



Appeal Decisions

Hearing held on 27 August 2008

by **Bridget M Campbell BA(Hons) MRTPI**

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

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Decision date:
11 September 2008

Appeal Ref: APP/Q3305/C/08/2072342 & 2072343

Land adjacent to Cabin Cafe, Marston Layby, Frome BA11 5DB

- 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 M and Mrs C Ayres against an enforcement notice issued by Mendip District Council.
- The Council's reference is 119419/001ENF.
- The notice was issued on 4 March 2008.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from agriculture to residential (comprising a caravan).
- The requirements of the notice are to cease the residential use of the Land and remove the caravan and all chattels associated with the residential use from the Land.
- The period for compliance with the requirements is 9 months.
- The appeal 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 fees have 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 succeeds and the notice is upheld with corrections and variation

Preliminary matters

1. At the hearing, the Council confirmed that the notice contains an error in that the period for compliance with the requirements is given as 9 months from the date of the notice when it should be 9 months after the notice takes effect. In addition both parties agree that the alleged unauthorised use would be more accurately described as the use of the Land as a residential caravan site. There is no argument that there would be injustice for either party if I were to make such corrections to the notice. I shall exercise my powers accordingly.

Background

2. An appeal by the current Appellants, who are Romani Gypsies, against the Council's refusal to grant planning permission for development which, in effect, amounted to the use of the appeal site as a residential caravan site was dismissed on 2 January 2008. The primary objection to the use was its effect on the character and appearance of the surrounding rural area, in particular having regard to the setting of Marston House, a Grade II* listed building, and to Marston Park within which the appeal site is situated and which is listed as Grade II in the Register of Historic Parks and Gardens. That decision has been accepted on behalf of the Appellants in that no appeal is now brought against the current enforcement notice on ground (a) – that is that planning permission should be granted.

3. Having identified the harm arising from the development, the previous appeal Inspector recognised that dismissal of that appeal could result in the Appellants losing their home but felt that refusal of planning permission was a proportionate response. He was not, however, involved in considering a particular timescale within which that outcome would come about. With an appeal brought against the enforcement notice on ground (g) only, it is accepted that the notice will come into effect and that the requirements of the notice will result in the loss of that home. The only consideration is whether the time given for complying with the requirements of the notice falls short of what should reasonably be allowed and the Appellants' case is that the period should be extended to two years. This requires an assessment of whether the action taken in the imposing a timescale of 9 months is proportionate when balancing the needs of the Appellants against the public interest which in this case involves protection of the countryside, listed building and listed historic park and garden.

Reasoning

4. The harm to the public interest is well documented in the previous Inspector's decision. There is no reason for me to revisit it. For as long as the Appellants remain on the site the harm will persist and that is not in the public interest.
5. The Council says that the 9 month period given took into account the expected birth of the Appellants' child in May and that it provides sufficient time for them to find somewhere else to go. The Council cannot, however, suggest any suitable alternative site to which the Appellants could go.
6. My impression is that the Appellants themselves seem far from reconciled to the reality of the situation that they are required to vacate the site; one which is fully accepted by those acting for them. Further structures have been erected and brought onto the site since the previous appeal was dismissed including a stable building currently used for storage, close board fencing, metal railing gates and a portacabin type structure used as an amenity block. Whilst I can understand that some work might have been essential whilst the Appellants remain on the land in the short term, much of what has been undertaken appears to be of a substance and quality that bears all the hallmarks of development intended for the long term. As an example I saw planting beds that have been constructed using railway sleepers with an attractive and well tended planting scheme introduced. The additional work undertaken, in particular the erection of extensive close board fencing, has increased the intrusive nature of the site and so compounded the damage identified by my colleague Inspector.
7. The Appellants' reply to a question in the Council's PCN was that it was their intention to continue to occupy the site until alternative accommodation could be secured for them. That is perhaps unsurprising given that they had nowhere else suitable to go to and, at that time, there was no enforcement notice in force. At the time of the last appeal Mrs Ayres was renting a Council maisonette in which she had previously lived for some 4-5 years. I can accept that this accommodation did not present a suitable solution to the Appellants' predicament as Mr Ayres has a strong aversion to bricks and mortar living accommodation and if Mrs Ayres had to live separately from her husband it could have an adverse effect on her well-being. Nonetheless, I find it difficult

to understand why the maisonette, which had been kept for some time after both Appellants had moved onto the appeal site, was then surrendered following an appeal decision which had made express reference to the prospect of homelessness. It might at least have provided a short term alternative for Mrs Ayres and the baby.

8. Pulling together all of the above and having regard to comments made by Mr and Mrs Ayres during the hearing I consider that the Appellants have yet to fully accept that there is a need to move, despite the assurances of those acting for them. This must call into question how genuinely they have sought to secure alternative accommodation. Nonetheless, they have made some attempt as I have documentation to indicate that the couple have been making enquiries with land and estate agents, although how sustained that has been is not evident. Mrs Ayres also confirmed at the hearing that they are on the waiting list for the public site at Gypsy Lane but I am told that the wait for pitches at that site is some 3-5 years.
9. Notwithstanding the above, it is clear to me that there is a real and pressing need for more gypsy pitches both nationally and in the local area and both the representative of the UK Romani Gypsy Council and the local Romani Gypsy Liaison Officer described the strenuous and continued efforts made to find suitable sites for this family and others in a similar situation. These have included approaching all organisations that might hold surplus and suitable land and meetings with local authorities including Mendip District Council.
10. The urgent need for more sites and the failure of the planning system to deliver them is recognised in Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites* which was published in February 2006 with the expressed intention of increasing sites so as to address under-provision over 3-5 years. Two and a half years have passed. An assessment of need has been undertaken to inform the Regional Spatial Strategy for the South West (RSS). The report of that assessment, also published in February 2006, identifies a need for an additional 57 residential and 30 transit pitches in Mendip for the period 2006 to 2011. For the Appellants it is said that this is an underestimation because it fails to take full account of those obliged to live in conventional housing. But even if the published figures are accepted (they have not yet been finalised for the purposes of the RSS), there is clearly a substantial need for more sites in Mendip.
11. Time moves on and, about half way through the 5 year period, only 12 additional sites have come forward. Putting aside transit pitches, that leaves some 45 residential pitches still to be found and the Council do not anticipate the adoption of a Development Plan Document (DPD) identifying suitable sites until 2011 by which time it will be time to reassess need for a further period. This does not bode well for the intention of the Circular to address under-provision within 3-5 years. Moreover where there is clear and immediate need as I consider there is in this local authority area, the Circular advises that DPDs containing site allocations are brought forward. At the hearing I was told that while the Council is considering taking some positive action in advance of the DPD there is no commitment to do anything as yet.
12. Despite the Appellants' seeming reluctance to move which I have recognised, I am nonetheless surprised that the Council should consider 9 months sufficient

time for the Appellants to find alternative accommodation knowing as it does the substantial need for more pitches in the area which must raise competition for any suitable site that might become available; being unable to suggest any suitable site that the Appellants might move to; and being aware of the efforts made by the Romani Gypsy Council to identify any potential sites.

Nevertheless, the loss of their home has been recognised as a necessary interference when balanced against the public interest and I do not reach any other conclusion. However, interference which deprives a person of their home with no other alternative readily available and with the real possibility of being obliged to live by the roadside, is severe even when that home has been established in breach of planning control. That has to be balanced against the serious on-going harm to the character and appearance of the countryside, listed building and listed park although that harm can be redressed at the end of whatever period is given.

13. In my opinion, the interference cannot be seen as proportionate unless a reasonable time is given to seek an alternative site, albeit that at the end of the period a suitable alternative still might not have been identified. With the well known difficulties encountered in finding suitable gypsy sites, and the prevailing conditions for meeting the needs of gypsies in the District that I have described, I consider that a longer period than 9 months is justified. Two years as requested, although not sufficient to await the identification of sites in the DPD, would provide the Appellants time to undertake a thorough search for alternative accommodation and indeed during that period there is also the possibility that the Council might, as has been mooted, take some positive action to address the shortage of sites.
14. The Council says that a compliance period of two years would be tantamount to a grant of temporary planning permission but I do not agree. In contrast to a temporary permission; with an enforcement notice in force there is no acceptance that the site is suitable for the use even in the short term. Furthermore, at the end of the compliance period the Council can take immediate action against the use should it be continuing whereas if temporary planning permission had been granted it would necessary to commence enforcement proceedings once the permission expired.
15. It has been suggested in written representations from interested persons that finding a piece of land should be a quicker process than buying a house but that simply isn't so. It is widely acknowledged that finding acceptable sites for gypsies and travellers is a significant problem nationwide, hence the publication of C01/2006 which aims to tackle it. It was further suggested that the Appellants might find a pitch at an existing private gypsy site at Bunns Lane which belongs to an uncle. However, as I understand it that site is limited to two pitches both of which are occupied and there is no reason why that owner should be obliged to accommodate the Appellants.
16. Some of the Appellants' actions to date, such as adding to the development on the site and giving the impression of not having any intention of moving have not fostered good relations with many of their closest neighbours. That is a pity. However, they have made some attempt to find other sites (estate agents visits and registration for the public site) and, perhaps more significantly, others acting on their behalf have demonstrated in good faith their efforts to identify possible sites for this family and for other members of

the gypsy and traveller community in need and to encourage the local authority to identify suitable sites as is required by the Circular. Little progress has been made and an acute need for additional pitches continues. In these circumstances I consider that a period of two years to comply with the enforcement notice is justified and strikes the appropriate balance between the needs of the Appellants and protection of the public interest. Whilst the Appellants' rights under Article 8 of the European Convention on Human Rights (*Right to Respect for Private and Family Life*) are engaged, with a two year compliance period the interference resulting in the loss of their home is proportionate when balanced against the public interest so that there is no violation of those rights. The appeal on ground (g) succeeds.

Formal Decision

17. I allow the appeal on ground (g) and direct that the enforcement notice be corrected by:

- (a) the deletion of the content of paragraph 3 and the substitution therefor of the words "Without planning permission, the use of the Land as a residential caravan site"; and
- (b) the deletion of the content of paragraph 5 and the substitution therefor of the words "Cease the use as a residential caravan site and remove from the Land all caravans and chattels associated with the use";

and varied by:

- (a) the insertion in paragraph 5 of the words "PERIOD FOR COMPLIANCE: Two years from the date on which the notice takes effect."

Subject to these corrections and variation I uphold the enforcement notice.

Bridget M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr B Cox	South West Law Ltd., 1 Hide Market, West Street, Bristol BS2 0BH
Mrs M Smith-Bendall	Romani Gypsy Liason Officer for the South West Region, 1 Bradley Lane, Ashcott, Bridgewater, Somerset TA7 9BH
Mr R Smith	UK Romani Gypsy Council, Charous, Gypsy Lane, Coursing Batch, Glastonbury, Somerset BA6 8JY
Mr M Ayres	Appellant
Mrs C Ayres	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Baker	Team Leader, Development Control
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INTERESTED PERSONS:

Mr H Lucas	UK Planning Manager, Aggregate Industries, Marston House, Marston Bigot, Frome BA11 5DU
Mr R Bonham Christie	Tuck Marsh Farm, Marston Bigot, Frome BA11 5BY
Mrs E Cantwell	The Old Rectory, Marston Bigot, Frome BA11 5DA
Mr R Ayres	Riverside, Bunns Lane, Nr Frome
Mrs P Piper	The Old Laundry, Marston Bigot, Frome BA11 5DE
Mrs M Canale	Home Farm House, Marston Bigot, Frome BA11 5DE

DOCUMENTS

- 1 Letter of notification of hearing date and list of persons notified
- 2 Petition in support of the Appellants
- 3 Extract from the Report of the Panel from the EiP of the Review of Additional Pitch Requirements for Gypsies and Travellers as part of the RSS for the SW submitted for the Appellants
- 4 Photograph submitted by Mr Lucas