

Statement of case on behalf of the Local Planning Authority

**APP/R1845/C/23/3320687: Land at "Top Acre", Cursley Lane, Shenstone,  
Worcestershire**

**Background to the appeal.**

The appeal site currently comprises a mixed use of the lawful keeping of horses and the unlawful residential use of the land and siting of caravans and associated development. Two caravans exist on site, including a static residential mobile home. This clearly defined unauthorised residential curtilage also comprises a shed, summerhouse and hardstanding for parking.

An unauthorised commercial yard area has also been created in the field, immediately adjacent to the residential area. Access to the site is via an existing track from Cursley Lane. Permission was granted on a temporary 5-year period on 26 November 2007 under appeal reference Nos.

APP/R1845/C/07/2039465 and APP/R1845/A/07/2040181.

In 2011 a further application was made under s73 TCPA seeking to remove Conditions 1 (personal permission) and 2 (five year temporary permission). That application was refused by the Council in 2012 and proceeded to appeal.

The appeal was recovered by the SoS. The appointed Inspector recommended that the appeal be allowed (Appendix RJ1), the SoS disagreed

(for the reasons stated in the Decision Letter) and dismissed the appeal (Appendix RJ2).

In 2006 (and so prior to the original residential use application) planning permission was granted for land comprising the northern part of the appeal site for the keeping of horses and a stable building. The Appellant's SoC makes reference to permission 08/0838/FUL which in fact relates a different parcel of land to the south of the appeal site (and to the north of the fishery). The correct reference is 06/1161/FUL.

#### Ground A

Ground A Planning permission should be granted for what is alleged in the notice.

#### **Policy Position**

In terms of the development plan, Policy DM.22 of the adopted Wyre Forest District Local Plan (2022) considers development proposals within the Green Belt (as defined on the Policies Map) and is fully reflective of the NPPF.

Development will not be permitted, except in very special circumstances, or unless one of the following applies:

a. There is a clear need demonstrated for new buildings for the purposes of agriculture or forestry.

- b. Provision of appropriate facilities (both for existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- c. The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
- d. The development involves the re-use or conversion of buildings in accordance with the policies for the re-use and adaptation of Rural Buildings (especially Policies SP.11 (dwellings) and DM.10 (employment)).
- e. The proposals involve the limited infilling or redevelopment of an identified Previously Developed Site in the Green Belt, in accordance with the site specific policies contained in Policy SA.PDL.
- f. The proposals are part of a Community Right to Build Order or a Neighbourhood Development Order.
- g. Other operations, including changes of use which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

None of the above exceptions apply to this case. The appellant -is claiming that although the development is inappropriate in the Green Belt, very special circumstances exist which outweigh the substantial -harm to the Green Belt.

Wyre Forest District Council conducted a strategic Green Belt Review in 2016 and the appeal site falls within Green Belt parcel SE4 which is categorised as making a 'contribution' to the purposes of the Green Belt. The Green Belt review summarises the following:

‘Overall, the parcel contributes to Green Belt purposes through its prevention of change through incremental encroachment of existing built development into open countryside. Whilst the current footprint is modest, being largely centred on Shenstone, the openness, topography and extensive vistas make the parcel sensitive to change.’

Policy SP.14 of the Wyre Forest District Local Plan specifically deals with development proposals involving the provision of Gypsy and Traveller Sites. The 2020 Gypsy and Traveller Accommodation Assessment identifies the need for 13 pitches, under the Planning Policy for Traveller Sites (PPTS) definition to be provided in the period 2020/21 to 2035/36, 3 of which need to be provided by 2024/5.

Policy SP.14 states that ‘Outside the sites safeguarded and allocated in this Plan, planning permission for new sites will be granted on previously developed land or in areas allocated primarily for residential development subject to all relevant policies within the Local Plan being met. Development in the open countryside that is away from existing settlements or outside areas identified in this Plan will be strictly limited in accordance with the Plan’s policies.’

Where it is relevant, the Policy states that: ‘There is a wider cultural need for 22 pitches to address the housing needs of Gypsies and Travellers who do not meet the planning definition set out in PPTS. This will be addressed through various means, including residential caravans/mobile homes sites and through other policies in the Plan which provide for different types of housing.’

In terms of the commercial use of the site, the storage of materials and numerous vehicles and equipment, results in severe harm to both the greenbelt in terms of openness and visual amenity, as well as the rural landscape.

### **The impact of the development on Openness and Visual Amenity**

In terms of topography, the site is flat and very open with little interruption from either established landscaping or built development. The caravans, associated residential paraphernalia and commercial storage and operations, appear as an alien, sprawling and incongruous feature in this otherwise rural landscape and are visible from far reaching views beyond the site and into the wider open countryside. The site boundaries are defined by urban style fencing, in what is otherwise rural in nature. Little additional planting has been undertaken, however, it is not considered appropriate to break up the otherwise open nature of the surrounding land with dense planting in an attempt to screen the site as this would also appear as an alien feature in the landscape in its own right. Any landscaping scheme will clearly require many years of establishment and in the longer term little control will be retained over its maintenance and retention, and in any case, the attempted screening of this visually unacceptable development with planting would not sufficiently overcome the substantial harm to the 'openness' of the Green Belt.

The NPPF and reflective Green Belt policy DM.22 requires that development within the green belt preserves openness and ensures the prevention of

urbanization. The caravan and its associated curtilage, residential paraphernalia and further encroachment with the development of a commercial compound has a significant impact on the landscape and openness, which the policy seeks to prevent and introduces an alien, urban character to this rural greenbelt location. The proposal is therefore contrary to the requirements of Policies DM.22, SP.22 and the NPPF.

### **Alternative Site Provision and need**

During the previous appeal, the Secretary of State attached no weight to the lack of an alternative site, for the reasons given above. He gave only limited weight to the personal circumstances of the appellant and his family, as he considered that these could all be met from an alternative, more suitable site, and that such a suitable alternative site was available at the time. This situation remains unchanged today and as part of the Local Plan Review a Gypsy and Traveller Assessment was undertaken last year.

Currently the short-term and longer-term needs identified can be met through the allocation of the land to the rear of Zortech Avenue (Policy SA.K17) which will very shortly be available and deliverable. Limited intensification/expansion of the existing safeguarded sites will also be considered, where proposals would comply with the other policies of the Plan.

It was concluded as part of this proposal that no immediate requirement for pitches was needed, however, 17 pitches would be required, throughout the plan period, clearly demonstrating that provision is being met, when also considering existing site turnover and the allocated site provision proposed. This requirement forms the basis of Policy SP.14 Gypsy and Traveller Site Provision in accordance with the relevant policy requirements within the district and the Planning Policy for Traveller Sites (PPTS). It is clear on that basis that there is no requirement to look at sites outside of these allocated areas, especially within sensitive Green Belt locations as is the case here.

In terms of the commercial use of the site, the LPA consider that there is no justification to operate a business of this visually obtrusive nature in such a sensitive greenbelt location. The appellant has offered no 'very Special Circumstances' in an attempt to overcome the inappropriateness of the development and sever resulting harm, nor has any evidence been provided to show that an alternative, commercial premises has been sought by the appellant, in a suitable location. The applicant has also at no time sought the assistance of the LPA to provide details of available sites within both allocated and existing lawful commercial settings.

The LPA consider that the site is wholly unsuitable for a commercial use, especially when considering such a visually intrusive commercial use as the storage of large numbers of commercial vehicles. The proposal is therefore contrary to the requirements as outlined within the NPPF and reflective Green Belt Policy DM.22.

## **‘Very Special Circumstances’**

Both the Inspector at the time of the previous appeals and the Secretary of State agreed that the main issue in this case is whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to justify the scheme on the basis of very special circumstances. This consideration remains key to the current determination as to whether the inappropriateness of the development is outweighed by the mitigating circumstances put forward by the applicant for either the residential or commercial use of the site.

The appellant lays out their ‘Very Special Circumstances’ argument both within their statement and within a letter received from the appellant’s wife, Sarah Smith, dated 21<sup>st</sup> February 2022 and addressed to the previous Planning Manager at Wyre Forest District Council.

Firstly, the appellant claims that it is vital that the family remain on the site to conduct their lawful business operations and to retain their customer base.

The LPA can evidence that these business uses are not lawful by virtue of time (see Appendix RJ3) [chronological aerial images]), and are in fact



unauthorised, resulting in an extremely detrimental impact on Green Belt openness and visual amenity.

Secondly, the appellant puts forward the case that their youngest child attends a local school which cater for her special educational and health needs. Although the LPA has sympathy with the appellant and his daughter over this matter, it is not considered that this attendance is limited by the occupation of the appeal site and alternative, more suitable and sustainable accommodation is available within the District. It is also the fact that this schooling could be provided elsewhere if necessary.

Thirdly, in terms of the family's overall social connections, again It is not considered that the appeal site is fundamental to their continuation, and certainly do not outweigh the resulting Green Belt harm resulting from the development.

Fourthly, the appellant claims that the LPA's has a lack of suitable alternative sites. This is considered in above within the section on unmet need and is clearly not the case. The LPA has adequate alternative provision within the district in the form of available site allocations and the potential for the expansion of existing sites outside of the Green Belt. In any case, due to the level of resulting harm resulting from the appeal site, the LPA do not consider that the search for alternative sites should be solely limited to the Wyre Forest District.

Finally, the appellants wife makes reference to the appellants health issues and those of his father, who does not reside at the site. Although the LPA has sympathy with the appellant over these health issues, they are not considered to be of a severity which restricts the appellant to the appeal site. The appellant has confirmed that he is medically fit and able to fully undertake his business operations.

In terms of the 'inappropriate' commercial use, no very special circumstances have been provided in an attempt to overcome the resulting harm to openness and visual amenity, nor to attempt to explain the reasoning as to why such a commercial use must operate in such a sensitive Green Belt Location. The LPA can only conclude that they do not exist. The commercial use of the site is therefore contrary to both the NPPF and Policy DM.22.

The Council does not consider that the 'other considerations' in this case do not clearly outweigh the harm to the Green Belt and the other identified harms. Accordingly, it is the Council's view that 'Very Special Circumstances' have not been demonstrated in this case and planning permission should not be granted.

#### Ground D

Ground D - That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

The applicant makes the case that two businesses have operated from the site for a period in excess of 10 years and are now lawful. It is stated that the business involves Home Improvements and contract services as well as a

separate business involving the buying and re-selling of vehicles, and that there are up to 20 vehicles stored on the appeal site, usually on the hardstanding in front of the mobile home or, in the paddock to the west (accessed through the caravan site).

The appellant claims that the business uses, involving the storage of commercial vehicles, plant, machinery and building materials, have been operating from the appeal site since 2009/2010. They have not been solely confined to parts of the appeal site which are physically and functionally separate from the caravan site but, have included use of the caravan site and that this mixed use of business/residential has operated from the land for a period of at least 12 years prior to service of the enforcement notice and, therefore, is now immune from enforcement action and, lawful.

The LPA have carefully considered these claims and research has been conducted of the aerial photo records [Appendix RJ3].

No evidence exists to suggest a business use has been operating from the site for more than 10 years, and it is clear from the aerial photographic record that the storage compound does in fact exist on the ground today but was clearly not evident in April 2016. In terms of the use of the residential area for the business purposes, all of the aerial photographs available to the LPA show nothing more than a single van and occasionally a lorry parked adjacent to the caravan, which would clearly be considered ancillary to the residential use and is in no way indicative of a change of use to a mixed use involving commercial uses. It is considered that this is no different to any residential dwelling where the occupier may park a works vehicle on the driveway.

Furthermore it is clear that had those commercial uses been ongoing at the time of the 2012 application / 2013 appeal / 2013 decision of the SoS they would have been obvious and visible to both the Council's case officer dealing with the application and the appointed Inspector who would have undertaken a site visit before, during or after the Hearing held on 26<sup>th</sup> March 2013.

Despite describing the appeal in detail neither the Officer's Report nor the 2013 Inspector note any activities other than residential activities and make no observations whatsoever as to commercial uses also being undertaken on the appeal site.

#### Ground G

Ground G - The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The LPA considers that 6 months is more than adequate to cease the unauthorised uses and clear the land. In terms of alternative site provision, assistance can be provided by the LPA in terms of potential suitable alternative pitches which are currently vacant, however, the appellant has to consider that when seeking alternative accommodation, this should not be purely restricted to the Wyre Forest District alone, and therefore provision should be considered on a national scale.

That said should the Inspector consider a longer period for compliance justified, the LPA would be willing to agree to a 12 month compliance period.

Appendix

RJ1 – PINS Appeal Decision

RJ2 – Secretary of State Decision

RJ3 – Aerial Photographic Record