

## **SECTION B – MATTERS FOR INFORMATION**

### APPEALS DETERMINED

#### **a) Planning Appeals**

**Appeal A Ref:** A2017/0014      **Planning Ref:** P2016/0271  
**Appeal B Ref:** A2017/0013      **Enforcement Ref:** E2017/0131

**PINS Ref:**            Appeal A: APP/Y6930/A/17/3188952  
                                Appeal B: APP/Y6930/A/17/3188919

**Applicant:**            Mr Opey Jones

**Proposal:**            The development proposed is the retention and completion of use of the land for the siting of two caravans for a Gypsy family, associated amenity building, hardstanding and improvement of existing access.

**Site Address:**      Land at Riverside Stables, Tyn Yr Heol Access Road, Pen Y Bryn, Pyle, Neath Port Talbot, CF33 4HW

**Appeal Method:** Hearing

**Decision Date:** 08 August 2018

#### **Decision:**

##### **Appeal A - Ref: APP/Y6930/C/17/3188952**

The appeal is allowed insofar as it relates to ground (g) only and it is directed that the Enforcement Notice be varied by the deletion of 6 months and the substitution of 12 months as the period for compliance. Subject to these variations, the Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

##### **Appeal B - Ref: APP/Y6930/A/17/3188919**

The appeal is allowed and planning permission is granted for the retention and completion of use of the land for the siting of two caravans for a Gypsy family, associated amenity building, hardstanding and improvement of existing access subject to the conditions

Whilst there are two appeal decisions for this site and the Inspector has determined each appeal on its own merits, he has written one report.

The main issues in this case are:

- whether the principle of development is justified in its countryside location, having particular regard to the planning policy framework;
- the effect of the development on the character and appearance of the area, having particular regard to the designated Special Landscape Area;
- the effect of the development on the openness of the Green Wedge;
- whether any identified harm would be clearly outweighed by very exceptional circumstances.

### ***The Principle of Development in its Countryside Location***

The Inspector agreed that the location was classified as countryside and located outside of settlement limits as defined by Policy SC1. He further went on to state that Policy SC1 sets out criteria where development outside of settlement limits may be permissible, including criterion 11) which includes appropriate provision of accommodation for Gypsies and Travellers which is covered by Policy GT2 which states that sites will be allowed outside of settlement limits only when it has been demonstrated that there are no suitable sites or pitches available within the allocated Gypsy Site at Cae Garw, within other existing authorised sites in Neath Port Talbot or within existing settlement limits.

The appellant's evidence indicated that returning to the Cae Garw site is not a reasonable or practicable option for his family. The Inspector considered that substantial evidence was submitted in respect of anti-social behaviour at Cae Garw, and in particular conflicts between the appellant's family and other residents. The Inspector established from this that, within context of the best interests of the appellant's family, the Cae Garw site is no longer a suitable site to meet the particular needs of the appellant. He also noted that that the Briton Ferry site was at capacity.

Whilst the appellant admitted at the Hearing that no sequential site search has been undertaken as required by criterion b) of policy GT2, the Inspector agreed with the appellant in terms of difficulty in

doing this and stated that it is well-established through case law that there is no requirement for site proponents to prove non-availability of alternative sites in such cases.

The inspector stated that whilst it is likely that the majority of trips to and from the site would be car borne, the site is not remote from day to day facilities and services within the town of Pyle. The Inspector advised that it was clear at the time of the Hearing that the appellant's way of life inherently relies upon the use of private modes of transport and, in this respect, it is important that the application of policies that seek to reduce car borne travel are not rigidly adhered to.

He also advised that well-being is a key component of site sustainability and, having had regard to all of the relevant factors did not find the siting of a gypsy and traveller site would unduly conflict with the general thrust of national policy.

To conclude the Inspector found that based on the very specific circumstances in this case, that the principle of development in such a countryside location is acceptable and that any conflict with Policy would be justified

***The effect of the development on the character and appearance of the area,***

The Inspector advised that the site is neither prominent nor visually intrusive and the fact that the site is generally seen within the context of an area of land located adjacent to the appeal site which is lawfully used for the storage of caravans is also a material consideration in favour of the appeal proposal.

He advised both schemes (the retention of what's there and the planning application) clearly represent urbanising forms of development that encroach into an area of open countryside, and concluded that Appeal A to be materially more harmful than the scheme proposed under Appeal B which provides for a more sensitive design layout that incorporates an element of grassed paddock. Nevertheless, the rural characteristics of the site itself would undoubtedly be harmed by both schemes. Indeed, the harm caused to the character and appearance of the immediate environs would conflict with the general thrust of the LDP's

strategy of protecting the countryside and would also conflict with LDP Policy EN2.

***The effect of the development on the Green Wedge designation***

It was common ground between all parties that the development comprises 'inappropriate development' in accordance with the definition set out in Planning Policy Wales (Edition 9, 2016) (PPW). Policy EN3 clarifies the purpose of the Green Wedge and also goes on to state that within such areas there should be a presumption against inappropriate development.

The Inspector concluded that inappropriate development within Green Wedges should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such a development would do to the Green Wedge. He considered that this was one such exceptional circumstance.

***Matters in favour of the Appeals and the Planning Balance, including whether there are very exceptional circumstances that clearly outweigh the harm to the Green Wedge***

Section 103 of the Housing (Wales) Act 2014 provides a statutory duty on local authorities to provide Gypsy and Traveller sites. Currently the LPA has an oversupply of some 3 pitches up until 2021. Nevertheless whilst quantitatively the number of available sites satisfies the short term need, the Inspector has stated earlier, a return to the Cae Garw site represents an unsuitable option for appellant, due to the serious antisocial behaviour, family disputes and significant fears for the health and well-being of his family members. He also noted that such experiences have prevented the appellant from travelling for work.

Whilst he recognised the LPA's contention that the site is well managed, the evidence submitted by the appellant was both consistent and compelling.

In the absence of any other available and suitable sites within the area, the family would therefore be resigned to an itinerant lifestyle should the appeals be dismissed which would adversely affect their access to education and medical services.

In contrast, residence at the appeal site would provide the opportunity for the family to enjoy a peaceful and safe existence, away from the feuds that have typified their time at Cae Garw. Indeed, it is notable that, since the appellant moved onto the appeal site, he has been able to resume travelling for work and generally enjoy the lifestyle associated with that of a Gypsy and Traveller. Within the context of the best interests of the children being a primary consideration, the Inspector considered that such matters merit substantial weight in the planning balance.

The Inspector stated that Appeal A is materially more harmful than what would be the case should Appeal B be permitted, not least because of the proposed quantity and arrangement of the hardstanding and associated grass paddock area. It is on this basis that he considered that the substantial harm caused by the development on site (Appeal A) would not be outweighed by the matters in favour of the appeal. Nevertheless, whilst the scheme proposed under Appeal B would also cause harm to the character and appearance of the site and result in the loss of openness to part of the Green Wedge, he felt that the extent of such harm would be limited by the more sensitively designed layout.

The Inspector was satisfied that the matters advanced in favour of the proposal, including the unsuitability of Cae Garw and the unavailability of any suitable alternatives, to amount to very exceptional circumstances that clearly outweigh the harm that Appeal B would cause to the Green Wedge.

In terms of the potential conflict between the grant of planning permission and the upholding of the enforcement notice, in the interest of completeness, the Inspector considered the possibility of varying the requirements of the enforcement notice to require the appellant to implement the planning permission granted under Appeal B. However, the status of the enforcement notice could potentially be unclear should that permission not be properly implemented and the variation of the terms of the notice to provide an option of more than one requirement would be convoluted. As a consequence the Inspector upheld the enforcement notice but extended the period of time required for the appellant to comply from 6 months to 12 months.

## ***Overall Conclusions***

To conclude the Inspector found that based on the very specific circumstances in this case, the principle of development in such a countryside location is acceptable and that any conflict with Policy would be justified. But he did agree with the LPA that the rural characteristics of the site itself would undoubtedly be harmed and that inappropriate development within Green Wedges should not be granted planning permission except in very exceptional circumstances. However he felt that the harm in this case would be clearly outweighed by the very exceptional circumstances. As such appeal A was allowed insofar as it relates to ground (g) only, although the enforcement notice was upheld subject to an amendment to the period for compliance. Appeal B was allowed and planning permission granted.