

Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 19/04/18

Ymweliad â safle a wnaed ar 19/04/18

**gan Richard Jenkins BA (Hons) MSc
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 08/08/2018

Appeal Decision

Hearing Held on 19/04/18

Site visit made on 19/04/18

**by Richard Jenkins BA (Hons) MSc
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 08/08/2018

Appeal A - Ref: APP/Y6930/C/17/3188952

**Site address: Land at Riverside Stables, Tyn Yr Heol Access Road, Pen Y Bryn,
Pyle, Neath Port Talbot, CF33 4HW**

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Opey Jones against an enforcement notice issued by Neath Port Talbot County Borough Council.
- The enforcement notice, numbered E2017/0131, was issued on 6 October 2017.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land for the siting of three caravans being utilised for residential purposes, along with the creation of a hardstanding on the land and other associated structures and enclosures.
- The requirements of the notice are to: 1) Permanently cease the use of the land (including stable building marked "D" and coloured purple on Plan 2) for residential purposes; 2) Remove all caravans from the land (meaning all and any caravans which may be sited on the land, including those existing on the land at the time of this Notice marked "A" and coloured in blue on Plan 2 which is attached to this notice); 3) Remove all sheds/ outbuildings from the land (including but not necessarily limited to those existing on the land at the time of this Notice marked "B" and coloured in orange on Plan 2); 4) Remove the shower/ amenity cabin marked "C" and coloured in pink on Plan 2; 5) Remove close boarded boundary fencing from the land (coloured in green on Plan 2); 6) Remove all areas of hardstanding (and all materials) from the land; and 7) Return the land to its former condition by the use of a minimum of 10cm of topsoil and grass seed.
- The period for compliance with the requirements is six months beginning with the day on which this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B - Ref: APP/Y6930/A/17/3188919

**Site address: Land at Riverside Stables, Tyn Yr Heol Access Road, Pen Y Bryn,
Pyle, Neath Port Talbot, CF33 4HW**

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Opey Jones against the decision of Neath Port Talbot County Borough Council.

- The application Ref: P2017/0576, dated 14 June 2017, was refused by notice dated 14 August 2017.
 - The development proposed is the retention and completion of use of the land for the siting of two caravans for a Gypsy family, associated amenity building, hardstanding and improvement of existing access.
-

Decisions

Appeal A - Ref: APP/Y6930/C/17/3188952

1. The appeal is allowed insofar as it relates to ground (g) only and it is directed that the Enforcement Notice be varied by the deletion of 6 months and the substitution of 12 months as the period for compliance. Subject to these variations, the Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - Ref: APP/Y6930/A/17/3188919

2. The appeal is allowed and planning permission is granted for the retention and completion of use of the land for the siting of two caravans for a Gypsy family, associated amenity building, hardstanding and improvement of existing access at Land at Riverside Stables, Tyn Yr Heol Access Road, Pen Y Bryn, Pyle, Neath Port Talbot, CF33 4HW in accordance with the terms of the application, Ref: P2017/0576, dated 14 June 2017, and the plans submitted with it, subject to the conditions set out in the schedule below.

Background and Procedural Matters

3. As set out above, there are two appeals at the site, both relating to the use of the land as a private Gypsy and Traveller caravan site. Whilst I shall determine each appeal on its own individual merits, to avoid duplication, I shall report on the two schemes together in this single document with separate formal decisions set out above.
4. The description of development relating to Appeal B, as referred in the decision letter header above, has been taken from the Council's Notice of Decision as it provides a more concise and accurate description than that outlined on the original planning application form. As this description is consistent with that outlined on the Appeal Form, I am satisfied that there would be no prejudice in this respect.
5. In terms of background, the Local Planning Authority (LPA) refused planning permission for "*the retention and completion of the use of the land for the siting of two caravans for a Gypsy family, associated amenity building, hardstanding and improvement of existing access*" in August 2017. Subsequently, in October 2017, the LPA issued an enforcement notice. The breach of planning control alleged in the Notice is "*without planning permission, the material change of use of land for the siting of three caravans being utilised for residential purposes, along with the creation of a hardstanding on the land and other associated structures and enclosures*".
6. I have been advised that the reference to the siting of three caravans within the Enforcement Notice was an accurate reflection of the number of caravans located at the appeal site at the time the Notice was issued. Nevertheless, the appellant clarified at the Hearing that planning permission is only sought for two caravans as per the definition in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. Such information has been reflected in the planning conditions submitted for my consideration which have been agreed between the main parties.

7. During the processing of the appeal, the Welsh Government (WG) issued Circular 005/2018: *'Planning for Gypsy, Traveller and Showpeople Sites'* (June 2018) (WG Circular 005/2018). That document supersedes the advice contained within WG Circular 30/2007: *'Planning for Gypsy and Traveller Caravan Sites'* (WG Circular 30/2007). Given the significance of that document, the main parties have been provided with the opportunity to make written submissions on the implications of the updated policy position prior to the issuing of this decision.
8. The fact that the appellant and other beneficiaries of the scheme comprise Gypsies and Travellers, as defined by WG Circular 005/2018, is a matter of common ground. Indeed, the evidence leads me to concur with such conclusions. I am therefore satisfied that this is an appropriate basis upon which to determine the appeal. The policy framework relating to Gypsy and Travellers is, therefore, engaged.
9. Given the extent of the personal circumstances advanced, the appellant has submitted that a permanent yet personal planning permission would be likely to be the most appropriate course of action should the appeal succeed. It was therefore agreed at the Hearing that, should the deemed planning application under Appeal A and/or the proposals under Appeal B turn on the personal circumstances advanced, any planning permission granted should be tied to the following persons and their resident dependents: *Mr Opey Jones and Mrs Caroline Jones*.
10. It is on the basis of the foregoing that I shall consider the appeals.

Reasons

11. The appeal relates to a parcel of land located approximately 2 miles north of Pyle. The site is bounded by a public carriageway to the west, by a watercourse (Afon Cynffig) to the north and east and by agricultural fields to the south. The site lies adjacent to a farmstead, which incorporates an established use for the storage of caravans, and is accessed via an existing agricultural gateway located on the outside of a bend in the public highway that runs alongside the site. The site itself is largely enclosed by existing trees and hedgerows and, at the time of my site visit, had been levelled by a substantial amount of hardcore and incorporated 3No. touring caravans, an amenity building and associated structures and paraphernalia associated with its residential use. The appeal proposal seeks retrospective planning permission, under Section 73A(2)(a), for the residential use of the land for occupation by a Gypsy family, the erection of an amenity building, the laying of a hardstanding and improvements to the existing access.

The Deemed Planning Application (Ground a) under Appeal A and Appeal B

Main Issues

12. The main issues in this case are: whether the principle of development is justified in its countryside location, having particular regard to the planning policy framework; the effect of the development on the character and appearance of the area, having particular regard to the designated Special Landscape Area; the effect of the development on the openness of the Green Wedge; and whether any identified harm would be clearly outweighed by very exceptional circumstances.

The Principle of Development in its Countryside Location

13. The appeal site lies outside of the settlement limits defined by the Neath Port Talbot County Borough Council adopted Local Development Plan (2011- 2026) (adopted January 2016) ("the LDP") and is therefore classified as 'countryside' for the purposes

of planning. Policy SC1: '*Settlement Limits*' sets out criteria where development outside of settlement limits may be permissible, including criterion 11) which includes appropriate provision of accommodation for Gypsies and Travellers. Policy GT2 provides the specific policy framework for '*Proposals for New Gypsy and Traveller Sites*'. Amongst other criteria, which will be addressed elsewhere in this decision, that policy states that sites will be allowed outside of settlement limits only when it has been demonstrated that there are no suitable sites or pitches available within: a) the allocated Gypsy Site at Cae Garw (GT1), or within other existing authorised sites in Neath Port Talbot; or b) within existing settlement limits.

14. The appellant has submitted evidence, both in writing and orally at the Hearing, to indicate that returning to the Cae Garw site is not a reasonable or practicable option for his family. Specifically, substantial evidence was submitted to the Hearing in respect of anti-social behaviour at the appeal site, and in particular conflicts between his family and other residents. Indeed, for reasons that are addressed further below, I have no reason to dispute such evidence and therefore accept that, within context of the best interests of the appellant's family, the Cae Garw site is no longer a suitable site to meet the particular needs of the appellant. It is also notable that all other authorised sites are either at capacity or unsuitable to satisfy the appellant's needs. The appellant admitted at the Hearing that no sequential site search has been documented in order to formally discount sites within settlement limits, as required by criterion b) of that same policy. Nevertheless, the difficulties of finding available and affordable land within or adjacent to settlement boundaries was expressed at the Hearing and it is well-established through case law that there is no requirement for site proponents to prove non-availability of alternative sites in such cases. It is also notable that no evidence has been submitted to demonstrate that there are available alternative sites within settlement boundaries.
15. WG Circular 005/2018 provides much of the policy framework established at a national level and paragraph 39 of that document states that: "*Sites in the countryside, away from existing settlements, can be considered for Gypsy and Traveller sites if there is a lack of suitable sustainable locations within or adjacent to existing settlement boundaries. In assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services. Over rigid application of national or development plan policies that seek a reduction in car borne travel in order to effectively block proposals for any Gypsy and Traveller site in a countryside location would be inappropriate*".
16. It is common ground that the appeal site lies within a rural setting and, given the fact that the roads that lead to the site are largely unlit and without a segregated pedestrian footway, it is likely that the majority of trips to and from the site would be car borne. However, the site is not remote from day to day facilities and services, with the town of Pyle within relative close proximity. Indeed, Pyle offers a broad range of facilities and services, including a school, medical services, a post office, retail services and a rail station. It was clear at the time of the Hearing that the appellant's way of life inherently relies upon the use of private modes of transport and, in this respect, it is important that the application of policies that seek to reduce car borne travel are not rigidly adhered to. WG Circular 005/2018 goes on to identify well-being as a key component of site sustainability¹ and, having had regard to all of the relevant factors that can influence site sustainability, I do not find the siting of a gypsy and traveller site at the appeal site would unduly conflict with the general thrust of national policy.

¹ Paragraph 37

17. Therefore, based on the very specific circumstances advanced in this case, I find that the siting of the development in such a countryside location is acceptable in principle. Any conflict with the aforementioned development plan policies is therefore justified.

The effect of the development on the character and appearance of the area, having particular regard to the designated Special Landscape Area

18. The Council objects to the proposed development on the basis that it causes material harm to the character and appearance of the area, whilst specifically referring to its location within a designated Special Landscape Area (SLA). Policy EN2: '*Special Landscape Areas*' seeks to protect such areas of high landscape quality, stating that development within SLAs will only be permitted where it is demonstrated that there will be no significant adverse impacts on the features and characteristics for which the SLA was designated.
19. Within this context, I was able to confirm at the time of my site visit that, by virtue of the topography and the fact that the site is relatively well screened, the development is neither prominent nor visually intrusive. Residential style boundary treatments that conflict with the rural character of the site are clearly visible from the public highway. However, such harmful impacts could be effectively mitigated through the imposition of suitably worded planning conditions. The fact that the site is generally seen within the context of the substantial area of land located adjacent to the appeal site which is lawfully used for the storage of caravans is also a substantial material consideration in favour of the appeal proposal. Indeed, having regard to such matters, I am satisfied that the development would not be discordant or incongruous when viewed from the surrounding areas.
20. Nevertheless, both schemes clearly represent urbanising forms of development that encroach into what is lawfully an area of open countryside. Indeed, the Afon Cynffig represents a defined physical feature that separates the adjacent farmstead from the countryside beyond and the confines of that feature have been breached by the development on site. In this respect, there is little doubt that the development represents a physical incursion into largely unspoilt countryside. I have been advised that the site itself represented a tree lined grassed paddock with a single stable prior to the commencement of the works on site and, accordingly, I am mindful of the harmful effect of the residential use of the land and the substantial area of hardcore that currently covers the appeal site. In this respect, I consider Appeal A to be materially more harmful than the scheme proposed under Appeal B which provides for a more sensitive design layout that incorporates an element of grassed paddock. Nevertheless, the rural characteristics of the site itself would undoubtedly be harmed by both schemes. Indeed, the harm caused to the character and appearance of the immediate environs would conflict with the general thrust of the LDP's strategy of protecting the countryside and would also conflict with LDP Policy EN2.

The effect of the development on the Green Wedge designation

21. The appeal site is located within a Green Wedge, as defined by Policy EN3: '*Green Wedges*' of the adopted LDP, and it is common ground between the parties that the development comprises 'inappropriate development' in accordance with the definition set out in Planning Policy Wales (Edition 9, 2016) (PPW). Policy EN3 clarifies that the purpose of the Green Wedge designation is to prevent the coalescence of settlements and to protect the setting of urban areas. It also goes on to state that, within such areas, there should be a presumption against inappropriate development. Consistent with that position, PPW also states that there should be a presumption against inappropriate development, which by definition would be harmful to a green wedge

designation, except in very exceptional circumstances where other considerations clearly outweigh the harm identified. PPW also clarifies that one of the most important attributes of green wedges is their openness.

22. The area surrounding and incorporating the appeal site comprises gently undulating land and there is little doubt that the aforementioned structures, as well as the general residential use of the land, would serve to erode the openness of the appeal site. I acknowledge that views into the site are somewhat restricted. However, it is well-established in law that the issue of openness should not be confined to public views. It is for this very reason that I do not consider that such a loss of openness could be effectively mitigated by a scheme of landscaping. I recognise that the development would not be of a scale that would result in the merging of nearby settlements. However, by failing to maintain the openness of the Green Wedge, the development would run counter to the legitimate aim of preventing coalescence and protecting the setting of urban areas.
23. PPW advises that inappropriate development within Green Wedges should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such a development would do to the Green Wedge. The extent of whether or not there are very exceptional circumstances in this case will be set out below.

Matters in favour of the Appeals and the Planning Balance, including whether there are very exceptional circumstances that clearly outweigh the harm to the Green Wedge

24. Section 103 of the Housing (Wales) Act 2014 provides a statutory duty on local authorities to provide Gypsy and Traveller sites where there is an identified need. In this case, the most up to date assessment of need comprises the Gypsy and Traveller Accommodation Assessment (2016) (GTAA) and this document identifies an oversupply within the area of some 3 pitches to 2021. Such a finding is consistent with the fact that the appellant and his family vacated an authorised site at Cae Garw to relocate to the appeal site. I therefore see no reason to dispute this position.
25. Nevertheless, whilst quantitatively the number of available sites satisfies the short term need identified by the GTAA, I have already set out above that, having regard to the personal circumstances of this case, a return to the Cae Garw site represents an unsuitable option for appellant. Indeed, the evidence clearly sets out the serious antisocial behaviour and family disputes at Cae Garw that have resulted in damage to property and significant fears for the health and well-being of his family members. It is also notable that such experiences have understandably prevented the appellant from travelling for work. I recognise the LPA's contention that the site is well managed. However, the evidence submitted by the appellant at the Hearing was both consistent and compelling. I therefore have no reason to conclude that his family's experiences and concerns are anything but serious and genuine. This finding is reinforced by the appellant's confirmation that a return to Cae Garw is not a viable option. In the absence of any other available and suitable sites within the area, the family would therefore be resigned to an itinerant lifestyle should the appeals be dismissed.
26. In contrast, residence at the appeal site would provide the opportunity for the family to enjoy a peaceful and safe existence, away from the feuds that have typified their time at Cae Garw. Indeed, it is notable that, since the appellant moved onto the appeal site, he has been able to resume travelling for work and generally enjoy the lifestyle associated with that of a Gypsy and Traveller. Moreover, in contrast to the

situation should the family be forced into a roadside existence, access to education and medical services, as well as other facilities and services that would sustain their well-being, would not be compromised should the occupation of the appeal site be authorised. Within the context of the best interest of the children being a primary consideration, I consider that such matters merit substantial weight in the planning balance.

27. I have fully considered the differences between the deemed planning application arising from Appeal A and the scheme proposed under Appeal B and have already set out above that the proposal under Appeal A is materially more harmful than what would be the case should Appeal B be permitted, not least because of the proposed quantity and arrangement of the hardstanding and associated grass paddock area. It is on this basis that I consider that the substantial harm caused by the development on site (Appeal A) would not be outweighed by the matters in favour of the appeal. Nevertheless, whilst the scheme proposed under Appeal B would also cause harm to the character and appearance of the site and result in the loss of openness to part of the Green Wedge, I consider that the extent of such harm would be limited by the more sensitively designed layout. Indeed, subject to the imposition of suitably worded planning conditions, I am satisfied that the matters advanced in favour of the proposal, including the unsuitability of Cae Garw and the unavailability of any suitable alternatives, to amount to very exceptional circumstances that clearly outweigh the harm that Appeal B would cause to the Green Wedge. Moreover, when considered alongside my conclusions in respect of the principle of development, I consider the totality of the considerations in favour of the proposals to outweigh the cumulative harm that Appeal B would cause to the character and appearance of the area and the Green Wedge.
28. On this basis, whilst I conclude that the deemed planning application under Appeal A should fail, I find that the proposals submitted under Appeal B should succeed and that planning permission should be granted subject to the conditions set out in the attached schedule. I have fully considered the potential conflict between the grant of planning permission and the upholding of the enforcement notice and, in the interest of completeness, have considered the possibility of varying the requirements of the enforcement notice to require the appellant to implement the planning permission granted under Appeal B. However, the status of the enforcement notice could potentially be unclear should that permission not be properly implemented and the variation of the terms of the notice to provide an option of more than one requirement would be convoluted. On this basis, and bearing in mind the provisions of section 180 of the Act, which states that an enforcement notice shall cease to have effect so far as it is inconsistent with a subsequent grant of planning permission, I am satisfied that neither party would be prejudiced by the approach adopted. In fact, the presence of the Enforcement Notice alongside the grant of planning permission would provide the LPA with greater control should the terms of the planning permission granted in this case not be complied with.
29. I have considered the suggested planning conditions and, having had regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014) (Circular 016/2014), have adjusted their wording in the interest of clarity and precision. Condition No.1 is necessary to reflect the fact that the personal circumstances were decisive to the above conclusions and Condition No.2 would ensure that the land is restored to its condition before the development took place once those named under Condition No.1 cease to occupy the land. Condition No.3 is necessary to reflect the terms of the permission sought. Condition No.5 is necessary to ensure satisfactory drainage and connection to utilities,

whilst Condition Nos.4, 6, 7 and 8 are necessary in the interest of visual amenity. I have not imposed any restrictions on boundary treatments or other enclosures as such matters are satisfactorily captured by the other planning conditions imposed.

The Ground (g) Appeal under Appeal A

30. An appeal under section 174(2)(g) of the above Act is that the time given to comply with the requirements of the Notice is too short. In this case, the period for compliance is six months beginning with the day on which the Enforcement Notice takes effect. Having regard to the requirements of the planning conditions and the fact that the implications of the Enforcement Notice could render the appellant homeless, I concur with the appellant that an extension to the 6 month period is justified. However, a lengthy period of compliance would prolong the identified harm. Within this context, I consider that a period of 12 months would be both proportionate and reasonable. Notwithstanding this, the Council would have discretion to delay actively pursuing the requirements of the notice if it is satisfied that suitable progress is being made.
31. To this limited extent, the appeal under ground (g) succeeds.

Overall Conclusions

32. Based on the foregoing, and having considered all matters raised, I conclude that Appeal A should succeed, but only insofar as it relates to ground (g). The Enforcement Notice should therefore be upheld, subject to variation, and planning permission refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B should be allowed and planning permission should be granted subject to the conditions set out in the attached schedule.

Richard E. Jenkins

INSPECTOR

Schedule of Conditions

- 1) The occupation of the site shall only be by the following and their resident dependents: *Opey Jones and Caroline Jones*.
- 2) When the land ceases to be occupied by those named in Condition No.1, the use shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place within 6 calendar months of that date.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time. Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.
- 4) Within 3 months of the date of this decision a scheme for the siting of the approved caravans and the layout of the associated area of hardstanding shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The siting of the caravans and the layout of the hardstanding shall be positioned in the approved locations and retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 5) Within 3 months of the date of this decision a scheme for the disposal of foul and surface water, and a scheme to connect to the mains electricity and water supply, shall have been submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. The approved scheme shall be implemented in accordance with the approved details and retained as such in perpetuity.
- 6) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
- 7) Within 3 months of the date of this decision a Site Development Scheme shall have been submitted for the written approval of the Local Planning Authority. The scheme shall make provision for:
 - i. the removal of all close board fencing;
 - ii. the removal of parts of the hard standing and its replacement with natural grass in accordance with the requirements of Condition No.4;
 - iii. the retention of existing trees and hedgerows;
 - iv. proposed tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities;
 - v. any other proposed boundary treatments or enclosures; and
 - vi. any external lighting proposed within or on the boundary of the site.

The development scheme shall include a timetable for its implementation. The site development scheme shall be implemented in accordance with the approved details and shall be retained as such unless otherwise agreed in writing by the Local Planning Authority.
- 8) All planting, seeding or turfing comprised in the approved site development scheme shall be carried out in the first planting and seeding seasons following the approval of the site development scheme 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.

APPEARANCES

FOR THE APPELLANT:

Mr Opey Jones	Appellant
Caroline Jones	Appellant's Wife
Mr Brown	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Steven Jenkins	NPTCBC – Case Officer
Rachel Jordan	NPTCBC – Planning Policy Officer
Steve Ball	NPTCBC – Development Management Manager
Steven Parker	NPTCBC – Gypsy and Traveller Liaison Officer

INTERESTED PERSONS:

Cllr Rob Jones	NPTCBC
----------------	--------

DOCUMENTS

- 1 Letters of Notification of Appeal Hearing
- 2 Plans Ref: 17/0576– Elevations, Site Layout & Site Location Plan
- 3 Planning Permission – Ref: P2003/0145
- 4 Revised Suggested Planning Condition Nos. 6 and 7 ²

² Received by PINS via email following consultation with NPA, as requested at Hearing