



Appeal Decisions

Hearing held and an unaccompanied site visit on 6 December 2018

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 13 December 2018

Appeal A Ref: APP/R3325/C/17/3190705

Land OS 8735, Sandbrook Lane, North Cadbury, Yeovil, Somerset

- 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 1990 Act").
- The appeal is made by Tony Junge against an Enforcement Notice issued by South Somerset District Council ("the Council").
- The Enforcement Notice was issued on 23 October 2017.
- The breach of planning control as alleged in the Enforcement Notice is:
 - (a) Without planning permission, the making of a material change of use of the Land by the siting of a mobile home, a touring caravan, a shipping container and a treatment plant on the Land for residential purposes, in the approximate location shown edged and hatched blue on the plan attached to the Enforcement Notice; and
 - (b) Without planning permission, the carrying out of operational development connected with the above use, namely the creation of areas of hard standing and the erection of timber fencing and gates.
- The requirements of the Enforcement Notice are:
 - (i) Cease the use of the Land for the siting and residential occupation of the mobile home and touring caravan;
 - (ii) Remove from the Land the mobile home, touring caravan, shipping container and treatment plant; and
 - (iii) Remove from the Land the areas of hard standing, timber fencing, timber gates, any services connected to the residential use of the Land and any other non-agricultural paraphernalia.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (g) of the 1990 Act.

Summary of Decision: The appeal is allowed, the Enforcement Notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/R3325/W/17/3190704

The Paddocks, Sandbrook Lane, North Cadbury, Yeovil, BA22 7BQ

- The appeal is made under Section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Tony Junge against the decision of the Council.
- The undated application Ref 16/03476/FUL, was received on 4 August 2016 and was refused by notice dated 18 August 2017.
- The development proposed is the change of use of land and the retention of one mobile home, one touring caravan, one shipping container, treatment plant, hardstanding, gates and fencing.

Summary of Decision: The appeal is allowed.

Procedural Matters – Appeals A & B

1. The land to which the Enforcement Notice and planning application relate are described differently in the headings above. They are the same area of land.
2. The Enforcement Notice refers in paragraph 3(a) to the treatment plant which has been installed at the Appeal Site as being a material change of use. I do not agree with that. It is operational development and should be included in paragraph 3(b). I consider that this matter can be addressed if I correct the Enforcement Notice. This correction can be made without injustice to either the Council or Tony Junge.
3. The Council agreed at the Hearing that if the Ground (g) appeal had to be determined they had no objection to the period for compliance being extended from nine months to one year as requested by Dr. Simon Rushton ("Dr. Rushton") on behalf of Tony Junge and his family.
4. The description of the development in Appeal B refers to a change of use but it does not specifically state that the change of use is to a gypsy caravan site. Everyone is aware of this and I consider that it should be specifically referred to if any planning permission is to be granted.
5. In my Appeal Decision I will refer to:
 - (a) The land to which Appeals A & B relate as "the Appeal Site".
 - (b) The terms "gypsy" to include both gypsies and travellers.

Relevant Background Matters

6. The Appeal Site is:
 - (a) Occupied by Tony Junge, his partner and five dependent children.
 - (b) Located within the open countryside.
7. I was advised that the proposed position of the caravans and the shipping container do not fall within the Flood Zone. Tony Junge advised me that no part of the Appeal Site had flooded since the gypsy caravan site use commenced in about July 2016.
8. Sandbrook Lane:
 - a) Provides access to and egress from the Appeal Site.
 - b) Forms part of the Macmillan and Leland Regional Trails.
 - c) Is part of a National Cycle Route.
9. The children living at the Appeal Site have a generous area within the Appeal Site where they can play.
10. The occupiers of the Appeal Site rely on water extracted from the ground for most of their on-site water based uses.
11. The Council do not raise any issue regarding the status of Tony Junge and his family as gypsies as defined in PPTS. Tony Junge explained that he had personally been living a nomadic habit of life since he was seventeen years old. This included travelling throughout the country seeking out work. His work

includes buying and selling of cars; hedge cutting; gardening and clearance of sites. He made the planning application leading to Appeal B himself and did not mention in that application that he was a gypsy. However, he instructed Dr. Rushton shortly after making the application and by September 2016 it was made clear to the Council that Tony Junge and his family were claiming the status of gypsies. I have no evidence before me to doubt the gypsy status claimed by Tony Junge and his family.

Appeals A (Ground (a)) & Appeal B

Policy

12. The Development Plan for the area includes Policies SS2, EQ2 and HG7 of the South Somerset Local Plan 2006-2028 ("the Local Plan").
13. I have also been referred to:
 - (a) Paragraphs 3-4, 8-15, 22-28 and Annex 1: Glossary of Planning Policy for Traveller Sites 2015 ("PPTS").
 - (b) Paragraph 2 of the National Planning Policy Framework 2018 ("NPPF").
14. The relevant parts of the Local Plan explain that:
 - a) Experience in the District suggests that applicants for gypsy sites favour small owned sites.
 - b) The targets for the provision of gypsy sites in the District are minimum requirements.
 - c) Criteria are specified to guide the location of gypsy sites. The relevant criterion in this case is that the development should not have a significant adverse impact on the landscape character and visual amenity of the area.
15. PPTS explains:
 - a) When assessing the suitability of sites in rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

Comment: This indicates that rural areas such as the Appeal Site are not excluded from accommodating gypsy caravan sites as a matter of principle. It is also clear from my site visits to North Cadbury that the scale of the use at the Appeal Site (one-pitch) does not dominate the nearest settled community.
 - b) Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure, amongst other things, that sites in rural areas avoid placing an undue pressure on the local infrastructure.

Comment: Government policy of very strictly limiting new gypsy sites in open countryside would not be breached in this case so long as the development accords with the Local Plan. There is no evidence before me that the use of the Appeal Site as a one pitch gypsy caravan site would place undue pressure on local infrastructure.

Main Issues

16. Having regard to the Local Plan I consider the main issue in this case is whether the impact of the gypsy caravan site use (as shown on Drawing No. TDA.2313.02 Rev A) would significantly harm the character or appearance of the Appeal Site or the surrounding area.

Reasoning

17. When the application was submitted to the Council the development had been carried out. Initially there were no plans submitted with the application indicating any proposed changes to the development that had been carried out.
18. Rhodri Crandon ("Mr. Crandon") on behalf of Tony Junge accepts that the close boarded fence and gates at the entrance to the Appeal Site and the close boarded fence around part of the site adjacent to the Wessex Water Compound ("that Water Compound") does have a substantial adverse visual effect upon the Appeal Site's immediate setting as seen from Sandbrook Lane.
19. However, Mr. Crandon explained that the Appeal Site is generally well screened by the natural undulating topography of the area and the mature stream-side trees associated with the River Cam. I also took the opportunity of trying to see the Appeal Site from Corkscrew Lane and, like Mr. Crandon, I was unable to identify the Appeal Site from there. Balancing the significant harm from Sandbrook Lane and the lack of harm from the wider area Mr. Crandon came of the view that the Appeal Site (in its current form) creates moderate harm to the landscape character and appearance. Mr. Crandon points out that the Council's former Landscape Architect ("Mr Archer") concluded in February 2017 that the visual impact of the development was considered to be "moderate adverse".
20. I do not wholly agree with these assessments. I consider the close boarded fencing and gates together the significant area of stoned hardstanding at the entrance creates such significant harm when seen from Sandbrook Lane that the lack of harm from other viewpoints does not reduce the overall harm to the character and appearance of the Appeal Site and the surroundings to moderate harm. In my view it remains as significant harm.
21. In July 2017 Mr. Crandon lodged landscaping and revised site layout proposals to amend the development. The main changes included:
 - a) The removal of the entrance fencing/gates and its replacement with post and rail fencing & matching gates.
 - b) A new access track from the gates to the area where the mobile home and shipping container would be sited together with an informal central verge.
 - c) The repositioning of the mobile home and shipping container.
 - d) Various soft landscaping proposals including trees and native understorey planting.
22. Mr. Archer commented on Mr. Crandon's proposed changes on 19 July 2017 and suggested three further improvements but nonetheless concluded that even if these changes were incorporated this would not overcome the harm to the character of the Appeal Site and the surrounding area.

23. Mr. Crandon submitted, as part of the appeal papers, a further revision which incorporates the majority of Mr. Archer's suggested improvements.
24. I have had full regard to the amendments suggested by Mr. Crandon. The stark uncharacteristic fencing and gates (including the fencing around the Water Compound) would be removed. The unacceptable extensive area of hardstanding, particularly at the entrance to the Appeal Site, would be reduced and the planting of native understorey and new trees would, in my opinion, transform the adverse visual impact of the current entrance and make it acceptable. Significant areas of new hedgerows would also be planted within the Appeal Site. A further extensive area of hardstanding within the Appeal Site would be replaced by a grassed area and the majority of the Appeal Site's perimeter would be planted with wildflowers.
25. I accept that the landscape character of the Appeal Site would change from that of being one of the pastoral fields in this area but the introduction of any gypsy caravan site in the open countryside is going to change the character of the parcel of land where the caravan site is provided. However, I have explained that there is no prohibition on gypsy sites in the open countryside within the Local Plan or at national level.
26. The mobile home and shipping container in their proposed positions would be largely screened from public view by those using Sandbrook Lane due to the extensive roadside hedge (which would be retained). Tony Junge has requested the retention of the close boarded fence immediately behind the roadside hedge so as to prevent light pollution from the mobile home spilling out onto Sandbrook Lane during the hours of darkness. I see no visual harm arising from the retention of this part of the close boarded fencing as it is largely screened by the roadside hedge. Further, Tony Junge is willing to retain that hedge at a height of not less than 2m (which reflects other hedgerows along Sandbrook Lane).
27. I agree with Mr. Crandon's assessment that once the proposed alterations to the hard landscaping have been carried out and when the new planting has been established the visual impact of the development will only have a slight adverse impact on the Appeal Site and the surrounding area. This is clearly a level of harm that is significantly less than the "significant adverse effect" referred to in Policy HG7 of the Local Plan.
28. Accordingly, I conclude for the reasons explained above that the impact of the residential use of this gypsy caravan site (as shown on Drawing No. TDA.2313.02 Rev A) would not significantly harm the character or appearance of the Appeal Site or the surrounding area. The gypsy caravan site use would be in accordance with the Local Plan.

Other Matters

29. I explained at the Hearing that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have concluded that the appeal proposal accords with the Development Plan.
30. The NPPF explains that development proposals that accord with an up-to-date development plan should be approved without delay.

31. I do not consider that it is necessary for Tony Junge to submit details of the treatment plant or the surface water disposal system as these have been in place for over two years and there is no evidence before me that these result in any planning problems.
32. Other material considerations have been raised both for and against this development. The main arguments against the development are:
- a) That Tony Junge did not seek planning permission for the development prior to carrying it out. Tony Junge explained why that was the case including that he was advised by contractors that certain elements of the development did not require planning permission. Both Tony Junge and his partner said that they did not know that planning permission was required. Once they had been informed of the need for planning permission an application was lodged quickly thereafter. Whilst there is no evidence before me that Tony Junge knew that planning permission was required I consider that as a man who carries on commercial businesses it would have been prudent to make enquiries as to what permissions (including planning permission) he needed prior to carrying out the development. This issue has caused considerable concern for the settled community who perceive the blatant breach of planning control as undermining a system which they adhere to. I consider that limited weight against the grant of planning permission should be attributed to this matter.
 - b) That there appears to be significant antagonism between some members of the settled community and Tony Junge and his family. However, Tony Junge explained that he uses the facilities in the locality, he attempts to be friendly and that his children socialise with other youngsters living in the settled community. I consider that the grant of planning permission would allow Tony Junge and his family to continue to integrate into the local community whilst still allowing Tony Junge and his family to continue their cultural lifestyle as gypsies. No weight against the appeal arises from this matter.
 - c) That the development carried out causes light pollution in what is otherwise a dark environment. Tony Junge is willing to only use external lighting that has been approved by the Council. Therefore any adverse light pollution (if any) that the residential use has resulted in can be addressed when details of external lighting are provided to the Council through an appropriately worded condition. No weight against the appeal arises from this matter.
 - d) That noise and disturbance is caused to residents living adjacent to Sandbrook Lane by Tony Junge's low loader returning to the Appeal Site late at night. Tony Junge disputed that he used the low loader late at night on any regular basis. Further, he agreed that he would leave his low-loader at his compound and that only domestic cars will be parked at the Appeal Site. This can be secured by the imposition of a planning condition and this will eliminate any noise problems. No weight against the appeal arises from this matter.
 - e) That the widening of the entrance to the Appeal Site and its residential use had resulted in harm to the ecology of the area. There is no evidence before me that these matters have had any adverse impact on ecology in the area. I was advised that the Council's ecologist raised no objection at the application stage. No weight against the appeal arises from this matter.

- f) That the residential use of the Appeal Site had resulted in highway safety issues along Sandbrook Lane. Clearly the introduction of the residential use has increased vehicular traffic along Sandbrook Lane. Sandbrook Lane is a rural single track road with some informal passing places. My impression was that vehicular use of Sandbrook Lane was very low and there was no evidence to the contrary. When vehicles meet other vehicles or horses travelling in the opposite direction one of the vehicles has to reverse to a suitable point where the vehicles/horses can pass one another. This is inconvenient but in my assessment it has no implications for highway safety. The inconvenience caused is likely to be short-lived and is part and parcel of living in an area served by narrow lanes. No weight against the appeal arises from this matter.
- g) That the residential use has increased the amount of litter along Sandbrook Lane. Tony Junge and his partner explained that they clear litter from Sandbrook Lane – they are not the cause of that litter. No weight against the appeal arises from this matter.
- h) That local residents suffered from nuisance caused by Tony Junge’s children’s use of motorcycles. I was informed by Tony Junge that the incidents referred to by local residents could not be attributed his children because they were back at the Appeal Site before the times of these incidents. Further, Tony Junge and members of his family had reported incidents of nuisance caused by motorcyclists along Sandbrook Lane to the Police. No weight against the appeal arises from this matter.
- i) That unspecified incidents had resulted in some members of the local community feeling intimidated by Tony Junge and his family. In my view there is nothing intimidating about the use of land as a gypsy caravan site per se. If the occupiers of such a site, and I am not saying they are in this case, cause anti-social behaviour which results in harm or fear of harm to others then these issues need to be addressed through the relevant agencies and cannot be resolved through the planning system. No weight against the appeal arises from this matter.
- j) That the Appeal Site is used in part by Tony Junge in connection with his businesses. Tony Junge explained that he did not and neither did he want to use the Appeal Site for such uses. There is no evidence before me that the Appeal Site is used for business purposes. A planning condition can be imposed to control this. No weight against the appeal arises from this matter.

Planning Balance – Appeals A & B

33. I have explained that the proposal complies with the Development Plan. Limited weight against the appeals arises from the matter referred to in paragraph 32(a) above. However, I remain firmly of the view that planning permission should be granted in this case.

Overall Conclusions – Appeal A

34. For the reasons given above:

- a) I shall uphold the Enforcement Notice with the correction explained above.

- b) I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.
- c) The appeal on Ground (g) does not therefore need to be considered.

Overall Conclusions – Appeal B

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

Formal Decision – Appeal A

36. It is directed that the Enforcement Notice be corrected by:

- (a) The deletion of the wording in paragraph 3 (a) and the substitution of the following wording, “Without planning permission, the making of a material change of use of the Land by the siting of a mobile home, a touring caravan and a shipping container on the Land for residential purposes, in the approximate location shown edged and hatched blue on the attached plan; and”
- (b) The deletion of the wording in paragraph 3 (b) and the substitution of the following wording, “Without planning permission, the carrying out of operational development connected with the above use, namely the creation of areas of hard standing, the erection of timber fencing and gates and the installation of a treatment plant”.

Subject to these corrections the appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the Act for the development already carried out, namely

- a) the use of the land at The Paddocks, Sandbrook Lane, North Cadbury, Yeovil, BA22 7BQ, as shown on the plan attached to the Enforcement Notice, for the siting of a mobile home, a touring caravan and a shipping container for residential purposes; and
- b) the creation of areas of hardstanding, the erection of timber fencing and gates and the installation of treatment plant on the land at The Paddocks, Sandbrook Lane, North Cadbury, Yeovil, BA22 7BQ, subject to the conditions set out in the Schedule of Conditions below.

Formal Decision – Appeal B

37. The appeal is allowed and planning permission is granted for the change of use of land to a gypsy caravan site and the retention of one mobile home, one touring caravan, one shipping container, treatment plant, hardstanding, gates and fencing at The Paddocks, Sandbrook Lane, North Cadbury, Yeovil, BA22 7BQ in accordance with the terms of the undated application, Ref 16/03476/FUL which was received by the Council on 4 August 2016 subject to the conditions set out in the Schedule of Conditions below.

Tim Belcher

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: H. M. Land Registry Plan for Title Number ST78206 and Drawing No. TDA.2313.02 Rev A.
Reason: For the avoidance of doubt and in the interests of proper planning.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
Reason: To avoid any ambiguity as to who can occupy the site and to accord with Policy HG7.
- 3) No more than one mobile home, one touring caravan and one shipping container shall be stationed on the site at any time.
Reason: To avoid any ambiguity as to the number of caravans and shipping containers that can be stationed on the site and to limit the harm to the character and appearance of the area.
- 4) The mobile home, the shipping container and the dog kennel shall be sited in accordance with Drawing No. TDA.2313.02 Rev A within three months of the date of this permission.
Reason: To avoid any ambiguity as to the position of the mobile home, shipping container and dog kennel and to limit the harm to the character and appearance of the area.
- 5) No vehicles other than private domestic cars shall be parked on the site.
Reason: To ensure that large commercial vehicles are not kept at the site as their use (especially late at night) could result in noise and disturbance for local residents living adjacent to Sandbrook Lane.
- 6) No commercial or business activities whatsoever shall take place on the site.
Reason: To ensure that the use of the site does not have any adverse impact on the character or appearance of the area or the living conditions of the occupiers of properties adjacent to Sandbrook Lane.
- 7) No external lighting shall be retained or installed within the site unless details of the external lighting have been submitted to and approved in writing by the Local Planning Authority. Any such approved lighting shall be carried out in accordance with the approved details.
Reason: To ensure that no unacceptable light pollution results from any external lighting within the site.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other Order revoking and re-enacting that Order with or without modifications), no walls, fences or other means of enclosure other than those shown on Drawing No. TDA.2313.02 Rev A shall be erected on the site unless otherwise approved in writing by the Local Planning Authority. Any such development approved by the Local Planning Authority shall be carried out in accordance with the approved details.

Reason: To ensure that no harm to the character or appearance of the area results from unacceptable permitted development in the open countryside.

- 9) The hedge along the frontage of Sandbrook Lane shall not be reduced below the height of two metres unless otherwise agreed in writing by the Local Planning Authority.

Reason: The prevailing height of hedges along this part of Sandbrook Lane is about two metres. Further, the hedge screens the close boarded fence erected immediately behind it. If the hedge was reduced to a level whereby the fence was seen which may harm the character and appearance of the area.

- 10) The hard landscaping details shown on Drawing No. TDA.2313.02 Rev A shall be fully implemented within three months of the date of this permission.

Reason: To ensure that the harm caused by the close boarded fence and gates at the entrance to the site and the close boarded fence around the Water Compound is reduced.

- 11) The scheme of soft landscaping identified on Drawing No. TDA.2313.02 Rev A shall be implemented in its entirety during the first available planting season. Any trees or plants which within a period of five years from the date of this permission die are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the site is adequately landscaped and to improve the visual amenity of the site.

APPEARANCES

FOR THE APPELLANT

Dr Simon Rushton BSc(Hons), MA, MA & MRTPI	Rushton Planning Limited
Rhodri Garth Crandon BA(Hons), Dip Landscape Architecture	Tirlun Design Associates Limited
Chris Stonard	Somerset Youth Offending Team
Tony Junge	Appellant
Sonia Crabb	Appellant's Partner

FOR SOUTH SOMERSET DISTRICT COUNCIL

Neale Hall BSc(Hons), Higher Degree (Professional Management), PGDip (Town & Regional Planning), MRTPI	Senior Officer (Planning)
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INTERESTED PERSONS

Malcolm Hunt – Chairman of North Cadbury & Yarlington Parish Council
Angela Hunt – Local Resident
Alan Brain – Local Resident
Marcus & Susan Gilbert - Local Residents
Eva Lagasse – Local Resident
Veronica Dunce – Local Resident

DOCUMENTS

Document 1	-	E-Mail from Chris Stonard to Simon Rushton dated 19 December 2018.
Document 2	-	Letter dated 22 August 2018 – Somerset County Council to Tony Junge & Sonia Crabb.
Document 3	-	Transport Care Plan dated 22 August 2018.
Document 4	-	Landscape Statement – Rhodri Crandon – November 2017.