

APP/R1845/C/23/3320687: Land at "Top Acre",

Cursley Lane, Shenstone, Worcestershire

Appendix RJ1

File Ref: APP/R1845/A/12/2183527

Top Acres, Cursley Lane, Shenstone, Kidderminster DY10 4DX

- 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 Mrs Sarah Jane Smith against the decision of Wyre Forest District Council.
- The application Ref 11/0545/FULL, dated 15 August 2011, was refused by notice dated 16 March 2012.
- The application sought planning permission for use of the land at Top Acres, Off Cursley Lane, Shenstone, Kidderminster DY10 4DX for the stationing of caravans for residential purposes, the laying of hardstanding and erection of a close boarded and gravel board fence without complying with conditions attached to planning permission 06/1062/FULL granted on appeals Ref APP/R1845/C/07/2039465, APP/R1845/C/07/2039453 and APP/R1845/A/07/2040181, dated 26 November 2007.
- The conditions in dispute are Nos 1 and 2 which state that:
 - 1) The use hereby permitted shall be carried on only by Sarah Jane Smith, Vera Smith and their dependants and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them whichever is the shorter.
 - 2) When the premises cease to be occupied by Sarah Jane Smith, Vera Smith and their dependants, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the premises in connection with the use hereby approved shall be removed, and the land restored to its condition before the use commenced.
- The reasons given for the conditions are that the circumstances of the appeal justified the grant of a temporary planning permission on the basis of very special circumstances but did not justify the grant of permanent planning permission for inappropriate development in the Green Belt.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Main Issue

1. The main issue in this appeal is whether the harm by virtue of inappropriate development in the Green Belt, and any other harm, is clearly outweighed by other considerations so as to justify the scheme on the basis of very special circumstances.

Reasons

2. The application sought to remove all reference to five years from the conditions, thereby creating a permanent planning permission.
3. Since the previous appeal decision Planning Policy for Traveller Sites (PPTS), issued in March 2012, has replaced ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites and the National Planning Policy Framework (the Framework), also issued in March 2012, replaced most national planning guidance and statements, including PPG2: Green Belts
4. Nevertheless Government policy, as expressed in the Framework and PPTS remains that travellers sites (temporary or permanent) are inappropriate development in the Green Belt, which is, by definition, harmful and should not

appellant's husband, Anthony, has since returned to live with her and they have a four month old baby.

12. In the previous decision the Inspector considered in detail the accommodation needs and history of Vera Smith and of Sarah Jane Smith and her 3 daughters and concluded at Paragraph 34 of the decision that "I conclude that they have a personal need for lawful accommodation and the obvious difficulties that they would experience in seeking a suitable alternative site is a material consideration that must carry considerable weight in this appeal."
13. The circumstances surrounding the accommodation needs have not changed materially except for the additional need relating to the young baby. Therefore the accommodation needs remain a consideration of considerable weight.

The healthcare needs of Sarah Jane Smith and Vera Smith.

14. The previous Inspector accepted that Vera Smith had serious health problems having had a heart attack in 2000 as well as suffering a number of other underlying health problems requiring ongoing monitoring. She has since had her gall bladder removed. The Inspector concluded that "Her access to health care facilities is not entirely dependent upon her living at this particular site but I consider that her medical problems would be far more difficult to manage if she did not have a settled base..... In my opinion, her particular medical needs should be afforded considerable weight."
15. In addition Sarah Jane Smith is currently receiving day patient hospital treatment in Kidderminster. This adds further weight in favour of the appellant.

The best interests of the children

16. The appellant's eldest daughter attends secondary school in Kidderminster and Annalese and Chelsea attend lower school in Chaddesley Corbett. They, along with Mr & Mrs Smith's baby daughter, who is currently receiving specialist eye treatment at hospital, have access to a local doctor. It is clearly in the best interest of the children that they have a stable education and access to welfare. In the current absence of an alternative site within the area for the family to move to the best interests of the children, in the form of education and access to welfare, are a matter of considerable weight as established by case law including, most recently, *AZ v. Secretary of State for Communities and Local Government and South Gloucestershire District Council* [2012] EWHC 3660.

Human Rights

17. As regards the submissions made under Article 8 of the European Convention on Human Rights, the dismissal of the appeal would be likely to result in the extended family's eviction from the site and interference with their home and private and family life. In particular, it could result in the loss of their home with no satisfactory alternative. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case.
18. That interference and the rights of these Gypsies must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8, particularly the economic well-being of the country (which includes the preservation of the environment). The objections to the development are

permission for a period of 3 years would enable the process of identifying suitable sites to be concluded and in the meantime the family would not have to leave the site and suffer the considerable hardship that the likely living at the roadside would entail.

26. I conclude that the substantial harm, when for a limited period, is clearly outweighed by other considerations including the current unmet need for suitable Gypsy sites in the area, the present lack of a suitable alternative site, the personal needs and circumstances of this particular Gypsy family and the prospect of progress towards an adopted Gypsy and Traveller DPD over the temporary period. Very special circumstances therefore exist to justify the grant of a temporary planning permission for the period of 3 years.

Planning Conditions

27. Allowing the appeal would create a new planning permission. For the reasons given above the permission should be for a temporary period and personal to Vera Smith, Anthony Smith and Sarah Jane Smith and their dependants. Since a personal condition is being imposed it is not necessary to impose a Gypsy-occupancy condition.
28. So as to uphold the purposes and preserve the openness of the Green Belt and to protect the rural character and appearance of the surroundings it is necessary to impose conditions limiting the number of caravans on the site, controlling the siting within the plot, preventing other structures or buildings being brought onto site, maintaining the approved landscaping scheme and the approved scheme for the storage and disposal of waste.

Recommendation

29. I recommend that the appeal be allowed and temporary planning permission be granted subject to the conditions in the attached schedule.

Andrew Hammond

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Anthony Smith

Sarah Jane Smith

FOR THE LOCAL PLANNING AUTHORITY:

John Baggott

Wyre Forest District Council

Jonathan Elmer

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