



# Appeal Decision

Hearing held on 10 March 2009

by **Paul V Morris** DipTP MRTPI

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

Decision date:  
8 April 2009

**Appeal Ref: APP/B3410/C/08/2079484**

**Land opposite Station Cottages, Station Road, Draycott in the Clay**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr H Sykes against an enforcement notice issued by East Staffordshire Borough Council.
- The Council's reference is EN/27594/005.
- The notice was issued on 23 May 2008.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land from use for agriculture to use for the stationing of residential caravans.
- The requirements of the notice are to:
  - (1) cease using any part of the land for residential purposes;
  - (2) permanently remove from the land all caravans, vehicles, contractor's plant, portable toilets and other structures;
  - (3) restore the land to its condition before the breach took place by removing all septic tanks, pipes, and service connections, building materials, rubble and material imported for hardstandings, level the land and re-seed with grass.
- The period for compliance with the requirements is: steps (1) and (2) – 30 days; step (3) – 60 days.
- The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. The appellant is deemed to have made an application for planning permission for the development to which the notice relates by virtue of s177(5) of the 1990 Act.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.**

## **Ground (a) and the deemed application**

### ***The occupation of the site and gypsy status***

1. The case for the appellant was made on the basis that the appellant and other occupants have gypsy and traveller status for planning purposes in line with the definition set out in ODPM Circular 01/2006, paragraph 15.
2. The Council was content that gypsy status was appropriate. Further information was provided by the appellant, and others, that all the families who would use the site were known to each other. The families of Laurence & Nora Boswell, Jim and Bridget Boswell and Neil & Bluella Knight are related. They were travelling families, particularly in summer, attending fairs and conventions and picking up garden work when travelling. They benefited from the site near the A50 as this was one of their main travelling routes. Before

settling on the site in April 2008, they had stayed around the area, including on a transit site at Ratby, but this was now closed.

3. None of these facts were disputed, and whilst there was little in the way of supporting evidence covering all the named residents, on balance, I accept that they fall within the definition of gypsy and traveller status for planning purposes set out in the Circular.

### ***Planning policy***

4. The East Staffordshire Local Plan was adopted in July 2006 and all the policies are therefore still in force. Policy NE1 controls development in the open countryside, and Policy H7 relates to housing outside development boundaries. Policy CSP1 deals with sustainable development. Policy H11 confirms that applications for private gypsy sites will be considered within the context of these and other prevailing development control policies, including Policies CSP3 and BE1 which relate to the protection of the character and appearance of areas and the design of development. Policy T1 and Policy NE26 deal with highway safety and flood risk respectively.

### ***The main issues***

- the impact on the rural area and sustainability;
- the impact on residential amenity;
- highway safety;
- flood risk;
- the need for and provision of sites for gypsies and travellers;
- the appellant's accommodation needs, and the availability of alternative sites;
- the overall balance.

### ***Reasons***

#### ***The impact on the rural area and sustainability***

5. The site is a long strip of land extending westwards from the access off the A515 alongside a railway line which crosses the A515 at a level crossing near the point of access. The land has been surfaced with loose stone and it is divided into 5 plots by low post and rail fencing. On the southern edge of the site is a distinct bank which drops away to the open fields to the south, which, I gather, resulted from earthworks to level the site and the surfacing.
6. The site is located outside the development limit of any town or village where Local Plan Policy NE1 applies. The wider setting is open countryside in all directions, but the site adjoins a cluster of development including the Boar's Head Hotel, a haulage depot and a residential care home to the north across the railway line, and a nearby terrace of houses and a house with business premises on the eastern side of the A515.
7. At the time of my visit, the site was only occupied by two small touring caravans and small shed. The appellant expected that there would be 10

caravans when it was fully occupied. Views of the site from the north are obscured by the nearby development, but it is in clear view from the east from the terrace of houses, and from the south along a significant distance of the A515. Although the elevation of the site above the adjoining fields tends to increase the prominence of the site in views from the south, it is also seen against the backdrop of the railway line and the haulage depot, as well as in the context of the other nearby development.

8. The development of the site has already had a significant impact on the local scene, and this would be more marked if the site were fully occupied by caravans, with the associated parking and other domestic trappings. Having said that, in its context, its general impact on the wider countryside would not be substantial. However, the fact remains that it would have a noticeable impact on the character and appearance of its local area, particularly for the occupants of dwellings which face the site.
9. The nearest centre with a reasonable amount of services and facilities is 2km away at Sudbury. Hatton Primary School, which the younger children might attend, is about 6km away. The nearest bus service to any of the surrounding towns is from Sudbury, and the appellant confirmed that they are reliant on their own transport for getting to any services and facilities. Having said that, Circular 01/2006 advises that rural settings are acceptable in principle, and there should be a realistic assessment of the availability, or likely availability of alternatives to the car in accessing local services. Whilst issues of sustainability are important, they should not only be considered in terms of transport mode and distances from services, but should include the criteria set out in the Circular, paragraph 64.
10. In this case, there are no alternatives to the car in accessing local services which are a significant distance away, and there is opposition to the use from local residents, but there are wider benefits in terms of access to services from a settled base. The problem of flood risk is the outstanding consideration, and I deal with that below. Taking all this into account, there are concerns about the sustainability of the development both in terms of national policy for gypsy and traveller sites, and Local Plan Policy CSP1.

***The impact on residential amenity***

11. I have found that, when fully used, the development would have an impact on the character and appearance of the local area, particularly for the occupants of Station Cottages which face the site.
12. To my mind, this impact affects the local residential amenity. Representations were heard from local residents, and whilst I do not find that the proximity of the development would cause unacceptable disturbance or overlooking because the dwellings are on the other side of a busy main road, it has been established on what was open, green land and it clearly affects the way in which the residents view and appreciate their immediate surroundings in this predominantly rural area. The surfacing of this extensive, open site has substantially changed the local scene, and a fully used caravan site would add to this.

**Highway safety**

13. The County Council was concerned about what it considered to be a lack of proper visibility at the access on to the A515, with a sight line to the north of 2.4m x 9m and to the south of 2.4m x 17.5m. The required visibility standard of 2.4m x 215m in both directions would only be achievable across third party land over which the appellant has no control.
14. It was acknowledged by the appellant that the Design Manual for Roads and Bridges (DMRB) requires an access on to a 60mph (96.56 kph) road to have visibility in both directions of 215m. Allowing for a set back distance of 2m, rather than the recommended 2.4m, the appellant claimed visibility of 223m to the north, and 102m to the south. If the visibility is measured to a point 1m. out from the nearside kerb edge, visibility to the south increases to 213m.
15. In addition, the appellant had carried out a vehicle speed survey, which the County Council did not dispute. This showed that the 85<sup>th</sup>% dry speed of traffic from the north to be 39mph (62kph) at 215m from the access point, increasing slightly to 41mph (66kph) at 100m, and from the south to be 55mph (87kph) at 215m, decreasing to 45mph (72kph) at 100m.
16. Taking these measured speeds into account, it seems to me that some relaxation of the recommended visibility distances would not be unreasonable, bearing in mind that the estimated traffic generation of the site occupied by five families would be about 50 movements per day. I have also taken into account that Manual for Streets gives advice about Stopping Sight Distances (SSDs) which suggests that a vehicle travelling at 60mph (96.56 kph), the maximum allowable speed for this road, can come to a halt safely under normal braking, on a wet road, in a distance of about 122m.
17. Dealing first with the visibility set back, I can see no sound reason to decrease this from the recommended distance of 2.4m which would be suitable for a small cul-de-sac of up to six dwellings where site conditions permit. This is similar to the site being occupied by five plots, and there is the likelihood of vans and small lorries being based on the site, and caravans being towed on and off the site.
18. As for the visibility distances, the appellant's measurements assume lines of sight across third party land. To the south, there is a substantial field hedge alongside the highway, and whilst the access point is on slightly higher ground so that it generally overlooks the trimmed hedge to the far point of the sight line, there could be no guarantee that this would remain so as the appellant has no control over the hedge. To the north, however, the interference with the sight line because of the proximity to the railway level crossing is, to my mind, much more serious. I saw on my visit that, from the 2.4m set back, although the road is relatively straight and flat, the inter-visibility of vehicles coming from the north is significantly reduced. The County Council considered the effective clear sight line to be about 9m and I concur. I acknowledge that the measured road speeds and the advice about SSDs indicate a more favourable margin of safety, but I do not consider that these factors are sufficient to set aside the concerns about the visibility distances, particularly to the north. I find overall that significant weight has to be given to the threat to

highway safety from the use of the access which is contrary to Local Plan Policy T1.

19. I realise that this is an existing access which has served previous uses of the land, but there was no indication that these uses would have resulted in a comparable type or amount of in and out trips. A new development of permanent dwellings on such a scale would not, in my view, be acceptable using this access with its current visibility, and I can see no reason why this yardstick should not apply to safeguard highway safety.

**Flood risk**

20. The site is indicated as Flood Zone 3 by the Environment Agency which is a High Probability zone referring to land where the indicative annual probability of flooding is 1 in 100 years or less from river sources, that is it has a 1% or greater chance of flooding in any given year.
21. The appellant pointed out that a Flood Risk Assessment (FRA) had been carried out for the appeal site, prior to its development and occupation as a gypsy caravan site. This study found that, even if the presence and effect of flood defences are ignored, about 40% of the appeal site would remain dry in a 1 in 100 flood event, and that climate change should not affect this position. Whilst the Dove Strategy Report (2006) cited the inadequacy of the present flood defences to cope with more extreme flood events, it indicated that only a narrow zone along the southern edge of the site would flood in a 1 in 100 year event. The A515, adjacent to the site, would be free of floodwater.
22. The Environment Agency raised concerns about the applicability of the FRA to the appeal development as it did not take into account the siting of residential caravans, or the impacts associated with the raising of the land with imported materials. No accurate assessment has been made of the extent of flood zone 2, and although it is recognised that areas of the site lie above flood zone 3, the presumption is that the remainder of the site lies within flood zone 2. It follows that development would not be acceptable without evidence that the sequential test, set out in Planning Policy Statement 25 - Development & Flood Risk, has been passed.
23. The position seems to be that a significant portion of the land, perhaps 60%, is subject to flood zone 3 considerations and that flood zone 2 considerations should apply to the rest.
24. The risk-based approach set out in PPS25 aims to steer new development to areas of the lowest probability of flooding and, to this end, a sequential approach should be applied. There is specific guidance on gypsy and traveller sites (paragraphs D19-21), which highlights the special problems in relation to flooding. For the flood zone 3 land, residential caravans are categorised as a highly vulnerable use, and should not be permitted in this zone.
25. Turning to the flood zone 2 land, the guidance makes clear that the acceptability of highly vulnerable development depends on the exception test. The guidance stresses that compliance with each part of the test should be demonstrated in an open and transparent way. In this case, the appellant claimed that the development provided wider sustainability benefits derived from the gypsy families having a settled home with access to local services,

that the caravans would be located on developable, previously-developed land with no reasonable alternative sites on such land, and that flood risk would not be increased elsewhere.

26. Drawing on my later conclusions on the need and provision of sites and the appellant's accommodation needs, I acknowledge that the site does offer a settled home in line with government policy to encourage gypsy owned sites. Whilst I take the Council's point that the land, before occupation, had vegetation cover and some trees, and was indistinguishable from the neighbouring agricultural fields, its former use had been a small railway siding and it does have some claim to be regarded as previously-developed land. Lack of reasonable alternative sites on developable, previously-developed land is not clear cut, but a clearer picture may not emerge until the Council prepares its Development Plan Documents. Whilst a FRA has been produced in relation to a previous proposal for development, I am not convinced that, as the appellant claimed, this demonstrated that the site would offer safe ground and not increase flood risk elsewhere, nor contribute to reducing flood risk overall. I gathered that the ground levels have been altered and the whole site is now surfaced, and, whilst this could possibly give added protection to the caravans placed on the site, in the absence of any formal update to the FRA on the details and impact of these works, I share the Environment Agency's concern that the safety of the ground is not proven, and there may be added flood risk on adjacent land and property.
27. I fully appreciate the appellant's submission that, in reality, there was little prospect of any serious consequences from flooding, even on the part of the land at highest risk. The occupants of the site would make sure they were well aware of any imminent flooding and, because of their experience of travelling, they could vacate or rearrange the site quickly, if necessary. This may well be the case, but this is not a sound reason to set aside the approach to flood risk of PPS25 and Local Plan Policy NE26.

***The provision of and need for sites for gypsies and travellers***

28. The Council acknowledged that provision is limited to one authorised private site at Anglesey Road, Branston which can accommodate 17 households but which is generally full. Although this is the case, the Council considered that there is no substantial evidence of need or lack of sites arising from unauthorised camping.
29. The North Housing Market Area Gypsy & Traveller Accommodation Assessment (GTAA) (2007), which included East Staffordshire, indicated an additional need for 11 pitches in the period 2007-2012. In the appellant's view, however, there was underestimation of need as not all respondents to the assessment survey who expressed a wish to move into housing will do so. A more realistic estimation of need in this period would be about 20 pitches.
30. Whilst I appreciate that some of the conclusions of the report could be revisited, it is an up-to-date assessment, and is intended to inform the West Midlands Regional Spatial Strategy (RSS) on the amount of accommodation which should be provided in the region. I take the Council's point that there has hitherto been no obvious pressure to increase the provision of sites, but the GTAA has identified a level of need to which weight must be given.

***The appellant's accommodation needs, and the availability of alternative sites***

31. The appellant outlined that the site was needed for five families, about 25 persons in total, including 15 children. As I have already mentioned, they wish to settle as a group on this site, which is convenient for travelling, and near to friends and relatives living in the area.
32. A main reason to settle is to enable the school-age children to attend school. To date, all the children had been tutored at home, aided by the traveller education service. Education was seen to be vital benefit not only to the children personally, and for the community in general as they would be able to mix with new friends.
33. Ten children are presently of school age, and a further three are pre-school age. The opportunity for a settled education for this number of children is a matter of significant weight to break the cycle of poor education in the gypsy community, and I gathered that the younger children could be enrolled at Hatton Primary School which has experience of teaching traveller children. Having said that, there was no indication that the children were not benefiting from their present education service, and the matter would have been more pressing if the appellant and the other occupying families had been seeking school places in the past for the older children.
34. The appellant also mentioned access to healthcare, and I acknowledge that this would be more secure from a settled site.
35. No alternative sites were put forward by the Council, but this is not unexpected in the light of the Council's view that there is no immediate pressure for new sites. In addition, the appellant has not consulted the Council about prospective sites which might have given rise to any alternatives, although it was clear that the appellant had the ability to acquire and develop his own land. It was not disputed that local families had been forced to seek accommodation in South Derbyshire.
36. There are no authorised sites in East Staffordshire to which the appellant could readily move, given that the Branston site is generally full. It was acknowledged that, if the occupants had to leave the appeal site, finding an alternative site may be difficult, with the only options being unauthorised sites or roadside camping.
37. I do not accept the appellant's point that there is no development plan policy to guide site selection and to determine the acceptability of a prospective site. Local Plan Policy H11 covers this matter, although by reference to the application of other policies in the Plan. However, I gathered that the forthcoming Local Development Framework Core Strategy will include a clearer criteria-based policy. The preferred options for this Strategy is to be published in November 2009, with October 2010 as the expected date for adoption. This will be followed by the preferred options for a Development Plan Document for site allocations by November 2010, and its adoption by January 2012.

***The overall balance and conclusions***

38. I have found there to be concerns about this development in terms of the impact on the rural area and sustainability, but these are lessened to some extent by the need for a realistic assessment of gypsy and traveller

accommodation and its acceptability in rural areas and the need for travel. The effect on the countryside is localised, but this is still of some importance because of its impact particularly on the amenity of local residents.

39. The highway objection is a matter of great weight because of the lack of proper visibility at the access on to the A515, and the concerns about flood risk are also of weight because of the high vulnerability of the development on this land, a substantial part of which is Flood Zone 3. Even though part of the land is in Flood Zone 2, and there is need for a settled site, to my mind the uncertainty about the real potential for flooding and the transfer of flood risk elsewhere means that the exception test has not been fulfilled.
40. Set against these concerns, there is an up-to-date GTAA which points to the need for 11 additional pitches in the District, and there is no existing or planned provision for such pitches, nor were any alternative sites put forward. The prospective occupiers of the appeal site are a cohesive group who wish to settle on their own land to see that the children of the five families receive a school-based education, and there can be no certainty about where the families might live if this land cannot be used. These matters together are of significant weight.
41. However, at this point in my reasoning, I find that this is not an acceptable site to provide the much needed accommodation as the threat to highway safety and the flood risk are overriding, and the concerns about the sustainability of the development and its effect on residential amenity also weigh in the balance.
42. I have therefore considered the implications of the Human Rights Act and the European Convention on Human Rights as dismissal of the appeal would result in an interference with the occupants' rights under Article 8 to a home and private life. In these circumstances, it is necessary to balance such interference against issues of wider public interest arising from the significant objections identified. However, the extent of the interference is tempered, in my view, because the appeal land was occupied without previous consultation with the Council, particularly about highway and flooding matters, and without planning permission. The objections I have found are serious ones and, in my view, the likely interference with the occupants' home and family life does not add sufficient additional weight so that support for the development outweighs the objections such as to justify a permanent planning permission.
43. I have considered whether any conditions, which might directly address the objections, would alter this balance such that the development would be acceptable. Conditions were discussed relating to the layout and boundary treatment of the site, restrictions to gypsies and travellers and a maximum of 10 caravans to be occupied residentially, a weight limit of vehicles on the site, no business use, ground contamination investigation, the surfacing of the access, parking and turning areas, the maximum height of any obstruction at the access junction, and conditions related to surface water drainage and to flood assessment, mitigation and risk control. Whilst the flooding related conditions may go some way to dealing with the objection, they would not overcome the Environment Agency concerns about the siting of caravans on Flood Zone 3 land. None of the other conditions would directly address the remaining outstanding objections.



44. I find, therefore, that a permanent planning permission should not be granted. I acknowledge the general need for gypsy and traveller accommodation, but if this is to be fulfilled by developing gypsy owned land, which national policy supports, clear regard should be had to the constraints which might arise, in this case, the highway and flooding problems.
45. Circular 01/2006 points out that where there is an unmet need but no available alternative gypsy and traveller site provision in an area, and there is a reasonable expectation that new sites are likely to be identified to meet that need in forthcoming Development Plan Documents (DPD), consideration should be given to granting a temporary permission.
46. The appellant argued for a temporary planning permission of at least three years, and I accept that this would give the occupants a settled site for that period of time, and which would also ensure that the accommodation needs are taken into account in any site identification to which the appellant could respond.
47. However, this would assume that the threat to highway safety, in particular, should be tolerated for that length of time, which I cannot support. This leads me to the conclusion that a temporary planning permission should not be granted. I am still mindful, however, of the factors supporting the development, and I propose to take these into account in ground (g).

**Ground (f)**

48. The appellant maintained that the removal of the rubble and material imported for hardstandings should not be required, and that re-seeding with grass could not be achieved as no top soil existed.
49. The loose stone has been laid over the site to a substantial depth, and there is little doubt that this was carried out to prepare the site for occupation. It was an integral part of the development, and because of its effect on the appearance of the local scene, I do not consider that it is excessive to require its removal.
50. The Council's photograph confirmed that the land, prior to the development, had been covered with greenery. I assume that this resulted from a natural growth of vegetation following its use many years ago as a railway siding. To my mind, the land should be returned to a green state, and following the removal of the loose stone, re-seeding cannot be considered to be excessive or onerous. The appeal on ground (f) therefore fails.

**Ground (g)**

51. The appellant noted that the expected date for adoption of the LDF Core Strategy is October 2010, to be followed by the preferred options for a Development Plan Document for site allocations by November 2010.
52. I consider that the time for compliance of 30 days to vacate the site is too short, particularly as the Council did not suggest any alternative accommodation for those that might need it, and as I have not accepted the case for the temporary planning permission.

53. I find that a period of 18 months would be more reasonable as this would enable alternative accommodation and site provision arrangements to be progressed in the light of the Council's emerging Core Strategy and Development Plan Document for site allocations, including any reconsideration of the current site, and avoid the adverse consequences of immediate displacement.

**FORMAL DECISION**

**Appeal Ref: APP/B3410/C/08/2079484**

54. I direct that the enforcement notice be varied by deleting, in paragraph 6, the time for compliance as set out, and inserting the words: '18 months'.

55. Subject to this variation, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Paul V Morris*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mr Philip Brown BA(Hons) MRTPI	Managing Director, Philip Brown Associates Ltd
Mr Mark Baker BSc CEng MICE FCIT FILT EurIng	Mark Baker Consulting Ltd
Mr Howard Fox	School of Science, University of Derby
Dr Peter Jones	School of Science, University of Derby
Mr H Sykes	Appellant
Mr J Young	Appellant's supporter
M N Knight	Appellant's supporter

### FOR EAST STAFFORDSHIRE DISTRICT COUNCIL:

Mr Jim Malkin	Senior Planning Officer
Mrs Ruth Downes	Planning Enforcement Officer
Mr Philip Somerfield	Planning Policy Manager
Mr Christopher Humphreys	Pollution Control Officer

### FOR STAFFORDSHIRE COUNTY COUNCIL:

Mr Malcolm Bagguley	Development Control Officer, Highways
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### FOR THE ENVIRONMENT AGENCY:

Mr John Beckett	Technical Specialist, Development Control
Ms Sarah Victor	Planning Liaison Officer

### INTERESTED PERSONS:

Mr Danny Stokes	6 Station Cottages, Draycott in the Clay DE6 5GX
Mrs Margaret Stokes	6 Station Cottages, Draycott in the Clay DE6 5GX

### DOCUMENTS

- 1 List of persons present
- 2 Traffic speed survey - the appellant
- 3 Email 19.1.09 re planning condition - Network Rail