
Appeal Decisions

Hearing held on 8 April 2014

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 10 June 2014

Appeal Ref: APP/Y3940/C/13/2206152

Sharkays, Whaddon Lane, Hilperton, Trowbridge, Wiltshire, BA14 7RN

- 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 Mark Miller against an enforcement notice issued by Wiltshire Council.
- The Council's reference is W/12/00176/ENF-M.
- The notice was issued on 6 September 2013.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from agricultural and equestrian to the mixed use of agricultural, equestrian and for the stationing of caravans and motor-homes for residential purposes; the use of stables for residential purposes; and operational development integral to the material change of use comprising the erection of a chimney on the stables.
- The requirements of the notice are to:
 - a) Permanently cease the use of the land for the stationing of residential caravans and motor homes; and
 - b) Permanently cease the residential occupation of all caravans and motor-homes on the land; and
 - c) Permanently remove all caravans and motor-homes occupied for residential purposes from the land; and
 - d) Permanently remove the chimney from the stables; and
 - e) Permanently remove all residential paraphernalia from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Appeal Ref: APP/Y3940/A/13/2203096

Sharkays, Whaddon Lane, Hilperton, Trowbridge, Wiltshire, BA14 7RN

- 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 Mark Miller against the decision of Wiltshire Council.
- The application Ref W/12/02069/FUL, dated 5 November 2012, was refused by notice dated 1 May 2013.
- The development proposed is the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with three caravans,

including laying of hardstanding.

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

Procedural matters

1. The use of the word 'permanently' in the requirements is both unnecessary and inappropriate having regard to the provisions of s.181(1) of the 1990 Act, which state that compliance with an enforcement notice shall not discharge the notice. Therefore I shall correct the notice accordingly using the powers available to me¹.
2. The main reason for issuing the notice and for the refusal of planning permission related to the Council's view that the Appellant had not provided sufficient information to demonstrate that he was a traveller as defined in Annex 1 of Planning Policy for Traveller Sites (the PPTS) and therefore the change of use of the appeal site to a residential caravan site was harmful to the rural scene in an isolated countryside location.
3. In its final comments², and confirmed at the Hearing, the Council contended that the appeal site is sustainable within the meaning of assessing gypsy and traveller sites. It also confirmed at the Hearing that the Council did not have a five year supply of specific deliverable sites for gypsies and travellers and that there was a demonstrable need for such sites.
4. Planning permission was granted on 10 July 2013³ for amendments to a previous planning permission⁴ for change of use of land for the keeping of horses, erection of stables and tack room, construction of manège and new access and the retrospective laying of hard standing with external lighting. In view of this permission (which granted permission for the hard standing and a septic tank), reason 2 for the refusal of the application that is the subject of this appeal (which related to foul and surface water drainage) had therefore been addressed⁵.
5. Given the terms of the application, that is, 'the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family' and the Council's confirmation set out above, the Parties agreed that planning permission has to be granted subject to conditions, one of which is a condition restricting occupation of the site to gypsies and travellers as defined in Annex 1 of the PPTS. From what I have read, heard and seen I have no reason to come to a different conclusion and therefore I will allow the s.78 appeal, subject to conditions.
6. The breach of planning control alleged in the notice is in different terms from the application in the s.78 appeal and as there is only one ground of ground appeal, that is, ground (g), the Parties agreed that the notice should be upheld. Again, I have no reason to come to a different conclusion.

¹ S.176(1) of the 1990 Act

² Paragraph 2 of the Council's Final Comments

³ W/13/00890/FUL

⁴ W/11/00742/FUL

⁵ Paragraph 6.2 of the Council's s.78 Statement and confirmed at the Hearing

7. S.180 of the 1990 Act provides that 'where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the planning permission, the notice shall cease to have effect so far as inconsistent with that permission'. As a result of my decisions the notice will cease to have effect in respect of the use of the land as residential caravan site. The occupancy of the caravan site will be restricted by condition to gypsies and travellers. Enforcing compliance with a planning condition is a matter for the LPA. However, the appellant and his family currently occupy the site. In the ground (g) appeal I therefore have to consider the Appellant's status in order to decide whether or not he and his family may lose their home and thus whether the time to comply with the notice is reasonable and proportionate.

The s.78 appeal

The appeal site

8. The appeal site comprises 0.13 hectares of land located along the south-eastern side of Whaddon Lane, about 600m north east of Hilperton. The site forms part of a larger land holding amounting to 1.07 hectares extending to the south-west and south-east of the appeal site.
9. The appeal site is a rectangular area containing a centrally located stable building and a hay barn in the southern corner. There is a second barn/stable block to the west of the hard standing. Access to the appeal site is from Whaddon Lane via a gateway in the northern corner. The appeal site is mainly laid to hard standing on which the caravans⁶ are located and vehicles parked⁷. The site is bounded by hedgerows along its north-western and north-eastern sides. The remainder of the landholding is laid to grass and used for the keeping of horses and pigs.
10. At the time of my visit there were two horses which Mrs Miller said they were keeping. There were also some pigs and piglets about a year old which had been bred as pets. One part of the main stable block was in use as a day room with, among other things, a washing machine, a fridge, a freezer, a wood burning stove and a television.

Conditions

11. The Council suggested five conditions. The Appellant's case is that he is a traveller as defined and the Council's agreement to the grant of permission is that the site fulfils the requirements for assessing gypsy and traveller sites; there was no suggestion by the Appellant that the site would be acceptable otherwise as a residential caravan site. In the circumstances a condition restricting the occupation of the site to gypsies and travellers is necessary. A condition requiring the development to be carried out in accordance with the submitted plans is necessary in the interest of good planning. The application is for three caravans and a condition limiting the number to three is therefore reasonable. Planning permission has recently been granted for external lighting and there are a number of fences erected around, and within, the appeal site; a condition withdrawing permitted development rights for fencing and a condition requiring permission for external lighting are therefore reasonable to protect the countryside. Similarly, to protect the rural

⁶ At the time of my visit there was one motor home, one large caravan and one touring caravan

⁷ At the time of my visit there was a transit van, a tipper truck and a four wheel drive vehicle

environment, a condition restricting commercial use of the site to the breeding and sale of horses is necessary.

12. In addition, although there were no highway authority objections, Whaddon Lane is narrow and, from representations from local residents, frequently used by walkers. Therefore in the interests of highway safety and to protect the countryside a condition limiting the size of vehicle kept on the site is reasonable. The application does not include the provision of any day room and the notice requires the removal of residential paraphernalia from the site. Therefore a condition requiring details of the day room provision is necessary.

The appeal on ground (g)

13. In an appeal on ground (g) the Appellant is saying that the time to comply with the notice is too short. In this case the Appellant seeks a two year period for compliance rather than six months as stated in the notice.
14. As referred to above, I have to consider whether the Appellant may be unable to continue living on the site and, given the terms of the planning permission granted in this decision, this is dependent on his status.

Traveller status

15. The Appellant claims that he is a traveller and falls within the definition of gypsies and travellers set out in Annex 1 of the PPTS which states that gypsies and travellers means 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own and their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such'. The determination of gypsy and traveller status is a question of fact and degree in any particular case. Whether a person falls within the definition is a functional test to be applied to their way of life at the time of the decision.
16. The Appellant's written evidence was considerably expanded at the Hearing although much of what he had written and what he and Mrs Miller told me was vague and they were often unable to be specific about many events, places and dates.
17. The Appellant that he was never very good at school and he left when he was 16 years old and started to earn his living by such things as grass cutting and hedging. He left home, which was outside Chippenham, when he was aged 19/20 in about 1992. In 1993 he met Mrs Miller, their daughter Michaela was born in March 1994 when Mrs Miller was living in a flat in Chippenham and in 1997 they set up home together in Chippenham in a rented house that they subsequently bought under the 'right to buy scheme'.
18. Throughout this time the Appellant earned his living by hedge cutting, tree work, soffits and fascia board works and driveway work which he did with his cousin; they worked locally to Chippenham and along the A303 to Salisbury, Reading and Newbury. They were often away in the caravan for 3-4 weeks at a time in the summer; work was occasional in the winter. They got work by leafleting houses and by knocking on doors. They also bought and sold vehicles; the vehicles would be taken back to the house. They were usually 2-3 days in an area and they camped on the side of the road in the caravan or

occasionally in campsites. In a typical year the Appellant was away travelling for 3 months.

19. The Appellant started to attend horse fairs when he was 18/19 years old. He kept his horses on a field rented from a farmer down the road from where Mrs Miller lived and he had at most 6-7 horses. When he was away, Mrs Miller looked after them. Most of the buying and selling was done at the fairs; some were sold by advertisements in the paper and some dealings are now on the internet. All deals were in cash and the Appellant had no paper records. The Appellant last sold a horse in November 2013 and the two horses he currently has are not for selling. He plans to go to horse fairs this year.
20. Sharna was born in May 1999 when they were living in the house they had bought. In 2006 they moved out of the house because of trouble with the neighbours who, among other things, did not like the Appellant's way of life, particularly the scrap metal in the back garden. The Appellant had always dealt in scrap metal which he had kept at his parents' house, then at Mrs Miller's previous address and then at their home. The majority of the Appellant's scrap metal dealing took place in the winter when he stayed at home and he took day trips out to pick up/collect the scrap metal which he sorted in the back garden.
21. When they left the house in the summer of 2006 they stayed for about four months in Mrs Miller's mother's garden in the caravan and motor home. The Appellant did not deal in scrap metal at that time but still travelled for work and he traded horses. They then bought a detached house in Chippenham where the Appellant carried on with his scrap metal business.
22. The appeal site was bought with no mortgage or loan in 2010. In about March 2011 they moved out of their second house, again because of problems with the neighbours. The house was sold in August 2011 and Council Tax was paid up to that date. From March 2011 until July 2012 the family lived on about five different campsites with some days in between when they camped on the road. In July/August 2012 they moved onto the appeal site and Council Tax has been paid since August 2012.
23. The Appellant's evidence is that he works now within about a 30 mile radius of the appeal site. Depending on the type and length of the job he may stay away in the caravan, otherwise he returns to the appeal site. Unless he is staying in the caravan with the Appellant, the Appellant's cousin returns to his home in Devises. In addition to the fencing/other types of work, the Appellant continues to run his scrap metal business from the appeal site.
24. The vague and anecdotal evidence relating to the attendance at horse fairs and horse dealing does not persuade me that this forms a large part, or indeed any part at all, of the Appellant's way of life and income. Although it would have been helpful if the Appellant had produced such things as examples of the leaflets he uses to seek work I am, however, satisfied that the Appellant travels to find work undertaking a variety of different jobs such as fencing and collecting scrap metal. But I have to consider whether his lifestyle comprises a 'nomadic habit of life' for the purposes of the PPTS.

25. There is case law which is relevant to the term 'nomadic'. In the case of *R v South Hams DC, ex parte Gibb and Ors*⁸, it was held that the term 'nomadic' imported the requirement that there be 'some recognisable connection' between a person travelling and the means by which they sought or made their living. In *Maidstone BC v First Secretary of State for the Environment and Dunn*⁹ it was held that a Romany gypsy who bred horses and travelled to horse fairs to trade them and was away from his home address for at least two months of the year qualified for gypsy traveller status. Again, in the case of *Basildon District Council v Secretary of State for the Environment and Rachel Cooper*¹⁰ a gypsy woman who travelled to fairs and sold craft items was afforded status. The Appellant has referred to an appeal decision in which a Inspector concluded that the Appellant, whose mother was a Romany Gypsy, and who had herself travelled and traded in horses for about four years prior ceasing to travel because of ill-health had retained her gypsy status although at the time of the appeal she derived her main income for working part-time in a shop and she had not travelled for an economic purpose for some time¹¹. However, in *Clarke-Gowan v SSTLR & North Wiltshire DC*¹² the Court upheld an Inspector's finding that the claimant's peripatetic working life of using his caravan to live in whilst he was working away from his permanent mobile home was typical of those engaged in sub-contractual work in the building industry and was not sufficient to establish a nomadic lifestyle.
26. The Appellant is not a gypsy by birth. The Appellant was extremely vague about where he lived when he left home and where he was living when he met Mrs Miller and thereafter until they set up home together. Mrs Miller was also unable to be precise about where they had lived and when. It appeared to me that they were reluctant to give information about their past and present way of life. It seems to me, however, that the Appellant has always had a base where his family reside, whether a flat, a house or a caravan on a site, from which he travels and when he does travel it is for relatively short periods at a time. In particular, most recently his travelling has been local and he has been away from his family only infrequently and then for a few days at a time.
27. When he and his family left their second house in 2011 they owned the appeal site and they did not explain why they chose to move from caravan site to caravan site until August 2012 when they moved onto the appeal site. Nor did they explain why they continued to pay Council Tax for the house despite the fact they were not living in it when they could have obtained an exemption. I note that during that period they did not stay on gypsy/traveller sites but on caravan club sites and that they are members of that club. No written evidence was provided such as receipts for payment for the various sites. The Appellant knew that they could only stay on those sites for up to 28 days, or longer if the owner allowed, but no explanation was given why they did not plan ahead to move to another site when the time ran out but stayed on the road side in between sites.
28. The family is not known to the Council's Gypsy and Traveller Manager nor is the family known to the Highways Enforcement Officer¹³ although the Appellant

⁸ [1995] QB 158

⁹ [1996] CO/2349/94

¹⁰ [2004] ECWA Civ 473

¹¹ APP/Y3940/A/11/2151655 - Appendix 2 to the Statement on behalf of the Appellant

¹² [2002] EWCH 1284 (Admin)

¹³ Document 3

claims traveller status and says that he has stayed on the roadside on many occasions, on his own, with his cousin and with his family.

29. On the evidence I have I consider that the travelling carried out by the Appellant is similar to that of many persons in the settled community who have permanent bases and who from time to time have to or choose to travel, and stay away for short periods of time to obtain work.
30. After taking account of all the evidence, including the cited case law, I consider that the nature of the travelling carried out by the Appellant has not been such as to be consistent with a 'nomadic habit' in that it does not involve him travelling from place to place in order to make his living¹⁴. I am not therefore satisfied on the balance of probabilities that the Appellant falls within the definition of travellers for the purposes of the PPTS.
31. The personal circumstances of the Appellant and his family, however, remain an issue to which I must give consideration.

Personal circumstances

32. The Appellant's daughters, Michaela and Sharna, are now about 20 and about 15 years old respectively. From the evidence, neither of them attended school for any significant period of time because of bullying and health issues which resulted in them being withdrawn from school by Mrs Miller. Both girls have been home educated. When the family moved onto the appeal site Michaela attended Trowbridge College for a short period of time but left when she became pregnant; her child is due to be born in early May. Sharna does her schoolwork at home via the internet and both Mrs Miller and Sharna told me that there is no chance of her going to school again. Given the length of time that both girls have been known to the Education Welfare Service I am surprised that no report, about Sharna in particular, has been made available. Also, given the mention by Mrs Miller of depression and the effect on their health that bullying has had on both of her daughters that no medical reports have been provided.
33. I have a letter from Mrs Miller's GP dated 23 October 2013 saying that 'she is suffering marked stress and anxiety as a result of the issues that she informs me are arising as a result of difficulties she is having with progressing the planning application'. The letter is, however, not up to date and it is in very general terms.
34. The Appellant has referred to Court decisions relating to the statutory duty on any public authority to give consideration to the best interests of the children¹⁵. In addition, Article 8 of the European Convention of Human Rights is incorporated into the Human Right Act 1998 and it states that 'everyone has the right to respect for his private and family life, his home and his correspondence'.
35. The fact that the residential occupation of the appeal site by the Appellant and his family will have to cease as a result of this decision constitutes an interference with his home and private life. This, however, must be balanced against the public interest in upholding planning policy to protect the

¹⁴ *South Hams DC, ex parte Gibb and Ors*

¹⁵ *AZ v SSCLG and South Gloucestershire DC* - Appendix 10 to the Appellant's statement and *Zoumbas v Secretary of State for the Home Department* - Document 4

environment and in particular planning policy relating to residential development in the countryside and sustainable development¹⁶.

36. Whilst I appreciate that the Appellant and Mrs Miller had their reasons for leaving the two houses that they owned, nevertheless it was their choice to leave them and to live on the various caravan sites for short periods of time. No evidence was provided in respect of why, for example, they could not return to live in a house or on a caravan park home site. Sharna does not, and is unlikely to attend school for the remaining one year of her school life, and her education can be undertaken wherever there is an internet signal. Whilst I accept that a settled home is generally in the best interests of any child, I have been given no information or reason why such a settled environment could not be provided for her away from the appeal site.
37. The period of time for compliance on the notice is six months. From the limited information that has been provided by the Appellant, both written and orally, I am satisfied that the eventual cessation of the residential use within that period of time would not be a disproportionate consequence and that it is a reasonable period of time to allow the Appellant to make arrangements about where he and his family should live in the future. I, however, draw the Council's attention to s.173A of the 1990 Act which provides powers to extend the period for compliance should it be necessary to do so.
38. I am satisfied that in coming to my decision I have properly taken into account the rights and duties conferred by the Public Sector Equality Duty Act 2010.

Conclusions - the enforcement notice appeal

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Conclusions - the s.78 appeal

40. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal Ref: APP/Y3940/C/13/2206152

41. It is directed that the enforcement notice is corrected by the deletion of the word 'permanently' from requirements a), b), c), d) and e). Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/Y3940/A/13/2203096

42. The appeal is allowed and planning permission is granted for the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with three caravans, including laying of hardstanding at Sharkays, Whaddon Lane, Hilperton, Trowbridge, Wiltshire, BA14 7RN in accordance with the terms of the application, Ref W/12/02069/FUL dated 5 November 2012, subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

¹⁶ Saved Policies C1 and H19 of the West Wiltshire District Plan 1st Alteration and Paragraph 55 of the National Planning Policy Framework

Drawing: Location plan

Drawing: Site location/ layout

- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (Department for Communities and Local Government - March 2012).
- 3) No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than two shall be a static caravan) shall be stationed on the site at any time.
- 4) Except for the breeding and sale of horses, no commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no fences or other means of enclosure shall be erected on the site.
- 7) No external lighting shall be installed on the site.
- 8) The use of the site hereby permitted shall not take place until details of a scheme to limit and define the part of the stable building to be used as a utility dayroom, to include the internal layout of the utility dayroom and its physical separation from the rest of the stable building, have been submitted to and approved in writing by the local planning authority. The use and extent of the dayroom shall be carried out in accordance with the approved details and within any such timescale as specified by the local planning authority.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr P Brown Chartered Town Planner
BA(Hons) MRTPI

Mr M Miller Appellant

Mrs J Miller The Appellant's wife

Ms S Miller The Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY

Mr J Taylor Senior Planning Officer
BA(Hons) MA MRTPI

Mr S Hawkins Planning Enforcement Team leader
MA MRTPI

Mr D Tyrrell Planning Enforcement Officer

INTERESTED PERSONS

Ms P Fisher Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1 - Copies of the Council's letters of notification and lists of persons notified

Document 2 - Letter from Mrs Miller's GP, submitted by the Appellant

Document 3 - Emails from the Highways Enforcement Officer and the Gypsy and Traveller Manager, submitted by the Council

Document 4 - *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, submitted by the Appellant