



Appeal Decisions

Hearing held on 10 January 2012

Site visit made on 10 January 2012

by James Ellis LLB (Hons) Solicitor

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

Decision date: 15 June 2012

Appeal A Ref: APP/Q4625/C/11/2158806

Land off Salter Street, Earlswood, Solihull B94 6DE

- 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 Act").
- The appeal is made by Mr Bernard Doherty against an enforcement notice issued by Solihull Metropolitan Borough Council ("the Council").
- The Council's reference is 3762.
- The notice was issued on 14 July 2011.
- The breach of planning control as alleged in the notice is the material change of use of land from agriculture to the unauthorised use for the stationing of caravans and their use for residential purposes.
- The requirements of the notice are:
 1. Cease to station any caravan on the land.
 2. Cease the use of any caravan on the land for residential purposes.
 3. Remove all caravans from the land.
- The period for compliance with the requirements is one day.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation

Appeal B Ref: APP/Q4625/C/11/2158812

Land off Salter Street, Earlswood, Solihull B94 6DE

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr Bernard Doherty against an enforcement notice issued by the Council.
- The Council's reference is 3763.
- The notice was issued on 14 July 2011.
- The breach of planning control as alleged in the notice is without planning permission operational development has taken place on the land by the importing, depositing, and spreading of soil, rubble, hardcore, stone, road planings, tarmacadam, the laying of concrete and similar material so raising, changing and re-contouring existing land levels and creating a new hard surface area.
- The requirements of the notice are:
 - 1) Cease the importing, depositing and spreading of soil, rubble, hardcore, stone, road planings, tarmacadam, laying of concrete and similar materials on the land or part thereof.
 - 2) Cease to raise and/or change or re-contour the existing land levels.
 - 3) Cease to bring onto the land any materials to facilitate any of the operations or changes of use specified in steps 1 and 2 above.
 - 4) Remove all soil, rubble, hardcore, stone, road planings, tarmacadam, concrete and similar materials from the land and the removal of any drainage pipes, tanks and similar services or infrastructure and restore it to the same height and contours as existed before the breach of control began.

- The periods for compliance with the requirements are immediately in respect of steps 1, 2 and 3, and 6 months in respect of step 4.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.

Summary of decision: I take no further action

Appeal Ref: APP/Q4625/C/11/2158817 (Appeal C)

Land off Salter Street, Earlswood, Solihull B94 6DE

- 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 Joseph Doherty against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The Council's reference is 3764.
- The notice was issued on 14 July 2011.
- The breach of planning control as alleged in the notice is without planning permission operational development has taken place on the land by the importing, depositing, and spreading of soil, rubble, hardcore, stone, road planings, tarmacadam, the laying of concrete and similar material so raising, changing and re-contouring existing land levels and creating a new hard surface area.
- The requirements of the notice are:
 - 1) Cease the importing, depositing and spreading of soil, rubble, hardcore, stone, road planings, tarmacadam, laying of concrete and similar materials on the land or part thereof.
 - 2) Cease to raise and/or change or re-contour the existing land levels.
 - 3) Cease to bring onto the land any materials to facilitate any of the operations or changes of use specified in steps 1 and 2 above.
 - 4) Remove all soil, rubble, hardcore, stone, road planings, tarmacadam, concrete and similar materials from the land and the removal of any drainage pipes, tanks and similar services or infrastructure and restore it to the same height and contours as existed before the breach of control began.
- The periods for compliance with the requirements are immediately in respect of steps 1, 2 and 3, and 6 months in respect of step 4.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.

Summary of decision: I take no further action

Appeal Ref: APP/Q4625/C/11/2158818 (Appeal D)

Land off Salter Street, Earlswood, Solihull B94 6DE

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr Joseph Doherty against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The Council's reference is 3765.
- The notice was issued on 14 July 2011.
- The breach of planning control as alleged in the notice is the material change of use of land from agriculture to the unauthorised use for the stationing of caravans and their use for residential purposes.
- The requirements of the notice are:
 1. Cease to station any caravan on the land.
 2. Cease the use of any caravan on the land for residential purposes.
 3. Remove all caravans from the land.
- The period for compliance with the requirements is one day.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation

Procedural matters

1. In its reasons for issuing all of the enforcement notices, the Council referred to the potential of the development to cause material harm to ecological interests. However, this issue was not expanded upon in the Council's Statement of Case. At the hearing, the Council explained that at the time the notices were issued, it had a concern about ecology, but now that operational development on the sites had ceased, it was not seeking to rely upon the issue at appeal. Accordingly, I shall not refer to ecology as a main issue, albeit that it remains a concern to third parties.
2. The area of land the subject of Appeals A and B is owned by Bernard Doherty, and that the subject of Appeals C and D by his brother Joseph. I shall refer to the brothers as "the appellants" and the areas of land as the "appeal sites". The appeal sites lie to the east of another area of land which is owned by the appellants and which has the benefit of planning permission granted by the Council under Ref: 2010/1336 dated 21 October 2010 for change of use to a gypsy and traveller site for 3 pitches for 3 touring caravans and ancillary development ("the existing site").
3. The appellants submitted a retrospective planning application for the extension of the existing site under Ref: 2011/1020 and this was refused by the Council on 9 September 2011. A plan submitted with the application shows two pitches which could each accommodate a mobile home and two touring caravans. A third smaller pitch would be used for visitors and there would be a work area. These pitches extended across the existing site and those parts of the appeal sites where the operational development the subject of Appeals B and C has been carried out. However, at the hearing, the appellants conceded that not all of those areas of the appeal sites where operational development has been carried out would be needed for the purposes of stationing residential caravans and ancillary structures. When questioned about this, the appellants confirmed that an area of about the same size as the existing site would be required.
4. On the site visit, I looked at the appeal sites in the context of the amount of land that the appellants claimed would be needed to meet their requirements. The appellants found a line to the east of the existing site which was considered to mark the minimum extension eastwards of the existing site which would meet the requirements after taking into account the slope of the appeal sites from west to east. This was paced out and I noted its distance from the existing site. This distance was approximately the same as the east-west length of the existing site. Thus, the area of land said to be required by the appellants would be about the same as the existing site. I shall bear this in mind when making my determinations.
5. Following the hearing, the Department for Communities and Local Government published the National Planning Policy Framework ("the NPPF") and the Planning Policy for Traveller Sites ("the PPTS") on 27 March 2012. I therefore consulted with the parties and sought their views on both documents in relation to the appeals before me. The documents are important material planning considerations and I have borne them in mind in my decision making. The views of the parties on the documents have also been taken into account by me. There is no conflict between relevant policies of the Solihull Unitary

Development Plan, adopted in 2006, and guidance in the NPPF so I give full weight to the policies.

Enforcement notices - Appeals B and C- whether or not they are nullities

6. The enforcement notices relating to operational development each contain four requirements. The period for compliance given in each notice in respect of three of the four requirements is "immediately this notice takes effect", whereas the compliance period for the fourth requirement is six months.
7. Section 173(9) of the Act states that: 'An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps and activities..'. There is case law¹ to the effect that a notice which specifies "immediately" as a period for compliance is a nullity since "immediately" is not a "period" for the purposes of section 173(9).
8. Although this point was not discussed at the hearing, I later sought the written views of the parties on it. I have given careful consideration to the representations made to me and I note the Council's contention that because stop notices were issued by it under section 183 of the Act no prejudice would be caused to it if the first three requirements of each of the operational development notices were to be deleted from the notices. However, it seems to me that irrespective of this the notices are missing vital elements because "periods" have not been specified for three of their four requirements and that the notices are therefore defective on their faces. I therefore find that the enforcement notices the subject of Appeals B and C are nullities.

Enforcement notices - Appeals A and D

9. The enforcement notices relating to the alleged unauthorised changes of use each refer to the breach of control as being a change of use of the land from agriculture to use for the stationing of caravans and their use for residential purposes. I consider that the requirements of the notices to cease to station any caravan on the land the subject of the notices do not relate only to the breaches of control cited by the Council and are excessive. The requirements as drafted would preclude the stationing of caravans on the land the subject of the notices in addition to those used for residential purposes or associated with residential use. After seeking the views of the parties at the hearing, I consider that an appropriate correction to the requirements so as to preclude the stationing of caravans used for residential purposes and those associated with such use would not cause injustice to the Council or to the appellants. I shall therefore use my powers under section 176(1) of the Act to vary the requirements accordingly.

Background – Appeals A and D

10. The appeal sites are in open countryside for the purposes of planning policies and within the Green Belt. I am told that the permission for the existing site was granted to regularise its unlawful occupation which had taken place over a number of years and also to take account of the personal circumstances of the appellants and their families. To the west of the existing site is the Stratford-upon-Avon canal and to its north is another residential caravan site.

¹ *R (aoa Lynes and Lynes) v West Berkshire District Council* [2003] JPL 1173

However, beyond the external boundaries of the appeal sites, other than those which join the existing site, there is attractive and open Green Belt countryside. To the east, the land slopes downwards towards a watercourse before rising again towards Warings Green Road. The appeal sites are accessed through the existing site which is served by a track which runs from Salter Street, adjacent to St Patrick's Primary Academy, alongside the canal.

11. As I saw on my site visit, the appeal sites have become extensions of the existing site. In effect, the existing site and the appeal sites have been incorporated into two separate long and narrow pitches with fencing between them. That to the north is occupied by Joseph Doherty and his family, and that to the south by Bernard Doherty and his family. An area comprising parts of both the appeal sites, adjoining the existing site, has been raised in level and hard surfaced to facilitate the use of the appeal sites as an extension of the existing site. From the written evidence and what I saw on my site visit, it would appear that the new hard surfaced area is just under twice the size of the existing site, which I understand covers an area of about 0.16 hectares. A retaining structure has been built at the end of the new hard surfaced area, beyond which is a surviving grassland area.
12. A concrete pad has been put down in the hard surfacing on Joseph Doherty's appeal site as a base for a mobile home/caravan. New drainage infrastructure has been installed on the appeal sites and new fencing with external lighting has been erected around their perimeters. Each of the two pitches now has a large mobile home stationed upon it on that part of the pitch which is within the existing site. Touring caravans, day rooms and amenity buildings were also on the pitches, with some caravans and ancillary structures on those parts of the pitches which comprise the appeal sites. There was also a stable block on Joseph Doherty's pitch, close to the entrance to the existing site, although it did not appear to be in use for stabling.
13. The appellants are Irish Travellers and the Council has accepted that they fall within the definition of 'gypsies and travellers' for the purposes of paragraph 1 of Annex 1 to the PPTS. I concur with that view. In addition to himself, Joseph Doherty's household includes his wife Rebecca, their son Patrick (aged 10), and their daughter Catlin (aged 7). Rebecca Doherty was expecting her third child at the time of the hearing date. Bernard Doherty and his wife Mary have three children, namely Martin (aged 10), Patrick (aged 8), and Shakira (aged 6).
14. At the hearing, there was no dispute between the parties that the proposals are inappropriate development in the Green Belt. Indeed, paragraph 14 of the PPTS states that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Both paragraph 14 of the PPTS and paragraph 87 of the NPPF state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy C2 of the UDP accords with this. Paragraph 88 of NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. It goes on to say that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I must therefore give substantial weight to the harm to the Green Belt arising from the inappropriateness of the changes of use.

The ground (a) appeals - Appeals A and D

Main issues

15. The main issues are: the effect of the changes of use on the openness of the Green Belt; their effect on the character and appearance of the area; and whether the harm by reason of the changes of use being inappropriate development in the Green Belt, and any other harm, if found, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the changes of use.

Reasons

Green Belt - openness

16. Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. There is no evidence before me to indicate that before the changes of use took place the lawful use of the sites was anything other than for agricultural purposes or that there were buildings or other structures on them. To my mind, the stationing of caravans and the erection of ancillary buildings on the sites, together with associated residential activity arising from the changes of use, has resulted in material harm to the openness of the Green Belt. This is in addition to the substantial weight which I must give to the harm arising from inappropriateness.
17. Reductions in the sizes of those areas of the appeal sites used for residential use to areas which would together be about the same size as the existing site would be an improvement in terms of loss of openness, in that residential activity could be restricted to a smaller area. However, the improvement would be limited given that the existing caravans and structures outside the reduced areas of the appeal sites could be relocated within the reduced areas.

Character and appearance of the area

18. The appeal sites lie in an attractive rural landscape which is generally characterised by small fields. Boundaries are marked mainly by hedges of traditional species, although there is some fencing. There are no public vantage points from where the appeal sites can be seen. However, there are views towards the appeal sites from the rear of two properties on Warnings Green Road. One of these properties, the northernmost one, has a hedge along its rear boundary. This is of such a height that it will screen views from that property towards the appeal site to some extent. However, there is no such screening along the rear boundary of the other property, and there are clear views from that property towards the appeal site.
19. The existing site is relatively compact and its situation on higher ground than the appeal sites is such that landscaping of trees and shrubs planted along its eastern boundary could provide an effective screen in views towards the site from the east. Such landscaping was required by a condition attached to permission Ref: 2010/1336. I therefore consider that the stationing of residential caravans on the existing site would not have a significant adverse impact on the character and appearance of the wider area provided the required landscaping was to be carried out. In effect, the domestic character

of the residential caravans, and the touring caravans and ancillary buildings that are with them, could be contained.

20. Unfortunately, I do not find this to be the case with the development the subject of the change of use enforcement notices. The area of land the subject of residential development has nearly tripled in size and it now projects out into the surrounding fields. In my view, the extent and nature of domestic development on the appeal sites and their location in relation to the small fields around them is such that the development is very much out of character with the gentle rural nature of the surrounding landscape.
21. I consider that the development will be seen to be conspicuous from the neighbouring properties, particularly the southernmost one, albeit that the development is at some distance from them. This is because it is on land that slopes downwards towards the east and the neighbouring properties are in an elevated position in relation to the appeal sites. I also note here that development has been brought nearer to the neighbouring properties. Because of the downward slope of the appeal sites, any landscaping at the eastern end of the hard surfacing would have to be of considerable height so as to screen views into the higher parts of the appeal sites from the neighbouring properties. This would, in my experience, take a number of years to achieve, if indeed it could be achieved.
22. Overall, having regard to the previous paragraphs and not withstanding that there are no public viewpoints from where the development can be seen, I conclude that the changes of use have resulted in significant harm to the character and appearance of the area contrary to Policy C8 of the UDP.
23. If the stationing of residential caravans was to be restricted to areas of land together about the same size as the existing site, this would still result in considerable harm to the character and appearance of the area, albeit that the protrusion of residential development into the open countryside would be less. In my view, the stationing of caravans etc on the restricted areas of land would be more concentrated than if it was spread over the areas of land the subject of the enforcement notices. Because of the particular nature of the downwards slope of the land in the reduced areas, the caravans etc. upon them would still remain conspicuous in views from the east. Again, I am doubtful that effective screening through landscaping at the eastern end of the reduced areas could be achieved.

Other considerations- the need for, and provision of, Gypsy and traveller sites

24. Paragraph 22 of the PPTS indicates that local planning policies should consider a number of issues amongst relevant matters when considering planning applications for traveller sites. Two such issues are the existing level of local provision and need for sites, and the availability (or lack) of alternative accommodation for the applicants.
25. At the hearing, reference was made to a Gypsy and Traveller Accommodation Assessment for Birmingham, Coventry and Solihull ("the first GTAA") which was published in 2008. As well as providing an evidence base for the Regional Spatial Strategy for the West Midlands, the first GTAA provided information to the constituent authorities to assist with their own local strategies.

26. The first GTAA identified a need within Solihull for 17 permanent residential pitches up to 2012 and a further 9 permanent pitches up to 2017. However, since the GTAA was published, 12 pitches have been approved leaving a reduced unmet need of 5 to 2012 and a further 9 to 2017. Following the hearing, the Council adopted the Solihull Gypsy and Traveller Accommodation Assessment ("the second GTAA") in March 2012, which supersedes the first GTAA. However, the identified need for residential pitches to 2017 remains unchanged, although figures for the period beyond that have been revised.
27. Consideration of existing suitable unauthorised sites (in line with Policy 5 of the Council's Emerging Core Strategy) has contributed towards the reduced unmet need. The Core Strategy has now been recast as the Solihull Draft Local Plan Proposed Submission Document. Policy P6 of the Draft Local Plan outlines that pitches beyond 2012 will be determined through a Gypsy and Traveller Site Allocations Development Plan Document ("the DPD"). I give due weight to Policy P6 in accordance with paragraph 215 of Annex 1 to the NPPF.
28. Work on the DPD has commenced and an options paper went out to consultation in July/August 2011. Responses to the options paper have been considered and a number of sites have been suggested to the Council including the appeal sites. However, at the hearing, the Council stated that, in its view, the appeal sites were not a feasible option, as evidenced by the enforcement action taken by the Council.
29. The appellants queried the GTAA figures by reference to the possible closure of 'The Haven' due to proposals for the extension of the main runway at Birmingham Airport. Mention was also made of the standard of facilities at 'The Haven'. After hearing evidence from the Council, I consider it unlikely that 'The Haven' will have to close as a result of the runway extension. Whilst facilities at 'The Haven' may need refreshing, it is nevertheless a provider of pitches. I acknowledge that there are unauthorised sites which, if approved, could add further sites to supply and I note the appellants' contention that the GTAA figure may be an underestimate. However, notwithstanding this, the GTAA figures, as updated in the second GTAA, are the most reliable evidence on need before me and they are sufficient to show that there is a current unmet need.
30. It is the Council's intention that a Submission Draft of the DPD will be published in the autumn of 2012 in which final sites would be identified, leading to adoption at the end of the year. In my opinion, this timetable is optimistic and I think it more likely that the DPD will be adopted in 2013. Given the time it would take for pitches to actually be provided following adoption, I think that, realistically, one is looking towards 2014 or even 2015 before pitches would be provided. The Council cannot therefore demonstrate an up-to-date five year supply of available sites.
31. The appellants are not seeking an additional pitch or pitches. They have advised that this is not a case where dismissal would render themselves or their families homeless. Their case is that the existing site is of insufficient size to accommodate the needs of their growing families and that dismissal of the case will require the provision of additional accommodation elsewhere in the area if it cannot be provided on the appeal sites. In this context, there are no public gypsy sites in the Borough and I am told that authorised private sites are full. Against this background, I consider the need for pitches to be a

relevant consideration and I find that there is an outstanding need for gypsy/traveller sites which will not be met for some years to come. This weighs heavily in favour of the proposal.

Other considerations – failure of policy

32. At the present time, the Council does not have an adopted policy concerning the provision of gypsy/traveller sites, albeit that the Council's draft local plan continues to proceed towards adoption. It has not maintained a five year supply of sites. Whilst the Council is making good progress on its DPD, it is likely to be some time before this is adopted. This failure of policy carries some weight in favour of the proposal.

Other considerations- personal circumstances

33. The personal circumstances of the applicant are another issue identified in paragraph 22 of the PPTS which a local planning authority should consider amongst other relevant matters
34. The appellants consider that they and their families need a settled base where their accommodation needs can be met in order that they can maintain their Irish Traveller lifestyle and culture. As has been indicated, it is the appellants' case that the existing site is of insufficient size to accommodate the needs of their growing families.
35. The permission that relates to the existing site is for three small pitches comprising two pitches for the appellants and their families, and a third pitch for visitors and to meet future needs. The plans submitted with the application that led to the permission assumed that the appellants would be residing in touring caravans. The plans show where residential caravans would be stationed and make provision for day rooms, amenity buildings, utility buildings and the stable building. However, the plans appear to make no provision for the stationing of touring caravans to be occupied by the male children of the families as they get older, or for the storage of touring caravans when not used for touring.
36. The appellants contend that the existing site is too small to meet their needs. A plan was produced showing that that, after taking account site licence conditions which refer to fire safety, the existing site could not reasonably accommodate the two mobile homes that are upon it, two children's caravans, two touring caravans, the stable block and the various ancillary buildings associated with two pitches. Reference was also made to the need for car parking and a children's play area. Certainly, there would be no room for a third pitch.
37. In support of their case, the appellants sought reliance on the Good Practice Guide entitled 'Designing Gypsy and Traveller Sites' which was published by the Department of Communities and Local Government in 2008. Clearly, the layout for the permitted scheme on the existing site would fall short of the ideal pitch requirements detailed in the Good Practice Guide. If the appellants were restricted to the use of the existing site, they would not be able to have all the caravans and buildings that are mentioned in the previous paragraph upon it. However, the Good Practice Guide is guidance only and, in my experience, there are many private gypsy/traveller sites in existence which do not match up to the ideal situation.

38. The families also have personal circumstances relating to education and health. The families are Roman Catholic and the children attend a Roman Catholic primary school in Shirley. As regards health, I am told that Martin Doherty is epileptic and takes medication twice a day to control his condition. I understand that Martin remains under the supervision of Birmingham Children's hospital. However, Martin's condition can occur in the settled population. At the hearing I was told that Martin's maternal grandparents bring a touring caravan and stay on Joseph's pitch on a regular basis in order to provide respite care. This is a further constraint in terms of the caravans and buildings etc. that can be stationed or placed on the appeal site.
39. Having regard to the above, and whilst noting that dismissal of the appeals would not render them homeless, I nevertheless conclude that the families' accommodation needs are such that they carry some weight in favour of the development. In addition there are also personal circumstances relating to both health and education which again weigh in favour of it.

Whether the 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.

Permanent planning permission

40. As I have indicated, I must attach substantial weight to the harm to the Green Belt by reason of inappropriateness. I have also found that the changes of use have resulted in material harm to the openness of the Green Belt. In addition, the changes of use have caused significant harm to the character and appearance of the area which is within the Green Belt.
41. However, to be weighed against these factors are a number of considerations in favour of the proposals. These are: the need for gypsy/traveller sites in the area; the failure of policy relating to gypsy/traveller sites; the personal circumstances of the appellants and their families, including their accommodation needs.
42. In my judgement, however, the material considerations in favour of the changes of use, even when added together, would not clearly outweigh the substantial harm caused by the changes of use as mentioned in paragraph 40 above. This would still be the case even if the proposals were to be restricted to a limited area of the appeal sites as previously referred to. Very special circumstances to justify the development do not therefore exist. The proposal is therefore contrary to saved Policy C2 of the UDP and guidance contained in the NPPF.

Temporary planning permission

43. Paragraph 25 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of a temporary planning permission. Circular 11/95 also indicates that a temporary permission may be justified where planning circumstances will change at the end of that period. The evidence before me suggests that at the end of a period of say three years sites would be delivered through the DPD to provide a five year supply of deliverable sites as required by the PPTS.

44. Having regard to this, I give significant weight to the Council's failure to demonstrate an up-to-date five year supply of deliverable sites in the context of a temporary permission and also note that in this case sites are likely to be available within, say, three years. In addition, I shall take account of the personal circumstances of the families, in particular those relating to the health of Martin Doherty.
45. Even so, the considerable harm caused by the development to the Green Belt in the short to medium term must be taken into account. I consider that this harm cannot be mitigated by conditions. In my judgement, the harm would not be clearly outweighed by the considerations weighing in favour of allowing the proposal for a temporary period pending the provision of sites following adoption of the DPD in order to achieve an up-to-date five year supply of deliverable sites. Again, this would still be the case if the proposals were to be restricted to the limited area.
46. After taking all matters into account (including the various appeal decisions referred to by the appellants and the Council) and whilst I have sympathy with the appellants and their families because of their circumstances, I consider that it would not be appropriate to grant temporary planning permission in this particular case.

Human Rights

47. I appreciate that my decision results in an interference with the rights of the appellants and their families in respect of private and family life and their home, and that Article 8 of the European Convention on Human Rights is engaged. However, I consider that my response is proportionate after taking into account the conflicting matters of public and private interests so that there is no violation of those rights.

Third party issues

48. Other issues raised by third parties include highway safety, the lopping of trees along the side of the track leading to the appeal site, the behaviour of children on the existing site, failure to comply with conditions attached to planning permission Ref: 2010/1336, the effect of the proposal on the living conditions of neighbouring properties in terms of noise, and the effect of the proposal on wildlife.
49. There is no evidence before me to suggest that the development would lead to an increased number of vehicle movements along the access track leading to the appeal sites, and its interface with the car park at the Primary Academy. The number of pitches on the sites and the existing site could be limited to three, as per permission Ref: 2010/1336. Again, I see no reason why the development, if permitted, would lead to the further lopping of trees along the access track. The existing site has the benefit of planning permission and the appellants' children can remain there irrespective of my decisions on the appeals before me.
50. It is open to the Council to take planning enforcement action in respect of any non-compliance with conditions, if the Council considers it expedient to do so. Given the distance of the appeal sites from the neighbouring properties, noise emanating from the sites should not have a significant impact on the residential amenities of the occupiers of the neighbouring properties. There is

no detailed evidence before me to explain how the development has impacted upon wildlife and I note that the Council did not pursue this issue at the hearing. I can, therefore, only give little weight to the points raised by third parties.

Conclusion

51. For the reasons given above, I conclude that the ground (a) appeals should fail.

The ground (g) appeals –appeals A and D

52. The ground of appeal under section 174 (2) (g) of the Act is that the time given to comply with the requirements of the notice is too short. The Council has given one day for compliance with the material change of use enforcement notices (Appeals A and D). However, the appellants have suggested an 18 month compliance period. The reason given for seeking the extension is to allow alternative arrangements to be made for the accommodation needs of the appellants' families.

53. After having regard to the appellants' contentions, it does seem to me that it would be reasonable to grant extensions of time so that the appellants can consider their accommodation needs and find a solution. However, I consider that a period of 18 months would be excessive. In my view, a period of 12 months would be appropriate as this should give the appellants sufficient time in which to re-arrange caravans and buildings on the existing site, or look elsewhere. There would be continuing harm to the Green Belt but this would be for a limited period. I shall vary the enforcement notices accordingly. To this limited extent, the appeals on ground (g) succeed.

Formal decision - Appeal A

54. Following on from paragraph 9 above, I direct that the enforcement notice be corrected by the deletion of the first and second requirements set out in paragraph 5 of the notice and their replacement with the following words: '1 Cease to use the land for the stationing of caravans used for residential purposes and caravans associated with residential use', and that requirement '3' be renumbered requirement '2'.

55. In accordance with paragraph 53, I also direct that the enforcement notice be varied by the deletion of the period of 'one day' and the substitution of the period of '12 months' as the period for compliance.

56. Subject thereto, I dismiss the appeal, uphold the enforcement notice as corrected and varied, and refuse planning permission in respect of the application deemed to have been made under section 177(5) of the Act.

Formal decision - Appeal B

57. Since I find the notice to be a nullity, I take no further action in respect of this appeal. In the light of this finding, the Council should consider reviewing the register that it keeps under section 188 of the Act.

Formal decision - Appeal C

58. Since I find the notice to be a nullity, I take no further action in respect of this appeal. In the light of this finding, the Council should consider reviewing the register that it keeps under section 188 of the Act.

Formal decision - Appeal D

59. Following on from paragraph 9 above, I direct that the enforcement notice be corrected by the deletion of the first and second requirements set out in paragraph 5 of the notice and their replacement with the following words:

'1 Cease to use the land for the stationing of caravans used for residential purposes and caravans associated with residential use', and that requirement '3' be renumbered requirement '2'.

60. In accordance with paragraph 53, I also direct that the enforcement notice be varied by the deletion of the period of 'one day' and the substitution of the period of '12 months' as the period for compliance.

61. Subject thereto, I dismiss the appeal, uphold the enforcement notice as corrected and varied, and refuse planning permission in respect of the application deemed to have been made under section 177(5) of the Act.

James Ellis

Inspector

APPEARANCES

FOR THE APPELLANT:

Philip Brown BA (Hons), MRTPI Managing Director, Philip Brown Associates
Joseph Doherty Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Wigfield Dip TP, MRTPI Enforcement and Conservation Manager, Solihull
Metropolitan Borough Council

INTERESTED PERSONS:

Cllr Brian Burgess Ward Member, Blythe Ward, Solihull Metropolitan
Borough Council

DOCUMENTS

- 1 Letter dated 6 January 2012 from Mrs Stephanie O'Grady, St Patrick's CE Primary Academy – submitted by the Council
- 2 Note on the current planning policy position – gypsies and travellers – submitted by the Council
- 3 Policy P6 of the Solihull Draft Local Plan – Provision of sites for gypsies and travellers – submitted by the Council
- 4 Secretary of State's appeal decision Ref: APP/Q4625/A/10/2133561 dated 24 October 2011 – submitted by the Council
- 5 Letter dated 5 January 2012 from Mary Philbin, Gypsy and Traveller Support Worker – submitted by the appellants