APPENDIX

Appeal Decisions

Hearing held on 1 May 2007

by Steven Fox BA MA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
11th May 2007

Appeal A: APP/P4415/C/06/2026166
Wales Bar Sewage Works, Mansfield Road, Wales, Sheffield

- 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 John Price against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The Council's reference is DT/RB2006/476/ENF.
- The notice was issued on 30 August 2006.
- The breach of planning control as alleged in the notice is change of use of the land from use for agriculture to a mixed use for agriculture and residential and the stationing of caravans.
- The requirements of the notice are to cease the use of the land for residential purposes and remove all caravans from the land.
- The period for compliance with the requirements is 6 months.
- 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.

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

Appeal B: APP/P4415/A/06/2027266
Wales Bar Sewage Works, Mansfield Road, Wales, Sheffield

- 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 John Price against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2006/0476(FUL), dated 10 March 2006, was refused by notice dated 8 June 2006.
- The development in question is a change of use to use as a residential caravan site for three gypsy families with four caravans, including hardstanding area.

Summary of Decision: The appeal is dismissed.

Matters Relating to the Notice

1. At the hearing I expressed concern about the wording of the allegation in that it could be misconstrued as relating to three separate elements of a mixed use. The breach clearly involves the stationing of caravans for residential use and its wording should specify this. The parties agreed that there would be no prejudice if the allegation were so corrected. There would be no effect on its requirements.

The Ground (a) Appeal and the Appeal against Refusal of Planning Permission

Inspector's Reasons

2. The site lies in the Green Belt, where Unitary Development Plan (UDP) policy ENV1 says that development will not be permitted except in very special circumstances for purposes other than agriculture, forestry, recreation, cemeteries or other uses appropriate to a rural area. Also relevant in this respect is the advice in part 3 of Planning Policy Guidance note 2(PPG2) concerning the control of development in the Green Belt. UDP policy HG4.9 relates to sites for travellers and sets out five criteria against which proposals will be considered. Both parties also refer to the up-to-date government advice on planning for gypsy and traveller caravan sites in ODPM Circular 01/2006.

3. The appeal site stands on a west facing hillside in open countryside the south-west of the village of Wales Bar. It is accessed from Mansfield Road (A618) by a single width track which leads down to an enclosed yard area flanked on two sides by timber sheds and stables, to the south of which is a further hard surfaced area on which stands one mobile home and three touring caravans together with a shed and portaloos.

4. There is no dispute between the parties firstly that the appellant and his family are gypsies and, secondly, that the use of the land for the stationing of residential caravans is inappropriate in Green Belt terms. In my opinion the presence of the caravans and associated vehicles and paraphernalia associated with their residential use fails to maintain the openness of the Green Belt and therefore constitutes inappropriate development as described in PPG2, which also says that such development is by definition harmful to the Green Belt and it is for the appellant to show why permission should be granted.

5. Consequently the main issue in both appeals is whether the harm through inappropriateness, together with any harm caused to the character and appearance of the area and to highway safety interests, is clearly outweighed by other considerations.

6. The visual impact of the development is to a large extent reduced by the siting of the caravans on a hardstanding area that is cut into the hillside and by the presence of stables and associate buildings and fencing. Views of the caravans from Mansfield Road are limited but I noted that there is little or no effective screening on the western boundary of the hardstanding areas, which are exposed to view from higher ground to the west and north-west. However, planting along the boundary would help assimilate the caravans into their open rural setting and would mitigate any harm caused to the character and appearance of the area. This is a matter that could be the subject of a planning condition, as was discussed at the hearing.

7. I now turn to consider the highway safety aspects of the development; firstly in respect of the width and gradient of the access track and the form of the junction with Mansfield Road and, secondly, in respect of the visibility available at the junction and the implication of its use for the safe and free movement of traffic.

8. The hard surfaced access track is some 250 m in length and apart from passing places that have been constructed on its south side is of single vehicle width. Although in parts its gradient is steep there is good forward visibility and the width available between the boundaries is sufficient to provide further passing places so as to avoid the undesirable eventuality of vehicles having to reverse along the track.

9. The access track joins the Mansfield Road carriageway at a steep incline with the first 10 m back from the main road having a tarmac and concrete surface. Its gradient and restricted width brings problems for vehicles entering and leaving the junction. In particular, the mouth of the junction is not wide enough to allow two vehicles to pass and this gives rise to the possibility that one vehicle would have to wait on the carriageway while another left the junction, thereby causing dangers for drivers on the main road. However, as I saw on site, it would be possible and practicable to widen the first section of track to 5 m and thereby allow two vehicles to pass, and also to ease the gradient and construct a platform so that drivers could more easily pull out of the junction. Consequently I conclude that the provision of passing places and the widening and re-grading of the access for an initial distance of 10 m back from the edge of the main road would overcome the problems identified above. Both are matters that could be the subject of planning conditions.

10. The Council does not dispute that improvements could be made to the design and construction of the junction but retains a fundamental objection on the grounds of inadequate visibility along the main road. In the vicinity of the site access traffic on Mansfield Road is subject to a 40mph speed limit. The carriageway rises quite steeply from the access to the Rother Valley Country Park to a crest on the south side of the access, from where the gradient reduces towards the built-up area of Wales Bar to the north. For drivers joining the main road at the site access visibility to the left (north) is good. There is a grass verge, behind which is a thick, dense thorn hedge. When I visited this hedge had been drastically cut back so that at a distance of 2.4 m in from the carriageway edge there was clear visibility of about 140 m to the north. Although the verge is part of the highway the ownership of the hedge is uncertain, but in any event it was confirmed at the hearing that the Highway Authority could exercise its powers under the Highways Act 1980 to require the hedge to be cut back if its growth obstructed visibility at the junction.

11. The critical issue is visibility to the right (south). Both parties agree that the available visibility in this direction to the crest in the road is 78 m. The speed survey undertaken by the appellant indicates that the average design speed for southbound traffic is 43 mph (69.2 kph), and 40 mph (64.4 kph) for northbound vehicles. The Council's figures, based on speed checks undertaken in March 2002, are that the 85th percentile speed is 45 mph in a northerly direction and 53 mph for southbound traffic.

12. My observations were that the A618 is a well used rural road carrying a mix of vehicle types that reflect the proximity of significant settlements, industrial estate developments and recreation areas as well as its function as a main route between North Derbyshire and South Yorkshire and the M1. At the hearing the appropriate visibility requirements that should be applied to this junction were discussed. The recently published government document Manual for Streets bases its advice on visibility at junctions on stopping site distances

(SSD) but the figures given only apply to situations where the 85th percentile speed is 37 mph (60 kph) or less. The advice in respect of higher speed roads is that it may be appropriate to use longer SSDs as set out in the Design Manual for Roads and Bridges. This document gives an SSD for 43 mph (70 kph) as 120 m. The Council maintains that this would be the appropriate visibility for the appeal site access.

13. The appellant's evidence examines visibility guidance in some detail, considering driver reaction times and deceleration rates and calculating that visibility to the right is just above the Manual for Streets requirement and well within the Highway Code stopping distance. It seems to me that there is no reasonable basis for departing from recently published central government guidance in respect of visibility at junctions. Whether or not the A618, which is a busy main through route, is a 'street' that falls within the ambit of the Manual for Streets the advice in that document specifically points to the use of guidance in the Design Manual for Roads and Bridges where speeds exceed 37 mph (60 kph). Even allowing for the effect of the gradient on the deceleration speed of northbound traffic the 78 m visibility available falls short of the standard required by the Design Manual. Whilst the appellant maintains that visibility is adequate to allow a driver on the main road to see a vehicle emerging from or entering the access and to stop safely this ignores the implications for the safety of following vehicles which may also have to brake, and the resulting interference with the free movement of traffic. When I visited the site and drove into and out of the access I found the situation regarding visibility to the right when emerging onto the main road to be highly dangerous in that vehicles emerging over the crest as I executed a left turn had to brake and reduce their speed. I considered the visibility so bad at the junction that I did not attempt to turn right across oncoming vehicles. My conclusion is that the absence of adequate visibility at the junction represents a compelling objection on highway safety grounds.

14. It was put to me that if the appeals fail the appellant will continue to visit the site to care for the horses which he keeps for breeding and that the use of the access would not reduce to a significant extent, bearing in mind that the caravans are occupied by a family group who share transport. Whilst accepting that visits would be made to care for the stock and that the frequency of those visits would increase when mares were foaling I consider that the vehicular activity generated by a residential use which involves three households would be on a far greater scale and would also be likely to involve visitors and delivery and service vehicles. Therefore I am of the opinion that the residential use would generate significantly more vehicular movements than the keeping and breeding of horses and therefore have the potential for significantly more conflicts and dangers at the access.

15. The appellant also referred to the possibility of obtaining an alternative access by using the track that runs from the south-eastern corner of his land. The track itself is not owned by the appellant, although its owner has indicated that he would be prepared to allow its use. As I explained at the hearing, because this land is outside the appeal site and in a separate ownership and also because the unauthorised use of the land has commenced the achievement of an alternative arrangement through a Grampian type condition would not be a realistic proposition. The question of whether or not this access would

overcome the problems associated with the existing access is not something that I am in a position to consider and the parties agreed at the hearing that it would be best addressed through a separate planning application.

16. The appeal site is occupied by the appellant and his wife and one of their sons together with two other sons and their families, comprising three households in all. The family group has lived and travelled in the area for many years and moved to the appeal site, which they have owned for 12 years, after being forced to vacate the nearby site at Halfway. Their gypsy status and local connections are not disputed by the Council. Rotherham Borough has no authorised sites, either public or private, and I was told that elsewhere in South Yorkshire sites are full, with waiting lists, and that unauthorised encamping is widespread. Evidence as to the need for sites in Rotherham is sparse but the Council recognised that a need existed when the UDP was prepared in the late 1990s. More recently the preliminary results of the joint gypsy and traveller accommodation assessment indicate a need to provide in the region of 16 pitches in the Borough. The results of the assessment have not been formalised and although the Council is undertaking an investigation of possible sites it cannot give an indication as to when the assessment information will be published or when sites will be brought forward through development plan documents. Consequently there is a demonstrable unmet need and no alternative authorised gypsy site provision and the Council are still at the initial stages of the process of bringing forward new sites.

17. This means that if the appellant and other occupiers have to leave the appeal site they are likely to face considerable difficulty in finding a pitch on an authorised site elsewhere in South Yorkshire, and they would in all probability have to resort to the roadside or unauthorised encamping. This would have particular implications for Mr P Price and Mr B Price, who require regular medical checks and clean living conditions. Also, the health and welfare of the young children on the site would suffer if they did not have sanitary facilities and clean water. I was told that one of the children attends school at Wales Bar on a part-time basis prior to enrolment for full-time education in September. Her educational prospects would suffer if her family were forced back onto the road. In my view there would undoubtedly be problems for the health and welfare of occupiers of the site and for the education of at least one of the children in the event that the notice was upheld and they had to resort to living at the roadside.

Conclusions

18. In addition to the harm through inappropriateness I find there to be limited harm to the character and appearance of the area which could be satisfactorily ameliorated by landscaping works that could be the subject of a planning condition. The lack of adequate visibility at the access onto the main road means that the residential use would give rise to serious highway dangers. Because visibility to the right is constrained by a crest in the road it is not possible to overcome the problem by reasonably practicable works that could be achieved through a planning condition. On the other hand, the evidence of the need for sites for gypsies and travellers in Rotherham and the absence of any authorised pitches, together with the implications for the health and education of occupiers of the site if they have to leave, are matters which weigh in the appellant's favour.

19. Circular 01/2006 advises that consideration should be given to granting a temporary planning permission where, as here, there is an unmet need, no available sites and a prospect that new sites will become available through DPDs. Whilst a temporary planning permission in these circumstances would not set a precedent for any future applications for full planning permission I consider that the grant of a planning permission for, say, three years would unacceptably perpetuate the dangers associated with the use of the access, albeit conditions could require works to be carried out to improve the gradient and width of the section of the track adjoining the main road.

20. Having taken all other matters into account my conclusion is that the harm caused by this development, in particular the harm to highway safety, is not clearly outweighed by other considerations relating to gypsy site provision and the implications of complying with the notice. Therefore the appeals are unsuccessful and I shall uphold the notice and refuse to grant planning permission.

The Ground (g) Appeal against the Notice

21. Primarily because of highway safety issues I do not consider that the grant of a temporary permission is justified, but there is no doubt in my mind that the occupiers of the site would suffer genuine distress and be faced with serious problems in finding alternative sites. I am also aware that there is a possibility of providing an alternative access to the appeal site which may prove acceptable to the Council but which will need to be the subject of further investigations and discussions, and possibly a planning application. Under normal circumstances I would take the view that use of a dangerous access for one day more than is absolutely necessary is undesirable. But there are particular circumstances here that whilst they do not warrant the grant of planning permission persuade me that the period for compliance should be extended from six months to one year. I shall vary the notice accordingly.

Human Rights Issues

22. Dismissal of the appeals would require the appellant and his family to vacate the site (which has to be regarded as their home) without any certainty of suitable alternative accommodation being readily available. I recognise that this would represent an interference with their home and family life. However, the harm caused by the development, in terms of its effect upon the interests of highway safety and the protection of the Green Belt is considerable. Given the acknowledged difficulties in finding a suitable alternative site in the locality, the health and welfare implications and the situation regarding the identification of sites by the Council, but also having regard to the harm caused I consider that the refusal of planning permission and an extension of the period for compliance is appropriate and reasonable in the circumstances.

Formal Decisions

Appeal A: APP/P4415/C/06/2026166

23. I direct that the enforcement notice be corrected by deleting from the description of the alleged breach of planning control the words 'and residential and the stationing of caravans' and substituting 'and the stationing of caravans

used for residential purposes.', and varied by extending the period for compliance from six months to 12 months.

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

Appeal B: APP/P4415/A/06/2027266

25. I dismiss the appeal.

Steven Fox

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA MRTPI	Philip Brown Associates
Mr J P Hurlstone BSC MIHT CMILT	Managing Director, The Hurlstone Partnership
Mr J Price	The Appellant
Mr P Price	Resident of the site

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Temple	Development Control Officer
Mr I Ferguson	Highways Engineer

DOCUMENTS

Document 1	List of persons present at the hearing
Document 2	Hearing agenda
Document 3	Gypsy caravan counts
Document 4	E-mails re the assessment of need for sites