Leeds CITY COUNCIL

Originator: Glen Allen

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Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 7th July 2018

Subject: 16/06911/FU – Appeal(s) by Mr T Doran against the decision of the City Council to refuse planning permission for the change of use of land to create a single travellers pitch and against the decision of the City Council to serve an enforcement notice to cease the use of the site and restore it to its former condition at land off Hollinhurst, Allerton Bywater, Leeds.

The Appeals; the appeal against the refusal of planning permission was allowed subject to conditions and the appeal against the serving of the enforcement notice was allowed in part on grounds (g) with modifications made to the notice.

A claim for the award of full costs against the Council was dismissed.

Electoral Wards Affected:
Kippax & Methley and Garforth & Swillington

Yes — Ward Members consulted (referred to in report)

Specific Implications For:

Equality and Diversity ☐

Community Cohesion ☐

Narrowing the Gap ☐

RECOMMENDATION:
Members are asked to note the following appeal and costs decisions.

1.0 BACKGROUND

1.1 The planning application had previously been considered by Plans Panel on two occasions initially on 9th March 2016 when Officer brought the proposal to Plans Panel for consideration with a recommendation to approve the scheme subject to conditions.

1.2 However, this recommendation was rejected by Plans Panel following due consideration and the case was deferred to return to Plans Panel with suggested reasons for refusal for Members to consider. This occurred on 13th April 2017 where two substantive reasons for refusal were presented to Plans Panel relating to overdevelopment of the site and impact on the character of the immediate area. Members, during the further discussion of this case, requested a third reason for refusal be imposed relating to highways safety matters.

1.3 The final reasons for refusal of planning permission was issued as:

1) The proposed change of use encompassing the siting of a static mobile home and two touring caravans, the building of a permanent utility room and the provision of three off street car parking spaces is considered to represent an overdevelopment of the site which will be detrimental to the amenities of the future occupiers of the site by reason of the close proximity of the individual caravans, and inadequate space remaining around those caravans for the purposes of recreation. The space remaining would also make the manoeuvring of vehicles difficult causing a danger to users of the site. As such the proposal is contrary to policies GP5 and BD6 of saved UDPR and to Policies P10 and H7 of the Core Strategy. It is also considered to be contrary to Policy H Determining planning applications for travellers sites of the Governments policy document Planning Policy for Travellers Sites issued August 2015.

2) The development by reason of the nature of the caravans, the lack of appropriate landscaping and the enclosure of the site by high walls, fences and gates is considered to be out of character with the semi-rural character of the immediate area and as such is detrimental to the amenities of the location as a whole. The proposal is considered to be contrary to Policy P10 of the Core Strategy and Policies GP5 and BD6 of saved UDPR. It is also considered to be contrary to Policy H Determining planning applications for travellers sites of the Governments policy document Planning Policy for Travellers Sites issued August 2015.

3) In the opinion of the local planning authority it is considered that the proposed development would result in the intensification of the use of Hollinhurst which is a highway with substandard layout and geometry, unable in places to accommodate two way passing vehicles, with side roads of restricted visibility and substandard provision for pedestrians. Additionally, difficulties associated with the development access, which is located on a ninety degree bend in the road, are likely to require users to carry out reversing or turning manoeuvres within this substandard highway environment. The development would therefore be prejudicial to the interests of highway safety for pedestrians and road users alike. As a consequence the development conflicts with policies GP5 of saved UDPR and T2 of the Core Strategy

1.4 It was also noted by Plans Panel that it was normal practice for any enforcement notice to be served at the same time as the decision refusing an application. In this case the reasons for the serving of the enforcement notice are different to those for the refusal of planning permission as the occupied site encompassed Green Belt land whereas the application for planning permission was only on part of the land owned by the applicant and included that part of his ownership that lay outside of the Green Belt designation.

1.5 The decision notice and enforcement notice were subsequently issued and appeals lodged against both of them. This resulted in a more complex system of appeals than would normally be the case and in summary there were as follows:

- Sec.78 Appeal – Against the refusal of planning application 16/06911/FU, and

- Sec.174 Appeals against the serving of the enforcement notice – one appeal each made by Mr T Doran and Mrs N Doran (as both had been served with copies of the enforcement notice).

1.6 The Sec.174 Appeals were further subdivided into different parts as the legislation allows for different grounds for appealing against an enforcement notice referenced (a) – (g). Any appeal under ground (a) also results in the creation of what is known as a Deemed Application for Planning Permission as this ground of appeal is on the basis that planning permission ought to be granted for the breach stated in the enforcement notice. The defence of this part of the case was different form the defence of the Sec.78 Appeal as this deemed application for planning permission also encompassed the land owned by the appellant and occupied by them that is green Belt.

1.7 The appeal under Sec.174 was also made on ground (g) which relates to the time period given to comply with the enforcement notice.

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

2.1 The Sec.78 Appeal, the appeal relating to the same area of land that was the subject of the application for planning permission determined by Plans Panel, was allowed. The Inspector noted that the nature of the development had changed the physical appearance of the site but then noted that the residential use is limited in scale.

2.2 The close proximity to the Green Belt boundary was also noted but he concluded that "…the development is unlikely to have an intrusive effect when seen from the adjacent woodland, because of the siting and position of the caravans. The nature and extent of the caravan site does not have an incongruous or intrusive impact when viewed from the wider countryside."

2.3 In relation to views of the site from Hollinhurst itself and particularly from the southern approach the Inspector noted "…Local residents will see the development from surrounding dwellings. Nonetheless, in my assessment, the visual impact of the development is likely to be localised and limited given the potential boundary treatment. Any visual impact would be softened by introducing soft landscaping along the boundaries to the site." He also commented on the material differences between the scheme that was subject to this appeal and the previous scheme that had been determined by previous Inspector that was for a more 'traditional' dwelling. He concluded in this matter "…that the mobile home would appear as a small bungalow and its siting is unlikely to have an incongruous effect."

2.4 Turing to the concerns regarding the future living conditions as expressed in the second reasons for refusal the Inspector made the following observations.

2.5 A site licence under the 1960 Act relating to Caravans would be needed and that this licence is a means of ensuring that public health standards are maintained and that residents' amenity and health and safety is safeguarded. Whilst accepting that this has no Planning Status he concluded that "given the number of caravans stationed upon the land, there is sufficient circulation space and reasonable amount of private and useable amenity space."

2.6 Likewise in relation to disturbance through comings and goings he concluded that it is his opinion there is not likely to be significant levels of such activities and that the noise that is currently created by the petrol generator could be controlled by condition pending the implementation of mains services to the site.

2.7 In conclusion on this matter he stated "…the development does not, and would not, have a materially harmful effect upon the living conditions of existing and future occupants."

2.8 On the matter of Highway Safety the Inspector concluded that because the proposal is for a single pitch and in the absence of any evidence that the nature of the residential pitch has the potential to significantly increase the use of the site access, that Hollinhurst is not heavily trafficked and there has been no reported incident or accident in connection with the sites residential use "that the development does not have a materially harmful effect upon highway safety." The Inspector also concluded the visibility at the junction of Hollinhurst and Leeds Road was satisfactory.

2.9 Another consideration made by the Inspector related to; the need for additional Traveller Pitch's. The Inspector noted the advances that the Council have made in the emerging SAP but that at the time of the appeal there were no alternative sites available and in particular that there was no 5 year land supply of specific deliverable sites. He noted that the SAP will make provision for the identified need for 25 publicly provided pitch's and noted the 9 proposed negotiated pitch's (which in the discussion was applauded by the appellants agent as a forward thinking solution), but also noted that the SAP will not meet the need for the necessary number of private pitch's identified for the Plan period.

2.10 The Inspector also noted that the appellant's agent put forward arguments in respect of the status of the appellants as Travellers, the needs of the children, their rights under Article 8 of the European Convention on Human Rights and commented that it was necessary for him "to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case" and "to consider whether refusal would have a disproportionate effect on the occupiers of the site."

2.11 In conclusion he attached significant weight to the following matters: The unmet need for gypsy and traveller sites in the area, the lack of a five year land supply of specific deliverable sites and the lack of available, suitable and affordable alternative accommodation. He concluded that "…These factors combined are sufficient to outweigh any localised visual effect of the development on the character and appearance of the area." What is also significant is that whilst the Inspector made this conclusion he also went on to say that "Although not determinative in this case, I attach personal circumstances including the best interests of the child involved moderately some weight in favour."

2.12 In conclusion on the planning application appeal the inspector found that the development was acceptable and imposed conditions relating to certain specific matters. The approval relates to an alternative scheme that is less intensive than that considered under the terms of the original planning permission and it was agreed at the hearing that as the scheme was less intensive there would be no prejudice to interests of acknowledged importance and in particular the occupiers of nearby properties.

2.13 Turning to the enforcement appeals the main point of discussion was the impact of the development occupying the entire site that also encompasses the Green Belt land owned by the appellant. The Inspector noted that this land encompassed approximately 11 metres by 26 metres.

2.14 The Inspector concluded the residential use of this part of the land including all the paraphernalia associated with residential occupation has diminished the openness of

the Green Belt. He noted that whilst caravans might come and go on a regular basis the mobile home will remain in situ for a considerable period of time. The site is directly visible from Hollinhurst and the static caravan is likely to have the appearance of a small bungalow. He concluded that the caravan site (as a whole) "is perceived as intrusive development and causes an actual and appreciable loss in openness."

2.15 Overall in relation to the ground (a) appeal relating to the entire site including the Green Belt land, the Inspector concluded that "the development has a significantly and adverse visual effect upon the character and the appearance of the surrounding area." In response to the appellants arguments regarding the lack of a 5 year land supply for private traveller pitch's and that this might outweigh the considerations of the Green Belt designation the Inspector made reference to Government advice on this matter that currently advices that the Green Belt boundary should only be altered through the plan making process rather than through the piecemeal grant of planning permission. In his conclusions the Inspector again made reference to the status of the appellants, their personal circumstances and that in his considerations he was mindful to allow the Sec.78 appeal thus making provision for the family in this instance. Therefore, he concluded that in this instance the harm done to the Green Belt was not outweighed by the other considerations.

2.16 The Inspector also gave consideration to the grant of a temporary permission however found that the harm caused even over a temporary period of time given that he was mindful to allow the Sec 78 Appeal was unacceptable including that the personal circumstances of the family were protected through this grant of permission under the Sec.78 appeal. The appeal under ground (a) was therefore dismissed.

2.16 The remaining consideration, the appeal under ground (g) was a matter for the Inspector to consider in terms of the length of time allowed to comply with any extant notice as a result of the appeal process. To this end he imposed a slightly longer time limit for compliance and amended the notice to 7 months. This he did in the interest of proportionality.

3.0 APPLICATION FOR FULL COSTS AGAINST THE COUNCIL

3.1 There was a claim for a full award of costs against the Council for unreasonable behaviour in respect of this case. There were two main thrusts to this case namely that the original recommendation of Officers was to grant planning permission and the Local Highway Authority did not object to the previous application for residential development of the land, however, Members resolved to refuse planning permission but the Council failed to demonstrate why the case was refused on highway grounds therefore the Council had delayed development that was acceptable.

3.2 The defence offered by Officers was that the point of having elected Members determine applications is a part of the local democratic process and that particularly in relation to the highways issues Members had decided to place different weight to the various material considerations after listening to the concerns raised by local residents.

3.3 The Inspector noted that despite the initial lack of objection on highways grounds that a Highways Officer was in attendance at the Hearing and defended the Councils case and further the Inspector found that the Council "has, on this occasion, substantiated all reasons for refusal on this particular matter." He then went on to conclude "unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is unjustified in this case."

4.0 IMPLICATIONS

4.1 The decision by the Inspector highlights the need to take into account the material differences between cases where there is a planning history. That the site had been the subject, previously, of decisions relating to residential accommodation does not, in the absence of an “in principle” objection to such a use render it unacceptable to alternative forms of residential development.

4.2 Notwithstanding that the Inspector agreed with the initial findings of Officer’s that the principle of a travellers site was acceptable in this location the Inspectors report does draw out in some detail the significant weight that he placed on the status of the applicant as a traveller and thus their Human Rights and to a lesser but still significant degree the best interests of the child that is part of the appellants family. This is something that should be noted by Members as in other cases where there may be an “in principle” objection to the establishment of a travellers site on material planning grounds, the aforementioned issues might outweigh those considerations.

4.3 The issue of the Green Belt was given significant weight by the Inspector and his reference to the Planning Practice Guidance in regards to how the boundary of the Green Belt should be changed through the plan making process supports this. However, because the Inspector had made provision for the family under the Sec.78 Appeal (the appeal against the refusal of planning permission), the decision does not give any indication whether the issues discussed at 4.2 above would outweigh the harm identified to the Green Belt.

4.4 In respect of the Costs decision this exonerates the Council and supports the democratic process of bringing certain applications to Members for determination. Whilst the reasons for refusal included a reason relating to an issue that the officers did not identify as being problematic, that of Highway Safety, that members had placed greater weight on this issue and then it was subsequently defended in a reasonable manner at the hearing led the Inspector to conclude that this did not constitute unreasonable behaviour.

4.5 Likewise that Plans Panel’s decision ran contrary to the initial advice of the Officers does not in and of itself constitute unreasonable behaviour and again supports the democratic process of the Planning System in that it is not unreasonable behaviour for Members to give different weight to different material considerations and come to a different conclusion than that of their advisors.

Background papers:
Application file: 16/06911/FU
Appeal and Costs decisions appended

The Planning Inspectorate

Appeal Decisions

Hearing and site visit held on 17 April 2018

by Mr A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 17 May 2018

Appeal A Ref: APP/W/17/3177207
Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr T Doran against the decision of Leeds City Council.
- The application ref 16/06911/FU, dated 4 November 2016, was refused by notice dated 27 April 2017.
- The development proposed is described on the application form for planning permission as *the change of use of land to 1 family traveller pitch with associated works including 1 no. mobile home, 2 no. touring caravans, 1 no. utility room, fencing and hardstanding*.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Appeals B and C Refs: APP/C/17/3177209 and 3177210
Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr T Doran (Appeal B) and Mrs N Doran (Appeal C) against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 8 May 2017.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for the purposes of the stationing of caravans for human habitation, the creation of a hard standing by the deposit of hardcore or similar material, the erection of a gate, toilet cabins, wooden hut and siting of generators and the parking of private motor vehicles ancillary to the residential use of the land.
- The requirements of the notice are to:
  1) Cease the use of the land for the stationing of caravans for human habitation and the parking of all motor vehicles in connection therewith and remove all such caravans and motor vehicles from the land.
  2) Remove all ancillary paraphernalia including tent, toilet cabin/s, timber dog hut, generators and metal cladded green gate from the land.
  3) Remove the hardcore laid on the land to its full depth and cultivate the area of the land from which the hardcore has been removed to create a seedbed suitable for sowing grass.
  4) Seed the entire area cultivated in accordance with Step 3 above with an appropriate agricultural grass seed mix and repeat the seeding where necessary until a grass sward is established.
- The period for compliance with the requirements is two months for Steps 1) and 2), three months for Step 3) and during the first available grass seeding season following the completion of Step 3) above.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
- Since the prescribed fees have not been paid within the specified period in Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: Both Appeal B and C succeed in part on ground (g)

and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural matters

1. At the Hearing an application for costs was made by Mr T Doran against Leeds City Council. This application is the subject of a separate decision.

The site, proposal and background information

2. The enforcement notice covers all of the land under the ownership of the appellant. It is in residential use and partly falls within the settlement and partly on land designated as Green Belt. The site under consideration in Appeal A falls within the settlement boundary and retrospective planning permission is sought for its continued use as a residential caravan site. In Appeal B, the deemed application relates to all of the land. For reasons that will become clearer later, I will first evaluate the s78 appeal and then the s174 case. I will return to matters relating to the notice when I address the latter.

3. The Council as local planning authority (LPA) determined the application for planning permission on the basis that the proposal is for a single traveller pitch. The plan show a mobile home and space for two touring caravans, hardstanding , a utility building and three off-street car parking spaces along the front. This application was refused permission because of the impact of the development upon the character and appearance of the locality, the effect upon existing and future occupants' living conditions and highway safety.

4. An amended plan has been submitted for my consideration. This drawing shows a static and a touring caravan, two car parking spaces and a hard-surfaced area[1]. Due to the reduction in the number of caravans, the site layout changes but the caravans and car parking spaces are located within the compound. The dayroom and the three car parking spaces are removed and the hard-surfaced is reduced. Overall, the alterations to the site layout are minor and the scale of development is reduced. To my mind, the amended scheme does not fundamentally alter the nature of the development considered by the LPA, because permission is sought for a single pitch with a slightly different site layout. I am satisfied that the amended scheme is not substantially different to such an extent that my consideration of it potentially deprives those who should have been consulted an opportunity to do so[2]. I will therefore proceed on the basis that planning permission is sought for the amended scheme.

5. There is a previous s78 appeal decision in relation to an application for planning permission to erect a single detached dwelling at the site[3]. Whilst the findings of the previous Inspector are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusion provided there are sound planning reasons for departing from her approach.

6. The appellant's claim that he meets the gypsy and traveller planning policy definition given in the *Planning policy for traveller sites* 2015 (PPTS) is unchallenged. The definition of gypsies and travellers is set out at annex 1 to PPTS. The appellant is an Irish Traveller who has a travelling lifestyle that is nomadic in

[1] Drawing no.TDA.2333.01, dated September 2017.
[2] Applying the principles established in *Bernard Wheatcroft Ltd v SSE* (Journal of Planning and Environmental Law 1982 P37).
[3] Appeal dismissed 6 July 2015 ref: W/15/3013414.

character. All of the site occupants have a clear cultural and family history of travelling. This lifestyle was, and remains, for the purposes of work and for attending the traditional gypsy fairs, indeed sometimes often attending fairs and seeking work would coincide. There is no suggestion that either intended to give up travelling. They want a settled base from which to travel.

Planning policy

7. Policy N33 of the Leeds Unitary Development Plan Review 2006 (UDP), which is saved by Direction of the Secretary of State, relates to development proposals inside the Green Belt. Amongst other things, the policy refers to change of use of land for purposes which do not compromise Green Belt objectives. The National Planning Policy Framework (NPPF) is a relevant consideration. Paragraphs 89 – 90 set out policy for assessing proposals inside the Green Belt. Paragraph 90 does not include material change of use of land. Paragraph 87 records inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I find some tension between paragraph 90 and UDP Policy N33 because of the phraseology used and I will attach it limited weight in the context of Appeal B. However, Policy BD5 and GP5 are general development control policies broadly consistent with the NPPF[4].

8. The Core Strategy 2014 (CS), Policy H7, which relates to accommodation for gypsies, travellers and travelling show people, is relevant. Policy P10 relates to design matters and Policy T2 to accessibility requirements and new development. In terms of emerging policy, the Local Plan Site Allocations Plan (SAP) has been the subject of public consultation and a draft version has been submitted to the Secretary of State in March 2018. However, there has been some delay as a result of additional research. Examination in public is planned for summer 2018 and adoption early 2019. Having regard to NPPF 216, I attach this emerging policy little weight as it is yet to be scrutinised by an independent Inspector and it might change in the future.

Appeal A – the s78 appeal

9. The main issue to consider is the effect of the development upon: 1) the character and appearance of the street scene and locality; 2) the living conditions of existing and future occupiers of the site having particular regard to site layout, amenity and space standards; 3) highway safety with particular reference to servicing, turning space and on-site parking space. In addition, whether any harm arising from the above matters is outweighed by other considerations, including the level of need for gypsy and traveller sites, personal circumstances and Human Rights considerations.

Character and appearance

10. The estate is characterised by rows of two-storey terraced dwellings. The site is situated at the top of Hollinhurst, which is a lane that roughly runs northwards from Leeds Road and turns into an access to the rear of existing dwellings. The site adjoins residential gardens to the east and dense woodland to the north and west. To the south and southeast there is residential development.

11. The site is roughly rectangular in shape some 230 square metres in size and was overgrown by vegetation. It is located on the edge of the settlement and forms a visual gap between the wooded area and built-up development to the south. I consider that the nature of the development has changed the physical appearance

[4] NPPF paragraph 215 applied.

of the site. That said, however, the residential use is limited in scale and is facilitated by the stationing of a single static caravan and a touring caravan.

12. The LPA is concerned that the site is located close to the Green Belt boundary. However, the development is unlikely to have an intrusive effect when seen from the adjacent woodland, because of the siting and position of the caravans. The nature and extent of the caravan site does not have an incongruous or intrusive impact when viewed from the wider countryside. Additionally, a suitable boundary could be erected between the appeal site and the countryside. Such a barrier would address concerns about the potential expansion of residential activity onto land within the countryside.

13. The caravans are noticeable in views from the south along Hollinhurst. Passers-by are likely to perceive the existence of a caravan site. Local residents will see the development from surrounding dwellings. Nonetheless, in my assessment, the visual impact of the development is likely to be localised and limited given the potential boundary treatment. Any visual impact would be softened by introducing soft landscaping along the boundaries to the site.

14. There is material difference between the scheme before me and the previous Inspector. In comparison, a two-storey house would have stood alone at the western end of the row of gardens close to the boundary of the Green Belt. In contrast, the revised scheme shows that the static caravan would be located close to the eastern boundary of the site, which is defined by a tall solid wall. I consider that the mobile home would appear as a small bungalow and its siting is unlikely to have an incongruous effect.

15. Pulling all of the above points together, I conclude that the development does not compromise the semi-rural character of the site or locality. Accordingly, the caravan site complies with UDP Policies BD5 and GP5 and CS Policy P10.

Living conditions

16. The LPA is concerned about the lack of amenity space for existing occupants of the site and is concerned about safety. It is likely that a site licence pursuant to the Caravan Sites and Control of Development Act 1960 as amended would be needed. The space would need to be satisfactory. The site licence is a means of ensuring that public health standards are maintained and residents' amenity and health and safety is safeguarded. The *Model Standards 2008 for Caravan Sites in England Caravan Sites and Control of Development Act 1960* are developed for good practice. However, these standards have no planning status and the standards are not set in any DP policy, or supplementary planning document. In any event, given the number of caravans stationed upon the land, there is sufficient circulation space and reasonable amount of private and usable amenity space. I consider that the nature of development provides acceptable amenity for existing and future occupants.

17. I do not consider the scale of development is likely to generate significant level of comings and goings to and from the site. The level of noise created by the petrol generator has disturbed residents and is unacceptable, though the appellant is negotiating with local utility providers. In the short term sound attenuation scheme could be submitted to the LPA for its consideration.

18. There is nothing before me to indicate that the scale of the development dominates the settled community when considered on its own or cumulatively. I consider that the nature of the development, as illustrated on drawing no.TDA.2333.01, does not have a materially harmful effect upon the neighbours' quality of life.

19. Drawing all of the above points together, the development has been designed with consideration given to both existing and future occupants' amenity. I conclude that the development does not, and would not, have a materially harmful effect upon the living conditions of existing and future occupants. Accordingly, subject to conditions, the scheme complies with UDP Policy BD5 and GP5, and CS Policy P10.

Highway safety

20. The estate is accessed via Hollinhurst which, in turn, is accessed from Leeds Road. Pedestrian provision within the estate comprises a single footway which is located between no.99 and Leeds Road along the eastern side of Hollinhurst. Pedestrians walking to and from the estate mainly use the carriageway. The evidence presented does not suggest there is a particular problem caused by the local highway network's design and layout.

21. There is adequate visibility at the junction where Hollinhurst meets the main carriageway, but the local highway authority (LHA) is concerned about the intensified use of the site access. The driveway is located on the outside of a 90-degree bend opposite no.99 Hollinhurst. The carriageway approaching the bend does not permit two vehicles to pass simultaneously, because of its width. The bend is about 3.8 m wide and visibility is restricted by a boundary wall. However, the scheme is for a single pitch. There is no evidence before me to suggest that the nature of the residential use has the potential to significantly increase the use of the site access. Hollinhurst is not heavily trafficked and there has been no reported incident or accident in connection with the site's residential use. The gates are slightly set back from the highway and there are adequate sightlines in both directions, due to the location of the access. There is sufficient space for drivers to turn within the site and exit in forward gear.

22. The LHA acknowledged that the shared surface road layout has not caused a particular problem between pedestrians and vehicles. Indeed, users of the local highway network are likely to be cognisant and alert of their surroundings. The evidence presented does not show to me that the caravan site has the potential to increase the risk to other users of shared surfaces including pedestrians and cyclists.

23. I note that CS Policy T2(v) requires parking provision and sets out specific accessibility standards at appendix 3. However, two car parking spaces would be sufficient and appropriate in terms of length and width to allow simple manoeuvring to get in and out of the space. Concerns about inadequate off-street car parking are misplaced.

24. In my assessment, the use of the access in connection with the residential caravan site does not, and would not, have a negative effect upon the safe and efficient operation of Hollinhurst, given the limited nature and scale of the development. I conclude that the development does not have a materially harmful effect upon highway safety. Accordingly, the development would not conflict with UDP Policy GP5 and CS Policy T2.

Other considerations

25. The following arguments are advanced as other considerations that might weigh in favour of the development.

26. The need for additional traveller sites is set out in CS Policy H7, which refers to the Gypsy and Traveller pitch requirement study in 2013-2014. The supporting text to Policy H7 indicates a need for 62 pitches to March 2028 made up of: 25 pitches

Council provision, 28 pitches private provision and nine negotiated stopping provision. Although sites will be allocated via the emerging SAP, there are currently no alternative sites available. Furthermore, there is no five-year supply of specific deliverable sites. I note the argument that there has been a local policy failure to provide sites, but the SAP would meet the identified need for additional public sites. There will remain an unmet need for privately owned traveller sites. Although minor, the appeal scheme would represent a way of meeting that identified and significant unmet need.

27. The appellant maintains that the appeal site is previously-developed whereas the LPA state it was probably an allotment. The agreed position, however, is that the site is reasonably accessible by public transport and a short car journey away to healthcare and educational facilities, supermarkets and local services. Economic benefits would be limited to the occupants of the site but there is social advantage in providing settled accommodation to meet the needs of travellers.

28. The Hearing received a range of detailed evidence relating to the general medical and educational needs of the family and, in particular, the needs of the children involved in this case. Details of anti-social behaviour targeted at the family have been submitted. Evidently, there is a dependence upon existing various educational and health services in the locality. I have heard and read sufficient evidence to satisfy me of the validity of the health claims and special educational needs of the children. Accessing facilities from an unsettled base is problematic as opposed to a more permanent abode. I appreciate the argument that these facilities could be accessed from a different site, but the family will have benefited from the ability to receive regular education and healthcare, which living at a settled base provides.

29. The appellant and occupiers' rights, including each child, under Article 8 of the European Convention on Human Rights (ECHR)[5] must be taken into consideration. This includes not only respect for their home but also their private and family life and their traditional gypsy lifestyle. The dismissal of planning permission could result in occupiers being evicted. Interference with their home, private and family life is therefore serious but must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. There is a need for restrictive development control policies and this restriction is an appropriate proportional response to that need.

30. A primary consideration for me is the best interests of the children[6]; the latter being aligned with adults' interests. I concur it is, and would be, in the children's best interests to continue to have access to health services and education from a settled base. It would be preferable for those facilities to be the same that they access at present and are familiar with. However, it is not necessary to access these facilities from this site. For example, it is also not uncommon for families to move home from time-to-time and their children to have to change schools. It is not that uncommon for people to change health providers as a consequence of moving home. That said there is no suggestion of another site being available right now that would provide a settled base from which health facilities could be accessed.

[5] The ECHR protections have been codified into UK law by the Human Rights Act 1998.
[6] The Planning Practice Guidance (PPG) [Ref 21b-028-2015091] states that; *Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.*

31. There is no alternative suitable site presently available for occupation in the district, or indeed, the wider area, which makes the interference more serious and, as indicated above, given that background, it would be in the best interests of the children to remain on the site. This is a primary consideration in the proportionality assessment required by Article 8. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the occupiers of the site in my conclusions.

The planning balance

32. The proposal would not harm the character and appearance of the surrounding area. A comprehensive landscaping scheme would considerably mitigate any visual effect of the development on walkers and passers-by. The site would be suitable and sustainable for the development. I find that the development complies with LP UDP Policy GP5, BD5, CS Policy H7 and PS10.

33. I attach significant weight to each of the following matters: the unmet need for gypsy and traveller sites in the area, the lack of a five-year supply of specific deliverable sites and the lack of available, suitable and affordable alternative accommodation. These factors combined are sufficient to outweigh any localised visual effect of the development on the character and appearance of the area. Although not determinative in this case, I attach personal circumstances including best interests of the child involved moderately some weight in favour. Limited weight is given to the intentional unauthorised development argument.

34. A favourable outcome would not violate the appellant's human rights. I have had due regard to the Public Sector Equality Duty (PSED) set out in the Equality Act 2010. I consider that a refusal of permission for development that is acceptable in planning terms would fail to foster good relations between the site's proposed occupants and the settled community. The PSED adds weight to my overall conclusion that the appeal should be allowed.

Conditions

35. I have considered the suggested conditions in the light of advice found in paragraph 203 and 206 of the NPPF and the relevant sections of the Planning Practice Guidance. Residential use of the land has already commenced. The grant of planning permission will generally be for the use of the land as a residential caravan site.

36. To ensure adequate control over the development and in the interests of amenity, details of sound insulation to address the level of noise emitted by the generator need to be submitted to the LPA for its approval. Details for foul and surface water drainage scheme as well as site connection to utility services, scheme for external lighting, hard and soft landscaping and boundary treatments need to be submitted to the LPA for approval. The details should include details of a physical boundary that subdivides the appeal site from land within the Green Belt. A timetable for implementation of the approved details must also be submitted. These matters need to be part of a site development scheme and a retrospective condition is reasonable and necessary.

37. The condition requiring a site development scheme reflects the significance that I attach to the various matters mentioned above, and the need to enforce the use in their absence. It is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters. These matters need to be addressed in order to make the development

acceptable in planning terms. I shall draft the retrospective condition so that it imposes certain timescales to ensure submission of the details within three months and to allow time for approval of those details, or appeal if necessary.

38. In the interests of visual amenity, there is a need to impose a landscaping retention condition given the potential visual effect of the development upon views from Hollinhurst. In the interests of good planning and to avoid doubt, it is necessary to retain control over the siting of the caravans and the layout of the pitch. To address my concern about the spread of development over the entire land, drawing no.TDA.2333.01, dated September 2017, should be specified.

39. In the interests of visual amenity and proper planning, a condition specifying the maximum number of caravans or pitches is necessary to limit the scale of the development. Occupation of the site is to be restricted to gypsies and travellers, in accordance with the definition given in the PPTS, as the need for such sites has been held to weigh in favour. Control commercial activity and vehicle size will address concern about business use of the site.

Conclusion on Appeal A

40. In reaching my decision on Appeal A I have taken into account all of the representations made by local residents. On balance, for the reasons given above and having considered all other matters, I conclude that Appeal A should be allowed subject to the conditions set out in the formal decision below. This is a proportionate response to the competing interests.

Appeals B and C – the s174 appeal

41. There are a few matters relating to the wording of the notice that require an assessment with a view to correct it, which is possible using the powers available to me subject, of course, to the essential test of injustice[7]. It alleges '...*the change of use of the land for the purposes of the stationing of caravans for human habitation, the creation of a hard standing by the deposit of hardcore or similar material, the erection of a gate, toilet cabins, wooden hut and siting of generators and the parking of private motor vehicles ancillary to the residential use of the land*'.

42. The allegation is imprecise in that it refers to a *change of use of the land*. To reflect the definition of the term *development* in s55(1) of the Act, it should state a *material change in the use of the land*. Furthermore, the evidence presented indicates that the purpose of the caravans and deposit of hard-core and the erection of walls and gates facilitated the residential use.

43. The description of the alleged contravention has caused no significant confusion nor has it misled any party. It told the appellant what had gone wrong and what was needed to put things right. For greater precision, I agree with the parties that the allegation should be described in the following terms: *Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator.* There are also some typographical errors in the reasons for issuing the notice. For example, the reference to planning policy guidance 2 which is no longer extant. UDP Policy H16 that has been replaced by CS Policy H7.

[7] Section 176(1)(a)(b) of the Act – On an appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation will not cause injustice to the appellant or the LPA.

44. The steps required to comply with the notice need to flow from the corrected allegation. Step 5(4) requires the recipient to seed the entire area but the LPA accept that the notice should simply require the removal of the hard-surface that facilitated the residential use. I concur with the appeal parties that all of these corrections do not make the notice any more onerous than first issued. I am satisfied that no injustice is caused by the intended corrections and I will correct the notice.

Appeal B - ground (a)

45. I note that the area designated as Green Belt is about 11 metres wide and 26 m deep, but nonetheless all of the land identified on the site plan attached to the issued notice is in use as a caravan site. The deemed application relates to this entire parcel of land. Planning permission is therefore sought for the continued residential use of the whole land. It is therefore necessary to apply relevant Green Belt planning policy to the development.

46. PPTS policy E describes material changes of use of land to traveller sites in the Green Belt as inappropriate development. The appeal parties agree that a change of use to a residential caravan site amounts to inappropriate development inside the Green Belt which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 88 indicates any Green Belt harm attracts substantial weight.

47. Against all of that background, the **main issue** is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether very special circumstances exist to justify the development. An assessment of the following matters is necessary in order to address the main issue:

    The effect of the development upon: (1) the openness and purposes of the Green Belt, (2) the character and appearance of the surrounding area, (3) the existing level of provision and need for traveller sites, the availability, or lack of, alternative accommodation taking account of whether there is a supply of specific deliverable sites and the policy response to address any under-provision of traveller sites in the district, and to what extent the personal circumstances and human rights of the residents contribute to the need for the development.

Reasons - *Openness and purposes*

48. There is no evidence to contradict or make less than credible the LPA's claim that the site was overgrown with vegetation before residential use. The development extends over a significant part of the land and the introduction of a static mobile home and touring caravans to facilitate that activity has diminished openness. In my assessment, the introduction of caravans with all attendant domestic features, such as gates and boundary walls and paraphernalia to support the residential use, all together results in the loss of openness.

49. Caravans could be moved on or off the site at any time. In practice, however, the mobile home is likely to remain on the land for a considerable period of time. The site is directly visible from Hollinghurst. The static caravan is likely to have a similar appearance to a small bungalow and the site is, and is intended to be, used as a settled base. The introduction of comings and goings to and from the caravan site as well as the parking of vehicles in the open adds to the visual impact of the development on the edge of the built-up area. To my mind, the caravan site is perceived as intrusive development and causes an actual and appreciable loss in openness.

50. The site is located on the edge of a built-up area and the development. The residential use has resulted in the introduction of all of the trappings associated with living, and extended domestication into land that was formerly undeveloped. I consider that the caravan site represents encroachment into the countryside and conflicts with the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. There is conflict with Green Belt purposes. I conclude that the development has a materially harmful effect on openness.

Character and appearance

51. The nature of the residential caravan site has changed the physical appearance of the land. Given the potential stationing of the caravans on any part of the area, the development is likely to be intrusive in views from the surrounding countryside. The extent and scale of the site's residential use has an urbanising effect. In my assessment, the use of the land that is partly within the Green Belt is unwarranted and unacceptable as it severely compromises the semi-rural quality of the site and its immediate environs. I therefore conclude that the development has a significantly adverse visual effect upon the character and appearance of the surrounding area. Accordingly, the development conflicts with UDP Policies BD5 and GP5 and CS Policy P10.

Other considerations

52. The appellant advances the following arguments that might weigh in favour. He contends that drawing no.TDA.2333.01 represents an alternative scheme and planning permission should be granted for part of the site. I have evaluated the merits of the Appeal A scheme and found in favour. However, I am concerned about the potential residential use of land within the Green Belt. The notice covers the entire land under the appellant's ownership and prohibits residential use of land that does not benefit from planning permission.

53. The appellant argues that land designated Green Belt may have to be allocated for future pitch provision for travellers, but there is nothing before me to indicate that the site was an area of land considered or identified and has been through an assessment process. PPTS, paragraph 17, states that Green Belt boundaries should be altered only in exceptional circumstances via a plan-led approach; not in response to a planning application. Any alteration to Green Belt boundaries to accommodate traveller sites, or any other development, should be carried out as part of the plan-making process with all available sites being considered. That approach would meet the Government's objectives of delivering sustainable development in a planned and co-ordinated manner. I acknowledge this application does not seek alteration of any Green Belt boundary, but the effect of a permanent permission would be similar.

The planning balance

54. The development has harmful implications for the Green Belt in terms of inappropriateness. It results in an appreciable loss of openness of the Green Belt and represents encroachment into the countryside, which is a serious planning objection. In accordance with national policy, such harm carries substantial weight. Added to that is the significant adverse visual effect of the development upon character and appearance arising from the residential use of the entire land under the appellant's control. Accordingly, there is conflict with the Green Belt protection objectives found in the NPPF and PPTS, and UDP Policies BD5 and GP5 and CS Policy P10.

55. My findings on the effect of the development upon existing and future occupants and neighbours' living conditions apply in Appeal B as the caravan site is for a single pitch albeit spread across a wider area. In a similar vein, residential use of the entire site is likely to have the same impact in terms of highway safety. These factors have a neutral effect on the overall balance as they neither weigh for or against the development.

56. On the other side of the scales, the site is accessible to local services and the scale of development does not dominate the settled community. There are some social and economic benefits from a settled base, but the use of the entire land has considerable environmental harm.

57. There is deficiency in that the LPA cannot demonstrate an up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, as paragraph 27 to the PPTS points out, the exception is where the proposal is on land designated as Green Belt.

58. The lack of an alternative site is linked to the absence of deliverable sites. There is a recognised national and regional need for additional traveller pitches, but these should be provided in a planned and co-ordinated manner. My deliberations above suggest there is an unmet need for additional pitches in the short-to-medium term arising from households who meet the PPTS definition. I accept that a single pitch makes a small contribution overall; nevertheless, I attribute significant weight to my findings on need for additional pitches.

59. I am satisfied steps are now being taken to address the perceived historic shortcomings in meeting needs of gypsies and travellers via the local plan-making process. In assessing this kind of scheme, the LPA rely on national policy and a new Local Plan is programmed for adoption in 2019 or thereabouts. The debate suggests the authority will proceed expeditiously in adopting a new Local Plan that addresses the needs of travellers. I attach limited weight to the historic failure of traveller site provision.

60. I have not lost sight of the fact that planning permission will be granted in Appeal A; there is no immediate threat of homelessness and risk of an unauthorised roadside existence. The lack of alternative sites carries very little, if any, weight in favour. In addition, limited weight is given to the advanced alternative scheme.

61. I am cognisant of the voluminous court judgements submitted in the bundle of evidence. The case in favour of planning permission has been forcefully put, and the case against is strong. In my planning judgement, the advanced considerations in support of the appeal, whether taken individually or collectively, do not, on balance, clearly outweigh harm to the Green Belt by reason of inappropriateness and the other identified harms. I will next examine whether personal circumstances can tip the balance in favour of a permanent planning permission.

62. Government policy is that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The appellant and site occupants need a permanent pitch which would facilitate their travelling lifestyle but the development causes significant environmental harm because the residential use extends onto land within the designated Green Belt. Presently and in the future the family has a need to access health facilities and educational services, but these could be accessed while living on part of the land

that is not within the designated Green Belt. I attach moderately some weight to the personal circumstances.

63. Of primary importance is the fact that the site is the home of young children but, as the PPG makes clear, these interests do not always outweigh other considerations. The best interests of the children involved would clearly be served if the family has a settled base, which carries significant weight in favour. However, a settled base can be achieved on part of the appellant's land. In my assessment, these considerations, individually or collectively with the other considerations advanced, do not clearly outweigh the substantial harm to the Green Belt and the other identified harm. The material change of use is contrary to policy in the NPPF and the PPTS.

64. Interference with a person's right to respect for private and family life and the home may be justified in the public interest. In this case, the interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would be in pursuit of a legitimate aim – the economic well-being of the country, which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective.

65. There are close family ties with members of the extended family who live on pitches elsewhere in the district, but there is no risk of homelessness because the appellant and site occupants will move onto land that has the benefit of planning permission. Hardship will not be caused as the scheme in Appeal A seeks to reduce the number of caravans and hard-standing. I consider that the regulation of the land-use is in accordance with the statutory framework. More specifically importance is attached to protecting the Green Belt both at national and local level. An essential characteristic is its permanence and openness. Consideration of the main issue confirms that the purpose of the Green Belt in which part of the site is situated fulfils an important function. The conclusion on other environmental harm relates to the character and appearance, which is a matter of acknowledged importance.

66. The site occupants are Irish Travellers and are persons who share a protected characteristic for the purposes of the Equality Act 2010. Having regard to the PSED, I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I have taken into account their need for a settled base and the present lack of a suitable available alternative site, although a grant of planning permission in Appeal A satisfactorily addresses welfare concerns.

67. A lack of success in Appeal B causes minimal disruption to home and family life. I consider that the best interests of the children will be safeguarded by reducing the caravan site's size and scale. I find that the legitimate aim of protecting the environment in the public interest has very substantial weight. I consider that the entire land that forms the appeal site in Appeal B is not suitable for a traveller site even for a single pitch. Permanent long term provision should be plan-led in the wider community interest. In this case, interference with the Convention Rights is necessary and proportionate. I shall, however, consider the grant of temporary planning permission next.

68. The material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The latter might be appropriate where planning circumstances will change in a particular way at the end of that period. The totality of harm to the Green Belt is substantial. Although it would be reduced were it for only a limited period, the PPTS states that even temporary traveller sites are inappropriate development in the Green Belt which again should only be granted permission on the basis of very special circumstances.

69. The appellant states that temporary planning permission is required for at least four years, because of a lack of progress relating to the SAP and the likelihood of alternative sites coming forward and delivered within that period. It would give sufficient time to allow for examining alternative site options, addressing the need and identifying a five-year deliverable supply of sites. It would allow for the possibility of the provision of a gypsy site through the grant of planning permission once suitable sites have been identified.

70. I have already said there remains a deficiency in that there is no up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. As I have said elsewhere, PPTS paragraph 27 points out that the exception is where the proposal is on land designated as Green Belt, such as this site.

71. The appellant intends to reduce the size of the residential caravan site should planning permission be granted in Appeal A. I have concluded that the s78 appeal should be allowed subject to conditions. This will address my concerns about the residential use of land that falls within the Green Belt and an extended period of compliance might assist, which I will come to later. There is, therefore, no persuasive or good planning justification in granting temporary planning permission for this caravan site due to environmental harm caused by the use of the entire land under the appellant's control.

72. On the particular circumstances of this case, I conclude that the points raised in support of the proposal, including best interests of the children, are not sufficient to clearly outweigh the harm identified so that very special circumstances exist to grant temporary planning permission.

Ground (g)

73. It is necessary to consider whether or not the specified compliance period, which is staged, falls short of what should reasonably be allowed. I observed that the entire land is currently occupied by the appellant. He conceded that it is likely that the Appeal A site will be used for residential purposes if the s174 ground (a) appeal fails. The residential use of the part of the land that falls within the Green Belt could cease relatively quickly. Additionally, the hard-surface covering that area could also be removed without causing much disruption.

74. I note an application will need to be made to the LPA to discharge conditions imposed on grant of planning permission in Appeal A. However, the breach of planning controls should not be allowed to continue more than absolutely necessary. As I am correcting the steps required by the notice for greater precision, I shall extend the period of compliance to seven months given the nature of the work required by the corrected notice. This is a proportionate response. In my assessment, this period would strike a fair balance between the competing interests of the wider public and individuals involved in this case. I am content that there

would be no violation of the rights of the Appellants and occupiers under Article 8 of the Human Rights Act. Therefore, ground (g) succeeds to this extent.

Appeals A, B and C - overall conclusions

75. Appeal A, having regard to all other matters, I conclude that the appeal should be allowed subject to conditions. In Appeal B, for the reasons given above, I conclude that the appeal should not succeed on ground (a). The Appeals on ground (g) succeed as I am varying the compliance period. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application. The notice will remain extant as corrected and varied. To the extent that the planning permission granted by virtue of the s78 is inconsistent with the terms of the notice, s180 of the Act[8] will ensure that the former prevails.

Formal Decision - Appeal A

76. The appeal is allowed and planning permission is granted for the change of use of land to 1 family traveller pitch with associated works at land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY in accordance with the terms of the application, ref 16/06911/FU, dated 4 November 2016 subject to the following conditions:

    1) 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 six months of the date of failure to meet any one of the requirements set out in i) to iv) below:

        i) Within three months of the date of this decision a scheme for the siting and layout of the caravans hereby permitted, attenuation measures to reduce sound produced by the generator, a scheme for foul and surface water drainage, details of site connection to utility services and a scheme for external lighting, and hard and soft landscaping and the type and location of boundary treatments, including a physical and solid boundary between the land designated as Green Belt and the appeal site, hereafter referred to as the site development scheme, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

        ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme 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.

        iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

        iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

        Upon implementation of the approved site development scheme specified in this condition, that 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.

[8] Where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the Notice to the extent that its requirements are inconsistent with the planning permission, but the Notice does not cease to have effect altogether.

2) At the same time as the site development scheme required by condition 1) above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

3) Notwithstanding condition 1) above, the caravans shall be sited in accordance with plan no.TDA.2333.01, dated September 2017. The area of land upon which the caravans are shown to be sited shall only be used for residential purposes and no other part of the land shall be used for residential purposes without prior written approval by the local planning authority.

4) There shall be no more than one (1) pitch on the site and on the pitch hereby approved no more than two (2) caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only one (1) caravan shall be a static caravan.

5) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

7) No commercial activities shall take place on the land, including the storage of materials.

Appeal B

77. It is directed that the enforcement notice be corrected by:

1) The deletion of all of the text in section 3, matters which appear to constitute the breach of planning control, and substitution therefor by the following text:

   Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator;

2) In section 4, reasons for issuing this notice, delete the following words: *'...planning policy guidance note 2 – Green Belts'* in paragraph 1), and delete the text *'H16'* and substitute by *H7* in paragraphs 1) to 3); and

3) The deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text:

   1) Cease the residential use of the land,

   2) Remove all caravans, tent, toilet cabin/s, timber dog hut, generators and metal cladded green gate, and hard-standings from the land.

4) The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion all of the text in section 6, time for compliance, and the substitution therefor by the following text: *The time for compliance with step 1) and 2) above is seven months*.

78. Subject to these corrections and variations, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

79. It is directed that the enforcement notice be corrected by:

1) The deletion of all of the text in section 3, matters which appear to constitute the breach of planning control, and substitution therefor by the following text:

   Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator;

2) In section 4, reasons for issuing this notice, delete the following words: *'...planning policy guidance note 2 – Green Belts'* in paragraph 1), and delete the text *'H16'* and substitute by *H7* in paragraphs 1) to 3); and

3) The deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text:

   3) Cease the residential use of the land,

   4) Remove all caravans, tent, toilet cabin/s, timber dog hut, generators and metal cladded green gate, and hard-standings from the land.

4) The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion all of the text in section 6, time for compliance, and the substitution therefor by the following text: *The time for compliance with step 1) and 2) above is seven months*.

80. Subject to these corrections and variations, the enforcement notice is upheld.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Simon Ruston	Ruston Planning Limited
Rhodri Crandon	Tirlun Design Associates Ltd
T Doran	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Glen Allen	Principal Planning Officer
Janet Bauer	Planning Compliance Officer
Chris Dows	Senior Highways Development Engineer

INTERESTED PERSONS:

Councillor James Lewis	}
	}
Councillor Keith Wakefield	} Ward Members Kippax and Methley

DOCUMENTS
1 Statement of Common Ground
2 Appeal decision ref: 3013414
3 Extract copy of CS Policy H7
4 Letter of objection from Ward Councillors
5 Letter from Nova Scotia Medical Centre

PLANS
1 Drawing no.TDA.2333.01 dated September 2017

The Planning Inspectorate

Costs Decision

Hearing and site visit held on 17 April 2018

by Mr A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2018

Costs application in relation to appeal refs:
APP/W/17/3177207, C/17/3177209 and 3177210
Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr T Doran and Mrs N Doran for a partial award of costs against Leeds City Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to 1 family traveller pitch with associated works and the issuing of an enforcement notice alleging the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator.

Decision

1. The application for an award of costs is refused.

The submissions on behalf of the applicants

2. The following key points form the basis of this application. The planning officer's recommendation was to grant planning permission for the s78 proposal and the local highway authority (LHA) did not object on highway safety grounds. Furthermore, the LHA did not object to previous application for residential development on the land. Members refused to grant planning permission but the respondent has failed to demonstrate why the planning application was refused on highway safety grounds. A similar reason was given for taking enforcement action. The respondent has delayed development that is acceptable.

The response on behalf of the respondent

3. Officers employed by the respondent authority conducted site visits. Representatives of the LHA observed a number of vehicles and caravans stationed upon the land. On the basis of the evidence submitted with the application and site observations, the LHA opined that the development has the potential to increase vehicular traffic using Hollinhurst. Members disagreed with the planning officer's recommendation and placed greater weight upon residents' concerns about traffic using Hollinhurst.

The final response on behalf of the applicants

4. If proper consideration had been given to national policy and the development's impact on the landscape, significant weight would have been attributed to other considerations leading to a grant of permanent planning permission.

Reasons

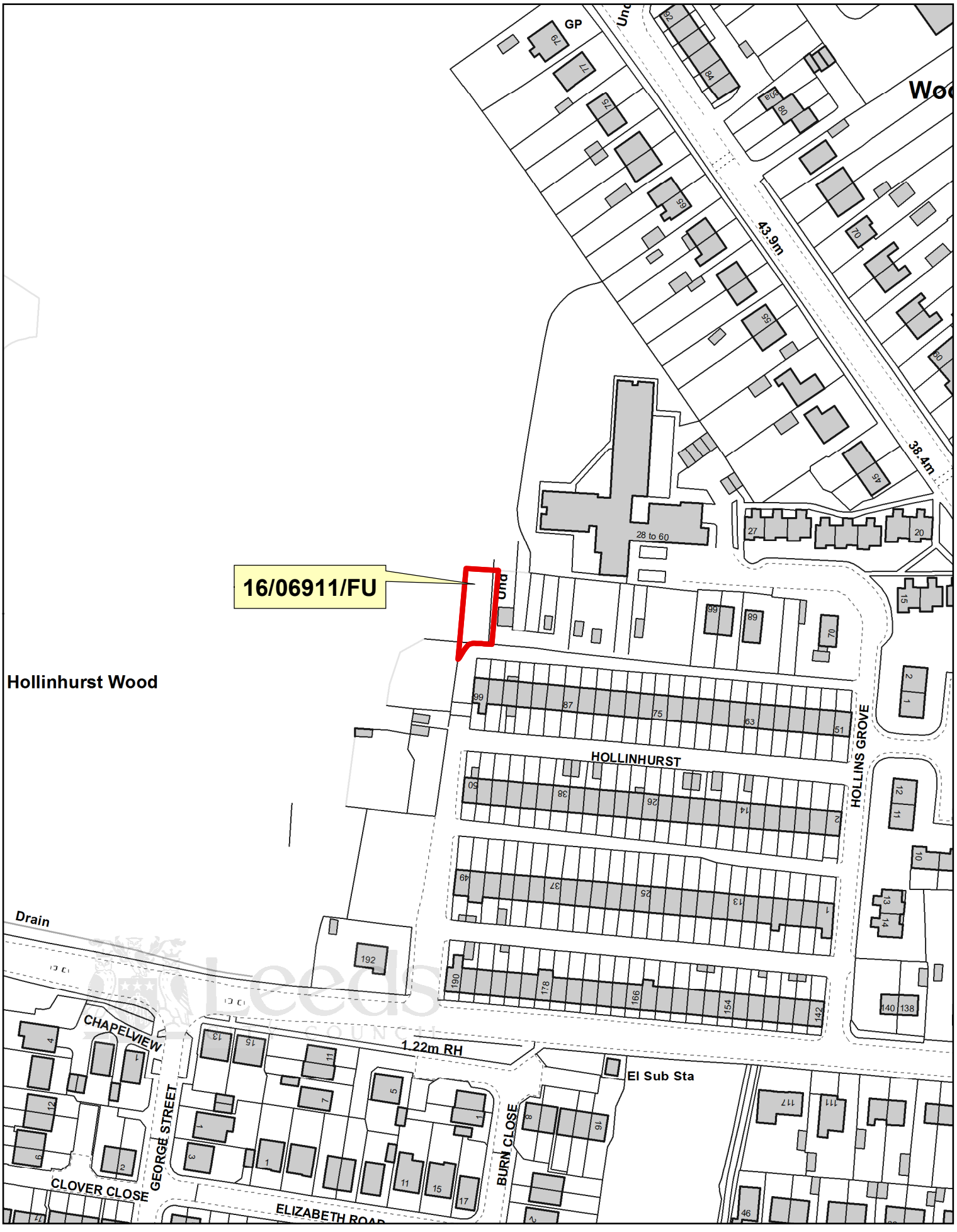
5. The respondent authority's planning committee decided to refuse permission for a number of reasons, including highway safety, contrary to officers' recommendations. It focused on site access and local amenity issues rather than technical highway matters. Moreover engineers were present at the Hearing to support the reason for refusal. The stance on highway safety was a realistic one and the respondent cannot be criticised for it. The concerns raised were evident in the representations submitted by local residents and ward councillors; this matter could not have come as a surprise to the applicants. I am quite satisfied that the respondent has, on this occasion, substantiated all reasons for refusal on this particular matter.

6. Sufficient and substantial evidence was produced in support of the respondent's decision to refuse planning permission contrary to their officers' recommendation. The quantum of that oral and written information suggests it provided a respectable basis for the authority's stance on highway safety. There is nothing to suggest that the handling of the planning application or decision to take enforcement action, and the subsequent defence of that decision, warrants a finding of unreasonableness.

7. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is unjustified in this case.

A U Ghafoor

Inspector



NORTH AND EAST PLANS PANEL

PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500