



Appeal Decisions

Inquiry held on 18 and 19 September 2007

Site visit made on 19 September 2007

by **Wendy McKay LLB**

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:
26th November 2007

Appeals A and B Ref: APP/R1845/C/07/2039465 and 2039453 Land at Top Acre, Off Cursley Lane, Mustow Green, Kidderminster, DY10 4DX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Sarah Jane Smith and Vera Smith against an enforcement notice issued by Wyre Forest District Council.
- The Council's reference is 07/0262/ENF.
- The notice was issued on 21 February 2007.
- The breach of planning control as alleged in the notice is without planning permission, the use of the land for the stationing of caravans and a portable toilet for residential purposes and the use of the land for residential purposes, the laying of a hardstanding and the erection of a close boarded and gravel board fence in connection with the residential use.
- The requirements of the notice are: (1) Cease the use of the land for the stationing of caravans and remove the caravans and portable toilet from the land; (2) Remove the fence, gravel boards and hardstanding; (3) Remove from the land all building materials and rubble arising from compliance with requirement (2) above.
- The period for compliance with the requirements is (1) 14 days; (2) 3 months.
- The appeal by Sarah Jane Smith is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
- The appeal made by Vera Smith is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee for this appeal has not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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

Procedural Matters

1. At the Inquiry, the oral evidence was given on oath.

The Appeal A on Ground (a), the deemed application and Appeal C

The Main Issues

2. The main issues are:

- Whether the appellants are 'Gypsies' for planning purposes as defined by paragraph 15 of ODPM Circular 01/2006.
- Whether the development would be inappropriate in the Green Belt having regard to Development Plan policy and the guidance included in PPG2.
- If so, what would be the harm to the openness, purposes and visual amenities of the Green Belt?
- The effect on the character and appearance of the surrounding rural area.
- Whether the development complies with the criteria set out in the Local Plan Gypsy site provision policy H15.
- Whether the benefits of the scheme would clearly outweigh any harm resulting from these issues and thus justify the development on the basis of very special circumstances.

3. As regards very special circumstances, the appellants have put forward a number of factors to be weighed in the balance:

- The need for sites nationally, regionally and within the District;
- The adequacy of the Development Plan framework to meet any such need;
- The particular accommodation needs of these Gypsies;
- The availability of alternative suitable sites;
- The personal circumstances of the family including education and health considerations;
- The Human Rights implications that dismissal of these appeals would have.

Planning Policy

1. The Development Plan includes the Worcestershire Structure Plan 1996-2011

out in PPS1: Delivering Sustainable Development; PPG2: Green Belts and PPS3: Housing.

Reasons

Gypsy Status

7. The definition for planning policy purposes of the term "Gypsies and Travellers" is set out in paragraph 15 of Circular 01/2006. The Council accepts that Sarah Jane Smith and Vera Smith have demonstrated that they meet this definition of a "Gypsy". The appellants gave evidence as to the nature, extent and purpose of the travelling which they have historically undertaken and the reasons why they now seek to be based at the appeal site. I am entirely satisfied that the site occupants fall within the planning policy meaning of the term "Gypsies".

Whether the development would be inappropriate in the Green Belt

8. The appeal site is located within the Green Belt. Circular 01/2006 paragraph 49 advises that new Gypsy and Traveller sites in the Green Belt are normally inappropriate development, as defined in PPG2. The Development Plan Green Belt policies reflect national policy as set out in PPG2. The appellants do not seek to argue that either the material change of use or the associated operational development falls within any categories of appropriate development set out either in the Development Plan or PPG2. I conclude that the development as a whole clearly constitutes inappropriate development within the Green Belt.

What would be the harm to the openness, purposes and visual amenities of the Green Belt?

9. Inappropriate development is, by definition, harmful to the Green Belt. PPG2 advises that the most important attribute of Green Belts is their openness. The retention of the fence and caravans would clearly have some impact upon openness. However, only part of the overall site would be occupied by one extended family and the number of caravans and the siting of ancillary structures could be restricted by planning condition. It seems to me that the development would cause limited harm to the openness of the Green Belt because of the small size of the site, and the small-scale nature and relatively low height of the caravans and fence.
10. As regards the purposes of the Green Belt, paragraph 1.5 of PPG2 sets out the 5 purposes of including land in the Green Belt. The contribution made by

the public footpath are from some distance away and the occupied part of the site is seen against the backdrop of the roadside hedge and in the context of the existing stable buildings to the north. The site can be seen from only a relatively short section of Cursley Lane with the substantial roadside hedge generally providing an effective screen. There is scope for landscaping around the boundaries with additional indigenous planting and this could be secured by planning condition. I believe that this would provide a significant level of screening, even during winter months, within a timescale of 3-4 years. I conclude that any harm to the visual amenities of the Green Belt in this location would be limited.

The effect on the character and appearance of the surrounding rural area

12. The development is inherently urban in nature and is out of keeping with the surrounding countryside. As indicated above, it can be seen from a variety of public viewpoints. The imposition of planning conditions relating to landscaping, and the colour of the fencing would mitigate the visual impact to some extent and help assimilate the caravan site into its surroundings. I nevertheless conclude that there is a small degree of additional harm to the character and appearance of the surrounding rural area contrary to Development Plan countryside protection policies.

Whether the development complies with the criteria set out in the Local Plan Policy H15

13. The Council draws support from its general housing policies. Nevertheless, it agrees that the most relevant housing policy is Local Plan Policy H15. Whilst the more general housing policies referred to by the Council are material considerations, I do not consider them to be directly applicable in this case. Indeed, the strict application of Policy H16, which only permits caravans and mobile homes as full-time homes to meet specific short-term needs, would prevent the establishment of any permanent Gypsy sites in the District. This is difficult to reconcile with Article 8 of the European Convention on Human Rights which entitles Gypsies to respect for their traditional way of life and also Government guidance relating to the provision of permanent Gypsy sites. I give little weight to any conflict with Policy H16 in this case.
14. Policy H15 (i) requires it to be demonstrated to the satisfaction of the Council that there is a clearly identified, bona fide need for the provision of a site or sites, additional to those identified in Policy H14, to accommodate Gypsies residing in or habitually resorting to the District. The latter requirement would seem to be in conflict with Circular 01/2006 which advises

15. Policy H15 (ii) sets out criteria which must be met by proposals for Gypsy caravan sites and criterion a) requires the proposals to meet the locational needs of Gypsies. The appellants do not claim that there are employment reasons for living at the site. However, this is a location from which they can access a support network of family and friends, healthcare at Chaddesley Corbett and educate the children at nearby schools. The Council does not accept that they have to live at this particular site and points to them having formerly lived in Derbyshire and having no previous connection with Wyre Forest District. However, as indicated above, Circular 01/2006 does not require Gypsies seeking new sites to demonstrate local connections with a particular area. Indeed, the Council recognises that the absence of locational requirements should not count against the appellants in this case.
16. Policy H15 (ii) criterion b) requires the development to be close to facilities, especially schools, shops and health facilities. Due to the narrow and busy nature of Cursley Lane, the appellants accept that it would not provide a safe route for walking to facilities in Chaddesley Corbett. The Council contends that the site is not even reasonably close to facilities and, as the site occupants are reliant upon the car for transport, it is not a sustainable location. The closest village with a range of services is Chaddesley Corbett where there is a primary school, post office/store, petrol filling station and shop, butcher, church, two public houses and a doctor's surgery. It is about 3.5 km by road from the site and access by car would normally take about 5 minutes. The site is within the 5 km distance of facilities which is the distance suggested by PPG13: Transport for cycling to have the potential to substitute for short car trips. Whilst the appellants do not intend to cycle, the fact that the site is within a reasonable cycling distance of Chaddesley Corbett is nevertheless indicative of its proximity to those services. Circular 01/2006 paragraph 54 advises that in assessing the suitability of sites in rural settings, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in assessing local services. It also advises that issues of sustainability are important and should not only be considered in terms of transport mode and distances from services but should include other matters such as the wider benefits of easier access to GP and other health services; children attending school on a regular basis and the provision of a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment. Criterion b) does not focus upon the mode of transport but upon the proximity to facilities. In my view, taking all relevant factors into account, the site is reasonably close to facilities and this is a sustainable location for a Gypsy family.

18. The evidence of Mrs Maynard, who lives nearby on Cursley Lane, was that the cost of connecting a mains water supply to her property and that of her immediate neighbour in 2002 was in the region of £12,000 which is very considerably more than the figure quoted by the appellants. The appellants accept that the total cost of connecting the site to the water mains would be significantly in excess of the Severn Trent Water connection charges estimate dated 17 August 2007 of £1,012.71. There would be additional costs including a streetworks licence, road closure and pipe laying. However, Sarah Jane Smith gave evidence that friends and family would help her undertake some of the work in order to reduce costs and she could also borrow funds from them. For example, she has friends with a mini-digger who would dig out a trench for the water pipe for no charge. She has a friend with a cess pit who could let her have it cheaply. Taking all these factors into account, I do not consider that the total cost of providing mains water and a cess pit would be likely to be prohibitive and beyond the appellants' means. I conclude that adequate services could reasonably be provided on the site in compliance with criterion c).
19. Turning now to criterion e), this requires the development to minimise the adverse impact on and from neighbouring land and/or buildings. The land immediately adjacent to the site is either in use for agriculture or for the keeping of horses. There are also the fishing pools which lie further to the south. The Council does not suggest that the development would be harmful to the residential amenities of people living nearby. It accepts that the development would not conflict with or have an adverse impact upon neighbouring uses.
20. Criterion f), requires that the development is capable of being screened from roads and adjoining land. Circular 01/2006 Annex C advises that landscaping and planting with appropriate trees and shrubs can help sites blend into their surroundings, give structure and privacy and maintain visual amenity. As indicated above, I believe that a significant level of screening of the site from Cursley Lane, the public footpath and adjoining land is capable of being provided within a relatively short timescale. The development would comply with criterion f).
21. On criterion g), this does not permit Gypsy Sites within the Green Belt, except in very special circumstances. This is a matter which I shall consider in detail under the next issue.

Whether there are any material considerations that would clearly

23. The Council accepts that there are no approved or tolerated Gypsy sites available for the appellants within the District or even within the County. The e-mail from the Gypsy Services Manager dated 6 August 2007 confirms the position in terms of availability of Gypsy Sites, namely, that there is 100% occupancy on all the County sites; there is very little turnover (only 2 plots in the District in the last 2 years); the waiting list stands at about 70 families and this will increase as families re-confirm their desire to remain on the list; there are no vacancies at the present time and there are a large number of young emerging families currently living on the sites. At the Inquiry, the Council advised that there were still no vacancies at any of the sites in the County or District.
24. Circular 01/2006 requires that the new statutory development plan process introduced under the Planning and Compulsory Purchase Act 2004 should make Gypsy site provision based on a Gypsy and Traveller accommodation assessment (GTAA). The Council is currently participating in the preparation of a GTAA being carried out for the South Market Area of the West Midlands Region. The final report is not expected to be published until November 2007. When completed this GTAA will feed into a single issue review of the West Midlands Regional Spatial Strategy that will identify the number of new pitches required for each local authority in the region. This single issue review is anticipated to be ready for submission by 2009. In the meantime, the West Midlands Regional Assembly has issued an Interim Regional Statement on Gypsy and Traveller Policy. This recognises that Gypsy and Traveller accommodation needs are serious and urgent in the Region. It reminds local authorities of the fact that transitional action is required now to address needs on the basis of the Interim Regional Statement. The estimated requirement for the South Housing Market Area is 170 residential pitches for 2006 to 2011. By extrapolation, using the same formula and the bi-annual count data for January 2007, the appellants calculate that at least 20 additional pitches would be required in the District over the same period of time. The Council agrees that this figure should be increased to 23, as 12 Gypsy caravans on private sites in the District have not been included in the bi-annual count figures. The Interim Statement reiterates the advice set out in Circular 01/2006 that where there is clear and immediate need, local planning authorities should bring forward DPDs containing site allocations in advance of the full regional consideration of pitch numbers on the basis of completed GTAA's.
25. Circular 01/2006 paragraph 41, explains that, in advance of the consideration of new GTAA's at a regional level by the RPB translated into

there may be some overcrowding on one of those public sites. At the very least it would seem that there are emerging families already living on those sites. Bearing in mind the findings of the Interim Report and the information provided by the Gypsy Services Manager, I am satisfied that there is, at present, a clear and immediate unmet need for lawful sites within the District. This is a material consideration of considerable weight in the appellants' favour.

The adequacy of the Development Plan policy framework to meet any unmet need

26. One of the main intentions of Circular 01/2006 is to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively. In relation to forthcoming Development Plan Documents (DPDs) the advice given is that criteria must not be used as an alternative to site allocations where there is an identified need for pitches. In the light of the advice set out in Circular 01/2006, I find the current Development Plan policies to be inadequate to meet the existing unmet need. The Council indicates that the policy framework is unlikely to change before 2011 at the earliest. This factor adds considerable weight to the appellants' case.

The accommodation needs of the family and the availability of suitable alternative sites

27. As well as the appellants there are three children living on the site, namely Sarah Jane, date of birth 16 August 2000, Chelsea, date of birth 26 August 2004 and Annalese date of birth 16 December 2006. The appellants, Sarah Jane Smith and Vera Smith, are both separated from their respective husbands.
28. Sarah Jane and Vera previously stayed on a site in Foston, Derbyshire for about 3 years. Sarah Jane's mother, Joanna Smith, was the warden of that site. The appellants gave detailed evidence as to the serious problems of violence they experienced on that site. This culminated in them leaving Foston in January 2006. Thereafter, they stayed on friends' and relatives' sites but they were unable to find anywhere that they could stay on a permanent basis. During this period, Sarah Jane stayed at a private site at Brierly Hill where her husband is based. However, this was only on a temporary basis for a period of 3 months and she left that site when asked to do so by the owner, Mr Bert Smith, at a time when she was still pregnant. I find, on the balance of probabilities, that Sarah Jane would not be allowed by the owner to return to the Brierly Hill site. It would not be appropriate to

her support network. The Council also suggests that Sarah Jane could move to the site in Tunstall, Stoke where her mother currently resides. However, Sarah Jane's evidence on oath was that Joanna Smith was there because a friend had let her onto it, but she was not even supposed to be there herself. Since it would seem that Joanna Smith is not lawfully entitled to reside on that site and is reliant upon the goodwill of others to enable her to stay there, the Tunstall site does not present a realistic option for Sarah Jane.

30. Due to difficulties experienced on the Foston site, the appellants do not want to move onto another Local Authority site. They are concerned that if they were to do so then word of their whereabouts would get around and might again lead to trouble from the people who caused the problems on the Derbyshire site. In any event, even if they could be persuaded that it would be safe for them to do so, there are no Council sites in the area or even the County where they could go to. Sarah Jane gave evidence that she was prepared to live on another private site in certain circumstances, namely, as long as the site occupants were respectable and were not going to hurt her.
31. Sarah Jane stated that she had mainly looked for sites in the newspapers and that was where she saw the appeal site details. She had been looking for plots mostly within that area but this was the first one she had looked at. She did not make any enquiries about the land's status in planning terms before moving onto it nor did she seek planning advice from the Council. The Council complains that she did not carry out sufficient enquiries before moving onto the site. It would seem that her efforts to find alternative accommodation, albeit as a pregnant single mother with two small children, were somewhat limited. However, neither party has since been able to identify an alternative authorised Council or private Gypsy site in the entire County on which the appellants could lawfully reside in their caravans. Given the Council's acceptance that there is a regional need for Gypsy sites, I conclude that it is unlikely that a more thorough search of a wider area would have produced a suitable alternative site.
32. The Council refutes that the only alternative to the appeal site for this family would be for them to live on the roadside. It suggests that it would be appropriate for them to consider whether any pitches are available at existing caravan sites in the District and not merely those which are Gypsy sites. The Council draws support from various newspaper adverts for mobile homes that are not on Gypsy sites. However, the rules and regulations in such mobile home parks can restrict occupancy in terms of matters such as age or length of stay and can impose their own conditions of residency. For example, two

she could go and live with her own children then she would do so. Sarah Jane also explained that neither she nor Vera Smith had ever lived in a house and that she could not do so. I am satisfied that they have a cultural aversion to bricks and mortar.

34. At present there is no alternative suitable site available to which the extended family could move. I am satisfied that they have nowhere else to go to and, if the appeal was dismissed and they were evicted from the site, then it is likely that they would be living on unauthorised roadside encampments. 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.

The healthcare needs of the family

35. The appellant, Sarah Jane, was recently prescribed anti-depressants by a GP. Chelsea has suffered from both constipation and incontinence problems and takes non-prescriptive medication for this. However, Vera Smith has the most serious health problems of the family having had a heart attack in 2000. She also suffers from osteoarthritis, tear duct blockage, angina, high cholesterol and high blood pressure. The report from her GP, who is based in Chaddesley Corbett, advises that she requires ongoing monitoring, including periodic blood tests and blood pressure measurements. 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. Although she is reliant upon Sarah Jane driving her to the doctor's surgery there is no reason to suppose that this arrangement would not continue in the future. The appellants gave evidence that they provide each other with mutual care and support. Vera confirmed that she did not feel isolated at the site and that she enjoyed helping to care for the children. It is clear that Sarah Jane and other family and friends are able to provide her with all the care and support that she requires at this base. In my opinion, her particular medical needs should be afforded considerable weight. There is also a general benefit to the remainder of the family, particularly the young children, having easy access to a local GP.

The educational needs of the children

36. The child, Sarah Jane Smith, attends the local primary school at Chaddesley Corbett. She has been placed on the special needs register since

alternative settled site within the area for the family to go to, I believe that her particular educational needs amount to a material consideration of some weight in support of this appeal.

Human Rights

37. As regards the submissions made under Article 8 of the European Convention on Human Rights, the upholding of the enforcement notices and dismissal of the appeals would be likely to result in Vera Smith's and Sarah Jane Smith'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 uphold the enforcement notice and refuse planning permission in all the circumstances of this case.
38. 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 which has taken place are serious ones. The overall harm to the Green Belt could not be overcome by planning conditions. There is a need for Green Belt restrictive policies to be applied to the area and this restriction is an appropriate proportional response to that need. I am satisfied that this legitimate aim can only be safeguarded by the cessation of the use.
39. The need to maintain a Gypsy lifestyle is an important factor in the decision-making process. Those Gypsies without an authorised site face difficulties in endeavouring to continue their traditional way of life within the law. There is no site presently available for occupation by the appellants in the District. The lack of available alternative accommodation makes the interference more serious. The appellants' home in this case has been established in the knowledge that it did not have the benefit of planning permission and without seeking assistance from the Council. Since their home has been established without planning permission, their position in objecting to leave is less strong. However, the circumstances surrounding the extended families move from previous sites needs to be taken into account.
40. I shall consider whether the dismissal of the appeal would have a disproportionate effect on the appellants in my overall conclusions

Summary and overall conclusions

weigh in favour of the grant of permission in this case against the harm to the Green Belt by reason of inappropriateness and any other harm.

43. It is not disputed that there is an unmet national and regional need for Gypsy sites. I find that there is also a clear and immediate unmet local need to accommodate Gypsies in the District. The local planning policy framework is inadequate to meet existing unmet needs and there is no immediate prospect of the policy framework changing.
44. The appellants moved onto the land in the knowledge that it did not have the benefit of planning permission for use as a Gypsy site. However, their move from the Foston site was unavoidable on their part and this particular extended family have a need for accommodation. There is no other site presently available for occupation by them in the District or the County. It is likely that if forced to leave the site they would be living on an unauthorised roadside encampment.
45. There are young children living on the site and there is a general benefit to the family having easy access to a local GP. Vera Smith has serious medical problems that would be far more difficult to manage if she did not have a settled base. The site would provide a settled base to enable these people to access health care facilities. Although the educational needs of the children are not exceptional, the site would provide a settled base from which Sarah Jane and, in time, the younger children, could attend school and receive a stable education.
46. I have considered the factors in support of this development both singly and cumulatively. I believe that the considerations in support of this appeal taken together do not outweigh the conflict with Development Plan and national policies designed to protect the Green Belt so as to justify the grant of a full planning permission on the basis of very special circumstances. The development is contrary to Structure Plan Policies D12 and D18 and Local Plan Policies GB1 and H15. Although, at present, there is no alternative site for them to go to, in all the circumstances it is not disproportionate to refuse the grant of permanent permission. I shall now consider whether the grant of a temporary permission is justified in this case.
47. The Council submits that an analysis of the existing and future provision of sites does not assist in this case and that it is highly unlikely that any existing or future site could meet the appellants' requirements. However, whilst clearly traumatised by her experience at Foston, Sarah Jane did not rule out other private sites, including those shared with others. The appellants submit

expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Circular 01/2006 paragraph 46 explains that such circumstances might arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In this case, there is an unmet need but no available alternative Gypsy and Traveller site provision in the area at present. The Council's Core Strategy is expected to be adopted during 2009 and the Site Allocation and Development Control Policies Development Plan Documents are intended to be adopted during 2011. There was no substantial evidence presented to the Inquiry to indicate that the statutory process might be brought forward.

49. At the Inquiry, the Council accepted that the compliance period was unreasonable and that it should be extended to a period of 6 to 12 months. Whilst resisting the grant of a temporary permission, it proposed that any such permission granted should be for no longer than 3 years. In my view, the suggested period of 3 years would be likely to prove to be optimistic given that a site specific DPD is not anticipated to be available before 2011. Circular 01/2006 intends to address the under-provision of Gypsy and Traveller sites over the next 3-5 years and also to help avoid Gypsies and Travellers becoming homeless through eviction from unauthorised sites without an alternative to move to. The grant of a 5 year temporary planning permission would enable the results of the assessment of need to be considered and the process of identifying additional sites within the District should, at the very least, have made substantial progress. I believe that it is likely that the planning circumstances will have materially changed by that time. In the meantime, the family would not have to leave the site and suffer the considerable hardship that living "on the road" would necessarily entail. It would enable the family and Vera Smith, in particular, to access medical services and continue to receive the support and care that she needs without disruption.

50. It seems to me that the expected changes to planning circumstances that are likely to occur over the period of the temporary permission significantly alter the overall balance in this case. I conclude that the considerations in support of this appeal including the existing unmet need for Gypsy sites in the area, the inadequacies of the current Development Plan Gypsy site provision policies, the present lack of a suitable alternative site, the personal needs and circumstances of this particular Gypsy family and the prospect of substantial progress being made over the temporary period as regards a site allocations DPD that would be likely to assist the family to find an alternative site without becoming homeless, taken together clearly outweigh the harm that would

that I intend to permit, I consider that it would be reasonable to expect the appellants to incur the capital costs involved.

52. Circular 01/2006 paragraph 46, advises that the fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. The Council submits that it would be able to accommodate the need for new Gypsy sites outside the Green Belt and would actively seek to avoid ad hoc single or double pitches being provided within such locations. The Council expresses concern that when the temporary permission expires, as the appeal site would not be allocated, the appellants would have to leave the site. This would disrupt the education of the children and the family would have wasted a significant amount of money installing services. The appellants accept that a temporary planning permission could result in the children having to change schools in the future but, given the timescales involved, that is not likely to be at a time when such a change would affect important examinations. The allocation of sites is ultimately a matter to be dealt with through the formal Development Plan process following the outcome of the GTAA. I do not regard the prospect of the family having to vacate the site at the end of the temporary period to be a strong argument against the grant of such a permission in the first instance. I consider the grant of a temporary permission to be a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individual in this case. There would be no violation of the appellants' rights under Article 8 of the Convention.

Other matters

53. The Council is concerned that if the development were to be permitted, it would make it difficult to resist similar proposals in the future. The original field has been sold off into separate plots. I have considered this case on its own merits and found that the relevant material considerations taken together justify the grant of a temporary permission. The factors to be weighed in the balance include the limited impact of this small site on the openness and purposes of the Green Belt and personal factors such as the healthcare needs of Vera Smith that will inevitably vary from case to case. The cumulative visual impact of any further development and the advice set out in Circular 01/2006 paragraph 54 as regards the need for Gypsy sites to respect the scale of the nearest settled community would also need to be borne in mind. I do not believe that to allow a temporary permission in this case would undermine Green Belt policy or make it more difficult for the Council to refuse

above, I consider that the permission granted should be for a temporary period of 5 years. In order to reflect the personal circumstances and need which justified allowing these appeals in part, I believe that the permission should be made personal to Sarah Jane Smith, Vera Smith and their dependants. Since a personal condition is being imposed it is not necessary to also impose a Gypsy-occupancy condition.

56. There is presently one static mobile home and one touring caravan on the site. The appellants agree that any planning permission granted should be limited to this number and type of caravans and that restrictions be placed upon the provision of other structures. I also consider that it is necessary to control the siting of the caravans within the plot. I believe that it is both reasonable and necessary to impose planning conditions to limit the use in this way. This is so as to preserve the purposes and openness of the Green Belt and the rural character and appearance of the surroundings.
57. I consider that it is necessary to impose a condition relating to the hard and soft landscaping of the site, including walls, fences and other means of enclosure, hardstanding, parking and amenity areas and existing and proposed planting, in order to protect the visual amenities of the Green Belt and the surrounding rural area. The condition imposed will also make provision for the replacement of failed planting. I do not believe that the capital outlay would be excessive. It is not unreasonable to impose such a condition on a temporary permission of this length.
58. I also believe that it is both necessary, given the rural location, to impose a condition relating to the submission and approval of details of the siting of the caravans and to subsequently restrict the siting to that which has been approved. It is also necessary and reasonable, in terms of capital outlay, to require approval and implementation of a foul and surface water drainage system to ensure adequate means of sewage disposal and surface water drainage arrangements. The same applies to a scheme for the storage and disposal of waste from the site.
59. The conditions imposed requiring the submissions of schemes for approval will reflect the fact that the use has already taken place and the advice set out in Circular 11/95. Given the importance of landscaping and siting in this case these conditions will provide for the cessation of the use in the event that a scheme is not approved within the terms of the condition. I consider that it is reasonable to include a lengthy fall-back date within which the use is required to cease until the relevant schemes are approved and implemented to

Formal Conclusions

Appeals A and B

61. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. The appeals on ground (g) do not therefore need to be considered.

Appeal C

62. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decisions

Appeals A and B Refs: APP/R1845/C/07/2039465 and 2039453

63. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely, the use of the land at Top Acre, Off Cursley Lane, Mustow Green, Kidderminster, DY10 4DX, as shown on the plan attached to the notice, for the stationing of caravans and a portable toilet for residential purposes and the use of the land for residential purposes, the laying of a hardstanding and the erection of a close boarded and gravel board fence in connection with the residential use, subject to the following conditions:

- 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.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home), shall be stationed on the site at any time.

indications of all existing trees and hedgerows on the land, and details of any to be retained; details of the size, species and spacing of all proposed trees and shrubs and a timetable for its implementation. All hard and soft landscape works shall be carried out in accordance with the approved details and timetable. Any approved trees or plants which during the period of occupation of the site by Sarah Jane Smith, Vera Smith and their dependants as a residential caravan site pursuant to this permission are removed, die 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 approval to any variation.

- 6) If no scheme in accordance with condition 5 above is approved within 18 months of the date of this decision, the use of the site hereby permitted shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented.
- 7) Within 2 months of the date of this decision, a scheme providing details of the siting of the caravans shall be submitted in writing to the local planning authority for approval in writing. The caravans shall thereafter only be positioned in the approved locations unless otherwise agreed in writing by the local planning authority.
- 8) If no scheme in accordance with condition 7 above is approved within 18 months of the date of this decision, the use of the site hereby permitted shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented.
- 9) Within 2 months of the date of this decision, a surface and foul water drainage scheme shall be submitted in writing to the local planning authority for approval in writing. The scheme shall include a timetable for its implementation and all drainage works shall be carried out in accordance with the approved details and timetable.
- 10) Within 2 months of the date of this decision, a scheme for the storage and disposal of waste from the site shall be submitted in writing to the local planning authority for approval in writing. The scheme shall include a timetable for its implementation and all waste shall be stored and disposed of in accordance with the approved details and timetable.

Appeal C Ref: APP/R1845/A/07/2040181/NWF

64. I allow the appeal, and grant planning permission for the siting of a mobile

APPEARANCES

FOR THE APPELLANT:

Marc Willers of Counsel

Instructed by The Community Law Partnership,
4th Floor, Ruskin Chambers, 191 Corporation
Street, Birmingham B4 6RP

He called

Sarah Jane Smith

Vera Smith

Philip Brown

Appellant

Appellant

Philip Brown Associates Ltd, Chartered Town
Planners, 74 Park Road, Rugby, Warwickshire
CV21 2QX

FOR THE LOCAL PLANNING AUTHORITY:

Katy Skerrett of Counsel

Instructed by Wyre Forest District Council

She called

Christine Mansfield

MRTPI

Clare Eynon BSc MRTPI

Enforcement and Implementation Officer, Wyre
Forest District Council

Development Control Manager, Wyre Forest
District Council

INTERESTED PERSONS:

Mrs M Maynard

Pheasant Run, Cursley Lane, Shenstone,
Kidderminster, DY10 4DX

DOCUMENTS

- 1 Attendance List
- 2 Copy letters sent by the Council notifying local people of the
Inquiry and circulation list
- 3 Statement of Common Ground
- 4 School reports for Sarah Smith
- 5 Severn Trent water analysis report
- 6 Severn Trent notification of new services connection charges
- 7 Bundle of correspondence and invoices relating to the new
services connection charges for Pheasant Run/No 1 Cursley Lane
- 8 Bundle of property adverts submitted by the Council
- 9 Copy appeal decision dated 20 March 2000 relating to land at
Shadowbrook Lane, Hampton-in-Arden, Solihull