WYRE FOREST DISTRICT COUNCIL

Planning Committee 11 January 2011

PLANNING AND ENFORCEMENT APPEALS

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1366 09/0588/OUTL	APP/R1845/A/10/2128377/NWF	Arab Investments Ltd	FORMER CARPETS OF WORTH FACTORY SEVERN ROAD Redevelopment of site to provide a mixed use development consisting of 159No. residential properties, Class A retail uses, Class B employment, Class C1 hotel and Class D2 assembly & leisure (outline)	HE 18/05/2010	29/06/2010			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1369 10/0316/TREE	APP/TPO/R1845/1385	Mr Robert Farr	4 IMPERIAL GARDENS KIDDERMINSTER DY102BB Reduce tree situated in rear garden	WR 07/09/2010			08/11/2010	Allowed With Conditions 30/11/2010
WFA1371 10/0155/CERT	APP/R1845/X/10/2135944	Mr N Newman	44 PARK LANE KIDDERMINSTER DY116TE Certificate of proposed lawful development:- Erection of three storey rear extension	WR 15/09/2010	27/10/2010			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1372 10/0147/FULL	APP/R1845/A/10/2137213/NWF	Mr S Mahoney	GROVE FARM DRY MILL LANE DOWLES BEWDLEY DY122LQ Change of use of redundant agricultural building (milking parlour/barn) to form 4 no. two-bedroom residential units with associated access and parking	WR 29/09/2010	10/11/2010		06/12/2010	
WFA1374 08/1056/CERT	APP/R1845/X/10/2137298	Mr D Warren	8 BRIAR HILL CHADDESLEY CORBETT KIDDERMINSTER Certificate of Lawfulness Application for a proposed rear extension	WR 01/10/2010	12/11/2010		10/01/2011	

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1375 10/0274/FULL	APP/R1845/A/10/2138592/NWF	Mr J Matthews	OXBINE CALLOW HILL ROCK KIDDERMINSTER DY149XB Demolition of existing bungalow and replacement with 3No dwellings (amendment to schemes previously approved under applications 09/0505/FULL and 09/0506/FULL	WR 19/10/2010	30/11/2010		06/01/2011	
WFA1376 10/0500/FULL	APP/R1845/A/10/2140347/NWF	Mr G Attwood	ROBIN HOOD DRAYTON ROAD BELBROUGHTON STOURBRIDGE DY9 Re-Erection of former pig-sty in form previously approved under consent 10/0323 for use as an outdoor bar area	HE 17/11/2010	29/12/2010			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1377 10/0475/FULL	APP/R1845/A/10/2142256/NWF	Mr Russell Stevens	PARKHALL BIRMINGHAM ROAD KIDDERMINSTER Erection of timber framed building for storage of marquees and associated fixtures and fittings (Resubmission of 10/0141/FULL)	WR 14/12/2010	25/01/2011			
WFA1378 10/0205/FULL	APP/R1845/A/10/2142317/WF	Mr J Atkinson	ADJACENT TO 140 BEWDLEY HILL KIDDERMINSTER DY116BT Erection of a detached dwelling, creation of rear access with garage	WR 17/12/2010	28/01/2011			

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 December 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

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 2 November 2010.

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 Small was first joined by Mr Stevens, his 21 year old cousin, who I was told helped with Mrs Small'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 Small's parents live in Gloucestershire and Somerset and Mrs Small 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 Small'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, 74 Park Rd, Rugby, CV21 2QX
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) MRTPI	Director, Tyler Parkes Partnership, Centre Court, 1301 Stratford Rd, Hall Green, Birmingham, B28 9HH
Mr S J Tucker BSc(Hons) MCIHT	Director, David Tucker Associates, Forester House, Doctors Lane, Henley-in-Arden, B95 5AW
Mr A D J Allan MRICS	Glebe House, Churchill, DY10 3LU

OTHER INTERESTED PERSONS:

Cllr P Hayward	Ward councillor, Wyre Forest District Council
Mr J W Long	Churchill and Blakedown Parish Council
Dr P King	49 Stourbridge Road, Hagley, Stourbridge, DY9 0QS. 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

The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2010

by D.H.Thorman B.Sc., F.Arbor.A.

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

Decision date: 30 NOV 2010

Appeal Ref: APP/TPO/R1845/1385
Land at No 4 Imperial Gardens, Kidderminster, Worc. 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 one Tree of Heaven that is protected by a Tree Preservation Order.
- The appeal is made by Mr R Farr and Mrs P Farr against the decision of Wyre Forest District Council.
- The application (Ref: 10/0316/TREE), dated 01-06-2010, was refused by notice dated 27 July 2010
- The proposed work is to reduce tree by 30%
- The relevant Tree Preservation Order (TPO) is Wyre Forest District Council Land at "Windy Ridge", Chester Road North, Kidderminster, Worcestershire Tree Preservation Order 2006, which was confirmed on 31st July 2006

Decision

1. I shall allow the appeal to reduce the crown of the appeal tree by 20% of its crown size, subject to the following conditions:

   (i) That the final height and crown spread of the tree should be agreed visually between the appellant and the Council prior to the commencement of any work.
   (ii) That all work conforms to BS3998:1989 "Recommendations for Tree Work" as far as is practical.
   (iii) That the work is completed no later than 12 months from the date of this consent.
   (iv) That the local authority is to be notified two weeks in advance of the date of the commencement of the works.

Preliminary Matters

2. At the application stage, the appellants applied for a 30% crown reduction, but on the appeal form it was amended to 20%. I have therefore made my decision based on the 20% figure.

Main Issues

3. In my view, the main issues are:

(i) Is the tree of significant amenity value and would the amenity be significantly affected by the proposed work?

(ii) Are the reasons given for reducing the height of the tree sufficient to justify that course of action?

Reasons

Is the tree of significant amenity value and would the amenity be significantly affected by the proposed work?

4. Tree of heaven *(Ailanthus altissima*) is not uncommon in private gardens, and the Tree Preservation Order plan shows that it was previously part of the garden of a large house. It is now – after re-development of the land - part of the steeply descending garden of no 5 Imperial Gardens. As it is at very low point in the garden, and surrounded by other trees and properties, it can barely be seen outside the garden.

5. The appeal tree cannot be seen from the front of the house in Imperial Gardens, and there are only very fleeting glimpses of the top of the tree from Imperial Avenue near to its junction with Imperial Gardens. The main view of the tree would be from the elevated residential section of Chester Road North, but it is obscured even in winter by other trees on both sides of Chester Road North. In my view, it is likely that in summer it would be totally obscured in this view. However, I do accept that the appeal tree is part of the general canopy in this view, so it does have some amenity value, albeit limited.

Are the reasons given for reducing the height of the tree sufficient to justify that course of action?

6. The tree is immediately adjacent to the northern boundary of the property, and there is a neighbouring house situated just to the north of the boundary. I was not able to go onto that property, but viewing from the appellant's garden it does appear that a sizeable part of the crown overhangs the boundary, and to some extent the roof of the neighbour's house. At least one of the large branches is almost horizontal over the boundary, and there are many other ascending branches also over the neighbouring property. In my view, tree of heaven is not a particularly suitable species in close proximity to property due to its architecture and rapid growth of long stems.

7. Tree of heaven is known to be a fast growing species, and wood quality is known to be weak with a tendency to split. I observed 3 moderate sized branches that had broken on the southern side, one of which had split but not yet fallen. One of the limbs on the northern side overhanging the roof of the neighbouring house has a noticeable rib at approximately one third of its length from its union with the trunk. This is a sign of an internal crack, and the risk of breakage is significant. The risk is exacerbated by the long relatively narrow limbs that are weighted at the extremities. In my view therefore, remedial work to mitigate the risk would be justified.

8. I accept that excessive crown reduction can be harmful, but nevertheless crown reduction within certain limits is an accepted arboricultural practice. In the case of the appeal tree its architecture is such that large wounds may be an inevitable consequence of a 20% reduction in crown size, and rapid regrowth sprouts may occur. It may be particularly difficult to find a suitable union on the long lateral limb to the north. However in my view, it would be possible to remove one fifth of the length of most of the stems, limbs and branches in the crown of the tree according to good arboricultural practice. If suitable unions are not available, cutting back to a union that does not conform to the one third diameter rule would be acceptable in this case.

Conclusions

9. Although the appeal tree has some amenity value, visibility is severely limited, and in my view the amenity is outweighed by the need for some tree surgery to mitigate the significant risks involved. I shall therefore allow the appeal to reduce the size of the crown by 20% in linear terms, subject to the conditions outlined in paragraph 1 above.

David H Thorman

Arboricultural Inspector