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## Appeal Decisions

Inquiry held on 3 June & 6-8 October 2014

Site visit made on 8 October 2014

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 17 December 2014**

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### **Appeal A: APP/K2420/C/13/2205416**

#### **Good Friday Caravan Site, Bagworth Road, Bagworth, Leicestershire**

- 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 Patrick Reilly against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The notice was issued on 16 August 2013.
- The breach of planning control as alleged in the notice is change of use of the land from use for stabling horses to use as a residential gypsy and traveller caravan site.
- The requirements of the notice are: (i) Permanently cease the use of the land as a residential caravan site; (ii) Permanently remove from the land all material imported onto the land for the use stated above including but not limited to hardcore, road planings, surfacing materials, fencing posts; (iii) Dismantle and permanently remove from the land all hardstanding areas including the hard surfaced element of the access drive; and all buildings and structures connected with the use stated above; (iv) Dismantle and permanently remove from the land all surface and subsurface infrastructure; containers, septic tanks; soakaways; pipework and cabling which are used for the collection or removal of waste from the caravan pitches on the land and for the distribution of water and electricity from the existing connection into the land to those pitches; (v) Permanently remove from the land all caravans, associated vehicles and domestic paraphernalia; (vi) Reinstate the land to its former condition as an open grassed field; (vii) Reinstate the vehicular access opening onto the land to its former condition.
- The period for compliance with the requirements are: For requirement (i) nine months and for requirements (ii) to (vii) twelve 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 enforcement notice is varied and the appeal is dismissed.**

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### **Appeal B: APP/K2420/A/13/2205393**

#### **Good Friday Caravan Site, Bagworth Road, Bagworth, Leicestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Patrick Reilly and others (Residents of the Good Friday site) against the decision of Hinckley & Bosworth Borough Council.
- The application Ref: 13/00170/CONDIT, dated 25 February 2013, was refused by notice dated 15 August 2013.
- The application sought planning permission for the change of use of land to use as a residential caravan site without complying with a condition attached to planning

permission Ref: APP/K2420/C/09/2105369, dated 19 March 2010.

- The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease and all caravans, buildings, 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 restored to its condition before the development took place.
- The reason given for the condition is: To allow sites to come forward that meet an identified unmet need for sites in the Borough.

**Summary of Decision: The appeal is dismissed.**

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### **Preliminary Matter**

1. Condition 1 of the planning permission which is the subject of Appeal B was granted on appeal on 19 March 2010 (Ref: APP/K2420/C/09/2105369). I have taken the reason for the condition referred to in the banner heading above from paragraph 43 of that appeal decision.

### **Background**

2. The Good Friday site is a rectangular area of land that lies parallel to the north side of the B585 Bagworth Road. The site was formerly occupied by stables that burnt down. Over the Easter bank holiday weekend in 2009 unauthorised development commenced to convert the site. An appeal (referred to above) against an enforcement notice served by the Council in May 2009, that sought to address the breach of planning control, was heard at a local inquiry held in January and February 2010. That led to the site being granted a three year temporary planning permission which expired on 18 March 2013. Appeal A is against another enforcement notice that seeks to bring the change of use to an end. Appeal B is against the refusal of planning permission to lift the three year temporary time limit to make the site's occupation permanent.
3. There are ten large pitches served by an internal access track. The pitch boundaries are a mixture of walls, fences, gates and vegetation. The original ground levels sloped away from the road but these have been levelled out by the importation of material. The site accommodates several families including persons in their 70's and 80's, some of who have a range of health conditions. There are also children of pre-school and school ages.

### **Planning Policy**

4. There is no dispute that the site's residents are Gypsies for the purposes of Annex 1 of Planning Policy for Traveller Sites (PPTS) issued by the Department for Communities and Local Government (DCLG) in March 2012. Therefore the policy regime at national and local levels in relation to Gypsies is engaged.
5. Policy 18 from the Council's Core Strategy (CS) is specific to the provision of sites for Gypsies, travellers and travelling showpeople. It stipulates that the Council will allocate land for 42 pitches (26 up to 2012 and 16 between 2012 and 2017). It also states that a Gypsy and Traveller Accommodation Needs Assessment (GTANA) will be undertaken to confirm the need beyond 2017<sup>1</sup>. Of these new pitches 6 it is stated should be socially rented to be provided on one site and managed by a Registered Social Landlord (RSL). CS policy 18 also

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<sup>1</sup> The latest GTANA was published was published in 2013.

specifies criteria against which planning applications for new Gypsy and traveller sites will be assessed. Relevant to the main issues in this appeal are that the site has safe highway access, it can be capable of sympathetic assimilation into the surroundings and it is located within a reasonable distance of local services and facilities.

6. The appeal site is in the National Forest which covers some 200 square miles of the Midlands. The aim of the National Forest is to increase woodland cover to about a third of all land within its boundary. CS policy 21 supports proposals that contribute to the delivery of the National Forest Strategy.
7. Saved policy T5 from the Hinckley and Bosworth Local Plan (LP) confirms that in considering proposals for new development and changes of use which involve new accesses, new highways and other works, the local planning authority will apply the highway design standards set out in the current edition of Leicestershire County Council's "Highway Requirements for Development". As the appeals proposal is for a change of use which has involved works to the access to widen it, I consider that it is a relevant development plan policy.
8. The "Highway Requirements for Development" document referred to in LP policy T5 has been superseded by the 6C's Design Guide. Whether or not this Guide is part of the development plan, because of doubts over its adoption by the Council and the fact that policy T5 refers to a previous guide, policy IN5 from the 6C's Design Guide is a material consideration.
9. Policy IN5 covers access onto the road network. To maintain safety and the free flow of traffic, access onto the most important high-standard routes will be severely restricted. Elsewhere, particularly in urban locations, a more flexible approach applies. For access onto A and B Class roads restrictions on the increased use of existing accesses will normally apply where the speed limit is above 40 mph and roads where there is an existing safety problem. The local Highway Authority (LHA) will recommend refusal of any planning application that raises concerns about road safety.

## **Main Issues**

10. Having regard to the above, the main issues are:

- The effect of the development on highway safety;
- The effect of the development on the character and appearance of the area;
- Whether the appeal site is within a reasonable distance of local services and facilities;
- Whether any harm and conflicts with the development plan would be outweighed by other considerations including the supply of Gypsy pitches and whether the condition in dispute under Appeal B is still necessary to allow sites to come forward to meet an unmet need in the Borough, the availability of alternative site accommodation, the personal circumstances of the site's residents and their human rights.

## **Reasons**

### **MAIN ISSUES**

#### *Highway Safety*

11. The previous Inspector also considered the issue of highway safety. That assessment was based on a very similar planning policy background to that before me. There was also agreement between the parties, carried forward to these appeals, that Design Manual for Roads and Bridges (DMRB) visibility splays applicable to trunk roads are available which are greater than would normally be relevant to a B Class road even though the national speed limit applies. Against this background the previous Inspector found that the use of the access to serve 10 pitches would not unduly compromise highway safety.
12. However, on 27 January 2011, twelve months after the previous Inquiry, there was a road traffic collision involving a vehicle turning right into the appeal site access that tragically resulted in the deaths of two young women. This is a very significant material consideration that as a matter of fact must be given paramount importance. I shall examine the circumstances of that crash to see what bearing it has on the current appeals.
13. Vehicle 1 (V1) was travelling along Bagworth Road approaching the appeal site on the right. The driver turned right into the site access cutting across the path of an oncoming vehicle (V2) resulting in a collision. Shortly after this initial accident another vehicle (V3) travelling in the same direction as V1 collided with V2. V3 managed to stay on the correct side of the road for the direction of travel and stopped some way past V1 and V2 beyond the appeal site access. A different vehicle (V4) travelling in the same direction as V2 then impacted with V2 thus pushing it towards V1. Unfortunately two women from V2 were stood in the road at that time in between V1 and V2 and as a result therefore of V4's impact they were trapped/crushed resulting in their deaths.
14. The accident happened at 2000 on a January evening when the evidence shows that it was dark. There were no street lights along the road (there still are none) and the headlights of V1 and V2 were smashed. With this in mind I turn to the night time visibility issues section of the Leicestershire Constabulary report to the HM Coroner<sup>2</sup>. This explains how the eye performs at its optimum level at high levels of illumination. The presence of an unexpected object may make it more difficult to detect when it is dark. The eye responds to contrast between an object and the background. At night time an object must be sufficiently lighter or darker than its background as the impact of other factors such as luminance, colour, pattern and texture are diminished.
15. In this case V2 was a dark coloured car lying broadside across the road with no lights making it less conspicuous and difficult to see for the driver of V4. When combined with accepted perception/reaction times at night and the relatively limited distance ahead on a road that dipped headlights afford, even though the driver of V4 was travelling well below 60 mph (at the commencement of skidding V4 was in fact travelling at 35mph) she simply did not have enough time and distance available to perceive, react and stop and thus avoid the impact with V2.
16. While the Good Friday site is there it will continue to cause vehicles to turn right into the site thus cutting across the path of oncoming vehicles. Some of those manoeuvres will be when it is dark. It is also relevant that the driver of V4 knew that this road should be travelled with caution because there are no street lights and often there are children outside the traveller site. Other

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<sup>2</sup> Document 18

drivers not familiar with these local circumstances would not be so aware and may therefore be driving less cautiously and faster as a result.

17. With all of these factors in mind I travelled to Bagworth Road one evening during the Inquiry at around 2000 to gain an understanding of what the drive along the road was like when dark. The lights from the caravans did not draw attention to the presence of the site due to the screening effect of the roadside hedge. The vegetation next to the road and some significant overhanging trees that the drivers of V2 and V4 would have passed under also darkened the road. In my opinion a dark coloured car turning right ahead of me, which would then have its lights shining into the site and not towards me, would have been difficult to see.
18. The driver of V4 described a flash of what is presumed to be the stationary V3 as she went past and the next thing she knew there was a grey wall that she hit. That was V2. Even though DMRB forward visibility was technically available, that did not mean that the driver of V4 was able to see the stationary vehicle ahead. What could be seen was reduced significantly by darkness and in this respect nothing has changed in the intervening three years to improve that situation. I am not convinced that measures such as a lit sign at the site entrance or traffic calming signs would alleviate the impact of darkness and thus reduce the risk of other potential future accidents. These in themselves would need to be properly safety audited to ensure that they did not themselves pose a risk to highway safety by way of a distraction to drivers. I could not deal with these by condition. Speed was not a causal factor in the accident anyway.
19. It is acknowledged that the tragic sequence of events stemmed from an error of judgement by the driver of V1 who should not have turned into the appeal site access when he did. Had it not been for that rash manoeuvre the chain of events that then unfolded may not have occurred. However, a sequence of events like this or any other sequence is not needed for accidents to occur. Only two vehicles need to be involved for drivers and/or passengers to be harmed. Driver error also probably causes the majority of road accidents for various reasons. Errors in themselves are not reasons to set aside concerns about safety because they could happen again.
20. The 6C's Design Guide seeks to normally restrict access onto roads like this for very good highway safety reasons. The other accidents that have happened along this stretch of Bagworth Road, pre and post the Good Friday site, appear to have happened for different unrelated reasons. Nevertheless, while there has been only one accident at the appeal site access; it did result in two deaths that would not have occurred if the site had not been there. This is so significant in itself that it shows there is an existing safety problem.
21. It is very rare to assess schemes against such real first hand stark evidence. Highway safety assessments normally involve balancing risk against probability. Knowing what has happened removes the 'ifs and buts' test. I cannot confidently predict that an accident involving a right turning vehicle would not occur again or find that using the access is safe. The 6C's Design Guide policy IN5 no longer has a criterion relevant to normally restricting accesses onto class A and B roads that do not have street lighting. However, that does not mean that the policy objection to the appeals scheme is

diminished when an underlying aim of the policy is to maintain road safety. In any event, CS policy 18 requires the development to have safe highway access.

22. There is a very clear conflict with the highway safety aims of CS policy 18, LP policy T5 and 6C's Design Guide policy IN5. I attach the fullest weight possible to this finding.

### *Character and Appearance*

23. Gypsy traveller sites may be acceptable in the countryside in principle. Sites are not required to be hidden from view. As such, there will with any site be some change to the character and appearance of the area. It is thus a test of whether that change would cause unacceptable harm. CS policy 18 requires sites to be capable of sympathetic assimilation into their surroundings. The last Inspector identified harm to the character and appearance of the area and a conflict with CS policy 18 in this respect.
24. Since then the appellants have identified two main changes for me to take into account. The first is the erection of an agricultural barn to the rear of the nearby Costalot gypsy site and its impact on views of the appeal site. Second, there has been some additional planting on the appeal site. From Barlestone Road the appeal site is situated on lower ground. There are clear views of the site across the sloping fields. Their starkness and numbers make the site a harsh and alien form of development in the rolling pastoral landscape. The caravans are probably more conspicuous by virtue of the raised land levels on the site. Consequently the barn only shields views of some of the lower part of the Good Friday site. Caravans are still visible above the roof of the barn.
25. Also in these views is the Costalot site which is a large rambling site with caravans and various outbuildings. I agree with the previous Inspector that this site also does not sit comfortably with its surroundings. Therefore, rather than the Costlaot site justifying the presence of the Good Friday site, because it is already part of the landscape, the cumulative effect of the two sites adds to my concerns about landscape harm. From the Ivanhoe public right of way the local landform means that there are only glimpses of the Costalot site when the Good Friday site is in view. Whether seen by itself or in conjunction with the other site, either way the Good Friday caravans stand out. They are at odds with the prevailing rural character of their surroundings even when taking a broader view of the landscape that includes other development such as pylons and other agricultural barns.
26. The extent of any additional planting that may have taken place seems to be very limited. The new planting does not appear to have had any material effect on blending the site into the landscape. To have any significant effect the planting would need to be more extensive and planned out. There is not enough room around the perimeter of the site to do this. As the last Inspector found, this could appear regimented and incongruous in itself anyway. A more comprehensive scheme as suggested before is needed. However, there are no plans before me to show how this could work without unacceptably impinging on the layout of the site. Also, there is nothing to dispel the reservations previously expressed about the success of establishing planting given the amount of hard surfacing that exists and the underlying material imported onto the site. I could not therefore leave this matter to the imposition of conditions requiring further landscaping to be carried out.

27. The appeal site causes unacceptable harm to the character and appearance of the area and I am not satisfied that the site is capable of sympathetic assimilation into its surroundings. There is a conflict with CS policy 18 accordingly.

28. I attach significant weight to this issue.

*Reasonable distance from local services/facilities*

29. Despite the previous Inspector's references to walking or cycling to Barlestone not being unreasonable, the test of CS policy 18 is that Gypsy and traveller sites should be within a reasonable distance of local services and facilities. I consider that the Good Friday site is such a distance away given that it is only about a mile from the settlements of Bagworth, Barlestone and Nailstone. Realistically in my view much of the travel from the appeal site is likely to be by private vehicle. However, that in itself does not mean the appeal development is unsustainable given the wider approach to sustainability outlined in the PPTS which includes economic and social factors as well<sup>3</sup>.

30. I do not find any conflict with CS policy 18 in this regard. This issue weighs in favour of the appeal development.

OTHER CONSIDERATIONS

*Supply of Gypsy pitches in the Borough*

31. In a letter dated 30 September 2014 the Council confirmed that it adopted the analysis of the supply of pitches given by the appellants' agent Mr Brown in his proof of evidence. This concluded that the rolling five year need 2014-2019 is for 15 pitches of which 10 have been granted planning permission. The shortfall was thus 5 pitches. Accordingly the Council accepted that it could not demonstrate a five year supply of sites. Furthermore, the evidence related to supply contained in Miss Zacharia's proof of evidence, the Council's planning witness, was thus superseded. As a result of this accepted position the Council also did not call its witness Mr Moore who would have specifically covered the 2013 GTANA. The Council further advised that since the Inquiry was adjourned it had granted planning permission for a further two pitches at Nock Verges, Earl Shilton thus reducing the needed supply figure by two. The Inquiry proceeded based on this agreed common position.

32. However, further into the resumed Inquiry the Council advised that it had just granted planning permission for a further three pitches at Whitegate Stables<sup>4</sup>. Consequently the Council's position had changed and it could demonstrate a five year supply of sites. Following an adjournment the appellants advocate confirmed that the Inquiry could proceed without prejudice to his clients. The change to the supply position was principally covered in closing submissions.

33. In short this was that the evidence in Miss Zacharia's and Mr Moore's proofs of evidence demonstrated that there was an unmet need for pitches and a lack of a 5 year supply of deliverable sites to meet that need. The problem I have with this is that the Council had clearly superseded the need evidence in Miss Zacharia's proof and the principle of doing that had not been challenged by the appellants. Also, Miss Zacharia had made clear that she was not the expert on

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<sup>3</sup> PPTS paragraph 11

<sup>4</sup> Doc 21

the supply of sites issue. Moreover, although Mr Moore's evidence had not been withdrawn, it had not been tested to examine, for example, suggestions that the baseline Gypsy population at the time of the previous GTANA across Leicestershire, Leicester and Rutland in 2006 had been overestimated and the impact of that on the Borough wide 2013 GTANA. It was also not possible to establish why the 2013 GTANA no longer recognises a need to have a RSL site.

34. Further, the reference in the GTANA to the need for a private site capable of accommodating ten pitches for families living on a site with temporary planning permission due to expire in 2013 (ie. The Good Friday residents) seems to me to be a need included within the overall need as set out at paragraph 11 of the Executive Summary of the GTANA. It is not an extra ten pitches over and above the overall five year need which could then constitute a shortfall. The lack of testing and the unanswered questions diminishes the weight to be attached to Mr Moore's evidence. It is also an inescapable fact that there was an agreed position based on the appellants own assessment that was in itself based on the 2013 GTANA.
35. Taking all of this in the round it appears to me that the Council can demonstrate a five year supply of specific deliverable sites. On this basis there would no longer be a need for the condition which is disputed under Appeal B. However, even if I am wrong about this and therefore paragraph 49 from the National Planning Policy Framework (NPPF) is relevant, the presumption in favour of sustainable development does not apply in the circumstances set out at paragraph 14 of the NPPF because of the conflict with the environmental dimension to sustainable development arising from the appeal proposal's harm to the character and appearance of the area.
36. Continuing the 'if I am wrong' vein I shall also assess later on, when it comes to the planning balance, whether the alleged lack of supply would affect the appeal outcomes having regard to, in particular, paragraph 25 from the PPTS and the consideration to be given to granting a temporary planning permission for the deemed planning application under Appeal A which is clearly an application for permission made after the PPTS came into force<sup>5</sup>.

#### *Alternative Accommodation*

37. Despite what may be a rolling 5 year supply of sites in the Borough this does not necessarily mean that the site's residents would have somewhere else to go to in the event that they were forced to leave the Good Friday site. There is no onus on the appellants to prove that there is nowhere else to go to.
38. There are six undeveloped pitches on the Costalot site. However, these have been in this state for a number of years and it seems that there are financial constraints meaning that they are unlikely to be developed soon. Even if they were they may be required to meet the needs of extended families already on the site. Just because some of the Good Friday residents moved off the Costalot site this does not mean that they would be able to move back.
39. The site at Dalebrook Farm where there are ten pitches available could accommodate the Good Friday residents in principle. However, the site is currently being advertised for sale by tender with the owner hoping to achieve a sale price of around £750,000. The Good Friday residents are all of limited

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<sup>5</sup> Paragraph 28 of the PPTS



means; either in receipt of the state pension or income support. It seems unrealistic that this site could be an alternative home. The same financial constraints would apply to other private sites. Moreover, the private sites do not offer any security of tenure. Previous experiences of the Gypsies on the appeal site show that invariably they end up back on the road when the private site owner wishes to accommodate other Gypsies.

40. There are a number of public sites in Leicestershire. However, there are already long waiting lists for these sites and they probably exist, or are currently being developed, to assist in meeting the accommodation needs of Gypsies in other districts.
41. The production of the Council's Site Allocations Development Plan Document (DPD) where sites will be identified to meet future need for Gypsy sites has slipped considerably from the timescale envisaged at the last appeal from adoption in March 2012 to October 2016. The DPD is where the residents of the Good Friday site may find a site being identified which they could develop for themselves. I have some misgivings about whether they would be able to do this because of their financial situation. However, the slip in the DPD is a factor to be taken into account when assessing the availability of alternative accommodation.
42. It is also recognised that despite the current site being unauthorised it has been privately afforded by the residents, it meets their needs and there are no other policy objections to the scheme such as in relation to flooding or impacts on surrounding residential amenity.
43. The possibility that the Good Friday residents may have nowhere else to go weighs in favour of the appeal scheme and it also impacts on the other considerations set out below.

#### *Personal Circumstances*

44. Some of the site's residents have very lengthy connections with the local area. There are a number of children who currently attend local schools and it is envisaged that the youngest children will follow this educational route. It is well known that constant moving around makes it difficult for Gypsies to attend school and the consequences of poor education can last lifetimes. The lack of a permanent address also affects access to medical services and the Gypsy population generally suffers poorer health than the rest of the population living in conventional housing. There are several elderly site residents and some of these have serious disabling medical conditions which require regular attendance at doctors and hospitals. Since the last appeal one site resident has died and a younger woman recently lost her baby during pregnancy.
45. I am very concerned that if the appeals were to be dismissed this would have a negative impact on the matters referred to above. It also strikes me that there is a heart-warming cohesion amongst the site's residents in terms of the care and support they give each other, particularly the elderly. For example, one of the Gypsies who has macular degeneration in her eyes and therefore can no longer drive is able to rely on others at the site to transport her to hospital for regular treatments. It would probably be difficult to replicate this level of support and care if the community that has become established is broken up.

46. These personal circumstances are undoubtedly significant material considerations that weigh in favour of the appellants.

#### THE PLANNING BALANCE AND HUMAN RIGHTS

47. I have attached the fullest weight possible to the issue of highway safety and significant weight to the harm to the character and appearance of the area. Balanced against this are the weights to be given to the site not being too far from access to services, considerations of the site's residents potentially having nowhere else to go and the adverse impacts that would have on the Gypsies education and health. I find that the issue of highway safety in particular is so significant that in the wider public interest this alone cannot be outweighed by the other considerations thus making it not possible to grant planning permission even on either a temporary or personal basis.
48. This balanced finding is not affected even if I am wrong about the pitch supply situation in the Borough and thus should be attaching significant weight to the possibility of granting a temporary permission for the deemed application under Appeal A or accepting that it is still necessary to allow time for sites to come forward to meet an unmet need which was the purpose of the condition disputed under Appeal B.
49. Also, whilst not intended as a criticism of the appellants, I could envisage that a temporary permission thus leading to quashing the enforcement notice could invoke the Council back into taking action again at the end of that period if the Gypsies had not by then found another site or pitches. That could give rise to further appeals and during this time the risk to highway safety that I am so concerned about would perpetuate. That would not be acceptable.
50. Dismissing the appeals would be an interference with the appellants' homes to the extent that rights under Article 8 of the Human Rights Act (HRA) would be engaged. It is recognised that the disruption to the persons on the site would be significant. In all likelihood the site residents would have to vacate the site, which is their home, without any certainty of alternative accommodation being available. Dismissing the appeals may also infringe on the ability of this recognised minority group to maintain their identity as Gypsies and lead their lives in accordance with that tradition. However, these rights are not unqualified rights.
51. An option that is open to me is to extend the period for complying with the enforcement notice in which the residential use of the land would have to cease. That possibility would though need balancing against the on-going risk to highway safety while the use of the land continues. I am very reluctant to extend the compliance period beyond that which is absolutely necessary for public safety reasons. That said nine months does not give the site's occupants adequate time to try and find somewhere else to live and ameliorate the adverse impacts on their health, general well-being and the education of the children. In this respect I am also very conscious of the primary consideration of taking account of the best interests of the children on the site.
52. Taking all of this in the round, if I was to extend the compliance period to 18 months the interference would be in accordance with the law and would be the minimum necessary in a democratic society to uphold the aims of relevant planning policies in the interests of the economic well-being of the country and public safety. The action to be taken and the time I have indicated should be

allowed to do it would strike the right balance between private and public interests such that the action would be proportionate. Accordingly there would be no violation of the human rights on this occasion.

53. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeals involve the use of land as a Gypsy site and the current occupiers are Gypsies, they have a protected characteristic for the purposes of the PSED.
54. It does not follow from the PSED that the appeals should succeed. However, in consciously thinking about the aims of the PSED I have had due regard to the appellants traditional way of life, their equality of opportunities, race relations and the individual disabilities of some residents. In the overall balance these are factors that have added to my finding that the seriousness of the impacts on these characteristics could be noticeably lessened by extending the notice's compliance period to 18 months.

#### **Appeal A - the ground (g) appeal**

55. In view of the above it is necessary to vary the requirements of the notice to allow 18 months to cease the use of the land as a residential caravan site (requirement (i)) and 21 months for compliance with the subsequent site restoration requirements (ii) to (vii). On this basis the ground (g) appeal succeeds.

#### **Conclusions**

56. Having had regard to all other matters raised, in writing and made orally at the Inquiry, it is concluded that the appeals should be dismissed.

#### **Formal Decisions**

##### **APPEAL A – APP/K2420/C/13/2205416**

57. It is directed that the enforcement notice be varied by deleting the text under paragraph 6 TIME FOR COMPLIANCE and replacing that with:

“For requirement (i) above: 18 months. For requirements (ii) to (vii) above: 21 months”.

58. Subject to these variations the enforcement notice is upheld and the appeal is dismissed.

##### **APPEAL B – APP/K2420/A/13/2205393**

59. The appeal is dismissed.

*Gareth Symons*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANTS:

Mr M Willers of Counsel

He called

Mr P Brown

Mr M Baker

Ivy Dolan

Philip Brown Associates Ltd

Mark Baker Consulting Ltd

Resident of the Good Friday site

### FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader of Counsel

He called

Dr D Hickie

Mr D Young

Miss C Zacharia

David Hickie Associates

Leicestershire County Council

Consultant appearing on behalf of Hinckley & Bosworth Borough Council

### INTERESTED PERSONS:

Cllr Ould

Cllr Crooks

Anne Marie Bateman

County Councillor

Borough Councillor

Local resident

## DOCUMENTS

- Doc 1 Hugglescote Surgery Patient Summary for Mrs Margaret Connors
- Doc 2 Letter dated 4 September 2013 from Catherine Wilkins
- Doc 3 Letter dated 10 September 2013 from Louise Richardson
- Doc 4 Letter dated 4 April 2013 from Hugglescote Surgery
- Doc 5 Letter dated 12 November 2013 from Father Colin Patey
- Doc 6 Letter dated 5 May 2014 from Reverend Terence Wilson
- Doc 7 School Commendations for Michael and Bridgette Boswell
- Doc 8 Letter dated 6 May 2014 from Barlestone C of E Primary School
- Doc 9 Letter dated 5 May 2014 from Paul and Anne Marie Bateman
- Doc 10 Statement of Common Ground
- Doc 11 Inquiry Re-notification letter dated 15 September 2014
- Doc 12 Representation from Barlestone Parish Council
- Doc 13 Email from Jane Ecob dated 20 September 2014
- Doc 14 Opening Statement by the Local Planning Authority
- Doc 15 Letter dated 8 October 2013 Traveller Sites and Liaison Officer LCC

- Doc 16 Photographs showing views of the Good Friday site
- Doc 17 Public Gypsy Sites in Leicestershire
- Doc 18 Report by PC Hinton for consideration by HM Coroner and the Crown Prosecution Service
- Doc 19 Witness Statement of Ceri Swain
- Doc 20 Dale Brook Farm Gypsy site sale details
- Doc 21 Planning permission notice (Ref: 14/00374/COU dated 7 October 2014) for Whitegate Stables – 3 additional Gypsy pitches
- Doc 22 Public footpaths and bridleways near to the appeal site
- Doc 23 List of draft conditions
- Doc 24 Plan showing the location of Battrams Corner/Turn – now closed tolerated site
- Doc 25 Closing Submissions for the LPA
- Doc 26 Closing Submissions for the Appellants