



Appeals Received and Decisions Made

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Appeal Decisions

Land North Of Brewery Lane West Of Rock Lane Rock Lane Melling

Reference: EN/2020/00377 (APP/M4320/C/20/3258166)

Appeal against unauthorised change of use of the site for residential purposes including the siting of caravans on land west of Rock Lane, Melling, L31 1EW

Procedure: Informal Hearing

Start Date: 04/01/2021

Decision: Allowed

Decision Date: 02/12/2021

Land west of Rock Lane, Melling L31 1EW

Reference: EN/2020/00377 (APP/M4320/C/20/3258167)

Appeal against engineering works including the importation of hardcore to create a hardstanding area on land west of Rock Lane, Melling, L31 1EW.

Procedure: Informal Hearing

Start Date: 04/01/2021

Decision: Allowed

Decision Date: 02/12/2021

New Appeals

42 Station Road Ainsdale Southport PR8 3HW

Reference: DC/2021/00696 (APP/M4320/W/21/3283843)

Extension to existing external dining area and retention of timber canopy over including side panels and planters.

Procedure: Written Representations

Start Date: 21/12/2021

Decision:

Decision Date:

9 Argarmeols Road Formby Liverpool L37 7BU

Reference: DC/2021/00644 (APP/M4320/D/21/3284311)

Alterations to existing boundary wall to front of dwellinghouse.

Procedure: Householder Appeal

Start Date: 16/12/2021

Decision:

Decision Date:

77 Cherry Road Ainsdale Southport PR8 3SF

Reference: DC/2021/01572 (APP/M4320/D/21/3284835)

Erection of 1660mm high boundary timber fencing to the front and both sides including pillars and gates to the front of the dwellinghouse (retrospective completed 10/05/2021).

Procedure: Householder Appeal

Start Date: 13/12/2021

Decision:

Decision Date:

Appeals received and decisions made between [26 November 2021](#) and [23 December 2021](#)

53 Halsall Road Birkdale Southport PR8 3DB

Reference: DC/2019/02423 (APP/HH/1921)
High Hedge Complaint

Procedure: Written Representations
Start Date: 07/12/2021

Decision:

Decision Date:



Appeal Decision

Site Visit made on 7 September 2021

by **F Rafiq BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/M4320/W/21/3276681

Lathom Club, Lathom Avenue, Seaforth, Merseyside L21 1EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Brian Corrigan against the decision of Sefton Council.
 - The application Ref DC/2020/01200, dated 1 July 2020, was refused by notice dated 3 June 2021.
 - The development proposed is an *'outline planning application for the erection of a two storey block of up to 12 flats with associated parking following demolition of The Lathom and adjacent garages'*.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for the erection of a two storey block of up to 12 flats with associated parking following demolition of The Lathom and adjacent garages at Lathom Club, Lathom Avenue, Seaforth, Merseyside L21 1EB in accordance with the terms of the application, Ref DC/2020/01200, dated 1 July 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have utilised the description of development from the decision notice as this better focuses on the development involved. I have taken the postcode of the appeal site from the appeal form.
3. A revised National Planning Policy Framework was published in July 2021 (the Framework). Whilst the paragraph numbers have changed in regard to those relevant to the main issue of this case, the substance thereof remains the same as the 2019 iteration. I have sought comments from the main parties and taken any comments made into consideration.
4. An outline planning permission is sought with access, layout and scale to be considered. I have determined the appeal on this basis.

Main Issue

5. The main issue is whether the proposed development would provide for a satisfactory standard of accommodation for its future occupiers with particular regard to air quality.

Reasons

6. The appeal site is a former social club which is situated on the junction of Lathom Avenue and Chatham Close. Immediately beyond Lathom Avenue is Princess Way (A5036), a dual carriageway which meets Crosby Road South

(A565) a short distance to the west of the site. The appeal site is located within an Air Quality Management Area, with the Council identifying the main source of air pollution to be from road traffic on the A5036, with this being the main route that connects the Port of Liverpool to the motorway network.

7. Monitoring data has been provided by the Council in a number of locations and the main parties have set out differing views on the trends that can be drawn from it, making reference to the time periods and the distance of monitoring sites from the appeal site. The general trend does show a reduction in Nitrogen Dioxide (NO₂) levels between 2015 and 2017, but I do acknowledge that in location 'EY-Lathom Avenue', that NO₂ levels in 2018 and 2019 were above the National Air Quality Standard objective (national NO₂ standard). The appellant states that this exceedance is due to the roadside location of the monitoring site and that at the proposed façade of the proposal, which is set back from the road, the NO₂ levels would be lower at around 38ug/m³. This is also reflected in the data from the monitoring site at 'ES-Chatham Close', which is situated further away from Princess Way (A5036) and shows consistently lower NO₂ levels than location 'EY-Lathom Avenue' over the 2015-2019 period that data has been provided for. My attention has also been drawn to the Council's 2019 Air Quality Annual Status Report (July 2019), that shows that at the nearest receptor, the levels of NO₂ were lower than the national NO₂ standard.
8. The Council has raised concerns on the increasing levels of traffic and in particular the significant increase that is envisaged in Heavy Goods Vehicles (HGV) using the A5036 passing the appeal site due to expansion of the Port of Liverpool and a future new road. The Council's own traffic count data show HGV traffic growth at higher levels than a number of referenced documents which contain growth forecasts, one of which is produced by the Department for Transport. The appellant however considers that an increase in air pollution does not follow from an increase in traffic. To support this position, I have been provided with details of the Sefton Clean Air Zone Feasibility Study (May 2019), which expects emissions to fall between 2020 and 2025 due to the uptake of newer vehicles and alternative technologies. The Council themselves has also referenced the efforts they are taking to bring about reductions in traffic related emissions such as the potential implementation of a Clean Air Zone.
9. I therefore consider the modelling provided by the appellant within the Air Quality Assessment (26 June 2020), which is based on a worst case scenario, albeit using national government growth rates on traffic rather than estimated levels from the Council's data, to be robust. The NO₂ level would be at or below the national NO₂ standard. Although the appellant does not consider it necessary for mitigation, the development, whilst being below the national NO₂ standard, would nevertheless be in an area where there are high levels of existing pollution.
10. Mechanical ventilation has been suggested as an essential mitigation measure, although concerns have been expressed that not being able to open windows would result in a poor standard of living for future occupiers. My attention has been drawn to an appeal¹ where an Inspector found that this arrangement would create an oppressive internal living environment for occupiers. It is evident however that the circumstances of that case differed, which was

¹ Ref: APP/T2215/W/16/3165435

subject to higher levels of NO₂, above the national NO₂ standard as well as other concerns beyond air quality relating to noise levels. In this case, whilst I consider mechanical ventilation would be necessary to avoid prolonged exposure to NO₂ emissions, because these NO₂ levels are lower than the national NO₂ standard, windows would not have to be non-openable, and it would be possible to open them for purge ventilation. Details of the mitigation could be secured by condition, including the maintenance measures.

11. For the reasons given above, I conclude that the development would provide satisfactory accommodation for future occupiers with regard to air quality. As such, there would be no conflict with Policy EQ4 of the Local Plan for Sefton, which seeks, amongst other matters, to minimise the risks of adverse impacts including on amenity and damage to health and wellbeing. It would also not be contrary to Paragraph 130 of the Framework, which seeks, amongst other matters, a high standard of amenity for existing and future users.

Other Matters

12. The Council have set out that the appeal site is a non-designated heritage asset and reference has been made to its association with the Beatles and its architectural interest. Although the building has some significance, it is clear from the evidence before me that the building has been substantially altered and that in terms of cultural significance, the Beatles played at many venues and this site does not have a special relevance. The proposal would result in the demolition of the building and the loss of a non-designated heritage asset, albeit it having low significance. The re-use of a date stone and the potential for a blue plaque to be erected would assist in mitigating this harm. I also note the benefits of the proposal, including making a modest contribution to local housing need. Taken together, I consider the harm that would be caused to this non-designated heritage asset would be outweighed by the benefits.
13. The appeal proposal would result in the erection of a two storey block of apartments following the demolition of the Club and the garages. The building would have an L shaped layout with a longer frontage to Chatham Close than Lathom Avenue, with car parking accessed from Lathom Close. The Council has not raised any concerns in relation to access, layout or scale although I note the various concerns from interested parties relating to overdevelopment. The layout of the scheme broadly reflects the positioning of the existing Club building and a generously sized garden area is also provided between the building and the parking areas proposed. I do not therefore consider the proposal would have an unacceptable impact on the character and appearance of the area.
14. I further note concerns in relation to traffic on the narrow roads and on parking. The proposal would provide 15 parking spaces, and although Chatham Close is narrow, there is sufficient space for vehicles to pass and I do not consider this scale of development would be detrimental to highway safety.
15. Due to the layout of the site and the distances to neighbouring properties, the proposal would not lead to any significant loss of privacy or light for the occupants of neighbouring occupants. There is no firm evidence that the development would lead to increased crime or anti-social behaviour, cause fly tipping or vandalism, adversely impact on drainage or give rise to noise disturbance, particularly given the current lawful use of the site as a social

club. Any disturbance during construction would be for a temporary period only, and can be mitigated by requiring the proper management of such.

16. I have no reason to consider the pedestrian accesses to either side of the building would necessarily give rise to disturbance. The presence of any asbestos on the site is a technical matter which would need to be addressed separately as part of the construction process. Given all of the above, other than in relation to air quality, I agree with the Council that there are no other reasons to withhold permission.

Conditions

17. I have considered the conditions suggested by the Council and other parties, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended the wording of the Council's conditions as appropriate.
18. I have imposed a condition specifying the relevant drawings in relation to access, layout and scale as this provides certainty. Standard conditions relating to the submission and timing of reserved applications and the commencement of development are necessary.
19. Conditions are also necessary in relation to the provision of a Construction Management Statement, details of highway works as well as contamination investigations required to ensure there are no adverse effects on living conditions, in the interests of highway safety and to minimise risks for land contamination respectively. A separate landscaping condition to the reserved matters condition is required in the interests of the character and appearance of the area and to ensure that any trees or planting that are damaged, diseased or removed within 5 years are replaced. It is essential for details relating to these conditions to be approved before any works commence to ensure there are no unacceptable impacts arising to existing surrounding and future occupiers and for highway safety reasons.
20. A condition is also necessary to ensure adequate drainage of the site, in the interest of flood prevention and to control demolition works during the main bird breeding season to prevent harm to protected species. Conditions are necessary requiring the parking, access and turning areas to be constructed, the provision of cycle storage and electric vehicle charging points to provide parking and to enable the use of electric vehicles and reduce emissions.
21. A condition requiring the submission of materials is necessary in the interests of the character and appearance of the area as are details of a date stone and potential blue plaque to mitigate against the loss of a non-designated heritage asset. Conditions relating to obscure glazing, acoustic glazing, acoustic barrier and acoustically treated and filtered ventilation as well as the construction of bedroom ceilings are required in the interests of ensuring satisfactory living conditions.
22. I have considered a suggested condition relating to the provision of full fibre broadband connections. However, I have not been provided with any particular justification for this condition. The appeal site is situated in the urban area where there is likely to be the availability of such infrastructure in the vicinity of the site to allow for the development to be connected. In any event, it is the norm on new build residential development, for a broadband internet

connection to be made available for future occupants. Accordingly, I have not imposed such a condition.

Conclusion

23. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal is allowed

F Rafiq

INSPECTOR

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) Details of appearance and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans (only in respect of those matters not reserved for later approval): Proposed Site Plan at Scale 1 to 500 (Plan No: LATH/06/20/08), Existing Site Plan (Plan No: 06/20/09), Proposed Site Plan at Scale 1 to 200 (Plan No: LATH/06/20/10), Proposed Ground Floor Plan (Plan No: LATH/06/20/05), Proposed First Floor Plan (Plan No: LATH/06/20/06), Proposed Main Front Elevation (Plan No: LATH/06/20/01/A), Proposed Rear Main Elevation (Plan No: LATH/06/20/02/A), Proposed Small Front / Rear Elevations (Plan No: LATH/06/20/03/A) and Plan Section Boundary Wall Plan (Plan No: LATH/06/20/12).
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority of a scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development; any trees or plants

which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced.

- 7) No development shall take place until a detailed scheme of highway works, including a programme for their completion shall have been submitted to and approved in writing by the local planning authority. The scheme shall include details of the proposed vehicular and pedestrian access onto Lathom Avenue and on Chatham Close where the existing access is to be closed. No part of the development shall be occupied until the works have been constructed in accordance with the approved details.
- 8) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 9) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before any part of the development is occupied.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried

- out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 11) No demolition works shall take place during the main bird breeding season between 1 March and 31 August inclusive unless a licensed ecologist has undertaken a nesting bird check immediately before any works start and submitted a report to the Local Planning Authority and received approval in writing from them. The report shall contain details confirming that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. The measures, where relevant, shall be adhered to through the period of demolition.
 - 12) No part of the development hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
 - 13) No above ground works shall take place until samples of all external facing materials have been submitted to, and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
 - 14) Details of a scheme to incorporate the existing date stone and a commemorative blue plaque within the development which outlines the social history of the site must be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any part of the development is occupied.
 - 15) No part of the development hereby permitted shall be occupied until the means of access/turning area and vehicular parking shall have been constructed in accordance with the approved plans. The access/turning area and parking shall be retained thereafter.
 - 16) Details of a minimum of two electric vehicle charging points shall be submitted to and approved in writing by the local planning authority before any part of the building is occupied. Development shall be carried out in accordance with the approved details and shall be retained thereafter.

- 17) Details of a secure cycle storage space for 12 bicycles shall be submitted to and approved in writing by the Council. The development hereby permitted shall not be occupied until the approved cycle store has been provided in accordance with the approved details and the cycle store shall thereafter be kept available for the parking of bicycles.
- 18) The development hereby permitted shall not be occupied until all first floor windows facing the boundaries of 7 Lathom Avenue and 9 Chatham Close at a distance of 10.5m or less have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the approved details shall be retained thereafter.
- 19) No part of the development hereby permitted shall be occupied until a scheme of acoustic glazing for all habitable rooms, with a minimum performance standard as shown in Section 8 of the Environmental Noise Impact Report (Ref: 14068 Version 1) has been submitted to and approved in writing by the Council. The approved scheme shall be installed before any part of the development is occupied and be retained thereafter.
- 20) No part of the development hereby permitted shall be occupied until a scheme for an acoustic barrier to protect the garden area of the proposed building and gardens of neighbouring properties around the proposed car park from noise, has been submitted to and approved in writing by the Council. All works which form part of the scheme shall be completed before any part of the development is occupied and shall be retained thereafter.
- 21) No part of the development hereby permitted shall be occupied until all bedroom ceilings have been constructed to the standard states in Section 8.3 of the submitted Environmental Noise Impact Report (Ref: 14068 Version 1). The bedroom ceilings shall be constructed before any part of the development is occupied and shall be retained thereafter.
- 22) No part of the development hereby permitted shall be occupied until a scheme for acoustically treated and filtered ventilation for all habitable rooms, including details of the maintenance, has been submitted to and approved in writing by the Council. The approved scheme shall be installed before any part of the development is occupied and be retained thereafter.



Appeal Decisions

Hearing Held on 14 September 2021

Site visit made on 14 September 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Appeal Ref: APP/M4320/C/20/3258166 ('Appeal A') **Land west of Rock Lane, Melling L31 1EW**

- 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 Marion Doherty against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 22 July 2020.
- The breach of planning control as alleged in the notice is *unauthorised change of use of the site for residential purposes including the siting of caravans*.
- The requirements of the notice are to cease the use of the land for residential purposes and remove all caravans, vehicles and domestic paraphernalia from the site.
- The period for compliance with the requirements is three months.
- 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal Ref: APP/M4320/C/20/3258167 ('Appeal B') **Land west of Rock Lane, Melling L31 1EW**

- 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 Marion Doherty against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 22 July 2020.
- The breach of planning control as alleged in the notice is *engineering works including the importation of hardcore to create a hardstanding area*.
- The requirements of the notice are to remove all of the imported hardcore from the site then return the land to its former condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The ground (f) appeal in Appeal B relates to the extent of hardstanding required to be removed if the notice is otherwise upheld, the parties agreeing that there was a hardstanding area on the site prior to the alleged breach of planning control. An agreed plan showing the area to be removed was supplied, at my request, after the close of the Hearing.

Main Issues

2. It is agreed that the development in both appeals amounts to inappropriate development in the Green Belt. The Gypsy or Traveller status (in accordance with the national policy definition) of the appellant and her extended family who also seek to reside on the site is not contested. My pre-Hearing note sought clarification as to the Council's position as to any conflict with Part 2 of the Sefton Local Plan policy HC5, namely the criteria to be applied to applications for gypsy or traveller sites not allocated for development. This was clarified by the Council before and during the course of the Hearing, and some conflict with criteria (b) (road access) and (f) (local environment) is asserted.
3. My note also sought clarification as to the position of consultees in relation to matters concerning contamination, flooding and drainage that were raised in representations from local residents. The Council obtained comments from the various specialists and acknowledged that such concerns could be overcome by the imposition of planning conditions. Nonetheless, given the concerns raised, they remain matters for consideration.
4. The main issues arising in the appeal are therefore:
 - (i) The effect of the development on the openness and the purposes of the Green Belt ('definitional harm' by reason of inappropriateness being agreed);
 - (ii) Any other harm and/or policy conflicts arising, particularly the effects of the development on highway safety, on the character and appearance of the site and the area, and in relation to contamination, flooding and drainage; and
 - (iii) Whether any harm to the Green Belt and any other harm is clearly outweighed by other considerations so as to amount to very special circumstances justifying the development. Such other considerations particularly include the need for and supply of traveller sites and the availability of alternative sites, and the personal circumstances of the appellant and her family, to include consideration of the best interests of the children and any human rights arising.
5. Further main issues concern the reasonableness of the requirements to remove all the imported hardcore and the time given for compliance with the notices, should the appeals on grounds (f) and (g) fall to be considered.

Reasons

Effects on the Green Belt – openness and purposes

6. The history of the site reveals a former agricultural use with permission for a cattle shed and a later extension to it. No planning history of the pre-existing hardcore on the site, taking up approximately half of the area currently laid to hardstanding, is given, but it is not contended that it constituted inappropriate development in the Green Belt when it was laid. Thus there is some previous built and engineered form on the site, but in the light of authority¹ I do not consider that any previous development on the site affected the openness of

¹ *Europa Oil and Gas v SSHCLG* [2013] EWHC 2643 (Admin) at paragraph 66; judgment approved by the Court of Appeal at [2014] EWCA Civ 825 and *Lee Valley RPA v Epping Forest DC* [2016] EWCA Civ 404 at paragraph 17

the Green Belt or the purposes of including the site within it prior to the unauthorised change of use.

7. There is also some evidence of the site having been used for scrap storage prior to the unauthorised change of use, and a neighbouring resident spoke at the Hearing of the improvements to the site that have come about since the present use has been instigated. Whilst I accept that there is no evidence of the Council having intended to enforce against any previous unauthorised use, I do not consider that the former use for scrap storage affects my considerations in relation to the Green Belt (or, for that matter, the character or appearance of the area). This is because the scrap storage use was not in itself authorised, it does not appear to have become immune from enforcement, and thus there is no right to revert to that use whether or not the notices are upheld. It cannot constitute a 'fallback' position and my starting point for consideration is thus the former lawful agricultural use of the site.
8. A planning application was made last year but not validated by the Council in the light of the enforcement action that was taken. This included a site layout plan of the proposal showing eight caravan pitches, each consisting of one static and one touring caravan, and each with its own amenity building. In the light of the Council's allegation and the situation on the site at the time the notices were issued, however, I do not consider the deemed application here (on either ground (a) appeal) to include the provision of further operational development in the form of amenity buildings. The appellant confirmed at the Hearing that the deemed applications here would produce a 'workable' development because the existing cattle shed can be (and is being) used to provide amenity facilities for sanitation and laundry. Although I accept that there is likely to be some pressure for the future development of individual amenity blocks, I do not consider this to be so inevitable that it ought to contribute to my deliberations in these appeals, given the agreement between the parties that the site is 'workable' without that additional development.
9. The other main differences from the site layout plan include the lesser extent of hardstanding and the proposed reduction in the total number of caravans from 16 to 12. It was said at the Hearing that around eight caravans were on the site at the time the notices were issued, although the relevant notice is not specific as to the number (and so nor could the deemed application be, in the absence of a planning condition imposed on any approval). Mr Brown for the appellant stated a continuing requirement for eight pitches, but that the number of touring caravans could be reduced by half. This in turn, he suggested, could be accommodated within the hardstanding that has already been laid rather than requiring the addition of any more, such as that indicated on the site layout plan. Thus although there may be some pressure for the addition of more hardstanding in future, again I do not regard this as so inevitable that it should fall for consideration now.
10. The final main difference concerns the site access arrangements. At present the site is bounded to the east by a hedgerow and large double close-boarded gates bordering the highway verge, set back approximately 2.5m from the carriageway of Rock Lane. The site layout plan proposes to set back the gates by around 10m. The local highway authority requires a set back of 6m, together with a visibility splay that may require removal of part of the hedgerow to the south (discussed further below). Whether 10m or 6m, the removal of the gates further into the site, although not affecting the overall

amount of development in itself, will reveal an area of hardstanding to public view from the roadside.

11. Although referring to the provision of up to 16 caravans and eight amenity buildings, thus differing from the proposal comprising the deemed application, the appellant accepts that the development results in a significant loss of openness to the Green Belt². Given the appropriateness of the pre-existing development on the site, I concur with this assessment. The introduction of a residential use over land approximating some 0.5ha³ with associated engineering works, characterised by the provision of caravans and domestic effects (for example the trampoline present on the site at the time of my visit) plainly, in my view, amounts to the 'urban sprawl' that is the counterpart of openness as referred to in *Turner*⁴. I accept the Council's contention that openness is lost both spatially and visually as a result of the development. The site is largely screened from public view by the boundary treatment but the development nonetheless has a visual dimension and is obviously different in appearance, including from outside the site, from the agricultural use that has gone before it. As accepted by both parties, the development conflicts with one of the purposes of the Green Belt; namely to assist in safeguarding the countryside from encroachment.
12. National Green Belt policy (Chapter 13 of the National Planning Policy Framework ('the Framework') of July 2021) provides that engineering operations and material changes in the use of land are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. As I have found the developments alleged in each notice to result in a loss of openness and to conflict with the purpose of safeguarding the countryside from encroachment, it necessarily follows that the developments are inappropriate in the Green Belt (as the parties agree). The material change of use here is not among the examples given of what might be appropriate at what is now paragraph 150(e) of the Framework, and in any event the PPTS (Planning policy for traveller sites) confirms that traveller sites are inappropriate development in the Green Belt.
13. Such development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt, whether definitional or otherwise.
14. The High Court has recently explained⁵ that national policy⁶ requires the decision maker to have real regard to the importance of the Green Belt and the seriousness of any harm to it. The relevant Framework paragraphs do not, however, require a particular mathematical exercise nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance⁷.

² SoC paragraph 5.7

³ The present hardstanding (and thus use) physically takes up rather less land than the 0.53ha referred to in the submitted application (appellant SoC paragraph 4.2) although the relevant notice, and hence the deemed application, is directed to the whole appeal site comprising some 1.22ha (appellant SoC para 2.1). It is not suggested that the horses presently grazed to the south of the site are anything other than ancillary to the use alleged in the notice.

⁴ *Turner v SSCLG* [2016] EWCA Civ 466 at paragraph 15

⁵ *Sefton MBC v SSHCLG* [2021] EWHC 1082 (Admin)

⁶ In paragraphs 143 and 144 of the Framework's former iteration

⁷ *Sefton* at paragraph 34

15. Consequently I do not find it appropriate to expressly disaggregate the weight to be attributed to each element of Green Belt harm (and the Council did not ask me to do so). The Framework requires that any harm to the Green Belt attracts substantial adverse weight and thus that is the weight I attribute to the harm to the Green Belt.

Effects on highway safety

16. The effect on highway safety was not given as a reason for issuing either notice, and the Council confirmed at the Hearing that they are satisfied any adverse highway impacts can be overcome by a condition requiring an acceptable visibility splay as well as setting back the entrance gates to the site by some 6m. The parties disagreed as to what the relevant splay should be, with the Council relying on the DMRB standard of 2m x 215m and the appellant preferring MfS2 resulting in a Y-distance of around 150m.
17. MfS2 sets out that most of its advice can be applied to a highway regardless of speed limit. It recommends that designers start with MfS for any scheme affecting non-trunk roads. However, it goes on to qualify that advice to say that where actual traffic speeds are above 40mph for significant periods of the day then DMRB parameters for stopping sight distances (SSD) are recommended. Where there is some doubt, speed measurements should be undertaken. This has not happened here.
18. Applying DMRB, the unrestricted speed limit on Rock Lane suggests a design speed of 100kph, translating into a desirable minimum stopping sight distance ('SSD') of 215m (table 2.10, CD 109). One step below the desirable minimum for that speed is 160m, which is also the desirable minimum for a design speed of 85kph.
19. Exiting the site, there is ample visibility to the left (north). To the right (south), the view is partly occluded by a section of hedgerow adjoining the highway verge and a little further on the presence of a streetlight, a telegraph pole and signs warning drivers of bends and a junction in the road ahead.
20. Although the design speed of the road can be taken to be 100kph given the unrestricted speed limit, I would not expect the vast majority of traffic approaching from the south to be approaching that speed. The derestriction occurs just north of Melling, where drivers are almost immediately met with a junction to the left from Brewery Lane. The derestriction sign to the right adjoins what appears to be a residential fence, with an access beyond it to the right into what appears to be a farm complex. Approaching the bend, a further farm access to the right becomes apparent. The presence of a pedestrian footway and street lights alert the driver to potential hazards (as well as potentially resulting in some doubt as to what the speed limit actually is). A bus stop lies ahead, indicating the presence of nearby residences. Entrance to the site is then taken shortly after the signs to which I have referred.
21. Despite these factors serving to limit traffic speeds I do not think that, in the absence of actual speed measurements, there is adequate justification to depart from (or relax) the DMRB SSD standard. As MfS2 sets out, much of the underpinning research for SSD is limited to locations with traffic speeds of less than 40mph, and there is some concern that driver behaviour may change above this level as the character of the highway changes. Although traffic

speeds appeared to me less than 60mph, I was unable to judge that they were as low as 40mph, and speed measurements have not been taken.

22. Therefore I accept the Council's case that visibility splays of 2m x 215m (and the setting back of the entrance gates to 6m) are required. As there is no suggestion that these cannot be achieved, then subject to the imposition of appropriate planning conditions I find no conflict with the development plan, specifically with criterion 2(b) of HC5 or with 2(a) of EQ2, or with national policy in this regard.

Effects on character and appearance

23. The land immediately surrounding the site is relatively flat, and the Leeds-Liverpool canal lies some 60m away to the west, with a towpath adjoining it on its western side. The caravans presently on the site are clearly visible from the towpath, as well as from the humpback bridge on Brewery Lane, and this would be the case for any further caravans on the site. The site is separated from the residential properties to the north by a substantial tree belt. However, the land surrounding the site is not entirely undeveloped and there is also some pre-existing development on the site itself, with hardstanding having formerly been laid at the site entrance and the building previously used as a cattle shed being visible to the towpath. The land opposite the site to the east of Rock Lane consists of a large farm complex which, although presently appearing unused, comprises large buildings of substantial and permanent construction. The site is viewed, from the bridge to the south and the towpath to the west, in this context.
24. As the appellant points out, the PPTS makes clear that traveller sites can be appropriately located within rural and semi-rural settings. Weight should be given to sites that are well planned or soft landscaped so as to enhance the environment, but sites should not be so enclosed as to create an impression of deliberate isolation.
25. Policy HC5 2(f) requires new traveller sites to avoid 'unacceptable harm to the local environment' and policy EQ2 requires proposals to respond positively to local character and distinctiveness, and to make a positive contribution to their surroundings.
26. The Council's main concerns are the visibility of the site from nearby elevated positions, and the consequential visual impacts that would arise from providing a safe highway access. These measures would involve setting back the gates, thus revealing some of the hardstanding area to the road, and pruning and possible loss of the hedgerow.
27. Loss of the hedgerow is raised as a possibility, but on the basis of the evidence before me and my observations on site I do not think that the total loss of any part of the hedgerow is likely. Regular pruning would be required, but although the Council describe this as a 'significant burden' it is not said to be unreasonable. I do accept that the extent of the required pruning might well reduce the screening effects of the hedgerow to some degree, but not to such a significant extent that that function would be seriously undermined.
28. Hardstanding at and near to the site entrance has existed since before the present alleged breach of planning controls took place. Whilst the appearance of this part of the land itself has not changed in this respect, setting back the

gates to 6m (or more) would reveal more of this hardstanding to passers-by. The existing gates are high and wide close-boarded double gates, and setting them back would, it was explained to me on site, involve tapering the entrance to a narrower set of gates than those found at present. I do not consider that these changes to the site entrance arrangements would have the harmful urbanising effect contended for by the Council, in the context of what is already a hard boundary at the site entrance.

29. As to the character of the site generally, this has necessarily changed as a result of the change of use and the siting of caravans. In view of the PPTS recognition that rural and semi-rural sites can be an appropriate location for traveller sites, however, I do not find that the character of the site has changed unacceptably (or would do, with the addition of more caravans and associated vehicles). The site is contained within mostly soft landscaping reflecting the existing field pattern. From the towpath and the bridge it is seen in the context of the large agricultural buildings to the east. It lies close to the residential properties to the north and is not in the middle of nowhere; rather, it rounds off and completes the linear cluster of development between the house opposite Brewery Lane and the motorway to the north.
30. Bearing in mind that traveller sites are expected to be found in such semi-rural settings I do not on the whole find there to be conflict with the relevant local policies, or with the Framework or PPTS, seeking to protect local character. There is no unacceptable harm amounting to any conflict with criterion (f) of part 2 of HC5. As to policy EQ2, whilst on its own the development of the site does not make a positive contribution to its surroundings, in the context of policies that anticipate traveller sites being located in semi-rural settings I do not consider there is conflict with the design objectives of this policy.

Effects on contaminated land, flooding and drainage

31. Interested parties have raised concerns that the hardstanding has caused flooding and drainage problems to Rock Lane and to the neighbouring property; that the site (and/or the adjoining land to the north, 'The Hermitage') has in the past been used for coal storage and waste disposal resulting in contamination risks; that it is liable to flooding in the event of a canal breach; and that additional pressure on the sewerage network would be detrimental.
32. In response to my pre-Hearing note, the Council obtained comments from relevant consultees (the Lead Local Flood Authority and the Council's Pollution Control officers). No overall objections to the development were raised. The LLFA considers there is unlikely to be any additional flood risk to the neighbouring area as a result of the permeable hardstanding. A potential concern was raised about waste water but no substantive comments offered. The Council has proposed a condition to deal with this.
33. Pollution Control officers confirmed that the site adjoins (and possibly includes part of) a closed landfill site, and there is a possibility of 'made ground' material being present as a result of tipping. Standard land contamination conditions are sought because of the presence of potentially significant pollutant linkages.
34. In the light of these comments and the conditions proposed, I am satisfied that the concerns of interested parties about flooding, drainage, waste water disposal and land contamination are capable of being addressed, and any such

problems overcome. Therefore, and subject to imposing such conditions, these matters do not weigh against the development and there is no conflict with the relevant criteria of policy HC5 in these respects.

Other effects

35. Two local councillors wrote (and one of whom appeared at the Hearing) raising several concerns about the development. These concerns are mainly addressed elsewhere in this decision letter. Additionally, although no particular issue was raised about the accessibility of the site, a conflict with the Sefton Local Plan policy EQ3 was asserted. This policy stipulates that new developments in the Borough must be accessible to local services and transport links, and be located and designed so as to encourage walking and cycling.
36. PPTS sets out that new traveller site development in open countryside that is 'away from' existing settlements should be very strictly limited. Here, the site lies opposite a footway leading into the nearby town of Maghull where shops and services (including schools) are available within walking distance. The small village of Melling lies to the south, similarly accessible by a footway. A bus stop lies shortly to the north of the site. Although not allocated for development I do not find the site to be 'away from' existing settlements or to fail the accessibility criteria found in local policy EQ3 or policy HC5(2)(c). On the contrary I consider its location to be sustainable.
37. Another local councillor spoke of his concern that to permit the development would undermine public confidence in the planning system and particularly in the Sefton local plan. The local plan has not long been adopted, following its Examination, and policy HC5 was found to be robust with adequate provision made to meet travellers' needs. It is clearly desirable that permissions for traveller sites, as for other developments, emerge from a plan-led system. However that system does allow for non-allocated sites to obtain permission, as in cases where the criteria-based policy of HC5 applies or in cases where very special circumstances justifying Green Belt development are shown to exist. Such cases may set a high bar to be met, but that does not mean that any resulting permissions are inconsistent with the application of policy.
38. A further consideration is whether 'intentional unauthorised development' has occurred, in which case a Written Ministerial Statement ('WMS') provides that it is a material consideration. The making of a planning application here, which was not validated by the Council due (I understand) to the timing of its submission, indicates both the appellant's consciousness that the development was unauthorised and her willingness to seek to regularise it.
39. In this case the development that has taken place appears readily reversible, and so the concern of the WMS that there is no opportunity to appropriately limit or mitigate the harm that has already taken place has limited application. Consequently I give this consideration limited weight. However, I acknowledge that the already-established benefits to the family of this settled base would not have arisen in the absence of the development having already taken place. Thus the weight I give to those benefits is somewhat tempered, although obviously none of the children involved are to blame for any breach of planning controls and it does not affect the weight I attribute to their interests as a primary consideration.

Other Considerations

Need for and supply of traveller sites

40. Part 1 of policy HC5 allocates a number of traveller sites for development following the findings of a regional (Merseyside and West Lancashire) Gypsy and Traveller Accommodation Assessment ('GTAA') published in 2014. The four pitches required in the initial plan period to 2017/18 were granted permission before the local plan was adopted. A requirement for the remainder of the plan period of 11 pitches was identified: 6 in the period to 2022/23; 4 to 2027/28 and 1 to 2032/33. Without accounting for expected turnover, the number of emerging households requiring pitches was expected to be 6 in the period to 2017/18 (reduced to 4); 9 in the period to 2022/23 (reduced to 6); and 7 in the period to 2027/28 (reduced to 4). Thus in the period to 2027/28, if expected turnover is reduced to nought then the requirement for pitches rises from 14 to 22.
41. The Council accepts that inclusion of a turnover element in such assessments is falling out of favour, but nonetheless points out that policy HC5 makes an overprovision as against the anticipated pitch requirement: the allocation is up to 19 permanent pitches over the whole plan period to 2032/33, thus at least to some degree cancelling out the turnover. The appellant asserts that, of those 3 allocated permanent sites, site HC5.1 is presently unauthorised and has been operating under a personal permission, now expired; HC5.2 has not been brought forward and there are no proposals to do so on the horizon; and HC5.3 has a permission for 8 pitches but of these only 6 are suitable as permanent pitches and only 2 of them have so far been made available.
42. The GTAA points out that the short-term requirement should be treated as a minimum, and that the demand for pitches should be regularly reviewed, at least every five years, to determine the extent to which this minimum requirement is changing over time. The prediction of longer-term pitch requirements is said to be challenging. The Council is in the process of reviewing the needs assessment, now some eight years old, but was not in a position to share any findings by the date of the Hearing.
43. In the absence of an up to date assessment it is difficult to assess the extent of unmet need in the area. The allocations and policy were found to be robust on Examination of the local plan, and there was at that stage some proposed overprovision of pitches. There has also been a further site recently permitted on appeal, and the permission at site HC5.3 meets at least the anticipated need, as found by the GTAA, for the period expiring in 2023. On the other hand there is a recognition by the Council that the approach to pitch turnover might warrant reconsideration, and there is no available review of the demand for pitches. Taking these matters in the round, I concur with the Inspector in the Spurriers Lane appeal⁸ that there is some doubt as to whether existing need is being met in its entirety, but there is unlikely to be any significant unmet need at present.
44. Although the review of demand for pitches is overdue I do not consider this to be a case of overall policy failure. The allocations made in the 2017 local plan following Examination made some overprovision for the then assessment of need, and there has been no persistent failure of policy to bring forward sufficient sites over an extended period.

⁸ APP/M4320/C/19/3221283 and APP/M4320/W/19/3220481

Availability of alternative sites

45. The Council agreed at the Hearing that none of the allocated sites in the Borough can meet the particular need here, the extent or nature of which was not challenged. The appellant seeks eight pitches for her extended family of, by descent, Irish Travellers. The pitches would be occupied by the appellant, her five siblings, and two of her children and all their respective families. Existing private sites are owned by English Gypsies and pitches would be unlikely to be made available to the appellant or her family. Public sites are generally full, with vacancies limited in number and unable to accommodate the extended family unit here. The extended family has moved from a (now closed) site in Skelmersdale and no evidence of current site availability outside the Borough has been provided. There appear no suitable alternative sites that would accommodate the need here. The appellant has not applied for a pitch on the Council's site, where vacancies become available on occasion. The Council's records show that vacancies over a two year period have however become filled quickly. On the evidence before me there are no presently available alternative sites to accommodate the extended family group.
46. The Council say that if the forthcoming review of pitch demand identifies need that cannot be accommodated by existing allocations then a 'call for sites' exercise would follow as part of a local plan review. The Council urge me not to second-guess where such allocations might be, whereas the appellant contends that it is inevitable that any further allocations, like those in the existing HC5 policy, will be in the Green Belt. I accept, in the light of the 2017 local plan allocations amounting to exceptional circumstances warranting Green Belt release for the HC5.1 sites, that on present information it is highly likely that any additional unallocated sites which come forward would be in the Green Belt, and note that this view was shared by the Spurriers Lane Inspector. Whilst not reducing the substantial adverse weight I give to the harm to the Green Belt caused by the development in itself, this likelihood does weigh in favour of the development, because if the appellant's needs are to be met in the Borough then it follows that some Green Belt harm is likely to result.

Personal circumstances, including human rights and best interests of children

47. At the time of writing the appeal statements the extended family group comprised 17 adults and 16 children under the age of 18. By the time of the Hearing a further baby had been born with another on the way. At the date of the Hearing all except the appellant, her husband and most of her own children were travelling away from the site. The extended family had largely if not all moved onto the site in July 2020 following a history of travelling together, originally based at a site now closed in Skelmersdale, and prior to moving onto this site having occupied unauthorised encampments including on Council car parks in the Borough. The public sector equality duty is relevant to my consideration of these appeals, as are the family's rights to enjoyment of their family life and home, including consideration of the best interests of the children.
48. Two of the appellant's children have enrolled in school, and letters (identical in form) have been received from teachers at those institutions supporting the appeal. One of the head teachers attended the Hearing and spoke persuasively of the benefits, both educational and more general, to the child in her charge of having become settled on the site and at school. I have no doubt that

dismissing the appeal will be detrimental to the children's education, and the Council did not challenge this assertion by the appellant. The appellant indicated the family's intention, if the appeal is allowed, to put all of the children into school where possible. A minister of religion also spoke at the Hearing about the family's integration into the community and the benefits to welfare and education if the appeal is allowed.

49. Other correspondence from health professionals reveals a number of quite serious health problems suffered by family members. It is said that the children's physiological needs may not be met if the appeal is dismissed. Health professionals have expressed support for the appeal, referencing the provision of sanitary amenities and fresh water supplies as well as site safety and security. From this correspondence and the appellant's contribution to the Hearing, it is clear that the provision of available washing facilities has made a significant positive difference to meeting the health needs of one of the children in particular. The provision of a site with a secure perimeter, and the ability of the extended family to live together, has made a positive difference to the supervision and thus safety of at least one of the children. In respect of the adults, the clinical advantages of a settled base are less certain, although one of the professionals concerned expresses support for the family to be able to reside on their own land with the sanitary amenities that are required for families to live in a healthy clean environment. Other health conditions (not referenced by supporting correspondence) are asserted by the appellant and not disputed by the Council. Although again the clinical benefits of a settled base to those individuals are not quantified or described in detail, I am in no doubt that the family would benefit from a settled base from which to access health care and educate the children.

Planning Balance and Conclusions

50. I have set out above that I attribute substantial weight to the harm to the Green Belt, arising by reason of inappropriateness, the loss of openness and the encroachment into the countryside. Additionally I attach limited weight to the development having intentionally taken place without authorisation. In order to permit inappropriate development in the Green Belt, that harm, and any other harm, must be clearly outweighed by other considerations amounting to very special circumstances.
51. I have found that the needs of this family cannot be met by any alternative site in the Borough. The review of the local needs assessment is overdue and, although the Council has taken positive steps to ensure the overprovision of pitches, there is some uncertainty resulting from the migration forecasts and the lack of an up to date assessment. I have also found that it is highly likely that the family's accommodation needs would have to be met in the Green Belt. The development does not, subject to complying with planning conditions, conflict with policy in any other way and in particular I have found that it meets the criteria of part 2 of policy HC5.
52. I attach some limited weight to the family's personal circumstances overall, with evidence that the health and well being of some of the adult family members would benefit from a settled base here and overall benefits from the family being able to live together. I attach very substantial weight to the particular health needs of some of the children that I have described above, and substantial weight to the social and educational benefits of all of the

children who will be able to attend school if permission is granted. Having regard to the aims of the public sector equality duty, I consider that to grant permission would assist in advancing equality of opportunity and in fostering social cohesion, as adverted to by the Rev. Kelly, and I attribute some weight to this.

53. I am conscious that in terms of the PPTS, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh Green Belt and any other harm so as to establish very special circumstances. Nevertheless in the particular circumstances of this case, I consider that the harm I have described is clearly outweighed by the cumulative weight I have given to the other considerations such that they do clearly outweigh the harm to the Green Belt and other harm. Very special circumstances do therefore exist which leads me to the view that planning permission should be granted. I have found no overall conflict with policy HC5 or the design or environmental policies cited by the Council or other parties. Because very special circumstances exist, it also follows that I find no conflict with policy MN7. Therefore the proposal overall complies with the development plan for the area.

Conditions

54. The Council have suggested a number of conditions which, with some adaptations and the inclusion of landscaping details, I shall impose. A condition is necessary to restrict the occupation of the site to gypsies or travellers in order to ensure that the site meets the need which justifies granting the permission. A limit to 8 pitches and 12 caravans reflects the scale of the development sought and restricts it to the identified need. Restriction of lighting and a landscaping requirement are necessary to safeguard the character and appearance of the area.
55. Visibility splays and an internal access road, and drawings to confirm that vehicles can all enter and exit the site in a forward gear, are all necessary to ensure highway safety. Restricting the size of vehicles is necessary to ensure visual amenity. An assessment of contamination risks and any remedial measures are required to secure the health of those living on the site. Drainage details are also required so as to avoid health or flooding risks. Given the comments of the Lead Local Flood Authority I shall also require that no mobile homes are situated on the site before agreement as to floor levels has been given.
56. The conditions will in the main apply to the permission granted under Appeal A. Additionally I shall impose a condition on the Appeal B permission requiring the removal of the hardstanding if the use (granted under Appeal A) is to cease. This reflects the plan submitted after the Hearing which is now the agreed extent of the hardstanding that would have had to be removed if the appeal was otherwise dismissed. It is necessary because if the use is to cease then it is undesirable to retain the engineering works that have facilitated the use.

Conclusions and Formal Decisions

57. For the above reasons I conclude that the appeals should succeed. As the deemed planning applications under ground (a) are to be granted, it follows that I do not need to consider the remaining grounds of appeal.

Appeal A

58. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the making of a material change of use of the land for residential purposes including the siting of caravans at land west of Rock Lane, Melling L31 1EW, subject to the conditions set out in the Schedule of Conditions to this decision.

Appeal B

59. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely engineering works including the importation of hardcore to create a hardstanding area at land west of Rock Lane, Melling L31 1EW, subject to the condition set out in the Schedule of Conditions to this decision.

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Marion Doherty	Appellant
Martin Doherty	Appellant's husband
Philip Brown	Philip Brown Associates

FOR THE COUNCIL:

Piers Riley Smith	of Counsel
Steven Faulkner	Planning Team Leader
Ian Loughlin	Policy Team Leader
David Lawrenson	Enforcement Team Leader
Neil Kennard	Legal Services

INTERESTED PERSONS:

Cllr. Paula Murphy	Local councillor
Cllr. Anthony Carr	Local councillor
Cllr. Ron Baker	Parish councillor
Rev. Joseph Kelly	Retired Parish Priest, St. George's RC Maghull
Yvonne Bennett-Gleig	Head Teacher, Summerhill Primary
John Hale	local resident

DOCUMENTS SUBMITTED AT THE HEARING

- (1) Photograph of the site taken on 13 September 2021 (submitted by the Council)
- (2) Copy letters (4) from health professionals (submitted by appellant)
- (3) Copy letter from neighbouring resident (submitted by appellant)

SCHEDULE OF CONDITIONS

APPEAL A

1. The site shall not be occupied by any persons other than gypsies or travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
2. There shall be no more than 8 pitches on the site and on each pitch there shall be no more than 2 caravans, subject to their being no more than 12 caravans on the site at any time and no more than 1 static caravan on any pitch.
3. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
4. There shall be no external lighting on the site other than in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
5. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed **within 28 days** of the date of failure to meet any one of the requirements set out in (i) to (vii) below:

(i) **Within 4 months** of the date of this decision a scheme, to include a proposed timetable for completion of the works, for:

- The setting back of the access gates to the site a minimum of 6 metres from the edge of the existing carriageway to Rock Lane;
- The provision of visibility splays of 2 metres x 215 metres at the junction with Rock Lane;
- The provision of an internal access road with a minimum width of 5.5 metres, including parking and turning facilities to enable vehicles to access and egress the site in forward gear;
- A scheme of landscaping, to include indications of all existing trees and hedgerows on the site identifying those to be retained and set out measures for their protection throughout the course of carrying out the site development scheme;
- The floor levels of any static caravans to be brought onto the site; and
- Details for the draining of all foul and surface water from the site, avoiding discharge to the public sewer where possible but if not the details shall include measures to restrict the discharge rate

(the 'site development scheme') shall have been submitted for the written approval of the local planning authority.

(ii) **Within 4 months** of the date of this decision the provision to the local planning authority of tracking drawings demonstrating that the largest vehicles entering and exiting the site can do so in forward gear.

- (iii) **Within 4 months** of the date of this decision an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice and the Environment Agency’s Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) and shall assess any contamination on the site, whether or not it originates on the site.
- (iv) If any contamination is found, **within 6 months** of the date of this decision a report (‘the contamination report’) specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to the local planning authority for approval. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority.
- (v) If **within 9 months** of the date of this decision the local planning authority refuse to approve the site development scheme or the contamination report or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (vi) If an appeal is made in pursuance of (v) above, that appeal shall have been finally determined and the site development scheme or, as the case may be, the contamination report shall have been approved by the Secretary of State.
- (vii) The approved site development scheme and measures identified in the contamination report shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme the scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. All planting, seeding or turfing comprised in the approved details of the scheme of landscaping shall be carried out in the first planting and seeding seasons following the completion of the site development scheme; and any trees or plants which within a period of 5 years from planting or seeding die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

APPEAL B

1. If the use of the site for residential purposes should cease, within 28 days of such cessation the hardstanding area marked in blue lines on the plan attached to this decision shall be removed from the site and the land restored to its former condition.



Plan

This is the plan referred to in my decision dated: 2 December 2021

by **Laura Renaudon LLM LARTPI Solicitor**

Land at: Rock Lane, Melling

Reference: APP/M4320/C/20/3258167

Scale: NOT TO SCALE

