved.
54. There are a number of aspects of the works which have been carried out which are unacceptable to the Highway Authority, and I discussed these with the parties at the site visit. These matters include kerbs which stand proud of the surrounding surface, damage resulting from incorrect kerbs being used, the substructure of the access being unknown, lack of drainage and definition of the extent of the highway. The Highway Authority has suggested two planning conditions which have the potential to resolve these matters in the event that the appeal is allowed.
55. In terms of the works to the access, on the basis of my observations on site and the evidence before me I am persuaded that the remedial works are required but that they are comparatively straightforward. The works could be secured through the submission and approval of detailed drawings and the implementation of an approved scheme, which is what should have happened before the works were carried out.
56. On this basis the improvement of the access at its junction with Atherstone Road is capable of being addressed by a planning condition and a safe and efficient access arrangement can be delivered.

57. Although not within the control of the Highway Authority concern was also expressed about the suitability of the access road in terms of its use by pedestrians. There is a bus stop at the junction with Atherstone Road and I acknowledge that it is important for residents to be able to access this facility safely. Access beyond this point by pedestrians is impractical given the absence of footways on Atherstone Road and the volume of traffic.
58. The access road has no lighting and is effectively a shared space having no defined footways or carriageway. It is also unsurfaced for most of its length. Improvements to the access would be desirable however it was explained at the hearing that the access is not in the ownership of the appellant. This makes it problematic to secure any improvements through the planning process particularly in the absence of any tacit agreement from the owner.
59. My experience of using the access leads me to consider that drivers of vehicles, who would mostly be only accessing the caravan pitches, would have a heightened sense of awareness of pedestrians on the access road. The access is also wide enough to provide space for vehicles to pass pedestrians if they are being driven safely. On this basis it is reasonable for me to conclude that whilst beneficial it is not essential to secure improvements to the access road in order to make the development acceptable.
60. Hartshill Parish Council (HPC) highlighted concerns about the size of vehicles already using Atherstone Road, the increase in traffic arising from new development and the capacity of the road network to accommodate additional traffic. However, there is no substantive evidence before me to suggest that the day to day use of the site will result in an increase in larger vehicles or result in capacity problems on the network.
61. HPC also referred to a development of 350 new homes in Hartshill and the potential for increased traffic. However, I have no detailed information about that development and in any event, it will have to address its own effects on the road network. This would also apply as part of any consideration of whether any other unauthorised uses served by the access road should be made lawful.
62. A local resident raised concern about the effect which the recent works to the access have on his ability to access and egress his property and on an adjacent ditch. The condition suggested by the Highways Authority should address the issues relating to the residents access where they relate to highway land. Effective kerb edging and drainage would reduce the likelihood of water run-off into the residents garden which would enable improved access to his house over the current situation. With regard to works which effect drainage ditches off the public highway, this would be a civil matter between the owners of the land.
63. The Highway Authority referred me to two appeal decisions and requested that I take them into consideration. One appeal decision relates to a development of nine houses to the rear of 6 to 20 Spon Lane, Grendon² (the Spon Lane appeal) and the other to a single dwelling at 5 Willows Lane, Grendon³ (the Willows Lane appeal).

² Appeal Ref. APP/R3705/W/19/3229569

³ Appeal Ref. APP/R3705/W/19/3233095

64. Both of these appeals relate to the introduction of new houses into an area where there was already established residential development served by driveways and where the opportunities for conflict between non-motorised users and vehicles were high. This access environment is not directly comparable with the appeal scheme in this case. Furthermore, there is no indication in the appeal decisions that a practical solution to address the Council's concerns was possible and could be secured by planning condition.
65. I have had regard to the appeal decisions for the Spon Lane appeal and the Willows Lane appeal. However, these have not dissuaded me from the view that subject to compliance with a planning condition, the change of use of the appeal site would not have a harmful impact on highway safety or convenience.
66. I conclude that, subject to a planning condition to secure the works recommended by the Highway Authority, the development would not have a harmful effect on the safety and convenience of users of the access road, including at the junction with Atherstone Road. The development is in accordance with Policies LP10 and LP29 of the Local Plan which require that safe and suitable access be provided for all users and that new gypsy and traveller sites can be assimilated into their surroundings and the National Planning Policy Framework which promotes safe and suitable access for all users.

Other Matters

67. Policy LP10 of the Local Plan sets out criteria against which proposals for gypsy and traveller sites need to be assessed. I have found that the development accords with the criteria relating to the assimilation of the site into the surrounding area and landscape.
68. The other criteria in Policy LP10 concern the relationship of the development to the nearest settlement, access to services, environmental hazards and utilities. The site is served by public transport which provides access to a wide range of shops and services. There is no evidence before me to indicate that there are any environmental hazards on the sites or that essential utilities are not available to residents. On this basis I conclude that the development accords with all of the criteria set out in Policy LP10.
69. The need for and supply of gypsy and traveller sites, the availability or lack of alternative accommodation and the personal circumstances of the appellants were addressed at the hearing. However, as I have found that the development accords with the relevant policies in the Development Plan, it is not necessary for me to consider these matters in any detail, including any implications of the Lisa Smith judgement.
70. Local residents, the Parish Councils and the local Member of Parliament have all made comments regarding the actions of the appellants in advance of receiving planning permission. Notwithstanding any lack of alternative accommodation being available, I agree that such actions do not foster good relationships with local people from the outset. However, intentional unauthorised development is not a determining factor in this case and the appellants have sought planning permission to allow the use of the land as a gypsy and traveller site.

71. Interested parties have also observed that there are far greater numbers of caravans on that part of Kirby Glebe Farm which benefits from planning permission than have been permitted. However, this is a planning enforcement matter between the Council and the occupiers of those pitches and has no bearing on the pitches which are the subject of this appeal.
72. In respect of capacity of local services such as schools and doctors, residents say that these are over-subscribed. However, there is no substantive evidence to support this or to demonstrate that adults or children on the site will be unable to access these services. In contrast I have been provided with letters from local schools and the County Council which confirm that some of the children have settled in well and both adults and children have access to healthcare.
73. The prospects of the appellants and their families developing a close, cohesive relationship with the settled population were discussed at the hearing in the light of comments made by the parish councillors. There was some reference to business activities on Kirby Glebe Farm and issues associated with fly-tipping and anti-social behaviour. However, it was accepted that these problems were not necessarily associated with the occupation of the appeal site by the appellants. Furthermore, the appellants expressed a willingness to participate in community life locally and connections were made with Hartshill Parish Council at the site visit.
74. A peaceful and integrated co-existence between the any gypsy and traveller site and the local settled community is a matter which is highlighted in the PPTS. From the evidence before me and the discussions at the hearing, there is nothing to suggest that the occupiers of the appeal site could not be successfully integrated into village life in Hartshill or Mancetter. On the same basis there is nothing to suggest that the expansion of the Kirby Glebe Farm development which would arise from the additional pitches would undermine that process of community cohesion.
75. The interested parties also raised concerns regarding the impact of the development on archaeological remains and the potential for contamination of the water environment in the light of the way in which foul water discharge was being dealt with on the site. There is no substantive evidence of such impacts and I have not been made aware that the Council's consultation process gave rise to any comments from statutory consultees in this regard. Consequently, they carry no weight in my consideration of the appeal.
76. Mancetter Parish Council also referred to the proximity of the development to the railway line and the necessity for consultation with Network Rail. It was agreed by the parties that this issue could be addressed by an informative. However, appeal decisions do not ordinarily include informatives. Thus, by raising the issue in my decision letter I am alerting the appellant to the need to follow this up. It does not have any bearing on my decision.
77. A local resident who lives adjacent to the access road is also concerned about the increase in the volume of traffic using the access. It is reasonable to assume that an increase in the number of pitches on Kirby Glebe Farm would result in the additional traffic, which the resident has experienced. However, the Council has not argued that this change would have a detrimental impact on the living conditions of occupiers of neighbouring properties. Having seen

the relationship between the access and the boundary with the neighbour, which is densely planted, I do not consider that the traffic associated with the development would have a significantly harmful effect on the neighbour in this regard.

78. Drawing these points together, the material considerations in this case do not indicate that my decision should be otherwise than in accordance with the Development Plan.

Conditions

79. The Council provided a list of conditions which it invited me to consider appending to the planning permission in the event that the appeal is allowed.
80. It is necessary to attach a condition to secure compliance with the plans submitted with the planning application both for certainty and to control the site layout and design of day rooms (Condition 1).
81. My decision has been made on the basis that the occupiers of the site are gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 2).
82. The Council has suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
83. In this case there is no foretelling as to whether any occupiers of the site might be forced to cease travelling permanently in the future. Consequently, imposing the suggested condition would be liable to result in unlawful discrimination, because those occupiers would be unable to continue to live on this site. I shall therefore amend the wording of the condition suggested by the Council to ensure that it restricts occupation to Gypsies and Travellers but does not exclude those who have ceased travelling permanently.
84. Since the grant of planning permission is for use of land as a residential caravan site it is necessary to condition the maximum number of pitches, caravans and types of caravans on the site (Condition 3). This condition is also necessary to safeguard the amenity of residents and in the interests of the appearance of the site.
85. In the light of concerns about the effect of larger vehicles using the access road and the agreement of the appellant to restrict the size of vehicles to 3.5 tonnes I have included a condition to limit the size of vehicles kept on the land (Condition 4). This will not prevent large vehicles accessing the site to deliver mobile homes, but it would be unreasonable given the nature of the use to restrict such vehicles. I have removed reference to 'no commercial activities including storage of materials' from the wording of the condition suggested by the Council because such activities would require express planning permission if they were a primary use and resulted in a change in the character of the development.
86. In order to assimilate the individual pitches into the surrounding area and the rest of Kirby Glebe Farm it is reasonable and necessary to secure new and

additional planting on the boundaries of each pitch (Condition 5). I have added a requirement to secure replacement planting as necessary.

87. I have attached the condition recommended by the Council and the Highways Authority to secure the improvements to the junction of the access road with Atherstone Road. This is necessary to ensure that the works already carried out are brought up to an appropriate standard in the interests of highway safety and convenience. (Condition 6)
88. It was agreed at the hearing that a condition to control the details of external lighting within the individual pitches is necessary to ensure that lighting levels are controlled given the site's rural context. I concur with that view (Condition 7)
89. The development has already commenced and conditions 5, 6 and 7 are imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the planting, improvements to the access road and external lighting before the development takes place.
90. The conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion (Appeal A)

91. For the reasons set out above the development accords with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons set out above, I conclude that Appeal A should succeed, and planning permission should be granted, subject to conditions.

Ground (g) (Appeals B, C, D and E)

92. An appeal on ground (g) is on the basis that the period specified for compliance with the notice falls short of what should reasonably be allowed. As I have quashed the notice which relates to Plot 6 (Appeal B), the appeal under ground (g) does not fall to be considered.
93. With regard to the notices relating to Plots 7, 8 and 9 the compliance periods are 3 months. The Council argues that this is sufficient time to remove caravans, structures and hard standings and that given the length of time since the notices were served, the appellants should have been giving consideration to alternative accommodation. The appellants consider that they have no other alternatives available and seek the longest period of compliance possible.
94. In these cases, there is no appeal under ground (a) or ground (f) or under any legal ground. Consequently, the appellants could not assume that they would be successful in their appeals on the basis of success on other grounds. However, Appeal A is running alongside Appeals B, C and D and in allowing Appeal A the appellants now have an option for alternative accommodation.

95. Given that I have imposed a number of conditions on the planning permission which arises from Appeal A, and those conditions will take time to be discharged, it seems to me to be reasonable to extend the compliance period to nine months. This will allow time for changes to be made on the individual pitches and for works within the highway to be commenced, in accordance with those conditions.
96. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

Sarah Dyer

Inspector

Annex 1 - Schedule of conditions – Appeal A

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - PAP/2019/0256 Location Plan
 - PAP/2019/0256 Site Layout Plan
 - PAP/2019/0256 Proposed Day Room (Floor Plan)
 - PAP/2019/0256 Proposed Day Room (Front Elevation)
 - PAP/2019/0256 Proposed Day Room (Rear Elevation)
 - PAP/2019/0256 Proposed Day Room (Side Elevation)
 - Proposed Day Room (Side Elevation)
 - PAP/2019/0256 Drawing No. PBA 5 Post and Rail Fence
2. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
3. There shall not be more than four pitches on the site and on each of the four pitches hereby approved, no more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended and the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
5. Unless within three months of the date of this decision a scheme for planting along the boundaries of each pitch hereby approved, including proposals for the removal of hard standing to accommodate planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within the next available planting season following the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved planting scheme specified in this condition, that scheme shall thereafter be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track, and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7. Unless within three months of the date of this decision a scheme for the erection of external lighting, including the retention of any existing external lighting to be erected on the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANTS:

Mr Philip Brown	Representing the appellants
Mr T and Mrs M Delaney	Appellants
Mr W and Mrs A Delaney	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth	Barrister appointed by Annie Ryan Solicitor for the Council
Mr Jeff Brown	North Warwickshire Borough Council
Mr Mike Pitman	North Warwickshire Borough Council
Ms Lucy MacDonald	North Warwickshire Borough Council
Mr David Pilcher	Warwickshire County Council

INTERESTED PARTIES

Mr Trevor Hopkins	Mancetter Parish Council
Mr Harold Blackburn	Mancetter Parish Council
Ms Glenys Roberts	Hartshill Parish Council
Councillor Denise Clew	North Warwickshire Borough Council

DOCUMENTS

Submitted to the Hearing by the Appellants:

Appeal Decision – Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE – Appeal ref. APP/R3705/W/20/3255527

Letters from People’s Directorate Warwickshire County Council dated 12 September 2022

Letter from Red Roofs Surgery dated 25 July 2022

Letter from Nursery Hill Primary School dated 12 September 2022

Letters from Hertshill Academy dated 24 May 2022 and 12 September 2022

Letters from St Benedict’s Catholic Academy dated 18 May 2022 and undated



Appeal Decisions

Hearing held on 13 and 14 September 2022

Site visit made on 14 September 2022

by Sarah Dyer BA BTP MRTPI MCSI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal A Ref: APP/R3705/C/20/3264636 (Plot 15)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Winifred Torrens against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use
 2. Without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.
 2. Remove all structures, vehicles and equipment from the Land, including: any associated electric hook ups, septic tanks, calor gas tanks or similar apparatus.
 3. Remove the whole of the hard standing from the Land, including any new access tracks, shown hatched on the attached plan.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three 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. 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/R3705/C/20/3264639 (Plot 16)

Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Lady Delaney against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of the Land for the stationing of caravans for a residential use.
 2. Without planning permission, the importation of materials to create hard surfaced areas.
- The requirements of the notice are to:
 1. Cease using any part of the Land as a residential caravan site. Disconnect all services to the caravans. Remove the caravans from the Land.

2. Remove all structures, vehicles and equipment from the Land, including: any associated electric hook ups, septic tanks, calor gas tanks or similar apparatus.
 3. Remove the whole of the hard standing from the Land, including any new access tracks, shown hatched on the attached plan.
 4. Remove from the Land all materials, equipment and debris associated with compliance of steps 5. (1) to 5. (3) above. Leave the Land in a clear, clean and tidy state.
- The period for compliance with the requirements is three 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. 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.
-

Decisions

Appeal A

1. It is directed that the enforcement notice relating to Plot 15 is corrected by:
 - the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the addition of the words 'covering the whole site' to the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
2. Subject to the corrections Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 1.

Appeal B

3. It is directed that the enforcement notice relating to Plot 16 is corrected by:
 - the addition of the words 'to a use' after the word 'Land' in the first allegation
 - the addition of the words 'covering the whole site' to the second allegation
 - the removal of the phrase 'Leave the Land in a clear, clean and tidy state' from the final requirement and substitution with the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development'.
4. Subject to the corrections Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the

Land for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas covering the whole site at Land at Kirby Glebe, Off Atherstone Road, Hartshill, Nuneaton, CV10 0TB as shown on the plan attached to the notice and subject to the planning conditions set out in Annex 1.

Preliminary Matters

5. I am also dealing with appeals relating to the change of use of land to use as a residential caravan site for 7 gypsy families, change of use of land to use as a residential caravan site for 4 gypsy families and in respect of enforcement notices served on Plots 6 to 14 (inclusive) and Plot 17 at Kirby Glebe. Those appeals are the subject of separate decisions.¹
6. The Council confirmed that since the enforcement notices were issued the North Warwickshire Local Plan 2021 (the Local Plan) has been adopted. Consequently, for these appeals the Development Plan comprises the Local Plan and the Mancetter Neighbourhood Plan 2017.
7. Ms MacDonald confirmed that she is no longer employed by the Council but that she was attending the hearing as she had been the enforcement officer responsible for the appeal sites when she was employed at the Council. She is now employed by Cannock Chase District Council.
8. There is no dispute between the parties that the residents of the development are gypsies and that they fall into the definition of gypsies and travellers as set out in the Planning Policy for Travellers Sites (PPTS). It was agreed that the PPTS was a relevant consideration for the appeals.
9. The Court of Appeal issued the Smith v SSLUHC & Ors [2022] EWCA Civ 1391 judgment (the Lisa Smith judgement) after the hearings were closed. The judgment regards the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The appellants and the Council were invited to make comments on the relevance of this judgement to the appeals.
10. The appellants' view is that in the light of the judgement the Council's Gypsy and Traveller Accommodation Assessment (GTAA) can no longer be relied upon as a means of deciding who does and who does not satisfy the PPTS definition. They consider that it is the total need (including 100% of unknowns) which provides the only reliable indicator of need and, of the five year pitch requirement.
11. The Council initially considered that the judgement did not affect its case and confirmed that that remains the case in the light of the response of the appellants.

The Notices

12. The Council requested that it be permitted to update its statement given the passage of time between its submission and the date which had been set for the hearing, a period in excess of 12 months. This was permitted by the

¹ Appeal Decisions APP/R3705/C/20/3264614, APP/R3705/C/20/3264616, APP/R3705/C/20/3264625, APP/R3705/C/20/3264626, APP/R3705/C/20/3264627, APP/R3705/C/20/3264628, APP/R3705/W/20/3251490, APP/R3705/W/20/3250244, APP/R3705/C/20/3264553, APP/R3705/C/20/3264555, APP/R3705/C/20/3264556 and APP/R3705/C/20/3264557

Planning Inspectorate and the Council sought to make a number of changes to the notices which it describes as variations to reflect the position at the time of the submission of its supplementary statement. This statement was submitted in June 2022 (the Supplementary Statement). The changes relate to the allegations and requirements.

13. In general, the appellants consider that the changes which the Council wished to make to the allegations would be prejudicial to them on the basis that they increased the scope of the notice.
14. As set out in its Supplementary Statement, the Council seeks to extend its reference to the creation of hard surfaced areas to the creation of a hard surfaced area across the whole of the site in each notice. The appellant had no objection to this change, and no injustice would arise were I to correct all of the notices to refer to a 'hard surfaced area covering the whole of the site'.
15. The requirements of the notices as served and as set out in the Supplementary Statement include the phrase 'Leave the Land in a clear, clean and tidy state'. This phrase lacks clarity and the parties agreed that an amendment to substitute the phrase 'Return the Land to its condition prior to the commencement of the unauthorised development' would be appropriate. I consider that the revised phrase is sufficiently clear and unambiguous, and I shall make this correction to both of the notices.
16. The material change of use can be more precisely worded as 'a material change of use of the Land to a use for the stationing of caravans for a residential use'. I can make this change without resulting in injustice to either of the parties.
17. In both notices the allegation refers to a material change of use (MCU) and operational development in the form of the importation of materials to create hard surfaced areas. The requirements refer to cessation of the MCU and removal of the hardstanding, but they also refer to the removal of structures, electrical hook-ups and similar apparatus.
18. An enforcement notice may require the removal of works integral to the unauthorised use. In this case I regard the structures, electrical hook-ups and similar apparatus as integral the use, however it is not necessary for the allegation to refer to such works. The notices do not require any correction in this regard.
19. The Council seeks to add in reference to the erection of means of enclosure as set out in the Supplementary Statement in the allegation and the requirements of both notices. The Council has not demonstrated that the erection of means of enclosure form part and parcel of the MCU in either case. Furthermore, I find that the addition of reference to means of enclosure would broaden the extent of the allegation to the point that the appellants would be prejudiced by not having the opportunity to make a case under the ground (a) appeal for those works. For those reasons I shall not make the corrections referred to by the Council.

Ground (a) and the Deemed Planning Application (DPA)

Main Issues

20. The main issues are:

- The effect of the development on the character and appearance of the surrounding area and the landscape with particular reference to the cumulative effects of the development of the sites together with development on adjacent land.
- The effect of the development on the safety and convenience of users of the access road, including at the junction with Atherstone Road.

Reasons

Character and Appearance

21. The appeal sites lie to the north of land which was the subject of a planning application for seven gypsy and traveller pitches which is currently at appeal. To the north of Plot 16 is a mainline railway line. It is served by an access road running through the wider Kirby Glebe caravan site. To the east on both sides of the access road are 18 authorised gypsy and traveller pitches which benefit from planning permission.
22. In terms of the immediate vicinity of the appeal sites the development would be a continuation of the appearance and characteristics of the gypsy and traveller site, which I shall refer to as Kirby Glebe Farm. Kirby Glebe Farm does not front Atherstone Road where the access road to it commences. Instead, the access road runs some distance beside a field used for grazing and other undeveloped land before opening up into the area covered by caravan pitches. From this perspective the development has no visual impact on the street scene.
23. From further afield the appeal sites are seen as part of Kirby Glebe Farm, albeit as a result of their location they lead to an expansion of the established gypsy and traveller site. Thus, the cumulative effect of the appeal schemes and the existing development of Kirby Glebe Farm needs to be considered.
24. The landscape character of the countryside immediately surrounding Kirby Glebe Farm is comparatively flat with field hedges which constrain views for instance from the path alongside the canal. However, where the land rises such as towards residential development on the edge of Hartshill there are wider views. Then, the views from Hartshill Hayes Country Park are expansive panoramas extending well beyond the railway line and the A5 Watling Street. From this higher ground Kirby Glebe Farm is visible but it is read against the embankment of the railway line and the appeal sites themselves coalesce into the established caravan pitch area.
25. There are public footpaths closer to the appeal sites and from those locations the expansion of Kirby Glebe Farm as a consequence of the appeal schemes and the plots which are the subject of other appeals is evident. However, even in those locations the views of caravans, amenity buildings and fences would be limited by field edge trees and hedges and would not be out of context with the surrounding area, which although predominately rural in character has clusters of residential and other development screened by roadside vegetation.

26. Kirby Glebe Farm lies adjacent to a railway line, and it would be viewable from the elevated position of the trains. However, this view would be transitory and in any case the presence of the railway and the regularity of trains which appear to use it also contributes to the character of the area. The railway line also provides a visual barrier such that the presence of Kirby Glebe Farm and the appeal sites are not evident from the roads to the north or the road junction of Atherstone Road with Woodford Lane and the B4111.
27. The Council referred to the Mancetter Neighbourhood Plan and the importance which it places on longer views of the landscape of the Anker Valley. However, it confirmed at the hearing that the countryside surrounding the appeal sites does not benefit from any statutory designation for example as Green Belt or an Area of Outstanding Natural Beauty. Therefore, whilst I accept that for local residents the countryside and facilities such as Hartshill Hayes Country Park are valued local environments, the landscape surrounding the site is not of such value that it benefits from any statutory protection.
28. Comments were also made at the hearing that when hedges and trees were not in leaf the appeal sites would be more visible. It is reasonable to conclude that this would be the case and that during the winter months the previous glimpsed views of the appeal sites would be more open. However, the PPTS makes it clear that in terms of landscaping it is not beneficial for occupiers of gypsy and traveller sites to be deliberately isolated from the rest of the community.
29. The Council made the argument during the hearing that granting consent for pitches on Kirby Glebe Farm does not necessarily mean that continuous growth and expansion is appropriate. I accept that point, however the presence of Kirby Glebe Farm inevitably changes the site context. In respect of the appeal sites the ponds and planting on the Barn Fishery site would constrain further expansion to the west. Similarly, the railway line beyond Plot 16 would preclude expansion to the north.
30. I am also dealing with the appeals relating to Plots 6 to 9 and Plots 10 to 14 and Plot 17 which have a similar relationship with Kirby Glebe Farm and which if approved would also increase the scale of the authorised development.
31. I anticipate that in the absence of natural containment Kirby Glebe Farm has the capacity to become overly dominant in terms of its impact on the character and appearance of the surrounding area. However, I do not consider that this point has already been reached such that the development on Plots 15 and 16 should be resisted.
32. Taking these matters into account, together with my assessment of the impact of the development on the particular appeal sites, the cumulative effect of allowing all of the appeals would not have a harmful effect on the surrounding countryside.
33. I conclude that the developments would not have a harmful effect on the character and appearance of the surrounding area and the landscape, either singly or cumulatively with existing and proposed lawful development on adjacent land. In respect of Appeal A and Appeal B the material change of use of the land for the stationing of caravans for a residential use and the importation of materials to create hard surfaced areas across the whole sites would accord with Policies LP1 and LP10 of the Local Plan and Policy BE2 of the

Mancetter Neighbourhood Plan. These policies require new development to integrate appropriately with the natural environment and to recognise and complement local character and specifically in relation to gypsy and traveller sites require that the site can be assimilated into the surroundings and landscape without any significant adverse effect.

Access, highway safety and convenience

34. The access road serving the appeal sites has a junction with Atherstone Road. At the times of my site visits I noted that Atherstone Road carries a constant flow of traffic of all types. There is a bus stop adjacent to the junction which indicates that buses also use the road.
35. In the direction of Mancetter village and Atherstone there is a complex junction under the railway line and towards Hartshill there are traffic lights which control access across a bridge over the canal. There are also a number of private driveways close to the entrance to the access road. Given the conditions on the highway, it is reasonable to expect that drivers would have a heightened sense of awareness of the potential for other traffic to join the road and of buses and the need to slow down at junctions and traffic lights.
36. It was agreed by the Council at the hearing that its concern is in respect of the increased number of vehicles and not any change in the type or size of vehicles. Notwithstanding this position, the appellant expressed a willingness to restrict the size of vehicles on the pitches to 3.5 tonnes.
37. The appellant has carried out works to the access and its junction with Atherstone Road comparatively recently in response to a planning condition which was attached to a consent granted on an application made in 2019. These works which include works within the public highway, were not agreed in advance by the Highway Authority or by the Council in order to discharge the condition.
38. The works which have been carried out have resulted in an improvement of the junction of the access road with Atherstone Road in comparison with what is shown on the photographs of the previous access provided by the Highways Authority. Kerbs have been inserted at the bellmouth and hard surfacing has been installed. To that extent the potential for vehicles to block Atherstone Road whilst manoeuvring into the access road has reduced, and the conditions for highway safety and convenience have been improved.
39. There are a number of aspects of the works which have been carried out which are unacceptable to the Highway Authority, and I discussed these with the parties at the site visit. These matters include kerbs which stand proud of the surrounding surface, damage resulting from incorrect kerbs being used, the substructure of the access being unknown, lack of drainage and definition of the extent of the highway. The Highway Authority has suggested a planning condition which has the potential to resolve these matters in the event that the appeal is allowed.
40. In terms of the works to the access, on the basis of my observations on site and the evidence before me I am persuaded that the remedial works are required but that they are comparatively straightforward. These works could be secured through the submission and approval of detailed drawings and the

implementation of an approved scheme, which is what should have happened before the works were carried out.

41. On this basis the improvement of the access at its junction with Atherstone Road is capable of being addressed by planning conditions and a safe and efficient access arrangement can be delivered.
42. Although not within the control of the Highway Authority concern was also expressed about the suitability of the access road in terms of its use by pedestrians. There is a bus stop at the junction with Atherstone Road and I acknowledge that it is important for residents to be able to access this facility safely. Access beyond this point by pedestrians is impractical given the absence of footways on Atherstone Road and the volume of traffic.
43. The access road has no lighting and is effectively a shared space having no defined footways or carriageway. It is also unsurfaced for most of its length. Improvements to the access would be desirable however it was explained at the hearing that the access is not in the ownership of the appellant. This makes it problematic to secure any improvements through the planning process particularly in the absence of any tacit agreement from the owner.
44. My experience of using the access leads me to consider that drivers of vehicles, who would mostly be only accessing the caravan pitches, would have a heightened sense of awareness of pedestrians on the access road. The access is also wide enough to provide space for vehicles to pass pedestrians if they are being driven safely. On this basis it is reasonable for me to conclude that whilst beneficial it is not essential to secure improvements to the access road in order to make the developments acceptable.
45. Hartshill Parish Council (HPC) highlighted concerns about the size of vehicles already using Atherstone Road, the increase in traffic arising from new development and the capacity of the road network to accommodate additional traffic. However, there is no substantive evidence before me to suggest that the day to day use of the sites will result in an increase in larger vehicles or result in capacity problems on the network.
46. HPC also referred to a development of 350 new homes in Hartshill and the potential for increased traffic. However, I have no detailed information about that development and in any event, it will have to address its own effects on the road network. This would also apply as part of any consideration of whether any other unauthorised uses served by the access road should be made lawful.
47. A local resident raised concern about the effect which the recent works to the access have on his ability to access and egress his property and on an adjacent ditch. The condition suggested by the Highways Authority should address the issues relating to the resident's access where they relate to highway land. Effective kerb edging and drainage would reduce the likelihood of water run-off into the resident's garden which would enable improved access to his house over the current situation. With regard to works which effect drainage ditches off the public highway, this would be a civil matter between the owners of the land.
48. The Highway Authority referred me to two appeal decisions and requested that I take them into consideration. One appeal decision relates to a development of nine houses to the rear of 6 to 20 Spon Lane, Grendon (the Spon Lane appeal)

and the other to a single dwelling at 5 Willows Lane, Grendon (the Willows Lane appeal).

49. Both of these appeals relate to the introduction of new houses into an area where there was already established residential development served by driveways and where the opportunities for conflict between non-motorised users and vehicles were high. This access environment is not directly comparable with the appeal schemes in these cases. Furthermore, there is no indication in the appeal decisions that a practical solution to address the Council's concerns was possible and could be secured by planning condition.
50. I have had regard to the appeal decisions for the Spon Lane appeal and the Willows Lane appeal. However, these have not dissuaded me from the view that subject to compliance with a planning condition, the change of use of the appeal sites would not have a harmful impact on highway safety or convenience.
51. I conclude that subject to a planning condition to secure the works recommended by the Highway Authority the development would not have a harmful effect on the safety and convenience of users of the access road, including at the junction with Atherstone Road. The development is in accordance with Policies LP10 and LP29 of the Local Plan which require that safe and suitable access be provided for all users and that new gypsy and traveller sites can be assimilated into their surroundings and the National Planning Policy Framework which promotes safe and suitable access for all users.

Other Matters

52. Policy LP10 of the Local Plan sets out criteria against which proposals for gypsy and traveller sites need to be assessed. I have found that the development accords with the criteria relating to the assimilation of the site into the surrounding area and landscape.
53. The other criteria in Policy LP10 concern the relationship of the development to the nearest settlement, access to services, environmental hazards and utilities. The site is served by public transport which provides access to a wide range of shops and services. There is no evidence before me to indicate that there are any environmental hazards on the sites or that essential utilities are not available to residents. On this basis I conclude that the development accords with all of the criteria set out in Policy LP10.
54. The need for and supply of gypsy and traveller sites, the availability or lack of alternative accommodation and the personal circumstances of the appellants were addressed at the hearing. However, as I have found that the development accords with the relevant policies in the Development Plan, it is not necessary for me to consider these matters in any detail, including any implications of the Lisa Smith judgement.
55. Local residents, the Parish Councils and the local Member of Parliament have all made comments regarding the actions of the appellants in advance of receiving planning permission. Notwithstanding any lack of alternative accommodation being available, I agree that such actions do not foster good relationships with local people from the outset. However, intentional unauthorised development is not a determining factor in these cases and the appellants are seeking to

- regularise the position through the submission of their appeals under ground (a).
56. Interested parties have also observed that there are far greater numbers of caravans on that part of Kirby Glebe Farm which benefits from planning permission than have been permitted. However, this is a planning enforcement matter between the Council and the occupiers of those pitches and has no bearing on the pitches which are the subject of this appeal.
57. In respect of capacity of local services such as schools and doctors, residents say that these are over-subscribed. However, there is no substantive evidence to support this or to demonstrate that adults or children on the sites will be unable to access these services. In contrast I have been provided with letters from local schools and the County Council which confirm that some of the children have settled in well and both adults and children have access to healthcare.
58. The prospects of the appellants and their families developing a close, cohesive relationship with the settled population were discussed at the hearing in the light of comments made by the parish councillors. There was some reference to business activities on Kirby Glebe Farm and issues associated with fly-tipping and anti-social behaviour. However, it was accepted that these problems were not necessarily associated with the occupation of the appeal sites by the appellants. Furthermore, the appellants expressed a willingness to participate in community life locally and connections were made with Hartshill Parish Council at the site visit.
59. A peaceful and integrated co-existence between any gypsy and traveller site and the local settled community is a matter which is highlighted in the PPTS. From the evidence before me and the discussions at the hearing, there is nothing to suggest that the occupiers of the appeal sites could not be successfully integrated into village life in Hartshill or Mancetter. On the same basis there is nothing to suggest that the expansion of the Kirby Glebe Farm development which would arise from the additional pitches would undermine that process of community cohesion.
60. The interested parties also raised concerns regarding the impact of the development on archaeological remains and the potential for contamination of the water environment in the light of the way in which foul water discharge was being dealt with on the sites. There is no substantive evidence of such impacts and I have not been made aware that the Council's consultation process gave rise to any comments from statutory consultees in this regard. Consequently, they carry no weight in my consideration of the appeal.
61. Mancetter Parish Council also referred to the proximity of the development to the railway line and the necessity for consultation with Network Rail. It was agreed by the parties that this issue could be addressed by an informative. However, appeal decisions do not ordinarily include informatives. Thus, by raising the issue in my decision letter I am alerting the appellants to the need to follow this up. It does not have any bearing on my decision.
62. A local resident who lives adjacent to the access road is also concerned about the increase in the volume of traffic using the access. It is reasonable to assume that an increase in the number of pitches on Kirby Glebe Farm would result in the additional traffic, which the resident has experienced. However,

the Council has not argued that this change would have a detrimental impact on the living conditions of occupiers of neighbouring properties. Having seen the relationship between the access and the boundary with the neighbour, which is densely planted, I do not consider that the traffic associated with the development would have a significantly harmful effect on the neighbour in this regard.

63. Drawing these points together, the material considerations in these cases do not indicate that my decisions should be otherwise than in accordance with the Development Plan.

Conditions

64. The Council provided a list of conditions which it invited me to consider appending to the planning permissions in the event that the appeals are allowed.
65. My decision has been made on the basis that the occupiers of the site are gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 1).
66. The Council has suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
67. In this case there is no foretelling as to whether any occupiers of the site might be forced to cease travelling permanently in the future. Consequently, imposing the suggested condition would be liable to result in unlawful discrimination, because those occupiers would be unable to continue to live on this site. I shall therefore amend the wording of the condition suggested by the Council to ensure that it restricts occupation to Gypsies and Travellers but does not exclude those who have ceased travelling permanently.
68. Since the grant of planning permission is for use of land as a residential caravan site it is necessary to condition the maximum number of pitches, caravans and types of caravans on the site (Condition 2). This condition is also necessary to safeguard the amenity of residents and in the interests of the appearance of the site.
69. In the light of concerns about the effect of larger vehicles using the access road and the agreement of the appellants to restrict the size of vehicles to 3.5 tonnes I have included a condition to limit the size of vehicles kept on the land (Condition 3). This will not prevent large vehicles accessing the site to deliver mobile homes, but it would be unreasonable given the nature of the use to restrict such vehicles. I have removed reference to 'no commercial activities including storage of materials' from the wording of the condition suggested by the Council because such activities would require express planning permission if they were a primary use and resulted in a change in the character of the development.
70. In order to assimilate the individual pitches into the surrounding area and the rest of Kirby Glebe Farm it is reasonable and necessary to secure new and additional planting on the boundaries of each pitch (Condition 4). I have added a requirement to secure replacement planting as necessary.

71. I have attached the condition recommended by the Council and the Highways Authority to secure the improvements to the junction of the access road with Atherstone Road. This is necessary to ensure that the works already carried out are brought up to an appropriate standard in the interests of highway safety and convenience. (Condition 5)
72. It was agreed by the parties at the hearing that a condition to control the details of external lighting within the individual pitches is necessary to ensure that lighting levels are controlled given the site's rural context. I concur with that view. (Condition 6).
73. The development has already commenced and conditions 4, 5 and 6 are imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the planting, improvements to the access road and external lighting before the development takes place.
74. The conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusions

75. For the reasons set out above the development in respect of Appeal A and Appeal B accords with the development plan and there are no other considerations to indicate that the appeals should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeals should succeed, and planning permission should be granted for the use and operational development as described in the notices (as corrected) subject to conditions.

Ground (g)

76. As I have allowed the appeals under ground (a), the notices (as corrected) will be quashed and the appeals on ground (g) do not fall to be considered.

Sarah Dyer

Inspector

Annex 1 - Schedule of conditions – Appeal A and Appeal B

1. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
2. There shall not be more than one pitch on the site and no more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended and the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
3. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
4. Unless within three months of the date of this decision a scheme for planting along the boundaries of each pitch hereby approved, including proposals for the removal of hard standing to accommodate planting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within the next available planting season following the local planning authority's approval, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved planting scheme specified in this condition, that scheme shall thereafter be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5. Unless within three months of the date of this decision a scheme for the improvement of the junction of the access track and the C12 Atherstone Road, including design drawings for a dropped kerb verge vehicular access, including tie-ins within the public highway carriageway, repairs to the public highway carriageway as a result of material transfer from the access track, and full details of how drainage will be installed within the access to the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site for the stationing of caravans for a

residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. Unless within three months of the date of this decision a scheme for the erection of external lighting, including the retention of any existing external lighting to be erected on the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site for the stationing of caravans for a residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANTS:

Mr Philip Brown	Representing the appellants
Ms Katie McGirley	Resident at Kirby Glebe Farm
Ms Lowien Torrens	Resident at Kirby Glebe Farm
Mr Martin Torrens	Resident at Kirby Glebe Farm
Mr James McDonagh	Resident at Kirby Glebe Farm

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth	Barrister appointed by Annie Ryan Solicitor for the Council
Mr Jeff Brown	North Warwickshire Borough Council
Mr Mike Pitman	North Warwickshire Borough Council
Ms Lucy MacDonald	North Warwickshire Borough Council
Mr David Pilcher	Warwickshire County Council

INTERESTED PARTIES

Mr Trevor Hopkins	Mancetter Parish Council
Mr Harold Blackburn	Mancetter Parish Council
Ms Glenys Roberts	Hartshill Parish Council
Councillor Denise Clew	North Warwickshire Borough Council

DOCUMENTS

Submitted to the Hearing by the Appellants:

Appeal Decision – Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE – Appeal ref. APP/R3705/W/20/3255527

Letter from Communities Group Warwickshire County Council dated 25 October 2022



Appeal Decision

Site visit made on 12 December 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2022

Appeal Ref: APP/R3705/W/22/3304390

Orchards, Bennetts Road North, CORLEY, West Midlands CV7 8BG

- 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 Dereck Beverley against the decision of North Warwickshire Borough Council.
- The application Ref PAP/2021/0531, dated 9 September 2021, was refused by notice dated 2 August 2022.
- The development proposed is a new build bungalow and single garage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An appeal was dismissed¹ for the erection of a bungalow on the site in early 2021. It appears that the siting and scale of development was similar to the dwelling proposed in this appeal. The Inspector found that the proposal would not constitute 'limited infilling' within a village in accordance with paragraph 145(e) of the National Planning Policy Framework (the Framework). The Inspector also found that whilst the site was deemed to be Previously Developed Land (PDL) the proposal would have a greater effect on the openness of the Green Belt than the existing development.
3. Since this decision was made, the Council adopted the North Warwickshire Local Plan (2021) (LP). Consequently, local policies have changed, creating a new policy context for the scheme. Furthermore, a revised version of the Framework was published in July 2021. However, its Green Belt policies have not materially changed between versions. As such, the appeal decision remains an important material consideration for this appeal.

Main Issues

4. The main issues are;
 - whether the proposal would be inappropriate development in the Green Belt and its effect on openness having regard to the Framework and any relevant development plan policies;
 - if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

¹ Planning Appeal Decision: APP/R3705/W/20/3258573

Reasons

Inappropriate development

5. The Framework explains that the Government attaches great importance to the Green Belt and that substantial weight is to be afforded to any harm. Paragraph 149 establishes that new development would be inappropriate development in the Green Belt unless it would meet a listed exception. Paragraph 149(e) states that limited infilling in villages is not inappropriate development.
6. LP Policy LP3, bullet point 3, states that limited infilling, in settlements washed over by the Green Belt, will be allowed within infill boundaries as defined on the Policies Map. At bullet point 4, the policy also identifies that 'limited infilling' may also be acceptable where a site is clearly part of the built form of a settlement, such as where there is substantial built form on three or more sides of the site. This provides a useful understanding as to how the Council applies the policy. Nevertheless, the question of infilling is also a matter of planning judgement, taking into account the size and location of the development and its relationship to existing built form.
7. The site consists of a deep plot that is L-shaped and wraps around the adjacent residential plot of Holmfield. To the northwest the pattern of development consists of a close-knit and regular form of linear housing. To the south-eastern side of the site development becomes more dispersed. Although there are two houses adjacent to the eastern side of the site, these are separated from the nearby linear form of development. The site is not therefore within an established row of linear development, but a point of transition where development becomes more dispersed.
8. The area is 'washed over' by the Green Belt. The site is relatively wide, with the open countryside beyond its rear and front boundaries. The site is not within a designated settlement infill boundary and has built form to only two sides. Consequently, the proposed site would not fulfil the definition of limited infilling advanced local policy. Furthermore, based on my own observations of the site and its context, the site is not within the built form of a settlement and instead at an edge beyond the close-knit linear form of development. Accordingly, whilst limited, the proposed site would not constitute an infilling plot within a village by virtue to paragraph 149(e) of the Framework.
9. Paragraph 149(g) of the Framework supports limited infilling of PDL which would not have a greater impact on the openness of the Green Belt than the existing development.
10. The site shows some signs that it was previously developed, with an access point and gap in the front boundary hedge. There is also evidence that parts of the middle of site have been turned over and there are some small piles of rubble evident elsewhere. A land registry title plan has also been submitted that shows that a property was previously located on the site. I have also noted the comments from an interested party, the Council and the previous appeal decision. These all help me to conclude the site would constitute PDL.
11. Paragraph 137 identifies that the fundamental aim of the Green Belt is to prevent urban sprawl and keep land permanently open. The openness of the Green Belt has both spatial and visual dimensions. The existing development

amounts to an extremely limited form of development. The house that previously stood on the site has been fully cleared with limited elements of this development remaining as 'existing'. In contrast, the proposed dwelling would be clearly viewed from the highway, and the countryside to the rear, through gaps in the boundary hedging. The proposed dwelling would also be overlooked by the occupiers of adjacent dwellings.

12. Spatially the proposal would have a large footprint, covering a large proportion of the site's width. Visually, whilst relatively low-lying, it would substantially erode the openness of the site in comparison to the existing development on site. New landscape planting, whilst providing some screening, would not mitigate the visual effect of development or the identified loss of openness. Consequently, the proposal would have a moderately adverse effect on the openness of the Green Belt and therefore would fail to satisfy the requirements of paragraph 149(g). Furthermore, whilst relatively discrete, the proposed development would introduce built form into this currently open site resulting in encroachment into the Green Belt, in conflict with a key purpose of national Green Belt policy.
13. The supporting text for LP policy LP3 explains, at paragraph 7.24, that redevelopment within the lawful use of the PDL is acknowledged as being appropriate development. However, this in itself is not policy. The assessment of the redevelopment of PDL in the Green Belt would be subject to the criteria of paragraph 149(g) and LP policy LP3(e), that includes consideration of the visual impact of the proposed development.
14. As it has not been demonstrated that the proposal would be any of the exceptions, listed in Paragraph 149 of the Framework, or comply with LP policy LP3, it would amount to inappropriate development which is, by definition, harmful to the Green Belt.

Other considerations

15. The Appellant asserts that the proposal would be close to Kersley End, offering future occupiers access to a range of goods and services, accessible by a footway. Furthermore, I understand that the proposed dwelling would include a ground source heat pump, solar panels, rainwater harvesting and highly insulated building techniques. These benefits are in favour of the proposal but are collectively of only limited weight.
16. The Self-Build and Custom Housebuilding Act 2015 has placed a statutory duty on 'relevant authorities', including district councils, to keep a self-build and custom register. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and grant sufficient permissions to meet the identified demand. The benefits of custom or self-build housing are recognised by the Planning Practice Guidance in finding that it helps to diversify the housing market and increase customer choice. The Framework also supports the delivery of a variety of land coming forward to meet the needs of groups with specific housing requirements including for those people wishing to commission or build their own homes.
17. The appellant asserts that the Council has not approved any self-build housing sites and there are currently 22 people on the Council's self-build housing register, this has not been disputed by the Council. It therefore appears that the Council is not fulfilling its duty to provide a suitable number of serviced

plots to meet this requirement. Consequently, this benefit affords moderate weight in favour of the proposal.

Whether there would be Very Special Circumstances

18. Paragraphs 147 and 148 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in moderate harm to the openness of the Green Belt and would result in encroachment. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt.
20. On the other hand, the other considerations I have identified are of limited to moderate weight in favour of the proposal. As such, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.

Other matters

21. A recent planning approval² for extensions to the adjacent property of Oakdene enabled the dwelling to be substantially increased in size. Extensions to buildings in the Green Belt are governed by paragraph 149(c) of the Framework. This states that an extension to a building would not be inappropriate development provided it would not result in disproportionate additions over and above the size of the original building. The Council explain that the approved extension was off-set by the demolition of existing workshops resulting in a net gain that was not significantly greater than its 30% guidance for such extensions. As such, the proposed extension did not amount to inappropriate development and would not therefore affect the openness of the Green Belt.
22. In the case of the approval³ for an extension at Little Hurst the officer report explains that whilst the extension would be inappropriate development, it would have a limited effect on openness. It was also noted that the fall-back position, of the implementation of permitted development rights, provided a material consideration that enabled the scheme to be allowed. These considerations are not engaged in the case of the current proposal.
23. The Appellant also refers to other cases of extensions to dwellings in the area. However, the assessment of such schemes in the Green Belt is subject to different requirements and these are markedly different to considerations associated to those for a new dwelling.

² Planning Application Reference: PAP/2019/0115

³ Planning Application Reference: PAP/2022/0303

24. The proposed dwelling would be a bungalow consisting of brick and tile. It would generally accord with the design and form of neighbouring development and be in keeping with the character and appearance of the area. However, this conveys only a neutral affect in respect of the merits of the case. Also, such an absence of harm would not result in 'no harm' to the openness of the Green belt.

Conclusion

25. The proposed development would not accord with the development plan or national policy and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Ben Plenty

INSPECTOR



Appeal Decision

Site visit made on 30 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/R3705/C/21/3288124

Land at Blabers Hall Farm, Green End Road, Fillongley

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Clarke Adams against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 4 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the undertaking of unauthorised engineering operations including the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation, together without the benefit of planning permission, the unauthorised screening and export of materials extracted from the land, shown edged red and hatched black, on the plan attached to the notice.
 - The requirements of the notice are to:
 1. Cease all engineering operations on the land including the formation of earth bunds, further alterations to the levels of the land by a cut and fill operation, and the screening and export of materials extracted from the land edged red and hatched black, on the attached plan.
 2. Remove the existing earth bunds shown cross hatched in the approximate position, on the attached plan, from the land, the materials forming the bunds should be removed from the land. Restore the land to its former levels.
 - The period for compliance with the requirements is: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (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.
-

Decision

1. The enforcement notice is quashed.

Applications for costs

2. An application for costs has been made by North Warwickshire Borough Council against Mr Clarke Adams. This will be the subject of a separate decision.

Matters concerning the notice

3. An enforcement notice must be drafted fairly to tell the recipient what they have done wrong and what they must do to remedy it. The notice alleges engineering operations including the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation, together without the benefit of planning permission, the unauthorised screening and export of materials extracted from the land.
4. The appellant asserts that no cut-and-fill has taken place and no material has been exported. Cut and fill operations typically involve the removal, or cut of

- material from one location or part of a site for use elsewhere, to create a more suitable landform.
5. Photographs provided by the Council show a substantial depression in the land which has presumably been created by the extraction of material, whether that is mineral occurring naturally within the site, or deposited material. While this could accord with the 'cut' allegation, it is not clear what has become of the 'fill', whether it is contained within the bunds, and would therefore need to be removed from the site to accord with the requirements, or whether it has been placed elsewhere within the site.
 6. Photographs also show substantial mounds of material which appear to comprise rubble mixed with soil and a mound of mixed waste. The appellant states that no materials have been imported by him and the enforcement notice does not allege the importation of any material. The position from which the Council's photographs were taken is not identified on a plan. Nevertheless, the mounds of material do not appear to have been limited to the south western boundary, nor do they appear to have been shaped into bunds.
 7. During my site visit, I saw that much of the land has been levelled and stockpiles of materials which are evident in the photographs were not evident during my visit. From the evidence, it seems that waste materials have been historically imported and deposited within the site and that it is, at least in part, this material which has been processed within the site.
 8. The processing of waste material is generally a use of the land and the deposit of waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose if the height of the deposit extended and exceeds the level of the land adjoining the site. However, the notice does not allege a material change of use, rather it alleges 'screening and export of materials'.
 9. The requirements, which include the removal of materials forming the bunds from the land, appear at odds with the allegation, since it does not allege the importation of material. I note the Council, suggests that the level of extracted materials cannot be utilised by re-use on the 'mixed-use planning unit'. However, if there was no importation of materials, it is not clear why simply restoring the levels would not be possible.
 10. The appellant has advanced their case on the basis that the operations are permitted by Schedule 2, Part 6, Class A, A(b) and Class C, C.1 and C.2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). The Council disputes that the works accord with the GPDO as it exceeds the limitations within A.2(2). However, it is not clear from the notice or the Council's evidence where the alleged cut and fill has taken place.
 11. Although the general position of the bunds is identified on the notice, a substantial area, which incorporates structures and buildings, is identified as being the 'approximate extent of the unauthorised engineering operation'. I consider it highly likely that the Council has included this area because it has conflated engineering works with a use of the land.
 12. I find the wording of the notice to be ambiguous, with the ambiguity further compounded by the plan attached to it. Whilst the appellant has appealed

under ground (b), it is not disputed bunds have been constructed within the site and so I need to consider whether the notice can be corrected.

13. Were I to correct the allegation to refer to a material change of use of the land, this would change the nature of the allegation. The appellant has appealed under ground (a) on the basis of the alleged engineering works and not a material change of use. Correcting the notice in this way would cause injustice to the appellant since they are likely to have advanced a different case under ground (a).
14. Moreover, the Council alleges that part of Blabers Hall Farm is being used in connection with an unauthorised commercial storage use, being the subject of proposed further (authorised) enforcement action. In mixed use cases, the allegation should refer to all the components of the mixed use since the materiality of change should generally be assessed against the planning unit. It is not clear from the evidence before me, whether the mixed use would need to refer to a commercial storage use and if so, whether it would be necessary to require that it ceases.
15. Alternatively, I have considered whether it would be possible to correct the notice so that it simply refers to operational development, namely the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation. However, such a correction would not address the lack of precision regarding the cut and fill allegation or the apparent contradiction with the requirements and so ambiguity as to what the appellant has done wrong would remain.
16. I do not consider that the issues with the notice I have identified above are such as would necessarily render it a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

Conclusion

17. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
18. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR