



# Appeal Decisions

Hearing held on 21 September 2010

Site visit made on 21 September 2010

by **Diane Lewis BA(Hons) MCD MA LLM**  
**MRTPI**

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

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**Decision date:**  
**6 January 2011**

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## **Appeal 1 Refs: APP/E3715/C/10/2126700, 2126701** **Land at Smeaton Lane, Stretton under Fosse CV23 OPS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr T Smith and Mrs C Smith against an enforcement notice issued by Rugby Borough Council.
- The Council's reference is ENF/2010/0124.
- The notice was issued on 26 March 2010.
- The breach of planning control as alleged in the notice is the change of use, without planning permission, of the land from agricultural to a mixed use of agriculture and the siting of two mobile homes.
- The requirements of the notice are:
  - i. Remove the two mobile homes from the land
  - ii. Disconnect all utility services from the land.
- The period for compliance with the requirements is two months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decisions: The appeals are allowed, the enforcement notice as corrected is quashed and planning permission is granted in the terms set out below in the Formal Decision.**

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## **Appeal 2 Ref: APP/E3715/A/10/2126698** **Land at Smeaton Lane, Stretton under Fosse CV23 OPS**

- 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 T Smith and Mrs C Smith against the decision of Rugby Borough Council.
- The application Ref R09/0826/PLN, originally dated 10 August 2009, was refused by notice dated 17 February 2010.
- The development proposed is a change of use of land to private gypsy caravan site.

**Summary of Decision: The appeal is allowed and planning permission granted subject to conditions as set out below in the Formal Decision.**

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### **The Development**

1. The Council issued two enforcement notices. By letter dated 22 September 2010 the Council withdrew the notice alleging unauthorised operational development consisting of the importation and laying of material to form a hard-standing. Therefore the appeals against that notice are no longer before me for determination.
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2. In the other notice the Council alleges that there has been an unauthorised change in the use of land from agriculture to a mixed use of agriculture and the siting of two mobile homes. I intend to correct this description to omit reference to a previous use, in view of the site history and to state the current use, where all the land is a residential caravan site. A correction was discussed at the hearing and may be made without causing injustice.
3. The description of the development in Appeal 2 should be amended to include reference to the formation of a new access, work which is shown on the submitted layout plan and indicated on the application form.

**APPEAL 1: Appeals on ground (a) (the deemed applications) and APPEAL 2**

4. Appeals 1 and 2 relate to a single development. As such the main issues are the same and consistent decisions must be made on each.
5. Mr and Mrs Smith are seeking planning permission to use their plot of land on Smeaton Lane as a base where they would station their caravans and set up home. They were born into Romany Gypsy families and were brought up in a traditional way of life. For many years Mr and Mrs Smith had a pitch on a local authority site, where they lived with their 7 children. The family make their living by landscape gardening and tree work, a typical form of employment within the traveller community. Consistent with the approach taken by the Council, I do not dispute their gypsy status for the purposes of applying planning policy<sup>1</sup>.

**Planning Policy**

6. The relevant saved development plan policies are set out in the Rugby Borough Local Plan 2006 (the Local Plan). The site is in the West Midlands Green Belt. Policy E2 states a general presumption against inappropriate development. It is consistent with national policy in PPG2<sup>2</sup> in stating that such development shall not be approved except in very special circumstances.
7. Policy H13 of the Local Plan identifies the criteria for the provision of gypsy sites. The criterion that requires a gypsy site to be outside the green belt is not consistent with Policy E2 or PPG2. The policy also pre-dates a needs survey and national policy in ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*. These factors need to be taken into account when coming to conclusions on the acceptability of a site based on the policy.
8. The Council's Local Development Framework Core Strategy was submitted to the Secretary of State in January 2010. Policy CS24 quantifies the number of residential pitches and transit pitches to be provided for gypsies, travellers and travelling showpeople between 2007 and 2012. It also identifies the criteria to inform the location of sites. The policy has yet to be tested through examination and therefore it cannot be accorded the weight of a development plan policy. However, it is the most up to date Council statement available on gypsy site provision and therefore a significant consideration.
9. The Government has announced its intention to revoke Circular 01/2006, subject to the necessary impact assessment and following public consultation

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<sup>1</sup> The definition of gypsies and travellers is set out in paragraph 15 of ODPM Circular 01/2006.

<sup>2</sup> Planning Policy Guidance: Green Belts (PPG2)

to which all interested parties will be entitled to respond. The aim is to replace the Circular by a short policy statement and light touch guidance. In the meantime the Circular remains in force, with as yet no draft replacement. However, the announcement has to be taken into account and affects the weight that can be attached to the Circular as a statement of Government policy.

### **Main issues**

10. These are:

- The effect of the development on the openness of the Green Belt and the purposes of including land within it.
- The effect of the development on the rural character of the area.
- The extent to which the development addresses accessibility and promotes social inclusion, equality and community cohesion.
- The weight to be attached to the considerations put forward to support the development, including the general need for gypsy and traveller sites in the Borough and the surrounding area, the appellants' accommodation needs and the lack of an available alternative suitable site.
- If the development is inappropriate, whether the resultant harm, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

11. Consideration of the human rights issues will be an integral part of my decision. The wider community interest will be balanced against the rights of the appellants, primarily those under Article 8, the right to respect for private and family life and the home.

### **Reasons**

#### ***Inappropriate development***

12. The making of a material change of use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt.

13. The appeal site is a triangular shaped area of land on the north side of Smeaton Lane. The land was originally part of a larger field (O.S. 6600) before it was separated off to become a parcel of land with its own boundaries. In the 1960's the land, together with a concrete sectional building that still stands in the north west corner, was used by a riding club. This use was authorised by a planning permission granted in 1966<sup>3</sup>. The permission was for a temporary period until 1973 but it seems the use continued for many years thereafter.

14. The land was sold and during the 1990's an agricultural contracting business was run from the site, a business which also assisted building and engineering activities. The contractor's yard was used for the parking of a number of JCB vehicles and the storage of plant, machinery, materials and smaller pieces of

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<sup>3</sup> The Council was unable to provide details of the permission, which probably applied to the appeal site and adjoining field.

equipment both in the open and in the concrete building. Compacted road stone covered the central part of the site. An enforcement notice against the unauthorised partial erection of a building was upheld on appeal in May 1997. At that time the Inspector commented that there had been no attempt to regularise the use and it would appear to be unauthorised. Subsequently, the expanding business relocated to an alternative site in the area.

15. The planning history leads me to conclude that: (i) the land has not been in agricultural use for over forty years, (ii) the contractor's business was not authorised by a planning permission or other provision within the 1990 Act, and (iii) no enforcement action was taken against that use, only against a partially erected building. In recent years the land was not put to any specific use. When the land was bought by the appellants around June 2009 it was in an overgrown state. Materials, buildings and a hard core base remained from former uses. In assessing the effect of the development on the Green Belt the comparison is not with land in agricultural use but with a neglected and unused area of land, probably with a nil use, having an area of hard surfacing and a small building.
16. The appellants cleared the land of vegetation, waste and rubble and removed the remains of two buildings. The site now is mostly hard surfaced with stone over a solid base, to facilitate domestic use and parking. Two touring caravans are positioned near the frontage and adjacent is a small utility block standing on a base of hard paving. All service connections are contained neatly within a very small brick enclosure. The concrete building has been painted and utilised for domestic storage. Close boarded fences have been erected along the frontage, behind an existing hedge and along the western boundary with the neighbouring residential property. A post and rail fence and the ditch have been retained along the boundary with the field to the north. Some new garden planting has been carried out inside the fences. A new access onto the highway has been formed at the eastern end of the site and the gated entrance now has two brick piers with solid timber gates. At the time of the site visit little additional domestic paraphernalia was evident, apart from a play house and a small number of external lights. All in all the land has a residential appearance and character.
17. My conclusion is that openness has not been maintained and some encroachment into the countryside has taken place, primarily from the physical presence of the caravans, the close boarded fencing and use of the land for residential purposes. Inappropriate development has taken place. However, because of the small scale and low intensity of the development the actual harm to the openness of the Green Belt is largely confined to the site itself.

### ***Effect on the rural area***

18. Along Smeaton Lane is a fragmented form of linear development, comprising a mix of residential, agricultural and industrial properties. Building types are similarly mixed and include the terrace of Victorian cottages opposite the site, detached bungalows and larger houses, steel framed sheds and units covered in cladding. A few caravans are to be seen on domestic and farm premises. This development is surrounded by open fields, used for agricultural purposes and also for keeping horses. Hedges, trees and small woodlands add visual interest and enclosure. A distinctive feature of the area is the Oxford Canal

which, together with the railway, crosses Smeaton Lane on a raised embankment just to the south west of the appeal site. A tow path follows the western side of the Canal but no claims were made that the site could be seen from the path.

19. The use of a small plot of land for a residential caravan site detracts very little, if at all, from its surroundings and, in terms of Smeaton Lane, it fits in well with the pocket of development around it. In part this is because the plot is adjacent to Smeaton Lane, is of limited depth and is not disproportionate in size compared to nearby residential curtilages. The fencing along the frontage and the gated entrance screen the caravans and the site from public view. The fence is not intrusive either, despite its height, because it is behind a tall hedgerow and it is painted dark green. Even if a touring caravan was replaced by a static caravan or mobile home there would be little visual change to views along Smeaton Lane. At the hearing mention was made for the first time that the caravans could be seen from Lanny's Lagoon, which is a commercial fishery off Fosse Way, north of Stretton Wharf. The fishery is a secluded spot and given the separation distance and local context I would not expect the caravans to be particularly noticeable.
20. A previously degraded and untidy piece of land has been cleared and some new planting carried out. The appellants have taken care in the work they have done to make the site suitable to accommodate their caravans and provide a domestic setting. Some of the neighbours have welcomed their presence and the improvements made. There is no evidence of any features of ecological significance and the site topography has not changed as a result of the clearance. The removal of tree stumps of the former conifers cannot be regarded as a harmful loss and the appellants are willing to plant indigenous species to close the gap in the hedgerow on the frontage, where the former entrance used to be. Mr Smith has cleared rubbish from the drainage ditch along the rear boundary, which is another small benefit. Details of hard and soft landscaping and its future maintenance could be resolved through planning conditions.
21. My conclusion is that the development does not significantly detract from the quality and character of the surrounding area and that there is no conflict with Policies E5 and GP2 of the Local Plan on landscape and settlement character and general principles of landscaping.

### ***Principles of sustainability***

#### *Accessibility*

22. Stretton under Fosse has a farm shop, which is open every day of the week but otherwise there are limited services and public transport provision. Brinklow, some 2.5 km away, is the nearest Main Rural Settlement with local shopping, a doctor's surgery and pharmacy, a post office and a primary school. Rugby and the outskirts of Coventry offer a greater range and higher order facilities, including supermarkets.
23. Smeaton Lane is not a location that would encourage walking or use of public transport. Reliance on the car, as the appellants confirmed that they do, is a disadvantage and contrary to an objective of local and national policy to reduce the need to travel by private car.

### *Social inclusion and equality*

24. Research has consistently confirmed the link between the lack of good quality sites for gypsies and travellers and poor health and education. The appeal site would provide a permanent base that would enable easier access to GP and other health services and stability in education for the children, benefits that are not readily achieved from unauthorised encampments and roadside sites. The development would contribute to a reduction in social inequality.

### *Community cohesion*

25. The Parish Plan attaches high priority to the role of the Green Belt in safeguarding the countryside. The establishment of the gypsy caravan site in such a sensitive location, without planning permission, has resulted in strong objections from Parish Councils and residents. There is concern that the same rules should apply to all and that there is consistency with previous decisions to refuse planning permission for the erection of a dwelling<sup>4</sup>.
26. Clearly there is disquiet in the local community but national planning policy on Green Belts applies equally to applications for planning permission from gypsies and travellers and the settled population. Mr and Mrs Smith are not asking to be treated differently from others and have explained why they believe their site complies with planning policy. They do not dispute that the change of use is a breach of planning control and is unlawful. There is, however, statutory provision to apply for planning permission in such circumstances, as the appellants have done. The fact that development has already taken place is not relevant to assessing the planning arguments<sup>5</sup>.
27. Furthermore, not all local opinion is negative. The appellants and their family have support from near neighbours and from the Head Teacher of Wolvey Primary School, who know them well. There is no evidence of anti-social behaviour or of the residential amenities of those living near by being adversely affected in any way. There is compliance with Local Plan Policy GP3, protection of amenity. There is no evidence of a concentration of gypsy sites in the locality and this small residential caravan site for a single gypsy family would respect the scale of and not dominate the nearest settled community.

### *Local infrastructure*

28. The Council raised no objections on highway grounds. I agree with that conclusion having taken account of the new access arrangements, including visibility, the characteristics of Smeaton Lane and the small amount of traffic that would be generated by the use. Parking and turning requirements are easily accommodated within the site. Relevant criteria of Local Plan Policies T3 and T5 are met.
29. The site is connected to the mains electricity supply, overcoming the need to use generators. Details of a waste water sewerage treatment plant were submitted to the Council in November 2009. Questions were raised about the capacity of the plant at the time but as no adverse comments were made subsequently the use of a planning condition would be appropriate to resolve

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<sup>4</sup> The planning history shows these decisions were pre 1988.

<sup>5</sup> Guidance on this matter is found in a judgement by the House of Lords in *South Bucks v SSTR & Porter* [2004] UKHL 33

any outstanding points. Residents and Combe Fields Parish Council have mentioned localised flooding of the roads and ditches within the last two years. However, if the site is at risk from flooding I would have expected the Council, with its local knowledge, to have consulted the Environment Agency. There is no evidence of any infringement of policy requirements in PPS25<sup>6</sup>. Risk from flooding was not a reason for refusing the planning application or for issuing the enforcement notice.

30. I conclude that there are appropriate facilities to meet essential requirements of those living on the site and no undue pressure would be placed on local infrastructure.

### *Conclusion*

31. The development complies with Local Plan Policies GP3, T3 and T5 on residential amenity, highways and parking. Considerations, which are raised in PPS1 and Circular 01/2006, related to social inclusion and equality, community cohesion, site and local infrastructure are acceptable. The one factor against the site is that it scores less well on accessibility.

### **General need**

32. The Council and the appellants agreed that 48 additional permanent gypsy and traveller pitches, and 5 transit pitches, are required between 2007 and 2012 to meet identified need. This figure is derived from the Southern Staffordshire and Northern Warwickshire Gypsy and Traveller Accommodation Assessment (the GTAA). The Council did not seek to argue that the figure has been reduced by provision since 2007. On this evidence I agree with the Council that there is a clear and immediate need for pitches in the Borough. The GTAA is the relevant indicator of accommodation need for gypsies and travellers, not the housing needs survey carried out in Stretton under Fosse, cited in the Parish Plan and relied on by the Parish Council in their objections to the appellants' caravan site.
33. Across the West Midlands over the same period there is a need for some 660 additional residential pitches, with a further 278 pitches between 2012 and 2017. These figures, which include Rugby, were set out in the Interim Policy Statement for the Region and they continue to be a reasonable indicator of pitch requirements.
34. The means of addressing the need for sites is through the development plan system. Through the GTAA's and work on the Interim Policy Statement progress has been made in defining a level of need that now has to be taken forward at local level. The onus is on local planning authorities to deliver the necessary land allocations. In Rugby there is a commitment to do so, although the process has been delayed and the allocations will not be made before 2012. When account is taken of measures being followed to improve the position the general need that exists in the Borough and across the wider area has significant weight.

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<sup>6</sup> Planning Policy Statement 25: Development and Flood Risk

### ***Appellants' accommodation need***

35. Mr Smith, together with his parents and brother, were residents on pitches at Aston Firs caravan site near Hinckley<sup>7</sup> for at least 19 years. He occupied a plot with Mrs Smith for 9 of those years. The Travellers Sites and Liaison Officer wrote in support of any housing, accommodation or planning applications that Mr and Mrs Smith may submit. He explained that the family suffered threats from another family, which had resulted in armed police being present on site on three separate occasions. Mr and Mrs Smith decided to leave the site in July 2005 for their own personal safety. The threats to the family continued, which resulted in Mr Smith's parents and brother having to leave the site in October 2005 after a violent incident involving assault and criminal damage.
36. After they left Aston Firs the family were able to camp on a friend's property in the Wolverhampton area until the Council asked them to go in early 2007. They went to stay with friends in Doncaster and then Kidderminster, where they sited their caravans at the back of a bungalow. The appellants say they searched for alternative sites by enquiring of land agents and other travellers and by consulting the development plan but to no avail. No further details have been provided of the site search or to show they need a site in the Green Belt, details which would help support their case. Nevertheless they were without a permanent pitch for about four years after leaving Aston Firs. Furthermore, there is no requirement in planning policy or case law for an applicant to prove that no other sites are available or that particular needs could not be met from another site<sup>8</sup>. Mr Smith was told of the land at Smeaton Lane by his brother and, following completion of the purchase in June 2009, they moved on in July 2009.
37. The youngest children, Naomi (aged 9) and Nicole (aged 8,) are now doing well at Wolvey C of E Primary School. The Head Teacher considers their progress would be jeopardised if they had to change schools. Naomi suffered severe post traumatic symptoms after witnessing the violent attack on members of her family. She has received intensive therapeutic care from the Orchard Centre in Rugby, which provides Child and Adolescent Mental Health Services. The specialist has stated that her recovery would suffer if her home life and schooling were disrupted. Recently Mr Smith has been diagnosed with multiple sclerosis and is under the care of University Hospital Coventry.
38. Clearly the family need a lawful caravan site where they can park their caravans and live safely. They have had connections with the area over many years through family ties, upbringing, health care and so on. Stability is important for their welfare, to enable the girls to attend school regularly and for continuity in health care. I attach significant weight to these considerations.

### ***Alternative Sites***

39. To be a realistic alternative, case law has confirmed that accommodation has to be suitable, available, affordable and acceptable<sup>9</sup>.

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<sup>7</sup> Aston Firs, Sapcote, is a local authority site providing permanent pitches for gypsies and travellers owned and managed by Leicestershire County Council.

<sup>8</sup> *South Cambridgeshire DC v SSCLG and Brown* [2007] EWHC 2117 (Admin), [2008] EWCA Civ 1010

<sup>9</sup> *Doncaster MBC v FSS and Angela Smith* [2007] EWHC 1034 (Admin)

40. In July 2010 the Council offered Mr and Mrs Smith a family pitch to rent on the Woodside Park Gypsy and Traveller caravan site, near Ryton on Dunsmore. This site, part public and part privately owned, gained a reputation for being a lawless area and was considered by one of my colleagues in 2007 to be of an unacceptable standard. Since then the Council has carried out refurbishment and improvements. There is a warden service during the day and 24 hour CCTV coverage. However, the appellants do not wish to move there, or indeed any other multi-occupied site, because they fear for their safety. As they explained, they are being victimised by a group of travellers who would get to know of their whereabouts. The lack of control over comings and goings on a public site would substantially increase their vulnerability. It is for this reason that they consider it essential that they have their own site where they are able to control access.
41. Having a safe place to live is a fundamental aspect of delivering sustainable housing development. Referring to a point raised in discussion at the hearing, the need to feel safe in your home is quite different to a general risk to personal safety that may exist in public places. The distress and the frightening experiences which the family have talked about have been confirmed by expert and professional evidence from health and local authority sources. An attack on one of their sons, Adam, in May 2010, suggests a continuation of previous troubles, although little evidence was brought forward to explain this incident. These circumstances are distinctive and I agree with the appellants that a pitch at Woodside Park is not a suitable or acceptable alternative at the current time. However, the position may change in the future, whether for family or other reasons and therefore I would not entirely rule out the acceptability of a pitch on a local authority site at a future date.
42. Looking ahead, the Council's records, appeal decisions and the personal experience of Mr and Mrs Smith show that finding private sites in the Borough that are suitable, available and affordable is very difficult. Alternatively, the Council agreed that a period four years would be a realistic timescale for adoption and delivery of sites through the DPD. At the present time there is no information about matters such as the size and range of land to be identified, tenure/ownership, the mechanisms for site delivery and pitch allocation. It may well be that options suitable for the appellants will be identified. The process and land search will be informed by the framework and adopted criteria in the Core Strategy with attention focused on locations in and around urban areas or Main Rural Settlements. As set out in the Sunrise Park decision, whilst some identified sites probably will be in the Green Belt, this does not justify pre-empting a thorough site search through the planning process. A common theme of the various recent decisions in Rugby on gypsy and traveller sites is the grant of temporary permissions to allow for sites to be allocated through the DPD.
43. In summary, at the current time there is no alternative acceptable site for the family. However, it is also very relevant that there is the prospect of land being allocated in the future which may offer the opportunity to resolve the family's accommodation needs. Overall, alternative site provision adds some weight to the appellant's case.

## **Conclusions**

44. National policy attaches great importance to Green Belts. PPG2 emphasises that the most important attribute of Green Belts is their openness. Within Rugby Borough the primary purpose of Policy E2 of the Local Plan is to protect the Green Belt from inappropriate development that would prejudice the open nature of the rural area and the character of settlements. The residential caravan site has resulted in a loss of openness, encroachment into the countryside and harmful inappropriate development has taken place. I attach substantial weight to this harm. In addition, the site is not easily accessible by means other than the car. This adds some further weight against the development but because the site delivers positive outcomes on other aspects of sustainability I do not consider it to be a strong objection.
45. The considerations that support the development are: the clear, urgent and unfilled general need for gypsy and traveller sites that exists in the Borough and across the wider area, the appellant's accommodation need and the lack of alternative sites for the family in the short term. None of the considerations, when taken on their own clearly outweighs the fundamental harm to the Green Belt and harm from dependence on the private car. When taken collectively, the outcome is more finely balanced. However, the harm has to be clearly outweighed. My conclusion is that the other considerations do not do so. The very special circumstances necessary to justify the development do not exist and the change of use does not comply with Policy E2 of the Local Plan and national policy in PPG2.
46. Having concluded the development is unacceptable on a permanent basis, the probable consequence for the family would be the loss of their home and a return to unauthorised camping. This outcome would be a serious interference to their home and family life and harmful to the educational attainment of the two children. This interference would have a basis in law, have a legitimate objective of protecting the environment and be necessary to secure cessation of the use in the public interest. The unlawful occupation also makes the family's position a little less strong. However, stability in home and family life is essential to their health, safety and welfare, especially bearing in mind the vulnerability of the children. Unauthorised camping would not be in the public interest either, as it would be likely to result in harm to the environment, conflict and costs to public authorities. A key consideration is whether dismissal of these appeals would be proportionate or whether the protection of the public interest may be achieved by means which are less interfering of the occupiers' rights.
47. The probability is that it would be some four years before there are outcomes on gypsy and traveller site provision through the development plan system. In view of this timescale, and the inability to control the development through planning conditions, I rule out a long extension to the compliance period. A temporary planning permission would perpetuate the harm to the Green Belt but the actual harm is small scale and this is not a case where the harm is so severe that it should be remedied as quickly as possible. There are no issues over highway safety or residential amenity. On the other side of the balance, the identified urgent need for sites and the appellants' accommodation need, which are not going to be resolved through the development plan process in the next few years, assume greater weight.

48. A time limited permission may be justified if it is expected that planning circumstances will change in a particular way at the end of that period<sup>10</sup>. In this case, the expectation is that land will be allocated for gypsy and traveller pitches within a four year period. This expectation is supported by a recent decision by the Council in July 2010 to grant a four year temporary permission in the Green Belt for a mobile home for a gypsy family.
49. In this context, I conclude that the identified harm is clearly outweighed by the other considerations when taken in combination. To require this vulnerable gypsy family to give up the relative safety of their own home, with little realistic prospect of a replacement, would be disproportionate. Looking at the case as a whole, my conclusion is that very special circumstances exist which justify the development for a temporary period. On this basis the caravan site is in accordance with Policy E2 of the Local Plan and with PPG2 and I will allow the appeals.
50. The success on the ground (a) appeals means that the enforcement notice will be quashed and consequently it is not necessary to consider the compliance period through the appeals on ground (g).

### **Conditions**

51. The vulnerability and welfare of this gypsy family, and the need to give stability in education and equal opportunity in life for the two youngest children, have been essential considerations in the acceptability of a temporary permission. Therefore the permission will be made personal to Mr and Mrs Smith and their dependants. A general gypsy occupancy condition, whereby the site could be occupied by any gypsy and traveller meeting the planning definition, is not necessary. As I have explained the use is only acceptable for a temporary period to enable time for gypsy and traveller sites to be brought forward through the development plan process. Linked to these conditions it is necessary to require restoration of the site when their occupation ceases in order to protect the Green Belt.
52. The appellants wish to station two caravans on the site, although they are uncertain as to the type of caravans they may have in the future. The two touring caravans on site now have helped to minimise site coverage and the effect of the development on openness and rural character. The definition of a caravan would allow a twin unit mobile home with the appearance of a small bungalow, otherwise described as a static caravan because it is not transportable except when carried by another vehicle. I consider that there should be no more than one static in this Green Belt location. In order to safeguard residential and visual amenity it is necessary to preclude commercial activity and the parking of larger commercial vehicles.
53. The submission of a site development scheme will enable outstanding details to be confirmed and to ensure that the site layout and associated works respect the environment and promote highway safety. Slightly more information will be required with the deemed applications because they are not supported by the plans and details submitted with the application now being dealt with as Appeal 2. Necessary and reasonable requirements suggested by the highways

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<sup>10</sup> Circular 11/95 The Use of Conditions in Planning Permissions

authority, such as the provision of a parking area and details of the verge crossing, will also be included as part of the scheme. Details of tree hedge and shrub planting are justified even though the permission is temporary because of the importance of planting to the boundaries and integrating the development into its surroundings. A maintenance scheme, though, would be excessive. In addition a separate condition is necessary to ensure the agreed standards of visibility are maintained, again in the interests of highway safety.

## **DECISIONS**

### **Appeal Refs: APP/E3715/C/10/2126700, 2126701**

54. I direct that the enforcement notice be corrected by deleting the description of the alleged breach of planning control and replacing it with the words 'Without planning permission, the material change of use of the land to use for the siting of two caravans for residential purposes'.

55. I allow the appeals, and direct that the enforcement notice, as corrected, be quashed. I grant planning permission on the applications deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land for the siting of two caravans for residential purposes at Smeaton Lane, Stretton under Fosse CV23 0PS, as shown on the plan attached to the notice, subject to the following conditions:

- 1) The occupation of the site hereby permitted shall be carried on only by Mr Tommy Smith and Mrs Colette Smith and their resident dependants, and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the site is occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied by those named in condition 1 above, or at the end of 4 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use, or works undertaken in connection with the use, shall be removed. Within 2 months of that time the land shall be restored to the state specified and approved as part of the site development scheme referred to in condition 6 below.
- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) No commercial activities and no storage of materials shall take place on the site.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a site development scheme shall have been submitted for the written approval of the

- local planning authority. The scheme shall include: the internal layout of the site, including the position of the caravans, the extent of hardstanding, parking and amenity areas; the position and details of construction of the single vehicular access and the verge crossing; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage of the site; the positions, design, materials and type of boundary treatment; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; a specification for the restoration of the land following the cessation of the use; a timetable for implementation of the scheme.
- ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 7) Within one month of the date of this decision visibility splays for vehicles shall be provided and maintained with an 'x' distance of 2.4 metres (the distance back along the minor arm) and 'y' distances of 90 metres as measured from the centre of the access. No structure, erection, trees or shrubs exceeding 0.9 metres in height shall be placed, allowed to grow or be maintained within the visibility splays so defined.

**Appeal Ref: APP/E3715/A/10/2126698**

56. I allow the appeal and grant planning permission for a change of use of land to a private gypsy caravan site and the formation of a vehicular access, on land at Smeaton Lane, Stretton under Fosse, CV23 0PS in accordance with the terms of the application, Ref R09/0826/PLN, originally dated 10 August 2009, and the plans of the location and the site layout and landscaping submitted with it, subject to the following conditions:

- 1) The occupation of the site hereby permitted shall be carried on only by Mr Tommy Smith and Mrs Colette Smith and their resident dependants, and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the site is occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied by those named in condition 1 above or at the end of 4 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use or works undertaken in connection with the use, shall be removed. Within 2 months of that time the land shall be restored to the state specified and approved as part of the site development scheme referred to in condition 6 below.

- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 4) No commercial activities and no storage of materials shall take place on the site.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i. within 3 months of the date of this decision a site development scheme shall have been submitted for the written approval of the local planning authority. Notwithstanding the details shown on the approved plans the scheme shall include: the internal layout of the site, including the siting of the caravans and the position of the parking and amenity areas; details of the construction of the single vehicular access and the verge crossing; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage of the site; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; a specification for the restoration of the land following the cessation of the use; a timetable for implementation of the scheme.
  - ii. if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
  - iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 7) Within one month of the date of this decision visibility splays for vehicles shall be provided and maintained with an 'x' distance of 2.4 metres and 'y' distances of 90 metres, as measured from the centre of the access. No structure, erection, trees or shrubs exceeding 0.9 metres in height shall be placed, allowed to grow or be maintained within the visibility splays so defined.

*Diane Lewis*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Dr Angus Murdoch BA BSc PhD MRTPI	Murdoch Planning
Mr Tommy Smith	The Appellant
Mrs C Smith	The Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Nathan Lowde Pg Dip BSc(Hons)	Planning officer, Rugby Borough Council
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### INTERESTED PERSONS:

Mr B Ireland	Local Resident
Mr R Handy	Local Resident
Mr D Collins	Stretton under Fosse Parish Council
Mr Terry Smith	Stretton under Fosse Parish Council
Mr D Parnell	Combe Fields Parish Council
Mr R Blenkinsop	Combe Fields Parish Council

### **DOCUMENTS** submitted at the hearing

- 1 Report to Planning Committee 17 February 2010
- 2 Minutes of Planning Committee 17 February 2010
- 3 Notice of refusal of planning permission
- 4 Report to and Minutes of Planning Committee 7 July 2010
- 5 Letter from Head Teacher Wolvey C of E Primary School
- 6 Letter from Leicestershire County Council
- 7 Letter from University Hospital Coventry
- 8 Letter from Clinical Nurse Specialist
- 9 Medical information
- 10 Appeal decision ref APP/M1520/A/10/2123612 dated 2 August 2010
- 11 Letter from Rt Hon Andrew Stunell MP
- 12 Information on site history
- 13 Letter of notification of the hearing and list of people notified

### **PLANS**

- A Plan attached to the enforcement notice
- B Planning application plans: Site location, landscaping plan with site layout, plan of existing layout.