
Appeal Decision

Hearing held on 4 February and 6 March 2015

Site visit made on 6 March 2015

by Jean Russell MA MRTPI

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

Decision date: 5 August 2015

Appeal Ref: APP/X1355/C/14/2222375

Land at The Stables, Land East of Pit House Lane, Leamside, DH4 6QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Dolan against an enforcement notice issued by Durham County Council.
- The notice was issued on 19 June 2014.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of land to siting and residential occupation of four chalets and six touring caravans. • Six amenity/storage sheds; • Two shipping containers; • Erection of two entrance lights.
- The requirements of the notice are to:
 1. Permanently cease the use of the site (as outlined red on the plan attached to the notice) for the purposes of residential occupation;
 2. Permanently remove from the subject site the four chalets, six touring caravans and all associated storage/amenity sheds, containers and paraphernalia located within the site,
 3. Permanently remove from the subject site, the entrance lights positioned on top of the boundary wall at the main entrance point from Pit House Lane.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under s177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

PRELIMINARY MATTERS

Application for Costs

1. At the Hearing an application for costs was made by Mr J Dolan against Durham County Council. This application is the subject of a separate Decision.

Consultations

2. Local residents have raised concerns about consultation, but notification letters were sent on 21 August 2014 and 6 January 2015 to inform them of the appeal and hearing respectively. I have taken account of the written representations and points raised at the hearing and site visit by all interested parties. I am satisfied that local residents were not prejudiced in the proceedings.

The Appeal Site

3. The appeal site covers approximately 0.5ha. It is bound by Pit House Lane to the west, fields to the north and east, and a lane to the south – which provides access

from Pit House Lane. The site is largely hardsurfaced but it also includes a wide grassed strip – used as an amenity area – along most of the western boundary. There are hedgerows on the boundary, which mainly comprise deciduous species but also include some conifers.

4. I saw two static and two touring caravans on the land: one by the access and others in the centre of site. It is proposed that additional caravans would be sited along the eastern and northern boundaries. The alleged shipping containers stand in the north east corners of the site. The alleged sheds are beside the amenity area and southern boundary, while the entrance lights are ornamental features affixed to the gateposts. I saw a portakabin on the land, used as a utility building, in the south eastern corner of the site. The Council suggested that the portakabin may be immune from enforcement action and it would be difficult to describe the structure as a shipping container. I consider it outside of the scope of the notice.
5. The notice requires the removal of 'paraphernalia', meaning miscellaneous items or belongings. The term would not cover the following structures on the land not cited in the notice: stables which have been granted planning permission; the hardstanding, blockwork boundary walls and street lighting columns which pre-date the residential use and are immune from enforcement action; and metal gates which the Council decided it was not expedient to enforce against.¹
6. The appeal lane leads past the site to the north east and it has long been used as a bridleway. It provides access to a closed landfill site and closed quarry, and local residents suggest that it will be reinstated to a public right of way when the quarry site has been restored. The lane is not shown on the Definitive Map but a path on the opposite side of Pit House Lane is – and it is used in any event by the public for walking and riding. It is likely to be at least a 'permissive path'.²

Planning History

7. Planning permission was granted in March 1993 for the erection of horse boxes, hay/straw barn and a toilet on the site. The buildings remain and the Council accepts that the use of the land for stabling horses is lawful. The appellant has long used the site for this purpose and his horses graze on the field to the north.
8. A planning application made in 1995 for a single dwellinghouse was refused. Planning applications to site caravans on the land for residential use were also refused and dismissed at appeal in 1993 and 1997. I am not bound to make the same decision as the previous Inspectors, who would have considered the appeals before them in a different policy context and with regard to different evidence.
9. In 2013, a planning application (ref: 04/13/00486/FPA) was refused for 'temporary change of use of land for 18 months from the keeping of horses to a mixed use for the stabling of horses and siting of caravans for residential occupation...'. Permission was refused (ref: CE/13/01522/FPA) on 23 October 2014 for the (permanent) use of land for the stationing of caravans for residential purposes for 6no. gypsy pitches. I shall describe these as the '2013' and '2014' applications.

The Enforcement Notice

10. Under s176(1) of the 1990 Act as amended, I may correct any error, defect or misdescription in the enforcement notice so long as there would be no injustice to the appellant or the Council. The alleged material change of use should be the siting of caravans for 'residential use' instead of 'occupation', because that term

¹ Much of the hardstanding on the site has been there for many years. Local residents suggest that more surfacing has been laid, but I cannot consider that question since the notice does not allege any such works.

² Hearing documents 8, 9 and 10

does not denote 'development' which requires planning permission. The notice should refer to 'static caravans' rather than 'chalets', since 'caravan' has a statutory definition.³ However, since the notice is concerned with a use of land, it is unnecessary to refer to the *number* of caravans – which could change.

11. The notice should allege that the site is in mixed use for residential use and the keeping of horses, even if the Council would not require the equestrian activity to cease. The appellant and the Council confirmed at the hearing that no business use is being carried out at the site, other than the keeping of horses.
12. Under s177(1), planning permission may be granted for the whole or part of the matters alleged in the notice. The appellant and the Council agreed at the hearing that the allegation should be corrected so that it expressly refers to a material change of use of land *and* 'operational development', comprising the alleged sheds, containers and entrance lights so that I could make a 'split decision'.⁴
13. I am satisfied that the notice can be corrected without causing injustice to allege: *the making of a material change of use of land to a mixed use comprising the stabling of horses and the siting of static and touring caravans for residential use, with operational development to install domestic amenity/storage sheds, shipping containers and entrance lights.*
14. Since I have decided to allow the appeal in part and grant planning permission in respect of the use of the land, there is no need to correct steps 1) and 2) of the notice, although they should properly have required the cessation of the residential use and the removal of the static and touring caravans.

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

The Deemed Planning Application

15. When an enforcement notice is appealed on ground (a) – that planning permission ought to be granted – and the fee is paid for consideration of the deemed planning application (DPA), the alleged breach of planning control as corrected forms the description of the development for which planning permission is sought.
16. For the avoidance of doubt, the appeal before me is made against the enforcement notice and not the decisions on the 2013 and 2014 applications. There was some discussion at the hearing as to whether any permission granted could or should be made on a temporary basis. I shall consider that matter, but the notice does not allege the temporary use of land, as was proposed in 2013, and the appellant's primary case is for a grant of permanent permission.
17. There is no power in an enforcement appeal to permit a development that is completely different from that being enforced against – but it is possible to grant permission subject to conditions that would overcome planning objections by, for example, restricting the scope of any use being permitted.
18. The enforcement notice suggested that there were ten caravans on the land prior to or when the notice was issued. The appellant confirmed at the hearing that permission is sought for the alleged use subject to a condition restricting the development to four pitches for gypsies or travellers, with one touring as well as one static caravan on each pitch.

³ *Caravan Sites and Control of Development Act 1960* and the *Caravan Sites Act 1968* as amended

⁴ While the stationing of a caravan normally is normally associated with a change of use of land, the setting up of a portable building, including shipping containers used as portable buildings, is generally regarded as a building operation, subject to the considerations of size, permanence and physical attachment.

19. While the appellant does not seek a personal permission, he intends to live on the site with his extended family. The pitches would be occupied by the appellant and his wife; their son, his wife and five children; the appellant's daughter and her two children; and the appellant's niece and her four children. The family previously lived at a Council-run gypsy site at Tower Road. By the date of the hearing, the appellant's niece had moved back temporarily to Tower Road, to care for other relatives, but she wished to return to the appeal site in due course.
20. The appellant confirmed at the hearing that he wishes to retain the stables and continue to keep horses on his land; the family travel to horse fairs and derive income from the keeping of horses.

Main Issues

21. Local residents suggested that the site is within a designated Green Belt but that is not the case, as the Council has confirmed, although there is a Green Belt nearby.
22. The enforcement notice was issued for one reason: that the alleged development is harmful to the character and appearance of the area. However, the Council refused the 2014 application for reasons relating to sustainability and arrangements for the disposal of foul water as well as the visual impact of the development. At the hearing, the Council confirmed that it still has concerns about the principle of development and drainage. Accordingly, and with regard to representations from the appellant and local residents, I consider that the main planning issues are:
 - Whether the site is an acceptable location in principle for the development and whether the development would represent a sustainable traveller site;
 - The effect of the development on the character and appearance of the surrounding rural area;
 - Whether there would or could be suitable arrangements for foul and surface water drainage;
 - The effect of the development on highway safety;
 - Its effect on the living conditions of nearby occupiers;
 - Other objections to the development; and
 - Considerations in favour of the appeal.

Planning Policy

23. Government planning policy is set out in the *National Planning Policy Framework* (NPPF) and *Planning Policy for Traveller Sites* (PPTS). The development plan comprises saved policies of the *City of Durham Local Plan* (LP). I have cited LP policies that I consider relevant, and attached weight to them according to their consistency with the NPPF and PPTS.
24. By the first day of the hearing, the Council's *Pre-Submission Draft LP* (DLP) had been subject to Examination in Public and the Inspector's Interim Report was expected. I heard that there were few unresolved objections to DLP Policy 33, the only emerging policy which has been cited as relevant to this appeal. When the Interim Report was published on 18 February, it recommended that the DLP be withdrawn. On 15 May, the Council lodged Judicial Review papers at Leeds High Court. Pending the outcome of those proceedings, the DLP cannot be taken as being at an advanced stage of preparation, as assumed at the hearing. DLP Policy 33 only carries weight insofar as it is consistent with the NPPF and PPTS.

25. At the date of the hearing, it was expected that preparation of 'Stage 2' of the DLP – setting out site allocations – would start in Spring 2015. I do not know whether the timetable has been affected by the Judicial Review, but in any event there was no initial proposal for Stage 2 to allocate sites for gypsy or traveller development.

Reasons

The Principle and Sustainability of the Development

26. The Council objects to the use of the land as a gypsy site on the basis that it conflicts with planning policies which seek to restrict residential development in the countryside, and the land is in an unsustainable location. The site lies some 900m north of the settlement boundary for Leamside/West Rainton as designated in the LP. West Rainton is a settlement with local shops and schools. Leamside is an adjacent village with a public house and dwellings fronting Pit House Lane.
27. LP Policy E7 only permits development in the countryside, outside of settlement boundaries, where it would accord with other specified policies – but these include Policy H15. H15 permits new sites for accommodation for gypsies and travellers where the site is outside of the Green Belt, any Area of High Landscape Value or other protected area.⁵ The appeal gypsy site is not in any such designated area and so it is not unacceptable in principle, according to the LP.⁶
28. Moreover, the NPPF does not equate sustainable development with development within settlement boundaries. The NPPF seeks to resist isolated new dwellings in the countryside; PPTS states that local planning authorities (LPAs) should strictly limit new traveller site development in open countryside that is away from existing settlements. PPTS does allow, however, for gypsy sites in 'rural or semi-rural settings' provided that they respect the scale of and do not dominate the nearest settled community, and avoid placing an undue pressure on local infrastructure.
29. The appeal site lies some 60m from 68 Pit House Lane. It is at a similar distance from the roadside village sign and dwellings on Mark's Lane, which runs off the main road close to the junction with the appeal lane. The site is outside of, but on the edge of Leamside. It has a rural or semi-rural setting; it cannot be described as 'isolated', in the 'open' countryside or 'away from' an existing settlement.
30. Turning to other aspects of sustainability, Pit House Lane is subject to a 60mph speed limit outside of the village and there is no footway for part of the 1100m stretch to the nearest bus stop. Occupiers of the site would be likely to drive when making day to day trips – and the site is some 2km and 5km from the nearest shops and secondary school respectively.
31. LP Policy H15 and DLP Policy 33 require that traveller sites are 'reasonably' close or 'accessible' to shops, schools, public transport, health care and other local facilities – but the terms 'reasonably' and 'accessible' are not defined. Since traveller sites may be located in rural areas, it is not unusual for them to be at these distances from a bus stop or secondary school.⁷ I also note that gypsies have a nomadic lifestyle and different travel patterns to the settled community. They will normally drive to work if not local amenities.⁸ Locating sites in large settlements would not necessarily change the modes or the distances of travel made by gypsies. The development, therefore, is reasonably close to shops and services.

⁵ DLP Policy 33 would also resist traveller sites in but not outside of the Green Belt.

⁶ LP Policies H3 and H5 direct new housing to land within settlements, and limit housing in the countryside. These policies cannot be relevant to traveller sites which fall to be considered under Policies E7 and H15.

⁷ The appellant has referred to other appeal decisions where the Inspector held a similar view.

⁸ The Council noted at the hearing that the site is far from major areas of employment but this misses the point that gypsies do not work in such locations; they must have a nomadic lifestyle in order to have 'gypsy' status.

32. I consider that the development does not conflict with the 'sustainability' criteria of LP Policy H15 and DLP Policy 33. If the Council disagrees, that would imply that the words 'reasonably' and 'accessible' must be interpreted so strictly as to be inconsistent with the NPPF and PPTS. The NPPF seeks to focus development in locations which make fullest use of public transport, walking and cycling – but it also recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. This point is important because PPTS allows for rural gypsy sites – and it does not mention distances to services or means of transport in paragraph 11, which sets out sustainability considerations.
33. Paragraph 11 of PPTS notes that having a settled base can reduce the need for long-distance travelling, and possible environmental damage caused by unauthorised gypsy encampments. As a general rule, allowing a traveller site can enable occupiers to avoid a roadside existence, which involves travelling to find places to stay *as well as* to work and access services.
34. The PPTS indicates that traditional lifestyles, whereby travellers live and work from the same location, can omit many travel to work journeys; the NPPF and LP Policy Q8 promote the efficient use of land. The appeal site is in a mixed use. Keeping horses is part of the gypsy way of life and a means for existing or future occupiers to sustain income. It is not proposed to reduce the number of stables on the site; allowing a residential use to be carried out with the existing equestrian use would optimise the potential of the land and serve to reduce travel to work journeys.
35. The NPPF is clear that sustainability has social, economic and environmental dimensions. Thus, PPTS promotes access to health services and education – and 'access' in this context means 'facilitating use'. Travellers need a permanent address in order that they can register with a GP and enrol their children at school. Granting permission even for rural sites can facilitate proper health care and education, benefitting individual travellers and society as a whole.
36. The PPTS encourages peaceful and integrated co-existence between gypsy sites and local communities. DLP Policy 33 would require traveller sites to be sympathetic to the scale of any adjoining settlement. The Council accepted at the hearing that four traveller pitches on this site would not dominate the scale of Leamside. It is not unusual for occupiers of an area to object to new residential uses; it does not follow that integration cannot occur. Permitting this development would allow four households to live on the edge of the village on a contained site. Given my later findings on the impact of the development on local living conditions, I see no serious barrier to acceptance and assimilation of the site.
37. The PPTS expects that regard is had to the effects of a traveller site on environmental quality, local infrastructure and risk of flooding. I shall deal with questions raised about character and appearance, highway safety and drainage separately. At this stage, I conclude that the alleged use would not be unacceptable in principle. Occupiers of the site would likely need to drive to shops and services, but the development can be considered on balance as a sustainable traveller site. It would not conflict with LP Policies E7 or H15, DLP Policy 33, the NPPF or PPTS.

Character and Appearance

The Alleged Use

38. The Council and local residents object to the development in part because it is in the countryside. The NPPF recognises the intrinsic character and beauty of the countryside but it also expects LPAs to set criteria-based policies which distinguish between international, national and locally designated landscapes, so that

- protection is commensurate with status. The PPTS seeks to ensure that traveller sites will protect amenity and environment – but it allows for such developments in rural areas, as do LP Policies E7 and H15. Gypsy sites are not intrinsically out of keeping within or harmful to the countryside.
39. Heading north out of Leamside, Pit House Lane is lined with dispersed dwellings separated by paddocks, and then larger fields in mainly agricultural use. There is a rural 'gap' between Leamside and the next village to the north, and this area is cherished by local residents for its green and open character and the opportunities for walking and leisure. However, it is not designated for its landscape beauty and it does not have any special protection from development. I agree with the appellant that parts of the landscape are still visibly affected by former quarrying and mining activity, and there is sufficient traffic noise from both Pit House Lane and the A1(M) to the west to render the area less than tranquil.
40. The field to the north of the appeal site, used for grazing the appellant's horses, makes a positive contribution to the rural character of the area. However, it would be difficult to say the same of the site itself, even if there were no residential caravans. Stables are common, even necessary rural buildings – but the number and design of those on the site, plus the hardstanding, when seen to adjoin a road and be some 60m from nearby dwellings, create a sense that the site is at a juncture between the village and countryside.⁹
41. I have noted that there would be four touring and four static caravans on the land. Caravans are large and stark objects and the siting of eight, plus the parking of domestic vehicles and use of domestic paraphernalia such as garden furniture would change the character of the site. However, the site is partly hardsurfaced and built upon already. It is contained by the boundary walls and hedges. Any permission granted would need to be subject to conditions to limit the number and type of caravans; prevent the siting of vehicles over 3.5 tonnes; and require plans showing the positions of caravans, the layout of parking and turning areas, areas for refuse storage and amenity, the means of enclosure and landscaping.¹⁰
42. With control over this 'site development scheme', the Council could ensure that intrusion from caravans is minimised, the grassed area and hedgerows on the site already are retained, and that additional planting takes place as appropriate.¹¹ I consider that the alleged use would not urbanise the site or extend development into the countryside so as to unacceptably harm the rural character of the area.
43. Local residents object that the site is in a prominent location, but passing drivers on Pit House Lane generally travel at speed. The larger structures associated with the use – caravans and vehicles – need to be sited away from the road behind the amenity area. The use is more visible from the appeal lane; I am mindful that I saw fewer caravans than are proposed and the hedge would provide less screening in winter. Caravan sites, however, are not unusual in the countryside. There is no policy requirement that gypsy sites be hidden but I have found that the Council could require additional landscaping. The land could be screened so that the gypsy site would not appear unduly intrusive from the lane. It would not unacceptably detract from the appearance of the area or, subject my findings on drainage, enjoyment of the bridleway.

⁹ The Council's report that recommended enforcement action suggests that the hardstanding on the site is not demonstrably harmful to the character and appearance of the immediate area.

¹⁰ It is reasonable and necessary to require details of the parking and turning areas since allowing the alleged mixed use would lead to domestic and equestrian vehicles being kept and moved on the site.

¹¹ I heard that there has been a loss of hedgerow on the site, but no Hedgerow Replacement Notice has been served. Any such harm could be remedied via a grant of permission subject to conditions. That the Highways Authority recommends trimming the hedge to the west of the site access does not alter this finding, since that is a short stretch of the hedge adjacent to the amenity rather than hardsurfaced part of the site.

44. I also find that, while the use would serve to increase on- and off-site activity, the effect would be mitigated by the fact that the land has long been in a stabling use and there is local and passing traffic. The area is not so peaceful and the gypsy site would not be so large that it would cause an unacceptable loss of tranquillity.
45. As noted above, lighting columns on the site are immune from enforcement action. It is likely that permitting a residential as well as stabling use would increase the times when the site is lit. However, the lights could be utilised whether the appeal is allowed or not, and I could require that the site development scheme includes details of any external lighting needed. This would allow the Council either to ensure that there is no other lighting, or to secure replacement installations that are less obtrusive than the columns.¹² A grant of permission need not lead to an unacceptable increase in light pollution.
46. I conclude that, subject to conditions, the use of the site for four traveller pitches would not cause unacceptable harm to the character and appearance of the surrounding area. It would not conflict with the NPPF or PPTS – or with LP Policy H15 or DLP Policy 33, which permit new traveller sites that would not have an adverse impact on the countryside or local landscape; would be sympathetic to the character of any adjoining settlement; and would be well-screened, landscaped and acceptable in relation to the character of the surrounding area.
47. The development would not conflict with LP Policies Q3, Q5, Q6, Q8, E14 or E15, which require development to landscape and demarcate parking areas; incorporate a high standard of landscaping and hedgerow planting on edge of settlement or exposed sites and along main transport routes; have well-designed means of enclosure; be appropriate to the character of its surroundings; and retain important hedgerows.

The Alleged Sheds, Shipping Containers and Entrance Lights

48. The shipping containers are in ancillary domestic use and utilitarian in form and materials. Whereas a caravan must have a somewhat functional design, in order to be moveable, the same does not apply to permanent buildings.¹³ The shipping containers are sufficiently unsightly that they unacceptably detract from the character and appearance of this semi-rural area.
49. I am not persuaded that the shipping containers are commensurate to the scale of the use proposed or of an essential design for their domestic purpose. Since I have decided to allow the alleged use, and although the portakabin may remain on the land, the appellant may need to apply for permission for additional utility buildings, but he has not justified the retention of the existing structures.
50. The sheds on the land are small and unobtrusive timber structures which would not be out of place in any garden, paddock or field. However, the entrance lights are distinctly suburban features; they appear incongruous on the site and adjacent to the lane. They are not needed for safety purposes, given that the Council has not enforced against the lighting columns which may be retained or replaced by more appropriate lights within the site.
51. I conclude that the alleged sheds cause no unacceptable harm to the character and appearance of the surrounding area. They do not conflict with LP Policies H15 or Q8, or DLP Policy 33. However, the same cannot be said of the shipping containers and entrance lights. Those features are sufficiently harmful to the character and appearance of the area that permission for them should be denied.

¹² Low level installations can provide safety lighting without causing external light spillage.

¹³ Gypsies are expected to live in caravans to facilitate their nomadic way of life.

Drainage

52. The Council and Environment Agency objected that there is insufficient evidence that adequate arrangements could be made for foul drainage. The existing septic tank is some 20 years old and does not include treatment facilities; it was not installed to serve a four household residential site. Whether or not the tank has given rise to odour along the appeal lane, it is not suitable for the development.
53. The appellant informed the hearing that he wishes to install a package treatment plant. He gave no details of the proposal but such facilities are often used, without problem, on rural gypsy sites. It is also common practice to permit development subject to a condition that details of a foul drainage scheme are submitted to the Council – and that, if the development has already commenced, it must cease if the scheme is not approved or implemented as agreed. Imposing such a condition would allow the Council to remove the residential use and caravans on the site if a satisfactory package treatment plant cannot be installed.
54. Local residents object that the appeal use would increase flood risk in the area through the run-off of surface water. The nearby path and fields are prone to flooding at times and there has been 'ponding' on the land to the east of the site. However, most of the hardstanding and buildings on the site are lawful; even if more hardstanding has been laid, the notice does not require that it is removed.
55. The alleged residential use would not cause any significant increase in the potential for surface water run-off. I also note that the site is lower than the field to the south of the footpath – owned by the occupiers of 68 Pit House Lane. Thus, it is likely that surface water on the site would soak through rougher parts of the hardstanding or the amenity area on the site, or run through to the appellant's field to the north. To ensure that this would be the case, as recommended by the Council's Drainage Engineer, a condition can be imposed to require that the appellant submits details of a surface water drainage scheme.
56. I conclude that the development, subject to conditions, could make satisfactory provision for foul and surface water drainage. It need not cause any unacceptable risk of pollution or flooding. The development would not conflict with LP Policy H15 or DLP Policy 33, which expect traveller sites to be adequately serviced. It would not conflict with LP Policies Q1, Q2 or U8A, which expect the layout and design of development to take into account the requirements of users and secure satisfactory arrangements for disposing of foul and surface water discharges.¹⁴

Highway Safety

57. The Council did not object to the development on highway safety grounds, but the issue has been raised by local residents. The Highways Authority (HA) commented, when consulted on the 2013 application, that there is good visibility at the entrance to the site and recent road traffic accidents in the area were not related to movements by the junctions of Pit House Lane and the appeal or Marks Lane. The HA's only concern was, that when restoration works commence at the quarry, the overall levels of traffic on the lane might be such that it is necessary to keep the hedge to the west of the site access trimmed.
58. Although not discussed at the hearing, and while the appellant cannot be held responsible for quarry traffic, it would not be unreasonable to modify the site development scheme condition to require details as to how visibility will be maintained. The use would increase the amount of traffic from the site and it is standard practice to allow developments subject to conditions that visibility is not

¹⁴ LP Policy Q8 requires that services are provided underground, but the NPPF sets out no such expectation.

obstructed. On this basis, I consider that there would be little risk of accident between drivers associated with the appeal gypsy site and others using the lane or passing by. I would add that there is ample room for vehicles to be turned on the site, so that drivers could enter and exit in a forward gear.

59. Local residents are concerned that there is potential for conflict between drivers associated with the site, and walkers, riders or cyclists using the appeal lane. However, I have heard no evidence of conflict between users of the lane and drivers accessing the stables on the site or quarry nearby. The additional drivers entering or leaving the site would have sufficient forward or splayed visibility to see users of the lane. There is no unacceptable risk of an accident in my view.
60. I conclude that the appeal development, subject to conditions, would not cause an unacceptable loss of highway safety. It would not conflict with LP Policy H15, which requires traveller sites to have satisfactory access. It would not conflict with LP Policies Q2, T1, T21 or Q2, which expect development to minimise conflict between pedestrians, cyclists and vehicles; not generate traffic detrimental to highway safety; and safeguard the needs of walkers.

Living Conditions

61. Again, the effect of the development on the living conditions of nearby occupiers is a concern of local residents. The site is within view of 68 Pit House Lane but only at a distance and oblique angle. The appeal residential use takes place too far away to cause an unacceptable loss of outlook or privacy at no. 68. I have noted that the occupiers of no. 68 own the small field to the south of the site, but this land could be not considered as private as a garden and indeed the boundary hedge was pruned back at the time of my visit.
62. I see no reason to consider that the appeal gypsy site would lead to unacceptable noise. I conclude that the use does not cause unacceptable harm to the living conditions of nearby occupiers. It does not conflict with LP Policies H15, T1 or Q8, or DLP Policy 33, which expect traveller sites to not have an adverse impact upon or detract from the amenities of nearby residents.

Other Objections to the Development

63. Concerns that the site would harm wildlife were considered by the Council when deciding the 2013 and 2014 applications. The Ecology Officer advised that the use creates a low risk of harm to Great Crested Newts and there is no need for further survey work. The development does not unacceptably threaten protected species.
64. Nearby occupiers object that the development took place without authorisation but any person may apply for retrospective planning permission and enforcement action is intended to be remedial and not punitive. I am not persuaded that allowing the appeal would lead to 'development by stealth' or set a harmful precedent, since I am not aware of other applications for traveller sites and such proposals would need to be considered, like this appeal, on their merits.
65. There is no evidence that the site is unstable, contaminated or otherwise unsuitable for a residential use; Environmental Health did not object to the development. Property value is not a planning matter.

Considerations in Favour of the Appeal

The General Need for Traveller Sites

66. PPTS requires LPAs to set targets which address the likely need for traveller pitches and take account of any need and site availability when determining applications.

- Local residents consider that, because there are several Council-run gypsy sites in Durham – with two being close to Leamside – there cannot be a need for more pitches. It is necessary, however, to look at the total need for and supply of sites.
67. The Council commissioned its *Traveller Site Needs Assessment* (TSNA) to provide an analysis of the need for and supply of gypsy sites, as part of the evidence base for the DLP. The TSNA was published in 2013, but it covers the period 2015-2025. Data was collected when works were being undertaken to refurbish and extend the Council's sites, and the occupiers of those sites were displaced. Thus, the TSNA includes a recommendation that its findings be reviewed in 2020.¹⁵
68. The TSNA found that, by 2025, there will be a supply of 285 and a need for 280 pitches, creating an over-supply of 5; I consider this unrealistic. I do not dispute that the TSNA was prepared with 'integrity' but there are obvious errors in both the supply and demand calculations which cannot be explained by the difficulties in undertaking the study while sites were being refurbished. It is more likely that the TSNA methodology was simply not robust.
69. In relation to supply, the TSNA took account of 15 pitches on 'commercial' caravan sites – but these are not likely to be permitted for use by or available to travellers. The TSNA assumed that permission would be granted for 14 pitches between 2015 and 2025. This might prove to be the case, but the NPPF and PPTS are clear that the supply must comprise 'deliverable' sites; unidentified land without planning permission cannot be described as such.¹⁶ The TSNA over-estimated the likely supply of pitches in 2025 by at least 29, bringing the total down to 256 (285 - 29).
70. The TSNA under-estimated demand. It made no allowance for household growth in the two years between the collection of base data (2013) and the start of the policy period (2015). The parties agreed at the hearing that there would have been an increase of some 5 households in this time. It was also agreed that 3 households seeking to live on the appeal site could relocate but the appellant is homeless. There is an immediate need for 6 pitches. By 2025, the demand will be at least 286 and there will be a net under-supply of at least -30 (256 - 286).
71. However, that figure is likely to be wrong because the TSNA also contains other errors. The TSNA assumes that, by 2025, the supply will include 51 pitches vacated by young families moving to bricks and mortar housing (BMH), and there will be a demand for 80 pitches for families wishing to move out of BMH. The figure of 80 was derived by dividing the number of families who expressed a wish to move by the number of interviewees, and then multiplying the sub-total with the number of other families with children. The figure of 51 was derived in the same way *and* by multiplying that sub-total by 10 to reflect the ten year period of TSNA.
72. By accident or design, there is a methodological bias to inflate the supply of pitches relative to demand over time, by calculating moves to and from BMH in different ways. The approach is at odds with PPTS, which seeks to facilitate the traveller way of life, and it must have skewed the conclusion of the TSNA. The methodology is so flawed that the number of families expected to move into BMH over ten years (51) is higher than the predicted family growth rate.
73. The TSNA estimates that there will be a demand by 2025 for 34 pitches resulting from household formation and concealed households on sites and in BMH. Yet household formation (growth rate) is not the same thing as concealed households

¹⁵ Caravan counts undertaken by the Council in the past five years have shown 7-40 caravans on sites without planning permission but it is difficult to know if they were displaced from Council-run sites during renovations.

¹⁶ The NPPF defines a 'deliverable' site as available now, a suitable location for development now and achievable with a realistic prospect that housing will be delivered within five years and that development is viable.

(additional households within a caravan or house) – and the figure of 34 is likely to simply cover household formation.¹⁷ The TSNA does not include any estimate of doubled-up households (in additional caravans on a pitch).

74. It is difficult to survey the traveller community and I will not attempt to calculate actual movements between BMH and sites, or numbers of concealed and doubled-up households. The key point is that the figures in the TSNA are sufficiently wrong that the need for pitches must have been seriously under-estimated. Adding weight to that assessment, the Gypsy and Traveller Accommodation Assessment of 2007 found a need for 104 pitches between 2007 and 2015, and planning permission has only been granted for 7 pitches since. There are 56 families on the waiting list for Council sites, although some may be from outside Durham. There is need for traveller sites, and the appeal development would help to meet that need. This benefit counts in favour of a grant of permission.
75. In reaching this conclusion, I note that DLP Policy 33 permits traveller sites where there is a clear, identified need supported by robust evidence. Neither the NPPF nor PPTS expect that such evidence is given in support of a grant of permission for BMH or gypsy sites. I heard that this criterion of the emerging Policy 33 will likely be deleted, in order to align it with national policy. Even as things stand, however, there is sufficient evidence of need for the development to comply with Policy 33.

The Availability of Traveller Sites

76. When considering the availability of sites, the starting point has to be that the appellant seeks planning permission for the use of the land as a gypsy site without restriction on a personal basis. I have noted that an immediate need for sites was likely generated by formation of 5 households between 2013 and 2015, and there is a waiting list for Council-run sites. I heard that there are no vacancies on existing private sites. I conclude that there are no alternative available sites for travellers in Durham. There is no available site for the appellant. This consideration carries weight in favour of the appeal.

Policy Failure

77. The PPTS aims to promote more private traveller site provision and increase the number of sites in appropriate locations with planning permission. It expects local plans to include criteria to guide land allocations and planning decisions. It also requires LPAs, in producing their local plans, to identify and update annually a five year supply of specific, deliverable traveller sites to meet their targets.
78. LP Policy H15 sets out criteria against which traveller site developments will be adjudged but it does not make provision for new sites. Surprisingly, since the DLP post-dates the NPPF and PPTS, the same is true of Policy 33. It states that no additional need for pitches has been identified and, accordingly, I heard that Stage 2 of the DLP will not allocate land for gypsy sites. However, the TSNA was not 'tested' at the DLP Examination and I have shown that it under-estimated need.
79. DLP Policy 33 also fails to promote private traveller site provision, or to specify that or how the Council will identify a five year supply of traveller sites in accordance with PPTS. If, as I have found, there is a need for at least 6 pitches in Durham now, it follows the Council does not have a five year supply of deliverable sites.¹⁸

¹⁷ The appellant suggested at the hearing that there would be higher rates of household formation – an additional 23 households by 2020 and a further 28 by 2025 – by applying a standard 3% compound growth rate from 2013.

¹⁸ Given the uncertainties as to the actual shortage of sites, it has not been shown that the Council has a record of persistent under-delivery. The Council may only need to maintain an additional buffer of 5%, rather than 20%, to ensure choice and competition in the market, but there is still an under-supply.

80. Thus, neither the existing nor emerging local plan makes adequate provision for the delivery of traveller sites now or a five year supply. The Council's planning policy fails to meet the requirements of national policy or of travellers on the ground. I cannot predict the outcome of the DLP Judicial Review or whether the TSNA review will be brought forward. It is not obvious when these policy failings will be rectified and this adds weight to the case for planning permission.

Personal Need and Circumstances

81. It follows from my earlier conclusions that the appellant's circumstances are not decisive to this appeal. It is not necessary or desirable to publicise his personal details; it would suffice to summarise the key points:

- The Council accepts that the appellant and the other intended occupiers of the site meet the definition of travellers set out in PPTS.
- By the date of the hearing, the Tower Road site had been refurbished and pitches were reserved for the appellant's son and daughter as well as his niece. However, there was no pitch for the appellant. The Council accepts that he needs a settled base. It is not clear when a pitch might become available.
- The appellant and his family need to live together for mutual support as part of the gypsy way of life. Several members of the family have medical needs, of varying degrees of severity. They are registered with a local GP and specialist services as appropriate, but rely upon each other for day to day care.
- The appellant and his son also require a site where they can reside and keep horses, to make a living and in the gypsy tradition. There are no public sites with land for keeping horses.

82. I conclude that the appellant and his family have a need to live together and there is no alternative site that could meet their needs. Allowing the development would address a personal need and that carries weight in favour of the appeal.

Conclusion

Planning Balance, Human Rights and Equality

83. The NPPF sets out a presumption in favour of sustainable development, which means permitting development which accords with the development plan. I have found that the residential use of the land is acceptable in principle and sustainable. Subject to conditions, the use causes no unacceptable harm to the character and appearance of the area, or in respect of drainage, living conditions or highway safety. Allowing the development would give rise to benefits by addressing a need for sites, a lack of alternative sites and a personal need at a time when the Council lacks a five year supply of sites or up-to-date planning policies.

84. The alleged shipping containers and entrance lights cause unacceptable harm to the character and appearance of the area and there are no material considerations to outweigh the harm. Planning permission should be refused for these structures, which conflict with LP Policies H15 and Q8, and DLP Policy 33. However, the alleged use of the land and sheds would not conflict with any relevant planning policies and I conclude that planning permission should be granted for them – and on a permanent rather than temporary or personal basis. Personal circumstances are not needed to provide support for the use and there could be no justification for limiting the duration of the permission.

85. I have had regard to the appellants' rights under the *Human Rights Act 1998*. Article 8 affords the right to respect for private and family life, including the

traditions and culture associated with the gypsy way of life; Article 1 of the First Protocol concerns peaceful enjoyment of possessions. These rights are engaged by the appeal proceedings, but they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is crucial.

86. I do not need to deal with the question as to whether refusing permission for the alleged use would violate the appellant's rights under Article 8, but making a split decision would interfere with his rights under Article 1, since the consequence would be that he needs to remove structures from his land. The interference would be limited and in accordance with the law and pursuance of a well-established and legitimate aim: protecting the character and appearance of a local area. A split decision would be proportionate and necessary. It would avoid a violation of the appellant's rights and the protection of the public interest cannot be achieved by means that are less interfering of his rights.
87. I have had regard to the rights of local residents under Article 8 and Article 1 of the First Protocol. The development would not cause unacceptable harm to the living conditions of nearby occupiers. The Human Rights Act cannot offer any guarantee that houses may be sold. Allowing the appeal would not violate residents' rights.
88. I have had due regard to the Public Sector Equality Duty (PSED) set out under the Equality Act 2010. It concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appellant has gypsy status, he has a protected characteristic for the purposes of the PSED.
89. A refusal of permission for the alleged use when it is acceptable in planning terms would fail to advance equality of opportunity or foster good relations between the site occupants and the settled community. The same would be true if permission was granted for structures which cause unacceptable planning harm. With regard to PSED, my overall conclusion is that the appeal should succeed on ground (a) and the DPA should be approved in relation only to the alleged use and sheds; the appeal should fail in respect of the shipping containers and entrance lights.

S180 of the 1990 Act

90. Had I allowed the appeal as a whole, the enforcement notice would have been quashed. A different procedure must be followed where a split decision is made. It is necessary to uphold the notice so that the requirements to remove the shipping containers and entrance lights come into effect.
91. While planning permission will be granted for the alleged use, it is not appropriate to vary the notice so as to delete the requirements of the notice to cease the residential occupation [sic] of the land and remove the caravans. This is because there can be no guarantee that the permission will be implemented, in accordance with the terms and conditions, although it is granted retrospectively.
92. S180(1) of the 1990 Act as amended provides that where, after the service of a notice, planning permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. The notice will be upheld but the requirements to cease the use and remove the caravans will be overridden by the grant of permission.

Conditions

93. It is reasonable and necessary to impose conditions to ensure that the land is used by gypsies and travellers only, because permission for the residential use is

granted on the basis of compliance with planning policies for travellers. It is also necessary to restrict the number of pitches to four and the number of caravans on each pitch, to protect the character and appearance of the area. For the same reason, and to ensure highway safety and prevent pollution, it is necessary to impose a condition requiring the submission and approval of a site development scheme as described above.

94. To further protect the character of the area and highway safety, it is necessary to prevent the installation of any external lighting that is not approved under the site development scheme; prevent the stationing, parking or storage of vehicles that that are over 3.5 tonnes, and prevent the use of land for any commercial purposes except keeping horses.

THE APPEAL ON GROUND (G)

95. The appeal on ground (g) is that the period for compliance with the notice – two months in this case – falls short of what is reasonable. The appellant put it to the hearing that he would need 18 months to draw up, submit and implement a planning application for utility structures to replace the shipping containers.
96. The Council did not object to that proposal but I am not persuaded that it would take so long to design, approve and construct small scale buildings. The appellant will need to submit the site development scheme within three months. Overall, I find that nine months would be a reasonable period for compliance with the notice. To this limited extent, the appeal on ground (g) succeeds.

FORMAL DECISION

97. It is directed that the enforcement notice be corrected by deleting the text of paragraph 3 in its entirety and substituting: *'the making of a material change of use of land to a mixed use comprising the stabling of horses and the siting of static caravans and touring caravans in residential use, with operational development to install domestic amenity/storage sheds, shipping containers and entrance lights'*.
98. Subject to this correction, the appeal is allowed insofar as it relates to the use of the land and the sheds, and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the making of a material change of use of land to a mixed use comprising the keeping of horses and the siting of static caravans and touring caravans in residential use, with operational development to install domestic amenity/storage sheds at Land at The Stables, Land East of Pit House Lane, Leamside, DH4 6QQ, subject to the conditions set out in Annex 2 to this decision.
99. It is also directed that the enforcement notice be varied by the substitution of nine months for two months as the time for compliance. The appeal is dismissed in respect of the remaining part of the development and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended for operational development to install shipping containers and entrance lights at Land at The Stables, Land East of Pit House Lane, Leamside, DH4 6QQ.

Jean Russell

INSPECTOR

ANNEX A: LISTS

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green	The appellant's agent
Mr James Dolan senior	The appellant
Mr James Dolan junior	The appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Ms Pamela Glaister	Senior Enforcement Officer
Mr Christopher Baxter	Senior Planning Officer
Mr Gavin Scott	Area Planning Team Leader
Ms Laura Williams	GRT and Gateway Manager
Ms Debbie Shanks	Senior Spatial Policy Officer
Mr Stephen Potter	Assistant Planning Officer
Ms Michelle Hurton (<i>Site visit only</i>)	

INTERESTED PERSONS:

Cllr Mark Gilibank	West Rainton and Leamside Parish Council
Cllr Robert Swinney	West Rainton and Leamside Parish Council
Mrs Carol Swinney	Local resident
Mr Kevin Horan	Local resident

DOCUMENTS

- 1 The Council's letter of notification regarding the hearing and list of those notified
- 2 Extract from the City of Durham Local Plan – May 2004, including Policies E14, E15, E16, H5, T1, T10, T21, U8A, U11 and U12
- 3 Witness Statement of James Dolan senior, signed and dated 4 February 2015
- 4 Witness Statement of James Dolan junior, signed and dated 4 February 2015
- 5 Letter from Nicola Raine RMN dated 3 February 2015
- 6 Replacement Statement on Need submitted by the appellant
- 7 Planning permission ref: CE/13/01522/FPA dated 23 October 2014 and the associated delegated report
- 8 Deed of variation relating to a Lease dated 25 May 1993 with attached 'definitive rights of way plan of the Landlord' – submitted by Mr and Mrs Swinney
- 9 Letter from the Council dated 9 March 2015 with the Definitive Public Rights of Way Map
- 10 Email from the appellant's agent dated 16 March 2015 concerning local footpaths
- 11 Email from the Planning Inspectorate dated 18 May 2015 concerning the DLP
- 12 Email response from the appellant dated 27 May 2015

ANNEX B: SCHEDULE OF CONDITIONS

- 1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (Department for Communities and Local Government, March 2012) or any replacement guidance.
- 2) There shall be no more than 4 pitches on the site, and no more than 2 caravans (as defined in the *Caravan Sites and Control of Development Act 1960* and the *Caravan Sites Act 1968* as amended) shall be stationed on each pitch at any time, of which only 1 caravan shall be a static caravan.
- 3) The use hereby permitted shall cease and the caravans and any structures, materials and equipment brought on to or erected on the land shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision a 'site development scheme' for:
 - a) the internal layout of the site, including the position of the caravans hereby permitted, the layout of vehicular parking and turning areas and the layout of amenity and refuse storage areas; b) all means of enclosure of and hard and soft landscaping within the site; c) all external lighting on the boundary of and within the site; d) the means of foul and surface water drainage of the site; and e) the prevention of obstructions to driver visibility to the west of the site access shall have been submitted for the written approval of the local planning authority with timetables for implementation;
 - ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above shall have been approved by the local planning authority or, if the local planning authority refuse to approve any details, 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 site development scheme shall have been carried out and completed in accordance with the approved timetable.
- 4) There shall be no means of external illumination, other than as approved in accordance with condition no. 3) above.
- 5) No commercial activities shall take place on the land, including the storage of materials but with an exception for the keeping of horses.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.