
Appeal Decisions

Hearing held on 1 March 2017

Site visit made on 1 March 2017

by **Paul Dignan MSc PhD**

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

Decision date: 13 June 2017

Appeal A: APP/J1535/C/16/3159620

Appeal B: APP/J1535/C/16/3159708

Appeal C: APP/J1535/C/16/3159711

Land at Woodside Place, Woodside, Thornwood, Essex.

- 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 Felix Nolan against enforcement notices issued by Epping Forest District Council.
- The enforcement notices, numbered DG/GAO/LEG/127, were issued on 12 August 2016.
- **Appeal A:** The breach of planning control as alleged in the notice is without planning permission the erection of fencing over 1m in height adjacent to the highway between the points marked A, B and C on the attached plan.
- The requirements of the notice are: Either remove the fence or reduce it to 1m or less above ground level between points marked A to B to C on the attached plan and remove all resultant debris from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
- **Appeal B:** The breach of planning control as alleged in the notice is without planning permission the erection of walls, pillars and gates over 1m in height adjacent to a highway and the erection of a pole of approximately 4m in height for use with CCTV cameras.
- The requirements of the notice are: Either remove the walls, pillars and gates or reduce their height to 1 metre or less above ground level. Remove the CCTV pole and cameras, and Remove all resultant debris from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- **Appeal C:** The breach of planning control as alleged in the notice is without planning permission the importation of materials to raise land levels.
- The requirements of the notice are: Remove from the land all imported material from the area shown hatched on the attached plan.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal D: APP/J1535/W/16/3159596

Woodside Place, Woodside, Thornwood, Epping, CM16 6LD.

- 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 Felix Nolan against the decision of Epping Forest District Council.
 - The application Ref. EPF/0988/16, dated 12 April 2016, was refused by notice dated 13 July 2016.
-

- The development proposed is: One additional static caravan and one additional touring caravan on an existing gypsy site, with two associated parking spaces, a security gate at the entrance to the site (with brick pillars and associated walls) together with a perimeter fence running adjacent to the boundary with the highways (on the inside of the existing hedges).
-

Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is allowed and the enforcement notice is quashed.

Appeal D

4. The appeal is dismissed insofar as it relates to: *The erection of a security gate at the entrance to the site (with brick pillars and associated walls) together with a perimeter fence running adjacent to the boundary with the highways (on the inside of the existing hedges).*
5. The appeal is allowed insofar as it relates to the use of the land for two gypsy pitches and planning permission is granted for *The use of land for the stationing of caravans for residential purposes for two gypsy pitches together with the formation of hardstanding and the provision of a utility/day room ancillary to that use* at Woodside Place, Woodside, Thornwood, Epping, CM16 6LD in accordance with the terms of the application, Ref EPF/0988/16, dated 12 April 2016, and the plans submitted with it, so far as relevant to that part of the development hereby permitted, and subject to the conditions set out in the attached Schedule of Conditions.

Background

6. The appeals concern a strip of land at the junction of Epping Road and Woodside Road. The land is in the Metropolitan Green Belt, it adjoins Epping Forest and a number of trees on and around the site are protected by a Tree Preservation Order (TPO). Planning permission was granted on appeal¹ in July 2015 for *The use of land for the stationing of caravans for residential purposes for one gypsy pitch together with the formation of additional hardstanding, the provision of a stable block and a utility/day room ancillary to that use.* At the time the application the subject of this appeal was made the site was not occupied, but there is now a static caravan in residential use on the 2015 application site, which occupies the eastern end of the strip of land, and another static caravan is also stationed there, although it does not appear to be in use.
7. The current layout of the site does not conform to the permitted plans, and pre-commencement conditions attached to the 2015 permission, requiring submission and approval of details of land restoration in the event that the

¹ Appeal Ref. APP/J1535/A/14/2228944

permitted use ceases, landscaping, tree protection, means of enclosure, the closing up of an existing field access and of site drainage have not been discharged, nor has a condition requiring that the access be provided in accordance with the approved drawings prior to occupation been complied with. The 2015 permission also removed permitted development rights to erect fences, gates walls and other means of enclosure.

8. This application is framed as an application to vary the 2015 permission, but it stands to be determined as a new application. Accordingly I shall amend the description of the proposed development to *The use of land for the stationing of caravans for residential purposes for two gypsy pitches together with the formation of hardstanding, the provision of a utility/day room ancillary to that use, and the erection of a security gate at the entrance to the site (with brick pillars and associated walls) together with a perimeter fence running adjacent to the boundary with the highways (on the inside of the existing hedges)*. Although the site is now occupied, in view of the failure to discharge the pre-commencement conditions outlined above, I consider that the 2015 permission has not been implemented, although it remains extant and is a material consideration in this appeal.
9. Since the planning application appeal seeks retrospective planning permission for the matters the subject of appeals A and B, I shall deal with that first.
10. I should also note that it was explained at the hearing that the Appeal B appeals on grounds (b) and (c) were intended to apply to Appeal C instead. I consider that no injustice would arise by my considering those appeals on the revised grounds. It was agreed also that the appeals on ground (e) would not be pursued.

Appeal D

Main issue

11. The main issue in this case is whether the development amounts to inappropriate development in the Green Belt, and if so, whether the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify a grant of planning permission.

Policy

12. The development plan for the district includes the combined policies of the Epping Forest District Local Plan (1998) and Alterations (2006) (LP). LP Policy GB2A provides criteria for appropriate development, none of which includes the development proposed, while LP Policy GB7A is largely concerned with the visual impact of development within the Green Belt. LP Policy DBE1 expects new buildings to respect their setting and use sympathetic materials, while LP Policy DBE4 seeks a good quality of design in the Green Belt. LP Policy CP2 aims, amongst other things, to protect the quality and character of the rural environment, and the aims of LP Policies LL1 and LL10 include, respectively, the conservation and enhancement of the character and appearance of the countryside, and adequate protection of trees.
13. The NPPF is a material consideration and states that LP Policies that predate the NPPF and must be given reduced weight where they are inconsistent within the NPPF policies. The LP Green Belt policies, GB2A and GB7A are somewhat

inconsistent with NPPF policies, as are LP Policies CP2, LL1 and LL10, and I have only given them moderate weight. However, Planning Policy for Traveller Sites (PPTS) makes it clear that gypsy and traveller sites in the Green Belt are inappropriate development, and the NPPF provides, at paragraph 87, that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances 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. Paragraph 88 says that substantial weight is to be given to any harm to the Green Belt.

Inappropriate development

14. Although the appeal site appears to be in use as a gypsy and traveller site, I consider that the 2015 permission for that change of use has not been implemented, hence the appeal development as a whole stands to be considered as inappropriate development in the Green Belt. At the 2015 Inquiry it was agreed that the openness of the Green Belt would be reduced by the scheme and, as it would be an encroachment of built form and development, it would conflict with one of the 5 purposes served by the Green Belt. The Inspector also found however, that since the proposal would not cover a large area and would introduce a relatively small quantum of development, the harm arising from the effect on openness and encroachment would be limited. This proposal includes the siting of two more caravans, but a stable block included in the 2015 proposal is not part of this scheme. However, while the permitted scheme did indicate that entrance gates would be erected further into the site, it did not include the walls, pillars and gates as erected. This overall structure is bell-shaped and starts close to the highway edge. It has 2.2m high brick pillars and a solid steel and timber gate rising to about 2.5m high. I consider that it has caused a substantial loss of openness, both in purely physical terms and also by its discordant urbanising and intrusive appearance in a highly visible location adjacent to a rural road, in part due to its imposing size, but also by the extensive use of red bricks, which do not appear to be part of the local vernacular. I consider that the inclusion of this built development in the appeal scheme amounts to additional harm to Green Belt openness over and above that of the 2015 scheme.

Character and appearance

15. The 2015 Inspector was dealing with an undeveloped site which he found made a positive contribution to the appearance of what he considered to be attractive countryside, and the appellant accepted that the land sat in a valued landscape. That scheme involved extensive boundary planting, but he considered nonetheless that the development would still result in an appreciable change to the site that would harm the appearance of the area and fail to protect the valued landscape. This scheme the subject of this appeal occupies the same area and has a similar quantum of development, but the highway entrance structure and the boundary treatment are different.
16. For the reasons given above, I consider that the entrance structure harms local character. In terms of boundary treatment, the 2m high close boarded fencing runs along the site boundary from the piers by the road frontage, and along Woodside Road it is less than 2m back from the highway edge and sits just behind a thin hedge. It precludes the extensive boundary treatment considered

in the previous scheme and which the Inspector felt would eventually soften and screen the development to a notable degree, limiting the long-term harm. Certainly in the winter months the existing thin hedge does little in the way of screening, and there is very limited scope for additional planting. The presence of a close-boarded fence of this height so close to the roadside is an intrusive and dominant feature that serves to emphasise the urbanising character of the development and significantly diminishes the rural character of this part of Woodside Road. The shorter part of the fence running along the Epping Road frontage has far less visual impact, being set at the back of a wide verge, and this part of Epping Road has in any case a less rural character, with housing on the opposite side. I consider however that the fence as a whole is harmful to the character and appearance of the area. The CCTV pole is also visually prominent, set just inside the gate, and is visually intrusive and discordant in the context of the rural character of this part of Woodside Road.

17. It is also unclear what measures have been, or will be, taken to protect the TPO trees around the site. Small areas or strips of grass/lawn have been retained in the vicinity of the protected trees, but I have not been provided with any information about how these relate to the root protection areas of the trees. In the absence of adequate information I cannot be satisfied that these trees are or will be given the protection necessary to ensure that they continue to make a positive contribution to local amenity and the character of the area.
18. The plans for the 2015 scheme showed far less of the site as being developed, with significant landscaping around the boundary and some 40m of the roadside hedge removed to provide the necessary highway visibility at the site entrance, replacement hedging being planted further back. In fact the roadside pillars appear to obscure the visibility splays that were required by the 2015 permission, and the proximity of the fence to the highway edge leaves little space for meaningful landscaping that might help to soften the impact and help to integrate the residential gypsy and traveller site into its surroundings without undue harm to the character of the area. In terms of appearance the scheme the subject of this appeal is substantially different to that permitted in 2015.
19. Overall I consider that in addition to the Green Belt harm, the development is an example of poor design that harms the character and appearance of the area. It conflicts with LP Policies DBE4, CP2, LL1 and LL10, and with national policy.

Other considerations

20. The application site is the same as that granted permission for a single pitch in 2015. The weight given to the personal circumstances of the appellant in that appeal, also Mr Nolan, was decisive in the Inspector's conclusion that there were material considerations that clearly outweighed the Green Belt and other harm so that the very special circumstances necessary to justify inappropriate development existed. Amongst these was that he was caring for his brother John who has serious medical issues following an accident. The 2015 permission restricts the occupation of the site to Mr Nolan, his then fiancée, and their resident dependents, which the Inspector made clear included John, and it limits the number of caravans to 2, of which no more than one can be a static caravan.

21. The application the subject of this appeal, in addition to seeking retrospective permission for the fencing and walls/gates, seeks consent to station an additional static caravan and a touring caravan for use by John and by their sister Roseanne and her young child. This would help to address overcrowding in the permitted static caravan and Roseanne would help with John's care. All of the proposed occupiers are acknowledged to fall within the definition of gypsies and travellers set out in PPTS.
22. By reference to the 2015 permission, the Council considers the additional caravans and their use to be acceptable, having regard to the acknowledged significant shortfall in gypsy and traveller site provision in the district, the lack of alternative sites, the continuing personal circumstances and the best interests of Roseanne's child, who would benefit from having a settled base. It has no objection to the principle of the greater level of residential use represented by this proposal, and I see no reason to come to a different view.
23. Ultimately however, the Council refused to grant planning permission because it considered that certain aspects of the proposal were unacceptable. Specifically, it considered that the walls, pillars and gates caused unacceptable harm to the Green Belt, that the fence, gates, walls pillars and CCTV pole harmed the character of the area, that inadequate provision was made for the protection of the TPO trees and the existing hedgerows, and that there was inadequate information about drainage. The drainage issue has now been addressed and can be dealt with by condition.
24. The remaining differences in the appeal scheme relate to the altered layout. Regarding the fencing, walls, pillars, gates and CCTV equipment, a security statement was submitted with the application emphasising the need for good security arrangements at gypsy and traveller site. There is nothing that is specific to this site, nor is there any explanation of why the various components of the development need to be sited where they are. The proposed layout for the 2015 scheme showed gates set well back from the highway and there was ample scope for similar security measures to this scheme, but without the considerable harm to the character and appearance of the area caused by the appeal development. Accordingly I give very little weight to the security needs as justification for these retrospective parts of the development.

Whether the harm is clearly outweighed by other considerations

25. Substantial weight must be given to the Green Belt harm identified, and I also give substantial weight to the harm to the character and appearance of the area, which conflicts with development plan policies. In essence, the other considerations considered as material in the 2015 appeal, relating to the policy approach for the supply of gypsy and traveller sites and those concerning personal circumstances are the same, with the needs of the additional family members adding further weight. However, in considering this appeal, that there is an extant permission that could be implemented is a material consideration. Implementation of that permission would directly address most of the matters that have been put forward as material considerations in this appeal, and the additional caravans and residents which the Council considers to be acceptable, could easily be accommodated within that scheme if, as is indicated, the stable block is no longer required. In view of this I consider that the weight that should be accorded to the material considerations that weighed in favour of the 2015 proposal should be given considerably less weight in this appeal when

considering the development as a whole. On that basis I consider that the weight of those other material considerations does not clearly outweigh the totality of the harm, and hence the very special circumstances necessary to justify planning permission, either permanent or temporary, do not exist.

26. However, I have the power under section 79(1)(b) of the 1990 Act to grant planning permission for part of the development only. The Council indicated at the hearing that had it also had this express power it would have granted permission for the additional caravans and their residential use as proposed and refused permission for the walls, gate, pillars, fence and CCTV pole. The Planning Practice Guidance (PPG) notes that such outcomes can be achieved by the use of conditions, but advises that this approach should only be used in exceptional circumstances.²
27. In this case I consider that the use of the site as a gypsy and traveller site comprising 2 pitches, each with 2 caravans, does not depend on the walls, pillars, gate, fence or CCTV pole. The use is physically and functionally separate from those operational developments. The plans submitted with the 2015 scheme clearly demonstrate, in my view, that the use can be accommodated on the site without the additional harm arising from the unauthorised operational development. When the change of use is considered on its own merits I am satisfied that there are material considerations that clearly outweigh the harm, such that the very special circumstances exist to justify planning permission for that part of the development.
28. I consider therefore that a split decision is appropriate in the circumstances. I shall grant permission for the change of use of the appeal site as proposed, but refuse permission for the walls, pillars, gate, fence and CCTV pole.
29. I consider all of the conditions imposed on the 2015 permission to be reasonable and necessary, with the necessary changes to reflect the additional caravans and residents and the relevant layout, for the same reasons. A personal condition is necessary given the decisive weight of the appellant's personal circumstances, while a condition restricting occupancy to gypsies or travellers is necessary because of the relevant policy considerations. Conditions limiting the number of caravans, requiring details of layout, landscaping, means of enclosure, external lighting, tree protection and future restoration, precluding certain permitted development rights, and limiting the size of vehicles on the site, are necessary in the interests of the character and appearance of the area. Control of site drainage is necessary in the interests of residential amenity and highway safety, and the provision of adequate visibility splays and the closing up of the existing field access is required for highway safety reasons. Conditions requiring special care with tree and hedgerow works are necessary for environmental reasons.

Appeal A

Ground (f)

30. This appeal concerns the erection of the 2m high close boarded fence adjacent to the highway. When the appeal was made the notice was also appealed on ground (a), which is that planning permission should be granted. That would have enabled the planning merits of the development to be considered.

² Paragraph: 013 Reference ID: 21a-013-20140306

However, the appeal on ground (a) lapsed. As a consequence the appeal on ground (f) is confined to the question of whether the requirements of the notice exceed what is necessary to remedy the breach of planning control, as a matter of fact. The arguments put forward on this ground is that the fence could be moved and repositioned on site, or alterations could be made to make the fence more acceptable. No details have been provided of where the repositioning would be to, but if it was not materially different to the location of the fence the subject of the appeal then it would not serve to remedy the breach of planning control. Similarly, no alterations have been proposed, and the acceptability of any alterations proposed would require an assessment of the planning merits, which is outside of the scope of this ground. I conclude therefore that the appeal on this ground must fail.

Ground (g)

31. This ground is that the time for compliance, 1 month, is too short. A period of 2 years is sought. The only argument put forward that is actually relevant to this ground is that a longer period would allow the existing hedgerow to become more established. The hedgerow is already well established, but thin. I consider however that a period longer than 1 month is reasonable in order to allow for the submission of details of landscaping and means of enclosure pursuant to one or other of the planning permissions. I shall extend the period to 6 months.

Appeal B

Ground (f)

32. As with Appeal A, the planning merits of the walls, gate and pillars and the CCTV pole cannot be considered under this ground. Since the arguments put forward involved planning merits the appeal on this ground cannot succeed.

Ground (g)

33. A period of 2 years is also sought here. The only argument put forward that is relevant to this ground is that a longer period is required to design a new scheme, get approval and carry out the works. I consider that a period of 6 months would be sufficient and reasonable.

Appeal C

Ground (b)

34. This ground is that the matters alleged have not occurred. This relates to the allegation of the importation of materials and soil to raise land levels at the western end of the site. This is the remainder of the strip of land that lies to the west of the Appeal D application site. Soil has been deposited onto the land that has raised levels by up to 1m in places. The Council thought that the soil had been brought on to the land, but it now accepts that the soil deposited on the western end of the site resulted from the construction of the hardstanding on the eastern end.
35. It is clear therefore that the breach of planning control alleged in the notice has not occurred. The possibility of correcting the description of the breach to properly describe what has occurred, namely engineering operations comprising the excavation of materials at the eastern end of the site and the

Appeal D: APP/J1535/W/16/3159596: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawings PP-05001390 (Location Plan) and 12_529_004 (Utility/day room).
- 3) The use hereby permitted shall be carried on only by Mr Felix Nolan, Ms Leanne Nolan, Mr Johnny Nolan, Ms Roseanne Nolan, and their resident dependents.
- 4) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy For Traveller Sites*, or any subsequent revision or replacement.
- 5) Before the commencement of development details shall be submitted to and approved in writing by the local planning authority of a scheme for the restoration of the land in the event that it ceases to be occupied by those named in Condition 3 and defined under Condition 4, together with a timetable for the implementation of the restoration scheme. If and when the land ceases to be occupied by those named in Condition 3 and defined in Condition 4 the land shall then be restored in accordance with the approved restoration scheme and in accordance with the approved timetable.
- 6) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.
- 7) No vehicles over 3.5 tonnes shall be stationed, parked or stored on the site.
- 8) Notwithstanding the layout plan Drawing LO-15-B submitted with the application, no development shall take place until details of the layout of the site have been submitted to and approved in writing by the local planning authority. The development shall then be undertaken in accordance with the approved layout details.
- 9) No development shall take place until details have been submitted to and approved in writing by the local planning authority of hard and soft landscape works (including the surfacing for the access and the hardstanding area), together with a timetable for their implementation. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved timetable; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 10) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the means and measures of protecting all trees and hedging around the site that are to be retained. The development shall then be undertaken in accordance with the means and measures approved.

- 11) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the means of enclosure around the site, and the development shall then be undertaken using the approved means of enclosure only.
- 12) No external lighting shall be used unless its location and type have been first approved in writing by the local planning authority.
- 13) There shall be no disturbance of existing trees or hedges around the site between 1 March and 30 September in any year unless a suitably qualified ecologist has confirmed to the Council in writing that no active bird nests would be affected by the works.
- 14) There shall be no clearance of grassland and no removal of hedgerow unless a suitably qualified ecologist is in attendance to check for the presence of reptiles or amphibians.
- 15) Prior to the first occupation of the development hereby permitted, highway access shall be provided with visibility splays of 2.4m by 70m to the west and 2.4m by 58m to the east. Those sight splays shall thereafter be kept clear of any obstruction greater than 600mm in height when measured from the access.
- 16) Any gates across the vehicular access shall be a minimum of 6m from the back edge of the carriageway and shall be inward opening only.
- 17) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the means of permanently closing up the existing field access to the west of the site. The details shall include a timetable for the works and the approved details shall be implemented in accordance with the timetable.
- 18) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the means of draining the site of foul and surface water, together with a timetable for the implementation of the drainage scheme. The approved drainage scheme shall then be installed in accordance with the approved timetable.
- 19) Notwithstanding the provisions of *The Town and County Planning General Permitted Development (England) Order 2015* (or any order revoking or re-enacting that order with or without modification) no fences, gates, walls or other means of enclosure shall be erected and no areas of hardsurfacing shall be laid other than those approved under the above conditions.