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# Appeal Decision

Site visit made on 18 October 2010

**by Ian Radcliffe BSC (Hons) MCIEH DMS**

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

**Decision date: 28 October 2010**

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**Appeal Ref: APP/R1845/D/10/2134362**

**34 Claerwen Avenue, Stourport-on-Severn, Worcestershire DY13 8LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Jeanette Lucy against the decision of Wyre Forest District Council.
  - The application Ref 10/0343/FULL, dated 4 May 2010, was refused by notice dated 5 August 2010.
  - The development proposed is a garden office.
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## Decision

1. I allow the appeal, and grant planning permission for a garden office at 34 Claerwen Avenue, Stourport-on-Severn, Worcestershire DY13 8LW in accordance with the terms of the application, Ref 10/0343/FULL, dated 4 May 2010, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: FPB 34 CL – 001A.

## Main Issue

2. The effect of the proposal on the character and appearance of the area.

## Reasons

3. The appeal address is a semi-detached dwelling located at the end of a residential cul-de-sac. Unlike other houses on the Avenue the front garden of No 34, although of a similar width, is approximately 3 times longer and encloses the whole of the western side of the turning head to the cul-de-sac.
4. The single storey garden office would be located at the southern end of the front garden at the furthest point away from the house. It would be positioned close to the side boundary with No 11 and set back from its front elevation. As a consequence, it would only be visible from the turning head and houses that surround it. The rectangular office would be constructed from timber and orientated so that its narrower gable end would face the Avenue. It would also be set 0.5m below ground level. As a consequence, the building would be comfortably accommodated within the garden space available and would not dominate the plot, or appear as an incongruous feature within the street scene.
5. For all of these reasons, I therefore conclude that the appeal proposal would complement the characteristics of the site and its surroundings. As a

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consequence, it would comply with the objectives of policies D1 and D3 of the Wyre Forest District Local Plan. These policies require the protection of the character and appearance of a locality through high quality design.

6. I note the objections of neighbours on Loweswater Road who would be able to see the gabled roof of the office above their rear fence. However, the distance separating the garden office from the rear of these houses, and the limited height of the office, would mean that the visual impact of the development would not result in demonstrable harm. Furthermore, given that the size of the office would provide sufficient space for only 2 people, and an occasional visitor, the level of activity associated with it would not result in material harm in terms of noise or disturbance.
7. For the avoidance of doubt, and in the interests of proper planning, I shall identify the approved plan in a condition attached to the permission and require that the development is carried out in accordance with this plan. Given the small scale of the development, its setting amongst soft landscaping and its location within the streetscene, it is not necessary in order to make the development acceptable to require that the building is stained green or for landscaping details to be provided. I have therefore not attached the conditions suggested in relation to these two matters.

*Ian Radcliffe*

Inspector



# Appeal Decision

Hearing held on 9 September 2010

Site visit made on 9 September 2010

by **Antony Fussey JP BSc(Hons) DipTP MRTPI**

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:**  
**2 November 2010**

## Appeal Ref: APP/R1845/C/10/2121417

### Land at Rocky Lane, Churchill, Kidderminster, DY10 3LU

- 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 John Edward Small against an enforcement notice issued by Wyre Forest District Council.
- The Council's reference is 10/0057/ENF.
- The notice was issued on 17 December 2009.
- The breach of planning control as alleged in the notice is without planning permission, the creation of an access, the use of the land for the stationing of caravans, the erection of a timber chalet and garden shed for residential purposes, the use of the land for residential purposes, the installation of a septic tank, the laying of a hard standing and the erection of a close boarded 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, timber chalet and garden shed from the land
  2. remove the fence, gravel boards, septic tank and hard standing from the land
  3. remove from the land all building materials and rubble arising from compliance with requirement 2 above.
- The periods for compliance with requirement 1 is 14 days and for 2 and 3 is 21 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

## Decision

1. I direct that the enforcement notice be corrected and varied by
    - a) deleting "garden shed" in section 3 and replacing it by "loose box with attached store";
    - b) deleting section 4.1 and replacing it by "it appears to the Council that the creation of an access, the erection of a timber chalet and loose box with attached store, the installation of a septic tank, the laying of a hard standing and the erection of a close boarded fence have occurred within the last four years, and that the use of the land for the stationing of caravans and for residential purposes has occurred within the last ten years;
    - c) deleting sections 5 and 6 and replacing them by
      - 5. WHAT YOU ARE REQUIRED TO DO**
      - (1) with the exception of the static caravan currently occupied by Mr & Mrs Small and their children, cease the use of the land for the stationing of caravans and remove all other caravans from the land
      - (2) permanently remove from the land the static caravan referred to in (1) above, the timber chalet, fence, gravel boards, septic tank and hard standing.
      - (3) Remove from the land all building materials and rubble arising from compliance with requirement (2) above
    - 6. TIME FOR COMPLIANCE**
    - (1) 14 days after this notice takes effect
    - (2) and (3) Before 31 July 2011
2. Subject to these corrections and variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Matters Concerning the Enforcement Notice**

3. The notice referred to the breaches of planning control as having occurred within the previous 4 years. The appropriate period in Section 171B of the Act relating to a material change of use is actually 10 years. There is no dispute that all the breaches occurred within 4 years, so no party will be prejudiced if I use my powers to vary the notice to take account of Section 171B.
4. At the site visit it was clarified that the "garden shed" described in the notice was in reality a small building containing a loose box with attached store, and currently used for domestic storage. The Council then confirmed that this building, being of equestrian appearance and on land which had received planning permission for equestrian use, was acceptable. It invited me to delete the requirement to demolish this building. I shall vary the notice accordingly.
5. The enforcement notice lists the creation of an access in the breaches of planning control but does not require any works to it. I explained that, under the terms of Section 173(11) of the Act, this under-enforcement has the effect of conferring planning permission for the access provided that the notice is complied with. The same provision now relates to the loose box building.

**Site Description and History**

6. The appeal relates to the appellant's land of around 0.5ha on the southern side of the C class Rocky Lane, about 80m west of the garden of Glebe House, the nearest property in the settlement of Churchill. Until the development began, a tall largely hawthorn hedge some 40m long occupied the site's frontage. Its eastern section has now been removed to create a splayed access with tall solid gates, on either side of which are runs of tall close-boarded fencing.
7. The access opens into an area largely covered with hardcore, bounded on the east and south by post and rail fences, some with low conifer planting. The fenced area extends westwards to a tall hedge next to a public footpath running southwards from the lane, then across the lower slopes of Churchill Hill towards the village church. Within the appeal site, a length of tall fencing fills gaps in this hedge, including across the original field gateway. Paddocks beyond the post and rail fencing comprise the remainder of the appeal site.
8. I saw a large static caravan, housing the appellant and his family, behind the western length of laneside hedge. Behind the fence to the west of the access was a large touring caravan which I was told was the home of Mr Jones (the appellant's brother-in-law) and his family since January 2010. A timber building in the site's south-western corner, close to the footpath, contains a large sitting, kitchen and dining area, with a separate storage area and utility room / bathroom. Further south is the loose box/store, which contained domestic items including many toys. An electricity generator was south of this building. Some play equipment and several vehicles, including a transit van, were on the surfaced area. The septic tank is in the southern part of this area.
9. A former owner received planning permission to use the land to keep horses in April 2005. The appellant carried out the appeal development during or after the 2009 August Bank Holiday weekend. He says that he had heard of the land through contacts in the gypsy community and bought it about 3 years before; this does not tally with Land Registry information that the sale was not completed until mid 2010. Be that as it may, he said that he, his wife and 2 children had been living on an industrial estate in the Newport or Bristol area

(without being more specific) after being in Cornwall. His wife was 5 months pregnant at the time and experienced complications and swine flu; they had to move at short notice so that a scan and medical help could be obtained. His other children's birth certificates showed his address as being at South Cerney, Gloucestershire, but he said that this was his parents' site and was used purely for correspondence.

10. This claimed scenario is unconvincing, given the clear need for detailed forward planning required to arrange for the various elements of the development to come together over a specific holiday weekend. In particular it became evident that his son Noah was born in April 2010; this does not tally with the claimed state of his wife's pregnancy in August 2009, said to have justified a sudden decision to develop the site without time to contact the Council first.
11. Photographs show up to 4 caravans and 5 commercial vehicles on site but the evidence about other occupiers was unacceptably vague. It seems Mr Short was first joined by Mr Stevens, his 21 year old cousin, who I was told helped with Mrs Short's pregnancy in place of her mother, who at one time was to live on site over that time. However the appellant did not know where he had been before, even though at one stage he was intended to live there. He moved off "some time ago"; the appellant did not know where to. Mr & Mrs Jones came in April but surprisingly he did not know from where. At the beginning of the hearing he said that he sought permission for 2 caravans to house both families, but during the site visit he said that the Jones family would move off if he and his family could stay, but did not know where they would go to.
12. In the light of this information, I am now assessing the appeal under ground (a) as relating to a single caravan for a single family. However I note that a retrospective application, refused in December 2009, sought approval for 3 caravans and the ancillary building.

### **The Appeal on Ground (a)**

13. The site lies in the West Midlands Green Belt. The appellant confirmed that the development is inappropriate in terms of the development plan and guidance in Planning Policy Guidance 2 "Green Belts" (PPG2). He further accepted that it reduces the openness of the Green Belt, which PPG2 says is its most important attribute, and also conceded that it encroaches into the countryside.
14. Accordingly the main issue in this appeal is whether the acknowledged harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### **Gypsy Status**

15. The Council does not dispute that the appellant and his family are "gypsies" as defined in Circular 1/06 "Planning for Gypsy and Traveller Caravan Sites". The appellant told me that he travels regularly "from one end of the country to the other" and lived on the roadside since 2002. The officers' report on the refused application refers to information that the family travelled widely through the South West, Kent, Sussex, Lancashire, Shropshire and Herefordshire.
16. I was told that he is a painter and decorator, travelling widely to established customers and those found by delivering flyers door-to-door. I sought to establish recent travel patterns; he said that the previous week he worked in

Kidderminster, after being in Norwich for 2 weeks. Before that he had worked in Cheltenham and Kingswinford. Mr Jones works with him and also does tree work. He had worked in Essex before coming to the site, but was away from April to early September. From the information given, it seems to me that they are both indeed "gypsies" in planning terms.

17. Mr & Mrs Short's parents live in Gloucestershire and Somerset and Mrs Short has an aunt in Telford. I was told that, after moving to Churchill, an uncle and other relatives living in Kidderminster and Stourport revealed themselves; neither had been previously aware of them. There are some loose family links, but I consider that their nature, together with the very dispersed travelling and work patterns, means that the site occupiers' local connections are tenuous. In fact they could argue such connections with many parts of the country.

### ***The Policy Framework***

18. After the submission of the appeal, and much of the material from the main parties, the Secretary of State revoked the West Midlands Regional Spatial Strategy (RSS). I have therefore taken no account of the references to the RSS in the various representations received.
19. The appeal site is in the open countryside in an area where new housing would contravene the principles of Wyre Forest District Local Plan (WFDLP) policy H2. None of the exceptions in policy H9 apply here. Moreover, policy H15 i) shows that the criteria for new gypsy sites apply to gypsies residing in or habitually resorting to the District. The tenuous local connections before the occupiers moved on cause me to agree with the Council that the policy's provisions do not relate to them. In addition, the emerging Local Development Framework (LDF) Core Policy 6 gives preference to allocating gypsy sites on previously developed land within settlement boundaries. Such a greenfield site outside any settlement and in the Green Belt would not be allocated under this policy. The breach of the extant and emerging development plans is a factor to add to the harm by reason of inappropriateness in the Green Belt into the balance.
20. It is appropriate here to address Circular 1/06. Shortly before the hearing opened, the Secretary of State announced his intention to revoke and replace it. The appellant argued that this announcement has no weight in this appeal without any timescale or a statement that the expressed intention should be a material consideration when determining applications and appeals. In reply, the Council suggested that the development plan now has greater weight in relation to the Circular. As the Circular has not yet been revoked and replaced, it continues to have weight (except where it refers to the now revoked RSSs), although this weight is tempered by the announced intention to replace it.
21. The revocation of the RSS places greater weight on each council's own assessment of need. Without a regional dimension for provision, it seems to me that significant weight is now given to assessments of pitch requirements determined locally and based on demand arising from within each council area. There is a conflict between policy H15 and the Circular's advice that local connections are unnecessary but I consider that the RSS's revocation must increase the weight of policy H15's requirement for local connections.

### ***Impact on the Surroundings***

22. The appeal site is in attractive open rolling countryside outside any settlement. The appellant accepts that the site encroaches into the countryside but I agree

- that extant guidance is that gypsy sites are not in principle out of place there and do not need to be completely hidden. The appellant cites an appeal decision acknowledging that any gypsy site in the countryside is likely to have some adverse visual impact. However this corollary of national guidance does not mean that all sites in the countryside will be visually acceptable.
23. I do not agree that this site is not easily seen from public viewpoints; in particular, it is next to a busy road and a public footpath. Hedgerows characterise the surrounding area and removing this one has significantly harmed the landscape's character. This has been compounded by the prominent and highly inappropriate gates and fence which created an urban appearance, significantly harming this lane's rural character. The fencing is also very prominent in views from an elevated part of what seemed to me to be a well-used public bridleway to the north of the lane, from where I saw the top of the touring caravan above the fence.
  24. The fence is likely to remain to provide privacy and security. Currently it largely screens the site, but lowering or completely removing it would make the caravans, vehicles, buildings, domestic paraphernalia and large surfaced area very obtrusive, especially in comparison with the former open paddock. The rest of the hedge, when in leaf, at present provides some screening from the lane, and hides the static caravan. However its removal to improve visibility (discussed below) would significantly harm the character and appearance of the area, whether the boundary is left open or more fencing replaces the hedge.
  25. Replacement planting would require the fencing to be set back but it is clear to me that new planting would take time to mature and effectively assimilate the site into the landscape. I find that in the short or medium term the site is not screened, or capable of being screened, or be integrated into the natural landscape. For this reason it breaches Worcestershire County Structure Plan (WSP) policy D18, WFDLP policy H15 and LDF Core Policy 6.
  26. The site significantly harms the character and appearance of its immediate surroundings and the visual amenity of the Green Belt. While gypsy sites need not be completely hidden, the impact of this one and its associated fencing is in my view so harmful in this prominent position adjacent to a busy road as to breach WSP policies SD2 and CTC1, and WFDLP policies GB6, LA1, LA6, D3, and D5.
  27. Residents also allege harm to setting of the Churchill Conservation Area, whose boundary here includes Glebe House's garden. There is a very high hedge along this line, but I could see the site from the garden through a gateway in a gap in the hedge. However this is not a public viewpoint, and the view is only available from a restricted area.
  28. Widespread views are indeed available from Churchill Hill, in the Conservation Area, but I could not see the site from the public footpaths on it. Photographs supplied showed that in February it is seen from the hill but, even if they were taken from a public footpath, it appears that a telephoto lens was used, and exaggerates the impact. In any event, if the existing development could be seen in some months from parts of the hill, to my mind it would be only a small element in the total landscape. In my opinion it is not so obtrusive as to be unacceptable in views to or from the Conservation Area. It has no material effect on the Area's setting and does not breach WFDLP policy CA1.

***Sustainability***

29. This matter was raised by local residents. There appear to be few community facilities in Churchill and the site is clearly away from services and facilities. However I take the point that if gypsy sites are acceptable in principle outside settlements, arguments of sustainability may have less force. Nevertheless the lane's characteristics, involving the need to walk in the carriageway through a cutting, mean that there is no safe and convenient pedestrian access, contrary to WFDLP policy H15 ii b.
30. I was told that a proposed amendment to LDF Core Policy 6 would require local facilities and services to be easily reached by a variety of transport modes. The poor pedestrian access and the lack of public transport means that this criterion would not be met were it contemplated to allocate this site in the LDF.

***Impact on Highway Safety***

31. This matter was not a reason for serving the enforcement notice but was raised by local residents. Part of the objection was to any access here but, as set out above, the Council has chosen not to enforce the closure of the access; the principle of the new access is not before me. Indeed the officer's report into the refused application indicates that an access in this position was approved in 2005 (but no details were provided to me). In these circumstances, I must accept some level of use, for either agriculture or the approved horse keeping.
32. Rocky Lane is narrow, winding and has no footways, but is a short cut between the A451 and A456; surveys show daily use by around 5,000 vehicles. The length outside the site is subject to the national speed limit but I was surprised at the volume and speed of traffic in the light of the lane's nature. In addition, Rocky Lane's continuation was closed at the time of my visit and a diversion operated; this would in my view have reduced normal traffic volumes. The highway authority says that there have been no recorded injury accidents within 3km of the site within the last 18 months, but local residents refer to regular accidents; in any event it does seem to me that the volume and speed of traffic on this length of lane have produced a hazardous situation. In these circumstances, adequate visibility is essential.
33. When assessing visibility requirements, it is common and acceptable practice to base highway design on measured 85 percentile speeds, even though this obviously means that some vehicles will exceed this figure, perhaps at times significantly. The County Council's survey shows 85 percentile speeds of 43mph in both directions. Mr Tucker's survey shows a slightly higher figure, but he "broadly agrees" that 70kph is the appropriate design speed here. This would require a 'y' distance of 120m in both directions, based on the Design Manual for Roads and Bridges (DMRB).
34. An appeal decision in Kent (Mr Brown's appendix 4) found visibility of 80m, based on Manual for Streets' (MfS) stopping sight distance of 70m, to be appropriate, but that decision concerned a road that was "not heavily used". MfS may be appropriately applied to lightly trafficked rural lanes, but Rocky Lane is very busy. Having experienced the nature of the traffic on it, I find visibility based on MfS would be dangerous here and that the DMRB's figure is more appropriate.
35. I established that existing visibility is well below this standard; from an 'x' distance of 2.4m, visibility of 41m to the left was demonstrated; to the right it



was 72m. However it seems to me that the low number of vehicle movements which are reasonably expected from a small gypsy site makes a 2m 'x' distance appropriate. This increases the 'y' distance to the left to 49m; a view to the right is available to the crossroads. In these circumstances, existing visibility to the right is acceptable, and seems to involve only land in the highway.

36. The situation is very different to the left. To achieve closer to a 120m 'y' distance would require the rest of the frontage hedge to be removed. Even then, Mr Tucker's unchallenged survey shows that only 2.4m x 104m could be obtained without involving third party land. The highway authority agreed that 104m would be acceptable as the vehicles involved would be on the other side of the road. However I agree with Mr Tucker that the appropriate standards are measured along the carriageway edge on the same side as an access, not along the opposite edge. 120m could not be achieved without affecting land which is outside the highway or the appeal site. I am not satisfied that the appellant could comply with the recommended condition to provide and maintain this visibility standard.
37. It seems to me that reducing the 'x' distance to 2m would only have a marginal effect to the left; visibility would still be below the 120m. However, in view of the approval of an access to an equestrian use, and the under-enforcement of the current access, I consider that the increase in visibility created by removing the entire hedge would make the access safer. In these circumstances I find that the use of an improved access to serve a small gypsy site would not cause material detriment to highway safety or breach WFDLP policy TR9.
38. However, adequate visibility could only be achieved by removing the remaining part of the laneside hedge. I find that the highway safety benefits of doing so would be far outweighed by the resulting significant visual harm.

### **Arguments of Very Special Circumstances**

39. PPG2 says that "*inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations*".
40. The appellant argues that there is an unmet need for gypsy sites in the District, there are no alternative sites and little prospect of providing them through the LDF process, and also cites the family's personal circumstances.
41. There are 2 public gypsy sites in the District, both fully-occupied, and a long waiting list for all sites in Worcestershire. The Council agreed that there is an unmet need for sites in the District and no lawful or "tolerated" site for the appellant there. Given the RSS's revocation and the indication that, as a result, numbers of new pitches should be set locally, where a Council reviews the level of provision a Gypsy and Traveller Accommodation Assessment (GTAA) is a good start point. The 2008 GTAA found a need for 30 additional pitches in Wyre Forest during 2008-13, largely due to overcrowding and household growth arising on existing sites. However the Council accepts that in total 35 more pitches are needed by 2017. It seems to me reasonable to use this figure as a basis to assess the level of need arising in the District.
42. Towards this figure, 8 pitches have recently been permitted on a site at Stourport. A current application for another 8 at "Saiwen" in Stourport

- involves a "tolerated" site which has already been occupied for over 10 years. The Council said that this generally complies with policy, but the ownership of the access is uncertain. Nevertheless it seems to me appropriate to consider this as a possible resource towards meeting the assessed need. I recognise that, set against this, 2 caravans at Mustow Green will cease to be authorised when their temporary permission expires in 2012.
43. These details indicate that a rolling 5 year supply has not been identified, whether based on 30 pitches by 2013 or 35 by 2017. However, it seems to me that distinct progress is being made towards achieving the locally identified level of provision. The Council feels that additional sites could come though the LDF's Allocations Development Plan Document; it anticipated adoption in 2012. It did not know when allocated sites would become available, but in my view it is unlikely that this would happen before 2013. The 2017 timescale seems, however, more realistic. I note that 43% of the District is outside the Green Belt, so it is likely that any allocations in the LDF will not be in this area.
  44. The Council agrees that there is an unmet need for pitches. However the strong indication of progress towards meeting it within the likely timescale following the revocation of the RSS in my view reduces the weight it has.
  45. The appellant is not required to prove he has exhausted the possibilities of alternative sites but local residents discovered that there are vacancies on 4 Council sites in Herefordshire. However it appears that he does not wish to be on any Council site and aspires to have a pitch where he can keep commercial vehicles, horses and several dogs. These features are more of an ideal desire than an essential need, and it is not unreasonable to settle for less than the ideal. For example, in my experience many gypsies keep their horses some distance from their residential sites, and the reported restrictions on horse keeping on Council sites in Herefordshire have not deterred other gypsies from living on them. Indeed, the appellant said that he kept horses on the appeal site before moving there, despite living a considerable distance away.
  46. He said that he has no family connections with Herefordshire, but the same point could have been made about this site when he first moved on, when he believed that his nearest relative was in Telford. His view that Herefordshire is away from his travelling routes does not tally with the list given when the application was submitted. Indeed, his travel patterns and the dispersed family (with parents on sites in Gloucestershire and Somerset) show that his connections are widespread and that his needs could be met within a wide geographical area. Indeed, I note that he would have been prepared to move to a site at Evesham if the neighbour bought it for him. This indicates to me that such a site would have been suitable for him and that his needs or even desires are not limited to this site, or indeed to the Wyre Forest.
  47. I also note that a neighbour had found a pitch on a commercial site at Hampton Loade, a few miles away, negotiated a sale for much less than the appellant paid for the appeal site, and had reserved it for him. That site also had other available pitches for family members. The appellant gave no details to support his claim that the site was unavailable for gypsies and travellers (even if such a prohibition were legally possible). Indeed, when reserving the pitch for him, the neighbour was told that occupancy was not restricted. It was accepted that Hampton Loade has no room for touring caravans, but the appellant is now not seeking permission for any. He claimed that Hampton Loade allows no

- commercial vehicles or animals, but the neighbour has seen some there, and said that in fact the current owner of the plot in question keeps dogs.
48. The appellant agreed that he has not sought to go on a waiting list for any Council site; indeed he would actually refuse one if it were offered. Even so, there appear to be alternatives in the District and the wider area, although perhaps not meeting all his aspirations. An unchallenged report of a telephone conversation with a neighbour indicated that he would be prepared to move away if given £150,000. This compares well with the very recent purchase price of £60,000, which is said to have included a car worth £30,000. Whether or not this stance is reasonable is not for me, but it does indicate that, if an appropriate offer is made, the appellant is not limited to the appeal site. I also note another unchallenged conversation transcript that he can obtain finance.
49. From the above details it seems incorrect that there are no alternatives to this site and the consequent harm I have found that it causes.
50. It seems that the claimed urgency of Mrs Short's pregnancy has now passed. The family is now registered with a local doctor, but this postdated the move. I accept that gypsies on the roadside may find it difficult to access doctors, but I note that the family used the hospital nearest South Cerney when necessary. Even if indeed that was only a correspondence address, I am not persuaded that they could not register from there. Moreover the expressed need for support from Mr & Mrs Jones does not tally with their agreement to leave.
51. At the time of the application, the nearest family members were said to be in Telford but some living in Kidderminster revealed themselves later. While it may be pleasant to be near some relatives, even though distant, I consider that, in terms of close family ties, there is no essential need to be on this site, or even in this county.
52. The appellant's eldest son is a "rising five" and started school at Wolverley, some 3 miles from the site, a few days before the hearing. Given the very short timescale, I am not persuaded that this is an overriding justification to be on this site for any appreciable period. It is not unusual for children from the settled community to move schools and I do not consider that this, or any of the personal circumstances advanced, are exceptional or of any great weight.

### ***Other Material Considerations***

53. The site could be seen from Glebe House itself when the boundary hedge is not in leaf, but developments which are accepted as appropriate in the Green Belt, such as farm buildings, could also affect its outlook. Conditions can control external lighting and I am not persuaded that noise from the generator or vehicles, originating close to a busy road, would have a materially adverse effect on neighbours. I appreciate that they are also annoyed by such matters as a failure to control dogs and the circumstances when the development took place. However it seems to me that Glebe House is so far away that the impact on its residents' outlook and living conditions is not so harmful as to of itself justify dismissing the appeal.
54. Some letters of support were submitted at the hearing but I note the high volume of objections, caused at least partly by annoyance at the sudden development without any prior consultation or warning. I can also appreciate that the appellant's actions do not help any integration into the community. However the mere fact that a development is unauthorised, while unadvisable,

does not thereby make it unacceptable; the Act specifically provides for developments to be considered retrospectively.

55. I agree that some other points raised, such as the substandard installation of the septic tank and any impact on wildlife, could be mitigated by conditions.
56. I recognise that if the appeal is dismissed it would interfere with Mr and Mrs Small's home and family life in terms of Article 8 of the European Convention of Human Rights in that they would then have to leave the site. However this has to be weighed against the wider public interest. For the reasons given above, I have found that this development is harmful to the Green Belt and the need to protect it and the countryside. I am satisfied that these legitimate aims can only be adequately safeguarded by the dismissal of the appeal. On balance, I find that such dismissal would not have a disproportionate effect on Mr and Mrs Small. For these same reasons, I also consider the interference with their peaceful enjoyment of their property is proportionate, and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.

### ***Conclusions on Ground (a)***

57. On balance, the level of unmet need has material weight, but this is reduced by the progress towards meeting it, even in advance of the LDF process, as does the possibility of alternative sites being available for the family in the District or further away. I have also found their personal circumstances and local connections to have little weight. Against these is set the substantial harm to the Green Belt by reason of being inappropriate, the harm to the character and appearance of this attractive area and the openness of the Green Belt, the unsustainable location and the poor pedestrian access.
58. The appellant accepted that none of the considerations he raised are strong enough to individually outweigh the harm to the Green Belt; I agree. However in my opinion this harm, and the other harm caused, is so great that the considerations advanced do not collectively clearly outweigh it either. From this, I conclude that they do not amount to the very special circumstances required to justify this development in the Green Belt. As a result, there is a clear breach of WSP policies D12 and D39 and WFDLP policies GB1 and H15 and guidance in PPG2. The development also contravenes extant advice in Circular 1/06 that alternative locations should be explored before those in the Green Belt are considered.
59. As an alternative to dismissal, the appellant sought a temporary planning permission of at least 3 years. However in my opinion this would unnecessarily prolong the significant harm which the development causes to the Green Belt and this attractive area. Nor do I consider the considerations advanced to be strong enough to justify a temporary permission. I shall therefore dismiss the appeal on ground (a).

### **The Appeal on Ground (g)**

60. Under this ground the appellant seeks a period of 18 to 24 months for the prospect of alternative sites to become available through the LDF process. However it does seem to me that some are currently available to meet his needs, although perhaps not his ideal desires, and that in the circumstances of this site such a period would be unreasonable.

61. However I consider that the compliance periods given in the notice are too short. I appreciate that the site was developed quickly, but it is clear to me that this was planned well in advance and not on the sudden impulse implied by the appellant. Although it would be physically possible to remove the caravans and fencing very quickly, I consider that more time is needed to arrange the other works.
62. I accept that gypsy families have poor educational experiences, and consider that disruption to the schooling of the appellant's son ought to be minimised, even though it began so recently. The notice's compliance periods would be likely to mean that he would be taken out of school during his first term. A more reasonable period to carry out the works would still interrupt his first year and to my mind it would be fairer to him to give enough time for him to finish the school year. I shall therefore extend the compliance period until the end of July 2011. This will minimise disruption to his education and give the appellant ample time to arrange the necessary works and find an alternative site, perhaps one of those mentioned at the hearing. These points only relate to Mr & Mrs Small and their children; I see no reason why the other occupants of the site should not move off within the notice's existing compliance period, especially as Mr Jones has agreed to do so. The appeal on ground (g) succeeds to this extent.

**Conclusion**

63. For the reasons given above I conclude that a reasonable period for compliance in relation to the appellant and his family would be until 31 July 2011 and I am varying the enforcement notice accordingly, together with other corrections and variations, prior to upholding it. The appeal under ground (g) succeeds to that extent but otherwise the appeal should not succeed and I refuse to grant planning permission on the deemed application.

*Antony Fussey*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA(Hons) MRTPI     Managing Director, Philip Brown Associates  
Mr J E Small                             The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs J Mellor                             Principal Development Control Officer, Wyre Forest  
District Council  
Mrs J Alexander                         Wyre Forest District Council  
Mr B Sharp                                 Development Control Team Leader, Environmental  
Services Dept, Worcestershire County Council

FOR CHURCHILL AND BLAKEDOWN GREEN BELT PRESERVATION

Mr R G W Jones, BSc(Hons)     Director, Tyler Parkes Partnership  
MRTPI  
Mr S J Tucker BSc(Hons)     Director, David Tucker Associates  
MCIHT  
Mr A D J Allan MRICS

OTHER INTERESTED PERSONS:

Cllr P Hayward                         Ward councillor, Wyre Forest District Council  
Mr J W Long                             Churchill and Blakedown Parish Council  
Dr P King                                 Representing Hagley Parish Council and the Council  
for the Protection of Rural England (Bromsgrove  
and Wyre Forest Group)

DOCUMENTS SUBMITTED AT THE HEARING

- 1     Letters of support submitted by Mr Brown
- 2     Copy of register of title
- 3     Character Appraisal for Churchill Conservation Area



## Appeal Decision

Site visit made on: 30<sup>th</sup> September 2010

**By: Jim Unwin BSCFor MICFor FArborA CEnv.**

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

Decision date: - 1 NOV 2010

Appeal Ref: **APP / TPO / R1845 / 1371**  
At: **No.6 Imperial Gardens, Kidderminster, DY10 2BB.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Mr Kieran Turrall, against the decision of Wyre Forest District Council.
- The application Ref: 10/0334/TREE dated 8 June 2010, was refused by notice dated 30 July 2010.
- The work proposed and appealed is refusal of consent for felling one Wellingtonia tree, T1 of the TPO.
- The relevant Tree Preservation Order (TPO) is the *Wyre Forest District Council (Land at "Windy Ridge", Chester Road North, Kidderminster, Worcestershire) Tree Preservation Order*, which was confirmed on 31 July 2006.

### Decision

1. I dismiss the appeal to fell one Wellingtonia tree, T1 of the TPO, standing in the rear garden of No.6 Imperial Gardens.

### Main Issues

2. I consider the main issues in this appeal are:
  - the impact the proposal would have on the appearance and character of the locality, and
  - whether the reasons given for felling the Wellingtonia are sufficient to justify that course of action.

### Reasons

- ***The impact the proposal would have on the appearance and character of the locality.***

#### *Character of the locality*

3. Imperial Gardens is a new residential development about 1.3m north east from Kidderminster Town centre, within a largely mature residential area. It comprises eight compact houses in varied sized plots: No. 5 has a large plot, but others are small. It is set on the north-east corner of a plateau which drops abruptly east to the A449 Chester Road North in a sandstone cutting,

and north down other, older, domestic plots into a valley. The far side of the valley is entirely residential rising up Sion Hill.

4. South east of Imperial Gardens, also on the plateau, are eighteen single-storey houses arranged around Waverley Close. To the west and south of Imperial Gardens are long rear gardens of Imperial Avenue.
5. No.6's house is set centrally in the plot, with small open lawn and parking comprising the front garden to its north. The enclosed rear garden is small, about 12.6m long, tapering south from about 8m wide behind the house, to 4m wide across the rear boundary.

*Local tree cover*

6. The corner of the plateau between Imperial Avenue and Chester Road, and as far as Hurcott Road to the south including Waverley Road, contains few trees of any stature.
7. Significant trees within the same visual area as the appeal tree include a Leyland cypress about 14m tall located about 45m south west from the appeal tree, a row of small 6m-tall Lawson cypresses 15m south of the appeal tree, and a sycamore and gum tree (*Eucalyptus* species) 15-18m tall about 70m south of the appeal tree.

*Amenity value of the appeal tree*

8. I measured the appeal Wellingtonia to be 15m tall, with a narrow and deep conical canopy. This has radial spread of 3.1m to 3.3m. The Wellingtonia is completely isolated from any other trees.
9. In views west from all parts of Waverley Close access road and its footways, the appeal tree is a prominent and solitary skyline feature prominently seen above low houses. I was also able to see the appeal tree clearly in long distance views south from the large residential area rising up Sion Hill, particularly off Upton Road.
10. The appeal tree is not visible from Imperial Avenue. However, I am confident it is a clearly-seen skyline feature in views east and north from rear windows along the road's eastern side, and from rear gardens along its eastern side.
11. I agree with the local authority that the Wellingtonia is an important local landscape feature. I also place significant weight in my decision on the young age of the tree. It could increase significantly in size, with increasing visual prominence as it grows.
12. The tree has been retained as part of the newly-built Imperial Gardens, which contains few trees. Although set on the southern edge of the development behind houses, it does help to soften the raw appearance of the new houses with new soft landscaping in views along its approach road off Imperial Avenue.



*Impact of tree removal on local visual amenity value*

13. Removal of the appeal tree would cause a significant loss of local visual amenity value within this residential part of Kidderminster. I consider strong justification would be required to remove the appeal tree.

- ***Whether the reasons given for felling the Wellingtonia tree are sufficient to justify that course of action.***

*Location of tree in the rear garden*

14. I have some sympathy for the appellant and his family whose small rear garden contains a medium-sized evergreen tree, which has the potential to grow much larger. The tree is located 8.2m south of the house, and 4.4m from the rear boundary, so overhangs the southern half of the garden.

15. No.6 and adjacent houses are recently built (around 2008) with the appeal tree in situ. Therefore I am confident the foundations will have been designed to tolerate present and future tree root growth, using a foundation design specified in National House Building Council (NHBC) Chapter 4.2 "Building near Tree", or a similar advisory document. Additionally, I observed the local geology to be sandstone, indicating that houses are unlikely to be underlain by shrinkable clay soil. Therefore, in the absence of any evidence, my observation assures me that the potential for root impact on adjacent houses is negligible.

*Safety*

Wellingtonia is a species noted for its stability, which very rarely blows over even in the strongest gales. The appeal tree has grown exposed to wind from an early age, so will be wind-firm. I place some weight in my decision on the very low hazard the tree poses to the house or its occupants at the present time, and even when it grows larger.

16. Any tree can shed branches, and I accept that children may play under the tree. The appeal tree is finely branched, but will shed small branches, either dead ones shaded inside the canopy, or live ones during gusty conditions. Occasional maintenance by a tree surgeon can remove dead and defective branches (subject to local authority permission to remove live branches). Therefore, the hazard posed by falling branches can be maintained at a low level. I also note that the base of the canopy is quite low, at about 3.5m above ground, so retained low branches act as a buffer between the ground and any branches falling from higher up the tree.

*Detritus from trees*

17. I accept that excrement from pigeons roosting in the appeal tree will require extra work to wash away from rear garden and garden play equipment, in order to avoid its build up and associated health hazards. I agree that needles and cones also require clearing away, which is a chore. I have sympathy with the extra work these cause in the end of the garden, but I cannot justify removing a healthy tree on this basis.

18. There are options to control debris before tree removal. One option could be a fine mesh canopy under the tree, above the rear garden, to collect or deflect

debris. Another would be to re-model the rear garden to reduce usage of the part under the tree.

19. Overall, the objective justification to remove the appeal tree falls short of evidence required to remove a healthy tree of high amenity value.

**Conclusions**

20. I consider this Wellingtonia T1 is a healthy tree, and provides high landscape value as an individual tree, to its residential surroundings in north-east Kidderminster.

21. I have sympathy with the subjective concerns caused to the occupants of No.6, regarding safety and damage to house foundations, caused by retention of a potentially-large tree in a small domestic garden.

22. I have sympathy with the issues caused by mess from birds and falling debris into the rear garden of No.6, and the reduced utility of the rear garden.

23. However, these fall short of justification to remove the tree.

24. For these reasons, I dismiss the appeal to fell the appeal Wellingtonia T1, standing in the rear garden of No.6 Imperial Garden, Kidderminster.

*Jim Unwin*  
**Arboricultural Inspector.**



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# Appeal Decision

Site visit made 3 November 2010

**by M J Single DipTP MRTPI**

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

**Decision date: 9 November 2010**

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**Appeal Ref: APP/R1845/D/10/2137429**

**8 Newton Close, Bewdley, Worcestershire, DY12 2PZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs Carson-Brown against the decision of Wyre Forest District Council.
  - The application Ref 10/0359/FULL, dated 14 June 2010, was refused by notice dated 20 August 2010.
  - The development proposed is a kitchen extension at front of dwelling.
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## Decision

1. I allow the appeal, and grant planning permission for a kitchen extension at front of dwelling at 8 Newton Close, Bewdley, Worcestershire, DY12 2PZ in accordance with the terms of the application, Ref 10/0359/FULL, dated 14 June 2010, subject to the following conditions:
  1. The development hereby permitted shall begin not later than three years from the date of this decision.
  2. The development hereby permitted shall be carried out in accordance with approved Plan No 1.

## Main issue

2. The main issue in this appeal is the effect of the development on the street scene and its relationship in design terms to the existing property.

## Reasons

3. Newton Close is a cul-de-sac of about a dozen link-detached dwellings of virtually identical original design. Although some of the dwellings are set on a staggered building line the somewhat undistinguished and repetitive appearance of the street scene is relieved by touches of individuality applied to some of the properties in the close. These include modest extensions and alterations to the front of dwellings, that at no.11 opposite being of similar design to the appeal proposal, but larger. Whilst I note the Council's submission that other similar extensions on the estate were granted permission prior to adoption of the Council's Design Supplementary Planning Guidance I do not find the extension opposite to be unduly prominent in the street scene or incongruous.
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4. When viewed from the entrance to Newton Close, the appeal property is set back further from the road than nos. 2 to 6, not as shown on the submitted plan. This being so its appearance in the street scene would be similar to the extension opposite, being screened to a degree by neighbouring dwellings. It would, I accept, stand forward of its immediate neighbours, which share the same building line, but I do not consider the building line in a development of this character to be sacrosanct. The extension would not project so far forward that it would appear out of proportion with the host dwelling and would be finished with a gabled roof and matching external facing materials. To gauge its impact in the street scene it is notable that the extent to which it would stand forward of the dwelling would be the same as the existing distance between the garage door and the front of the house. Judging by the scale given on the drawing submitted with this appeal this would not be as much as the Council report suggests. When viewed from the end of Newton Close the extension would be seen against the side wall of properties that stand further forward and would not appear out of place.
5. The Council's Local Plan Policies D.1 and D.3 seek to ensure that new development is of satisfactory design and harmonious with its surroundings. Whilst it would mean that no. 8 would be of different design to the neighbouring properties it would cause absolutely no harm, in my judgement, to the street scene or the appearance of the existing dwelling. Indeed the adjoining property has been significantly altered with a large two storey side extension. I find that the proposed development would be subservient to, and reflect the scale and architectural character of the original, and would not conflict with the criteria in Policy D.17.
6. The Council has not suggested the imposition of conditions so I have attached the standard time condition and reference to the approved plan.

*Martyn Single*

INSPECTOR