The Planning Inspectorate

Appeal Decision

Date of Hearing 26 July 2021 (Virtual) and 19 August 2021
Site visit made on 19 August 2021

by Grahame Kean B.A. (Hons) Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal APP/N1350/C/21/3266271
Little Beck, Burma Road, Darlington, Co Durham DL2 1QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Tom Smith against an enforcement notice issued by Darlington Borough Council.
- The notice was issued on 7 December 2020.
- The breach of planning control alleged in the notice is failure to comply with condition 4 of a planning permission Ref 10/00059/FUL granted on 19 November 2010.
- The development to which the permission relates is the provision of a private gypsy site to provide pitches for 2 residential caravans and 2 touring caravans and other matters.
  The condition in question is:
  > Condition 4: The residential use hereby permitted shall be restricted to the stationing of no more than 4 caravans at any one time (of which no more than 2 shall be a static or mobile home). This permission only permits the static caravans to be occupied for residential purposes.
- The reason given for imposing condition 4 was in the interests of the character and visual amenities of the area.
- The notice alleges: in breach of planning permission reference 10/00059/FUL (won on appeal APP/N1350/A/11/2153105):
  1) The unauthorised stationing on the Land of 2 additional touring caravans and associated vehicles with a view to residential occupation, in breach of condition 4 of the planning permission;
  2) The erection of commercial sized timber dog kennels on the Land, in breach of [condition [9] of] [the approved site details in] the planning permission [sic];
  3) The use of the Land for the storage and dismantling of scrap vehicles, in breach of [condition [9] of [the approved site details in] the planning permission [sic].
- The requirements of the notice are:
  Step 1 - Remove from the Land all unauthorised static caravans, touring caravans and associated vehicles.
  Step 2 - Dismantle and remove from the Land the unauthorised commercial sized dog kennels.
  Step 3 - Remove from the Land any scrap vehicles, vehicle parts and associated machinery and equipment.
  Step 4 - Reinstate the Land to its original condition immediately before the breach of planning control took place including, without prejudice to the generality of this requirement the removal of any rubbish and debris in connection with this unauthorised development to ensure that the site is set back to grass and otherwise is complete in complete accordance with plans and details of planning permission 10/00059/FUL.
- The period for compliance with the requirements is:
  Step 1 – One week after this notice takes effect.
  Steps 2-4 – Four weeks after this notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a)(b)(c)(d) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed following correction of the enforcement notice and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

2. The hearing was held over two days, a virtual session to consider policy matters, and a session at the Council offices which considered policy matters further and other factual issues including the circumstances of the appellant.

3. I had been advised by the appellant's agent that any discussion of matters of personal circumstances and gypsy status would require the appellant to be present. That was also my view and a face-to-face session was arranged in a Covid-safe environment, in accordance with procedures for such events in cases such as gypsy and traveller appeals, where the physical presence of witnesses is often desirable or necessary.

4. The appellant was not present when the hearing resumed on Day 2, and I adjourned to enable the agent to speak further with him, as a result of which he was able to be present after a further short adjournment. I am satisfied that the Council was made aware of the appellant's vulnerable condition as an adult with serious health issues before the hearing. I took care to ensure the appellant was comfortable giving evidence. After the hearing a Council officer who attended expressed disquiet, suggesting that I was biased in favour of the appellant. I am satisfied that I was scrupulous in my impartiality.

Background

5. The appeal site includes Littlebeck, a private gypsy site at the junction of Neasham Road and Burma Road, in a small settlement, Skipbridge, between Darlington and Hurworth on Tees/Neasham. The area was generally degraded land and the site is said to have been part of the circulation and storage system around the quarry and brickworks. The northern part of the land was reinstated by the Smith family following the grant of the 2010 planning permission as referred to in the notice.

6. In correspondence with the appellant's agent the Council confirmed that the pre-action letter sent to the appellant's brother dated 18 September 2021 did relate to development the subject of this appeal but not to the southern part of the site, which by then had been sold to third parties.

7. A temporary stop notice was served in respect of the whole of the site, on the appellant's brother and the third parties on 20 October 2020 and a separate enforcement notice was issued on 7 December 2020 relating only to that part owned by the third parties. However this is the subject of a separate appeal.

8. The 2010 permission does not make clear how many or what caravans are allocated per pitch or delineate fixed boundaries. "Pitch" in the Planning Policy

for Traveller Sites 2015, means a pitch on a "gypsy and traveller" site. This is commonly understood to mean a space occupied by a single family within such a site, usually accommodating more than one residential caravan or mobile home. Therefore a pitch is normally understood to comprise an area large enough for one household to occupy with enough space for two caravans. Taking into account the application details, I am satisfied that the correct interpretation of the 2010 permission is that it permits two pitches.

Procedural matters

Dog kennels and storage and dismantling of vehicles

9. The appellant's agent explained, which was not disputed, that the existing structure on the site had been converted into 4 to 5 kennels and the dogs were pets and not for commercial use.

10. At the hearing it became apparent that there was no substantive evidence to justify the allegations made in the notice, not only concerning the dog kennels but also the allegations related to storage and dismantling of scrap vehicles. The Council conceded that they could be omitted from the notice. Since the notice is being quashed there is no need formally to amend its requirements or the periods for compliance, however items 2) and 3) of the allegation should be deleted and I will vary the notice accordingly.

Allegation of vague wording

11. The appellant claimed the notice was invalid due to the vague wording in the allegation ("*with a view to*") in describing the alleged breach "*the unauthorised stationing on the land of two additional touring caravans .... with a view to residential occupation, in breach of condition 4 of the planning permission*". It was also alleged that it was incorrect to state that the planning permission at issue was "*won on appeal*".

12. I disagree that the notice is invalid but agree that it should be amended for clarification. The application form dated 29 April 2010 was for a "*Private Gypsy Site for two pitches…*". Planning permission 10/00059/FUL dated 18 November 2010 (the 2010 permission) was granted for:

    "Provision of a private gypsy site to provide pitches for 2 residential caravans and 2 touring caravans, alterations to access, provision of utility building, timber fencing and field shelter, and use of land for equestrian purposes (retrospective application) (amended location plan received 1 October 2010) at Proposed private Gypsy Site."

13. Condition 4 states:

    "The residential use hereby permitted shall be restricted to the stationing of no more than 4 caravans at any one time (of which no more than 2 shall be a static or mobile home). This permission only permits the static caravans to be occupied for residential purposes."

14. The Council acknowledged that the wording in the allegation "*(won on appeal APP/N1350/A/11/2153105)*" was incorrect in as much as the appeal decision referred to, dated 20 September 2011, only varied the 2010 permission by deleting condition 5 so as to render the permission permanent.

15. The 2010 permission had approved the creation of two pitches. One, in the northern part of the site, was occupied by the appellant's brother and his family and the other, immediately to the south, occupied by the appellant's parents. It was common ground that at the time of the notice the appellant residentially occupied an additional pitch to the south of the others, by siting two touring vans, one that was lived in and the other for domestic storage.

16. It is also agreed that the target of the notice is the creation of the additional third pitch on the existing gypsy caravan site. This would be a breach of condition 4. At the site inspection the current position of the additional pitch was agreed between the parties and marked on a copy of the notice which I propose to substitute for the original plan attached to the notice.

17. So, taking into account the above matters, the notice should be corrected under s176(a) and the said amendment made to the plan. I will amend point 1) in the notice to clarify that the breach of condition consists of the siting an additional third pitch within an existing Gypsy caravan site, comprising two additional touring caravans occupied for residential purposes and associated vehicles in the area marked X on the attached plan.

Ground (b) – that the matters alleged in the notice have not taken place

1. As described there was no substantive evidence to justify the allegations made in the notice concerning the dog kennels and the storage and dismantling of scrap vehicles. It was agreed the allegations could be omitted from the notice.

2. The appeal on this ground succeeds to this limited extent but, having regard to other matters agreed between the parties and the notice as corrected, it is clear that the alleged breach of condition as to the residential occupation of an additional pitch by the appellant, has occurred as a matter of fact.

Ground (c) – that the matters alleged do not constitute a breach of planning control

3. On this ground the appellant must demonstrate on the balance of probability that the matters as alleged in the notice are not a breach of planning control. It is said on the appellant's behalf that the appeal site had been used as 3 separate pitches for a period in excess of ten years, however that is a matter to be considered on ground (d).

4. I do not find on the balance of probability that it has been shown that the breach of condition alleged in the notice as corrected has not occurred. The appeal on ground (c) does not succeed.

Ground (d) – that it is too late to take enforcement action

5. In an appeal on this ground, to be immune from enforcement action the appellant must show on the balance of probability that what is alleged in the notice occurred ten years prior to the issue of the notice and that the use has been continuous before that date for a full ten-year period. In other words the use of the appeal site for residential occupation of a third pitch should be demonstrated to have been carried on continuously for the period of ten years from 7 December 2010.

6. Guidance as to what is expected in order to establish a lawful use is set out in the Planning Practice Guidance. It advises that the appellant's evidence should

not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. This approach was endorsed in *Ravensdale Limited v SSCLG [2016] EWHC 2374 (Admin)* in the context of an appeal on ground (d).

7. The Council, via its Head of Planning, did not accept that it could be inferred from the statements as more likely than not that, irrespective of where he may have lived on the site or in what accommodation, the appellant had lived there for a continuous period of ten years. I disagree for the following reasons.

8. The appellant claims that there were 3 pitches on the appeal site used by the Smith family since November 2009, occupied by respectively: (1) the appellant's parents; (2) the appellant's brother and sister-in-law and their 3 children; and (3) the appellant and his family. It is undisputed that when they first moved on to the site the appellant's eldest son moved with him and, later, his youngest son. All his 4 children are now over 18 and he is visited regularly by them and his 2 sons often stay with him.

9. Completed signed and dated statements were submitted from: the appellant; the appellant's agent who has been involved with the appellant's extended family for several years; the appellant's brother; the appellant's mother; the appellant's sister-in-law; and the appellant's father, the head of this extended Romani Gypsy family.

10. The statements were later converted to statutory declarations and submitted at Day 2 of the hearing. They refer to the appeal site as Littlebeck. The Council queried whether this accurately referred to the appeal site but could not suggest another location to which it might have referred. I am satisfied through questioning the appellant and from what I have read, that the deponents, in using the term Littlebeck, mean to refer to the appeal site. The Council offered no evidence to suggest that the appellant lived elsewhere than on the appeal site during the ten years prior to its issuing the enforcement notice.

11. The declarations are reasonably detailed and the Council has not provided contradictory evidence of its own. From these declarations, coupled with my questioning of the appellant, his brother and his father, and my reading of the other documents and statements, I find it is probable that the following events occurred.

12. The appellant and his brother bought the appeal site prior to its occupation. It was first occupied by members of the extended family in the autumn of 2009. It is likely that the parents moved onto the site first, in October 2009 whilst the appellant and his brother were away working in Germany and elsewhere. The appellant and his brother were working abroad whilst their father instigated the planning application the subject of this appeal. That was formally made to the Council on 29 April 2010. The agent was instructed in November or December 2009 by the appellant's father on behalf of the two brothers, to submit an application for two pitches. It was originally intended that the parents would stay temporarily to provide site security when the brothers were away and to assist in caring for younger members of the wider family. It is probable in my view that the appellant, in accordance with his and the other declarations, had also moved onto the site by the end of autumn 2009 or at any rate by the end of that year.

13. The appellant states he has chosen to live in small tourers but is unclear as to which ones or where or when. His brother attests to the fact that the appellant has had several small caravans which "*have taken up various positions within the family site including the position at the present time*." His father states that the appellant "*wished to have his own little area but as close to us as he could*". In reply to my questions, the appellant told me that initially he had only one tourer on the site, it fell into disrepair, so he bought another and used it to live in and used the old caravan for storage, mainly toys for his grandchildren. Because of what he perceived to be the trouble that the enforcement notice had caused, he had most recently removed the storage van from the site and it was temporarily sited on a friend's land.

14. The agent is adamant that there were three pitches from the outset. I appreciate the exact configuration of the vans may have occasionally changed over the years, but I questioned the agent as to how exactly he knew there were three pitches from the outset. He consulted his diary and told me that he remembered going to the site on 19 November 2010 and met with the appellant, his brother and his father, and saw at that time that the arrangement of the caravans was as shown in the Geoinvestigate plan.

15. The Geoinvestigate plan, dated 23 January 2012 was supplied in connection with the contaminated land conditions on the 2010 permission. It shows that at the date of the plan there were (among other things) three wheeled caravans in a fenced-off area, said to be then occupied by the appellant. This area is distinct from the pitches occupied by the appellant's parents and by his brother's family. The plan provides some documentary evidence of the third pitch apart from what is asserted in the statements. The agent told me that the disposition of pitches represented in the plan reflected his understanding of how they were from the outset, ie when the appellant first occupied the site. I note that one of the vans so marked on the plan is in the area corresponding to where the appellant's vans are currently located and the other two are just behind, in the space now occupied by dog kennels.

16. The agent, who has been professionally qualified as a planner for several years and represents the RTPI in a regional capacity, told me that he had queried why three pitches should not have been applied for, but states he was told by the appellant's parents at the time of the application that there was no point in applying for three because they were only going to be there for a couple of years. He is clear in his statutory declaration that he has "*been aware that there have been three pitches on that land occupied by the family since our involvement in the application in 2009."* He does not attest to occupation of any specific accommodation by the appellant from 2009, stating that the types of caravans have changed but the occupation of the appeal site by the three families in separate pitches had not.

17. The Council has not contradicted this evidence. The statements give no detail as to the exact location of the additional pitch but there is nothing to suggest accommodation was shared between the appellant and the wider family members. I offered the Council the opportunity through me to ask further questions of the appellant or family members present but this was declined.

18. I find it to be likely that although the exact location of the pitch occupied residentially by the appellant may have altered within the site as a whole, it

was nevertheless at all times a space exclusively occupied by him and his immediate family within the site and set apart from the existing two pitches.

19. Two aerial images are supplied but are of limited assistance. One image is dated 15 April 2014 and shows two structures in a location consistent with the location of the alleged third pitch marked on the 2012 Geoinvestigate plan but it is impossible to confirm what they are. The second, dated 27 May 2018, shows what could be the appellant's tourer vans although at that date they are further south, over the grassed area designated in the 2010 permission.

20. Apart from the allegation relating to the storage and dismantling of scrap vehicles which has been withdrawn, the Council did not contest the statement that the vehicles that exist on site relate to the general domestic use of the site. It was not disputed that the appellant has a pickup truck that he uses as a personal vehicle which he also uses to pull his caravan on whilst travelling. Nor was it disputed that the restoration of two "near vintage" trucks (now moved on) was not a commercial enterprise but done during pandemic restrictions as a domestic activity within an existing gypsy/traveller site.

21. Overall the evidence in my opinion demonstrates on the balance of probabilities that the appellant has occupied the appeal site residentially within his own separate pitch on a gypsy caravan site continuously for a period of ten years before enforcement action was taken. It is likely that the pitch consisted of siting two touring caravans and associated vehicles in the general area marked X on the enforcement notice as corrected.

22. Consequently the appeal succeeds on this ground and the enforcement notice will be quashed.

Disposal of the appeal

23. Due to the numerical limitations on caravans in the description of the caravan site approved in the 2010 permission, it would be contradictory to vary condition 4 to purport to allow a greater maximum number of permitted caravans. I briefly explored whether the allegation might be altered to a material change of use rather than a breach of condition but neither party considers a material change of use has occurred; rather the use has intensified contrary to condition 4. I agree with the Council that it would not be good practice to use the powers available to me in this way unless I were satisfied on the evidence, which I am not, that such a material change of use had occurred.

24. Section 177(1)(b) permits the discharge of a condition on the determination of an appeal under s174. The power is not limited to consideration on ground (a) and can include the substitution of another condition or limitation for it, whether more or less onerous. Nevertheless I would still be unable to change the nominal details of the development previously approved which is limited to four caravans.

25. Also, the Council could be said to be disadvantaged in being unable to pursue an eventual breach of condition on matters unrelated to the appellant's position. It would have to evaluate on a case-by-case basis whether a material change in the use of the site had occurred over and above the permitted use. The reason given for imposing condition 4 was in the interests of the character and visual amenities of the area and it serves a proper planning purpose to be

able to assess planning harm to those interests without there necessarily being a material change in the use of the land. On balance I consider it expedient for the condition to continue to subsist.

26. The Council maintained that contaminated land conditions on the 2010 permission had not been complied with but, despite no enforcement action ever being taken in this regard, it seeks in this appeal to impose more onerous conditions than currently subsist in relation to that matter, on any eventual permission that might be granted. There may be intrinsic merit in the Council's new conditions but in the interests of natural justice I will not make a decision that would put the appellant in a worse position than if there were no appeal.

27. Moreover, where an appeal succeeds on the basis that new conditions should be imposed, it would be necessary to grant permission under s177(5) and s177(1)(a), discharge the condition that is subject to the notice under s177(1)(b) and impose the new conditions on the original permission under s177(4). The Council's proposals would disadvantage the rest of the Smith family who are quite entitled to occupy the site under the extant permission.

28. Generally, if an appeal succeeds on ground (d) the development will be lawful in accordance with s191(2) and (3), and the planning merits will not need to be considered. That is the course I propose to adopt here.

29. However I do have discretion under s177(1)(c) of the Act to issue a lawful development certificate (LDC) on the determination of an enforcement notice appeal under s174, specifying that on the date the appeal was made any matter constituting a failure to comply with a condition or limitation subject to which planning permission was granted was lawful. Normally the LDC process is intended to be administered primarily by local planning authorities.

30. However in cases related to caravan sites, success on ground (d) alone is not equivalent to a grant of planning permission or a LDC for the purposes of a site licence under the Caravan Sites and Control of Development Act 1960. Therefore an LDC will be granted under s177(1)(c) for the existing use so that the appellant can obtain a site licence or vary the terms of an existing licence.

31. The LDC does not have the effect of discharging condition 4, which thus remains in force. The LDC provides protection against planning enforcement action only for as long as the current breach continues, although it is of course open to the appellant to apply to the Council separately for planning permission to retain the third pitch in a form which may be considered appropriate.

Conclusion

32. From the evidence at the hearing I conclude that the allegation in the notice of 7 December 2020 is incorrect, in that it wrongly includes reference to dog kennels and storage and dismantling of vehicles and fails accurately to describe the matters constituting the breach of planning control. The plan attached to the enforcement notice should be corrected for clarity to show the position of the third pitch within the caravan site. I shall correct the allegation in the notice and the extent of the land affected thereby to reflect these matters.

33. As to the appeal on ground (d) I am satisfied on the evidence that the breach of condition 4 in the 2010 Permission had been ongoing for a continuous period in excess of ten years and the appeal on this ground should succeed in respect of those matters which, following the correction of the enforcement notice, are

stated in it as constituting the breach of planning control. In view of the success on legal grounds, the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

34. Furthermore, I conclude that it is appropriate in the circumstances of this case, to exercise the power available to me under s177(1)(c) of the 1990 Act as amended, to issue a certificate of lawful use or development under s191 of the 1990 Act as substituted by s10 and paragraph 24(1)(b) of Schedule 7 to the Planning and Compensation Act 1991.

Formal Decision

35. It is directed that the enforcement notice in the allegations of breaches of planning control, be corrected as follows:

- Delete "(won on appeal APP/N1350/A/11/2153105)"
- Delete Point 1) and substitute: "the unauthorised stationing on the Land of an additional third pitch within the existing Gypsy caravan site, comprising two additional touring caravans occupied for residential purposes and associated vehicles in the area marked X on the attached plan."
- Delete Points 2) and 3).

36. It is further directed that the plan attached to this decision be substituted for the plan attached to the enforcement notice

37. Subject to these directions, the appeal is allowed and the enforcement notice is quashed.

38. Attached to this decision is a certificate of lawful use or development, issued in accordance with the powers under section 177(1)(c) of the 1990 Act as amended, in respect of the failure to comply with condition 4 attached to planning permission Ref 10/00059/FUL dated 18 November 2010, together with a plan and a note as to the effect and extent of the certificate.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Stovell (snr) MRTPI	Agent, North East Regional Representative, RTPI
Mr B Stovell	Agent
Mr T Smith	Appellant
Mr Thomas Smith (snr)	Appellant's father
Mrs L Smith	Appellant's mother
Mr G Smith	Appellant's brother

FOR THE LOCAL PLANNING AUTHORITY:

Mr Coates	Head of Planning
Ms Williams	Planning Officer
Dr Werres	Garden Community Officer
Mr Conyard	Monitoring and Compliance Officer

INTERESTED PERSONS

Mr Allen	Local resident

Additional documents submitted at the hearing:

Day 1

CD1-1	Geoinvestigate plan
CD1-2	Application form 29.4.2010
CD1-3	Revised list of conditions
CD1-4	Photographs of appeal site and adjoining sites with ongoing appeals
CD1-5	Walking and cycling distances (PPG13)
CD1-6	Statutory declarations of D Stovell; T Smith; T Smith snr; L Smith; G Smith; N Smith
CD1-7	Plan to show the site and nearby sites
CD1-8	Email 17.8.2021 recording parties' discussion on need/supply figures

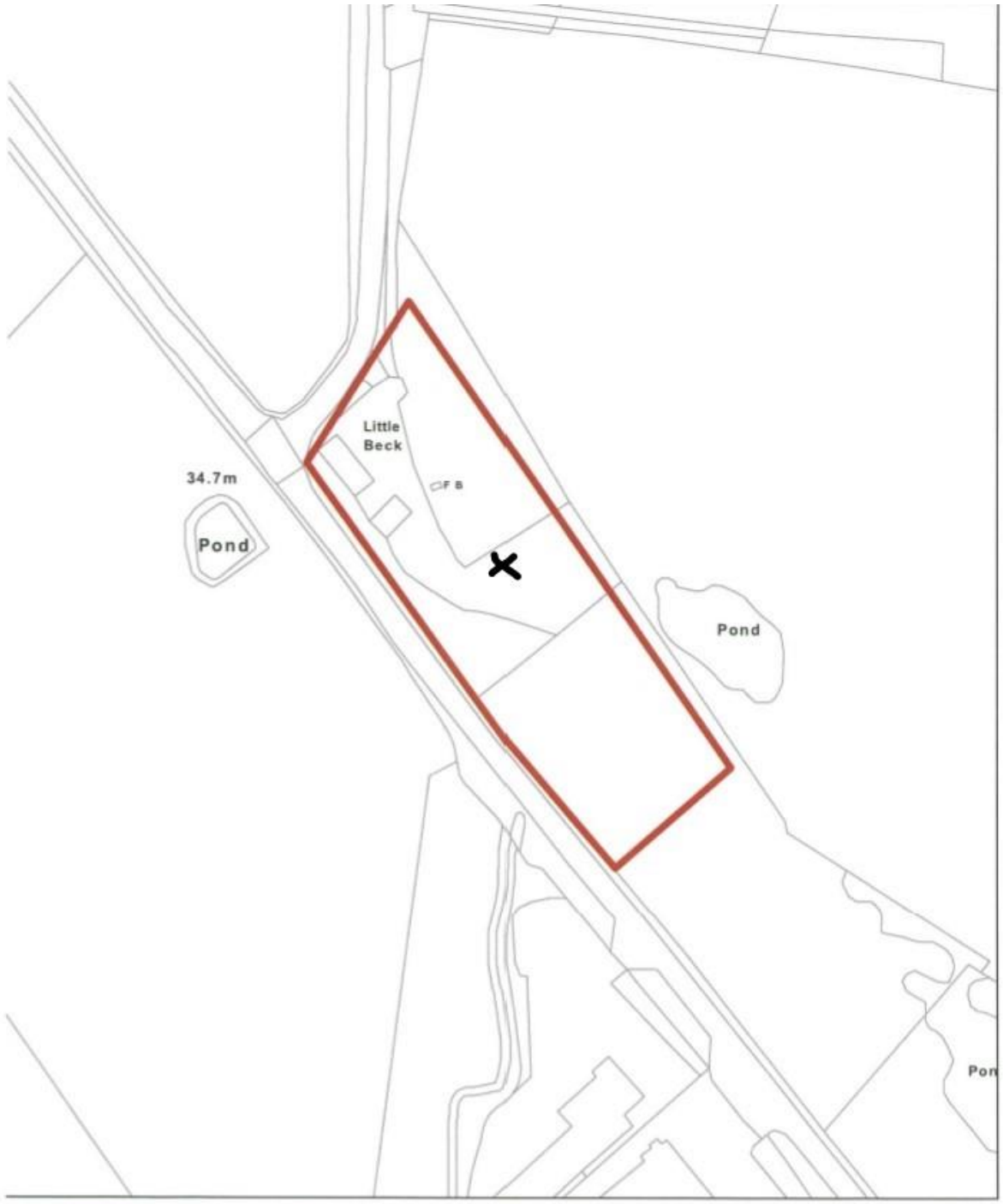
Day 2

CD2-1-10	Documents submitted by Council relative to need/supply figures

Post hearing: Application and other documents concerning traveller sites.

Annex

Plan substituted for plan attached to the enforcement notice of 7 December 2020.



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT: SECTION 191 (as amended by section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 December 2020 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The use was lawful because:

a) No enforcement action could be taken in respect of it because the time for taking enforcement action had expired in that a breach of condition 4 attached to Planning Permission Ref 10/00059/FUL dated 18 November 2010 has subsisted for a period in excess of ten years (s171B(3)), and there is nothing to show that the use was subsequently superceded or abandoned.

b) The use does not constitute a contravention of the requirements of any enforcement notice in force.

Signed

Grahame Kean

Inspector

Date: 27 January 2022

Appeal Ref: APP/N1350/C/21/3266271

First Schedule

Use of the Land for the stationing on the Land of an additional third pitch within the existing Gypsy caravan site, comprising two additional touring caravans occupied for residential purposes and associated vehicles in the area marked X on the attached plan

Second Schedule

Land at Little Beck, Burma Road, Darlington, Co Durham DL2 1QH

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in Lawful Development Certificate dated:

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

Land at Little Beck, Burma Road, Darlington, Co Durham DL2 1QH

Appeal ref: APP/N1350/C/21/3266271

Scale: Not to Scale