The Planning Inspectorate

Appeal Decision

Inquiry Held on 10, 11 & 12 May 2022, 30 August 2022, and 1 & 2 September 2022

Site visits made on 10 May 2022 and 2 September 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Appeal Ref: APP/Q3115/C/19/3238398
Land at 12 (aka Plot 12) Kiln Lane, Garsington

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Arthur McDonagh against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 27 August 2019.
- The breach of planning control as alleged in the notice is failure to comply with condition No 1 of a planning permission Ref P15/S/S1878/FUL granted on 29 April 2016.
- The development to which the permission relates is the change of use of the land to a private gypsy and traveller caravan site. The condition in question is No 1 which states that: The mobile home hereby permitted shall only be occupied by the appellant Mrs A. McDonagh and her immediate family. At the expiration of a period of 3 years from the date of this permission the use of the land as specified in the application shall cease and all structures, chattels and development associated with the use shall be removed from the land (for the avoidance of doubt, this includes mobile homes, touring caravan). The notice alleges that the condition has not been complied with in that over three years have elapsed since the permission was granted but the use of the land for the purpose specified in the notice has not ceased and the various structures, chattels and development associated with the use have not been removed from the land.
- The requirements of the notice are:
  (i) Stop using the land for residential purposes.
  (ii) Remove from the land the static mobile home and touring caravans stationed thereon, and all vehicles and/or machinery parked or stored thereon.
  (iii) Remove from the land the blue container and wooden dog pen stationed thereon.
  (iv) Take down the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the Land and remove from the Land the materials used in the construction of the said fencing.
  (v) Take down the 2-metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land and remove from the Land the materials used in their construction.
  (vi) Dig up and remove from the land the sceptic tank stationed on the Land and all associated drainage and resultant materials.
  (vii) Dig up and remove from the Land the materials comprised in the gravelled hardstanding and any other hardstanding laid on that part of the land situated in the approximate position shown hatched brown on the plan attached to the notice.
- The period for compliance with the requirements is 12 months
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

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

the Formal Decision.

Application for costs

1. At the Inquiry applications for costs were made by Mr Arthur McDonagh against South Oxfordshire District Council and Garsington Parish Council respectively. These applications are the subject of separate Decisions.

Procedural and preliminary matters

2. This is one of two appeals heard at the same Inquiry relating to different plots on Kiln Lane but occupied by members of the same wider family. The other appeal, Ref: APP/Q3115/W/20/3263366, is the subject of a separate Decision.

3. Evidence at the Inquiry was given under oath by way of affirmation.

4. In giving his evidence, the appellant explained that he travels for work for periods of around three to four months at a time. This is usually along the M5 corridor, in the Bristol and Birmingham areas, but also as far afield as a Cardiff and Torquay. In the light of evidence given by Mr McDonagh at the Inquiry, the Council now accepts that he and his dependants are gypsies and travellers within the definition in Annex 1 of the Planning Policy for Traveller Sites (PPTS). I see no reason to take a different view, albeit from the evidence before me it is apparent that Mr McDonagh operates one or more businesses from the appeal site when he is not travelling for work. That is a relevant consideration in the context of the appeal on ground (a).

5. Planning permission was granted on 29 April 2016 for the change of use of the land to which this appeal relates to a private gypsy and traveller caravan site (Council Ref P15/S/S1878/FUL). That permission was subject to several conditions, one of which (Condition 2) required that the development shall be carried out in accordance with the details shown on the approved plans, including Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1. Those drawings respectively showed the approved site layout and the approved mobile home, including the internal layout and elevations of the mobile home.

6. At some point(s) before the enforcement notice was issued, the appellant erected some structures on the land. These include the blue container, the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the site and the 2 metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land. Those matters do not form any part of the breach of planning control alleged at paragraph 3 of the notice, but are included in the requirements to comply with the notice.

7. Then, at some point after the enforcement notice subject to this appeal was issued, the appellant removed the mobile home shown on Drawing No. 01299-5-rev 1 and replaced that with a larger mobile home. The appellant also erected a not-insubstantial building adjacent to that mobile home, described as a day room but nonetheless containing all the facilities required for day-to-day living. The appellant also made some significant alterations to the layout of the site, including a larger area of hardstanding compared with the layout shown on the approved drawing No. 01299-2-rev 3.

8. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land *to which the notice relates* (emphasis

added). The deemed planning application that arises from the appeal on ground (a) in this case is therefore for use of the land to a private gypsy and traveller caravan site without complying with Condition 1 imposed upon planning permission P15/S/S1878/FUL.

9. Because the replacement mobile home, the day room and the other alterations to the site (before and after the enforcement notice was issued) do not form any part of the matters to which the notice relates, they do not fall to be considered under the deemed planning application that arises from the appeal on ground (a) and are not before me in this appeal. For that reason, I have determined this appeal solely on the basis of the drawings initially approved as part of planning permission P15/S/S1878/FUL, including Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1.

10. In the interests of clarity and for the avoidance of doubt, the above means that my Decision does not grant planning permission for the stationing of the replacement mobile home that is currently on site, the day room or the alterations to the approved site layout that have taken place (including the fencing and gates). It is a matter for the local planning authority in the first instance to determine whether those matters constitute a breach of planning control and, if so, whether it is expedient to issue an enforcement notice in relation to them.

11. There are further consequences that follow from the deemed planning application in this case, as dictated by the breach of planning control alleged in the notice and by the effect Section 177(1) of the 1990 Act. In order to benefit from any planning permission that arises from that deemed application, the appellant would need to revert to the scheme approved by planning permission P15/S/S1878/FUL. This would entail removing the mobile home that is currently on the site, together with day room. Any mobile home that replaced the current mobile home would need to accord with Drawing No. 01299-5-rev 1. The layout of the site would need to revert to that shown on Drawing No. 01299-2-rev 3.

12. This would also require the removal of some of the other structures and fixtures that are currently on site and which do not form part of the development approved by planning permission P15/S/S1878/FUL. These include the blue container, the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the site and the 2 metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land. Those are not matters stated in the notice as forming part of the breach of planning control that is alleged. It follows that my Decision cannot, and does not, grant planning permission for those matters. It is again for the Council to determine whether those matters constitute a breach of planning control and, if so, whether it is expedient to issue an enforcement notice in relation to them.

The Enforcement Notice

13. The requirements of the notice at paragraph 5 of the notice do not match the breach of planning control alleged in paragraph 3. In particular, the requirement at paragraph 5(i) to stop using the land for residential purposes does not properly reflect the breach of planning control alleged, which relates to the change of use of the land to a private gypsy and traveller caravan site. Had I been minded to uphold the notice, I could have corrected the notice in

that respect without causing injustice. However, given that I am minded to quash the notice in any event, there is no merit in doing so.

14. The Council did request that, in the event that I was minded to uphold the enforcement notice, the removal of the day room was added to the requirements of the notice. I am not entirely persuaded that would be open to me to do so but, in any event, I do not propose to uphold the notice.

The appeal on ground (a) and the deemed planning application

15. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appeal site is within the Green Belt. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the PPTS

  and

- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the PPTS

16. Policy E of the PPTS makes it clear that traveller sites (temporary or permanent) are inappropriate development in the Green Belt. It is nonetheless necessary to consider the breach of planning control in terms of its effect on the openness of the Green Belt.

Openness of the Green Belt

17. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. I have considered the effect on the openness of the Green Belt against the development approved under planning permission P15/S/S1878/FUL, specifically Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1.

18. According to the stated dimensions on Drawing No. 01299-5-rev 1, the mobile home approved under that permission had a length of 12.2m and width of 6.6m. The mobile home had a shallow roof and stood on a raised plinth, such that the maximum height was some 4m and a height of some 3m at the eaves. In spatial terms, the presence of that mobile home on its own had a significant adverse effect on the openness of the Green Belt.

19. In addition to the mobile home itself, the approved drawing shows a 2m close boarded timber fence running across the site perpendicular to Kiln Lane and 1.5m close boarded fence along part of the north-west boundary of the site. The site layout drawing also shows a shed sited adjacent to the mobile home, and an area of gravel between the site entrance to the site

on Kiln Lane and the mobile home sited towards the rear of the site. Individually and cumulatively, these structures and areas of hard surface further erode the openness of the Green Belt in this location.

20. I recognise that the Council's planning witness, conceded that the mobile home permitted by planning permission P15/S/S1878/FUL would not impact unduly on the openness of the Green Belt. However, I have undertaken my own assessment and have reached a different view.

21. In visual terms, the site is clearly visible from Kiln Lane. It follows that the harm to the openness in spatial terms would have been clearly experienced in visual terms.

Conclusion on inappropriateness

22. I conclude that the use of appeal site as a private gypsy and traveller caravan site fails to preserve the openness of the Green Belt in this location and conflicts with the purposes of including land within the Green Belt. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

23. A number of other considerations were advanced during the Inquiry, both in support of and objection to the breach of planning control that has occurred. The main considerations are as follows.

Character and appearance

24. The appeal site is within Landscape Character Area 1: Oxford Heights, as defined in the South Oxfordshire Landscape Character Assessment 2017 (SOLCA). The SOLCA describes the key characteristics of the Oxford Heights Landscape Character Area as comprising an undulating landscape, predominantly in agricultural use and sparsely settled, with blocks of mostly deciduous woodland scattered across the landscape.

25. The area surrounding the appeal site largely accords with those key characteristics, with large, mostly flat fields in agricultural use to south, east and west. The ground slowly rises to the north, and there are small pockets and lines of trees dispersed across the landscape. The landscape has a predominantly rural character, with the only permanent buildings in the immediate vicinity being a residential dwelling (No 11 Kiln Lane) and at Kiln Farm. Although now partially converted into residential unts, the latter still exhibits the appearance of a working farm, and to that extent reinforces the rural character of the surrounding landscape.

26. The location of the appeal site has been rightly described in other contexts as being edge of settlement. However, purely in relation to its relationship with the surrounding landscape, the appeal site is separated from the settlement of Garsington by a substantial field on the east side of Kiln Lane. There is an area of woodland to immediate east of the appeal site and fields to the south. To the north-west is Kiln Farm, with its rural character and appearance, with plots occupied by mobile homes north of that. Even then, there is an open area separating the northernmost plot from the permanent

houses on the southern edge of Garsington. I therefore consider that the appeal site itself sits in a rural setting.

27. Many of the local residents who gave evidence to the Inquiry described how the character of Kiln Lane has changed over recent years, becoming more urbanised and losing much of its previous verdant appearance. They describe a narrow lane, with no edging or kerbing, bordered by trees, shrubs and wild flowers and which was frequented by wildlife. They drew a direct comparison with the continuation of the lane southwards beyond Kiln Farm as it is today. The experience of walking down the lane, the residents say, was very much of being in the countryside.

28. Given the consistency with which that view was expressed, I attach considerable credence to the evidence given by those local residents. That evidence is further supported by aerial photographs of Kiln Lane dating from 1999 onwards, and photographs of the appeal site taken from ground level in 2015. Comparison of the latter with the appeal site as it appeared at the time of my site visits illustrates the extent of the change that has occurred in the character and appearance of the site since that time. However, whilst the use of the appeal site has a private gypsy and traveller caravan site has contributed to that transition, I recognise that it is not the sole cause.

29. Nevertheless, the use of the appeal site has a private gypsy and traveller caravan site, including the stationing of the mobile home, the erection of fencing, the area of gravel and the traffic movements generated, itself contributes in no small way to an urbanisation of Kiln Lane. The use of the site for this purpose, as approved by planning permission P15/S/S1878/FUL, is markedly different in character to the open countryside that surrounds it and is harmful to the rural character of the surrounding landscape.

30. A significant component of that change in character is the result of traffic movements generated by activity on the appeal site. Mr McDonagh states that he does not operate a business from the site. I have great difficulty in reconciling that position with other evidence that is before me. That evidence includes a detailed description of commercial vehicles using Kiln Lane (including registration plates) provided by the Parish Council and Mr Mathias. The Council has also provided photographs of large commercial vehicles parked on and/or exiting the appeal site together with photographs of numerous livered vans and pick-up trucks parked on the site, far more than would normally be associated with a residential use.

31. The former occupier of No 2 Kiln Lane, at the northern end of the lane, provides a series of photographs showing vans and other vehicles passing her property in the morning and returning in the other direction in the evening. At least one of the vehicles (which has a distinctive livery) recorded on those photographs is also shown on photographs provided by the Council parked on the appeal site. It is therefore more likely than not that this and the other commercial vehicles recorded on those photographs are associated with businesses being run from the appeal site.

32. The level of activity generated by those vehicular movements, and its effect on the character of Kiln Lane, is far removed from that resulting from the

conversion of two existing buildings on Kiln Farm to residential use in or around 2009. I therefore find that not to be a valid comparison.

33. The appellant claims that mobile homes have historically formed part of the character of Kiln Lane, pointing in particular to a period of some 16 years (between 1959 and 1972, and then between 2016 and 2019) when Plot 12 had planning permission for stationing residential caravans. The appellant also points to the stationing of caravans on other plots nearby, including 7/8, 9 and 10. The salient point, however, is that these are/were mostly temporary permissions. In relation to plot 12, there was gap of 44 years between 1972 and 2016 when no planning permission was in place: that is a period well in excess of the 16 years when planning permissions were in place. It is therefore not accurate to say that mobile homes have historically formed part of the character of Kiln Lane, and certainly not of Plot 12.

34. I conclude that the use of the appeal site as a private gypsy and traveller caravan site is harmful to the character and appearance of the area. I therefore conclude that the breach of planning control is contrary to Policies DES2 and ENV1 of the South Oxfordshire Local Plan 2011-2035 (Local Plan) which, amongst other things, seeks to protect the landscape, countryside and rural areas of South Oxfordshire. The breach of planning control is also contrary to criteria (iii) of Part 2 of Policy H14 of the Local Plan which, in relation to provision for gypsies and travellers, states that proposals will be permitted where it has been demonstrated that they will not have an unacceptable impact on the character and appearance of the landscape.

Living conditions

35. The residential property at No 11 Kiln Lane is occupied by Mr Mathias, his wife and daughter. In giving his evidence, Mr Mathias set out several examples of how, in his view, the living conditions enjoyed by his family as occupiers of No 11 Kiln Lane have been adversely affected by the use of the appeal site as private gypsy and traveller caravan site. Those impacts included noise disturbance, light pollution and flooding. I do not propose to rehearse all of the examples stated by Mr Mathias here, and will focus on what I consider to be the most serious impacts on his property that arise directly from occupation of the appeal site by Mr McDonagh and his family.

36. The most significant impact, it seems to me, is noise disturbance. Mr Mathias related several examples of where excessive noise affected his living conditions, including loss of sleep and inability to work from home. According to Mr Mathias, the sources of the noise include vehicle and machine noise, shouting, and the playing of loud music well into the night. The severity of these noise events is evidenced in a diary of nuisance events maintained by Mr Mathias on a pro-forma provided the Council's Environmental Health Department. On one occasion described by Mr Mathias, the noise inside the house was so loud that his daughter was unable to revise for her forthcoming exams, causing her considerable distress.

37. In addition to the above, Mr Mathias cites examples of rubbish being deposited on his land. Whilst it is not possible to be absolutely certain that the appellant was responsible, the position where the rubbish was deposited is a secluded and difficult-to-reach spot directly behind the fence

that separates Mr Mathias' property from the appeal site. This strongly suggests that the rubbish was thrown over the boundary fence and that the appellant was responsible, either directly or indirectly through the actions of others present on the plot which he is in occupation of. A photograph showing a discarded sign advertising a company with which Mr McDonagh is associated further supports that conclusion. The presence of beer bottles in other photographs is also consistent with the evidence given by Mr Mathias (and Ms Barbara Engstrom, see below) of noisy parties being held on the appeal premises.

38. I found Mr Mathias to be a credible witness, being calm in giving his evidence and very measured in response to questions put him in cross-examination. The harmful effect on his living conditions resulting the occupation of plot 12 as private gypsy and traveller caravan site is very apparent from his evidence and, in my judgment, is both significant and unacceptable. In reaching that conclusion, I acknowledge that the Council has not found noise levels emanating from the site to constitute a statutory noise nuisance for the purposes of Environmental Health legislation. However, noise disturbance does not need to reach the level of a statutory noise nuisance before potentially becoming injurious to residential amenity for the purposes of planning policy.

39. In addition to the evidence of Mr Mathias, I heard evidence on behalf of Ms Barbara Engstrom about the effect the occupation of Plot 12 by Mr McDonagh and his family has had on her living conditions. In a written statement read out on her behalf, she recounts examples, with dates, when loud music was being played or a raucous party was taking place. Her evidence is that the noise was so bad that she was unable to enjoy her garden, and was forced to close her windows during the summertime. She also describes how the lighting at Plot 12 shines right into one her bedrooms, resulting a loss of sleep to people using that room.

40. I am mindful that Ms Engstrom's property is some distance from the appeal site. However, because of the level of detail, I find Ms Engstrom's evidence to be compelling. Moreover, given that Ms Engstrom's property is some distance from the appeal site and yet still causes that level of impact, her evidence places in context the severity of the impact experienced by Mr Mathias immediately adjoining the appeal site.

41. In giving his evidence, Mr Gordon Roper indicated that he could hear traffic noise from the movements on Kiln Lane when in his garden. The former occupier of No 2 Kiln Lane also complains of noise disturbance from vehicles associated with the appeal site.

42. I conclude that the use of the appeal site as a private gypsy and traveller caravan site by Mr McDonagh and his family has unacceptably harmed the living conditions of the occupiers of No 11 Kiln Lane and others, specifically in relation to noise disturbance, light pollution and the deposit of rubbish. I therefore conclude that the breach of planning control is contrary to criteria (iii) of Part 2 of Policy H14 of the Local Plan which, in relation to provision for gypsies and travellers, states that proposals will be permitted where it has been demonstrated that they will not have an unacceptable impact on the amenity of neighbouring properties.

43. In the course of giving his evidence, Mr Mathias also made a number of allegations of a more serious nature against Mr McDonagh. Given that I found Mr Mathias to be a credible witness and, bearing in mind also that his evidence was given under oath, I am persuaded that encounters of some description between the appellant and Mr Mathias did occur. My view in that respect is reinforced by the fact that the appellant was offered the time and opportunity to refute the claims made by Mr Mathias but failed to do so, either by calling further witnesses or by providing witness statements. Nevertheless, Mr McDonagh denies emphatically and under oath that the events as described by Mr Mathias did occur. I am also mindful that other local residents, business owners and members of the wider community enjoy good relations with Mr McDonagh and his family. In the absence of any corroboration from independent witnesses, I cannot take an informed view either way and have therefore not taken that evidence into account.

Intentional Unauthorised Development

44. The Written Ministerial Statement (WMS) of December 2015 introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. In considering whether the occupation of Plot 12 by the appellant constitutes intentional unauthorised development, it is first necessary to establish the nature of the development took place.

45. Planning permission was granted on 29 April 2016 for the change of use of the land to a private gypsy and traveller caravan site subject to conditions (Council Ref: P15/S/S1878/FUL). Condition No 1 required, amongst other things, that the mobile home permitted shall only be occupied by the applicant Mrs A. McDonagh and her immediate family, and that the use of the land as specified in the application shall cease at the expiration of a period of 3 years from the date of the permission.

46. For reasons that Mr McDonagh sets out in his evidence, it was decided that he and his wife Winnifred would take occupation of the site. This appears to have been a unilateral decision amongst the wider family. No approach was made to the Council in order to determine whether Mr McDonagh and his wife would be entitled to benefit from that permission. As it transpires, the original applicant (Mrs A. McDonagh) never took occupation of the site and the plot was occupied by the appellant and his family in breach of Condition No 1 of the permission from the outset. Then, at the expiration of 3 years from the date of the permission on 29 April 2019, Mr McDonagh and his family continued occupying the plot in further breach of Condition No 1 of the planning permission.

47. In response to my question, Mr McDonagh claimed that he was not aware at the time that the permission was limited to three years. I accept that answer. However, it is apparent from his own evidence that Mr McDonagh knew full well that permission to use the land as a private gypsy and traveller caravan site was granted to Mrs A. McDonagh. He therefore knowingly took first occupation of the plot in breach of condition No.1 of planning permission. There is also some evidence that work commenced on the occupation of Plot 12 before any planning permission was in place,

albeit Mr McDonagh denies this. The foregoing, in my view, constitutes intentional unauthorised development for the purposes of the WMS.

48. The WMS pre-dates the revised Framework, which does not include this provision. Nevertheless, the WMS has not been withdrawn and therefore remains a material consideration. The fact that the provision has not been translated into national policy in my view reduces the weight to be given to the WMS as a material consideration, but it does attract some weight. In the particular circumstances of this case, based on my assessment of Mr McDonagh's understanding of the consequences of his actions, I afford this matter only moderate weight.

The need for gypsy and traveller sites

49. Policy B of the PPTS states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council concedes that it cannot demonstrate an up-to-date five year supply of deliverable sites and that there is a need for further sites for gypsies and travellers nationally, regionally and locally.

50. The Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) produced by Opinion Research Services (ORS) for the Council was published June 2017. The appellant criticises the GTAA, including in relation to its methodology. In a later Addendum published in 2019, ORS revised the methodology and on that basis identified a need for 13 pitches. The appellant maintains that this revised figure in the Addendum is still insufficient but it was that figure which formed the basis for the allocations set out in Policy H14 of the Local Plan. The Local Plan was adopted relatively recently following the examination process and found to be sound.

51. The Council accepts that none of the sites allocated in the Local Plan currently meet the definition of a deliverable site for the purposes of the PPTS. Moreover, the Council indicates that development of the strategic sites at Culham and Chalgrove will not begin until 2025/26, and are unlikely to be delivered until after 2026.

52. It is evident that there is a local need for gypsy and traveller pitches. Even based on the need identified in the Addendum to the GTAA, the allocations set out in Policy H14 would not meet that need. Nevertheless, Policy E of the PPTS makes it clear 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. That is repeated in Policy H of the PPTS. For that reason, I attach only limited weight to the unmet need identified in the GTAA.

Alternative sites

53. Planning permission P15/S/S1878/FUL was granted, in part, because there was no capacity on existing Council sites at that time, for which there was already a waiting list. It was also considered that private traveller sites tend to be for single pitches or occupied by extended families, and therefore unlikely to be suitable for the applicant's family needs.

54. The Council accepts that it cannot point to any immediately available sites that are suitable and affordable. For the reasons set out by the Court of Appeal in *Clarke v SSTLR & Tunbridge Wells BC* [2002] EWCA Civ 819, I reject emphatically the suggestion made by the Council's witness in evidence that the family could move into bricks and mortar accommodation. The Council does, however, point out that only 20% of the district is within the Green Belt. Given the lack of a five-year supply of sites, the Council considers that there is an enhanced prospect of gaining planning permission on a site outside of the Green Belt.

55. There is more to finding a suitable site than being outside of the Green Belt. Much of the district is designated as an Area of Outstanding Natural Beauty (AONB). The Framework indicates that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONB. That is a policy constraint which is likely to present an obstacle to obtaining planning permission. It is also likely that any site which might be available would be in the countryside. In addition to needing to comply with planning policies aimed at protecting the countryside, it is likely that such sites would not be sustainable locations. It may therefore not be an easy task to secure planning permission for use a gypsy and traveller site, even if one was available.

56. Overarching the above is that, in the process of adopting the Local Plan, the Council could only identify a total of 10 sites on the whole district. To my mind, that illustrates the difficulty of finding suitable sites. The appellant is a member of the gypsy and traveller community and, it seems to be, would be aware if a suitable site did become available. None have. Consequently, even if the appellant does have the resources to mount a search for sites, it is my view unlikely that any sites that are both suitable and available would be found.

57. There was a suggestion that the appellant and his family have access to alternative sites in Groby and at Blaby, and at Melton Mowbray, all in Leicestershire. The appellant claimed that he personally had no connections with those sites and, whilst he inherited a property in Berinsfield, he had never lived there and has since sold it on. Two other sites, known respectively as Redbridge Hollow and Oakview Park, were investigated but found to be full, albeit the supporting documentary evidence is very sketchy. Mr McDonagh indicated that the ex-Council property in Edgecombe Road was used by him and other travellers as a postal address.

58. I was not wholly convinced by the answers given by Mr McDonagh in this respect, which were largely unsupported by documentary evidence. Nevertheless, I have no evidence to counter that given by Mr McDonagh, under oath, and nothing before me to suggest that those sites are definitely available to the appellant and his family, or would be suitable if they were available.

59. The corollary is that, in the event that the notice is upheld, it is likely that the appellant and his family would be forced to return to living on the roadside, and/or the pattern of continual eviction from supermarket car parks that the family previously experienced. This would adversely affect

the health and well-being of the appellant and is family. That is a consideration to which I attach significant weight.

Sustainability of the appeal site.

60. The sustainability of the appeal site is accepted by the Council. In general terms, I concur with that assessment although the PPTS does not specifically refer to accessibility to services and facilities by foot and public transport as an aim. I therefore consider that the term 'accessibility' is more appropriate in this context.

61. Paragraphs 14 and 25 the PPTS implicitly accept that traveller sites may be located in rural areas when this will lessen opportunities for sustainable travel. The accessibility criteria set out for traveller sites in paragraph 13 of the PPTS do not include distance from or means of transport to shops and services, but do refer to considerations which are unique to traveller site applications: for example, the provision of a settled base can reduce the need for long distance travelling and that traditional lifestyles, whereby some travellers live and work from the same location, can omit travel to work journeys and contribute to sustainability.

62. In general terms, the criteria set out in the PPTS apply to the appellant and his family. It is, however, still necessary to consider the site-specific factors and how they relate to the personal circumstances of the appellant and his family. In that context, whilst there a convenience store located a short distance from the appeal site, much of Kiln Lane is unmade and lacks street lighting. There would therefore be occasions when accessing that facility on foot would be difficult and/or an unattractive proposition. The school attended by Mr McDonagh's children is some distance away, as is the church that the family regularly attend. Attendance at both require the use of a car. Other facilities are within 1 kilometre but equally require the use of a car, albeit the journey is relatively short.

63. Consequently, whilst the site is in a sustainable location, occupation of its does require use of a car for some if not most of day-to-day activities. Accordingly, the sustainable location of the appeal site is qualified and for that reason only attracts moderate weight in support of the development.

Personal circumstances of the appellant and his family

64. The personal circumstances of the appellant and his family are set out in great detail in the evidence before the Inquiry. Those circumstances are deeply personal and I do not propose to rehearse them here, but it is the advice of medical experts and social workers that the mental and physical health of the appellant and his family have greatly benefited from having a stable base provided by the appeal site. In the opinion of those medical experts, the return to a roadside existence would be injurious to their mental and physical health. It is also indicated that the health and development of their children would suffer in response to any decline in the parent's well-being.

65. I have no reason to question the evidence that is before me in this respect. This is therefore a matter to which I attach significant weight.

Best interests of the children

66. The appellant and his wife have two children of school age, and a younger son. The school-age children attend a school in Oxford. They are doing well there, having made friends and attend various school activities. It is indicated that one of the children is likely to benefit from speech/language therapy in due course, and for that reason the social worker liaising with the family considers it to be of great importance that this child remains at his current school to receive any support that he might need. In general terms, it is the opinion of the social worker that it is strongly in the best interests of all the appellant's children that they continue to reside on the appeal site.

67. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable base, not only from which to access education and medical facilities but also to remove the children from the dangerous environments of a roadside existence. The best interest of these children is a primary consideration, and inherently carries as much weight as any other consideration.

Human Rights and the Public Sector Equality Duty

68. Paragraph 3 of the PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life for travellers while respecting the interests of the settled community. In that regard, interference with rights held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), is a key consideration. In this case, there is interference with rights under Article 8 (right for respect for private and family life, home and correspondence). That is a qualified right, and interference with it may be justified where it in accordance with the law and it is necessary in a democratic society.

69. In this case, the interference with the appellant's Article 8 rights arises from an enforcement notice issued under section 171 of the 1990 Act. The interference with the appellant's Article 8 rights is therefore lawful. The protection of the Green Belt is a legitimate and well-established planning policy aim and, as set out in the Framework, is a key element of national planning policy. The protection of the Green Belt is therefore in the public interest. The harm to the Green Belt in this case would be substantial, and there are others harms relating the character and appearance of the area and the living conditions of the occupiers of No. 11 Kiln Lane and others. I am also mindful that occupation of the appeal site by the appellant and his family was an act of intentional unauthorised development.

70. Against this harm, the Council cannot point to a five-year supply of sites. The allocation of sites in Policy H14 of the Local Plan, whilst found to be sound in the recent examination of that plan, does not meet the need for sites identified in the 2019 Addendum to the 2017 GTAA. There are no suitable alternative sites available. Upholding the notice would therefore result in the appellant and his family losing their home and, in all likelihood, would oblige the appellant to return to a roadside existence, with all the implications that would bring. I also have the best interests of the children residing on the site at the forefront of my mind.

71. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and his family would be significant, but would be both necessary and proportionate in the event that the notice is upheld or in refusing to grant a permanent planning permission. In reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights.

72. The appellants and his family share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on the appellant's way of life and would reduce the opportunities available to him and his family. It would also deny or reduce the opportunities available to Mr McDonagh and his family to foster good relations with the settled community, including those of the children at their school. I am also mindful that a more positive outcome in respect of the aims of PSED exists in the form of a temporary planning permission.

73. I am of course mindful that local residents have rights under the HRA, and I have taken those rights into account in reaching my conclusions below.

Conditions

74. I have considered whether suitably worded conditions could make the development acceptable in planning terms. The first point to make is that it would be necessary for any permission granted to be subject to a condition requiring that it be accordance with the same drawings specified in planning permission P15/S/S1878/FUL.

75. I am not persuaded that the imposition of conditions could overcome the harm caused to the openness of the Green Belt and the character/appearance of the surrounding area resulting from the very nature of the development. A condition removing permitted development rights would not, in itself, be sufficient to achieve that purpose. Neither would a condition restricting the site to the provision of a single pitch. These are considerations that militate against granting a permanent planning permission.

76. The harm to the living conditions of the occupiers of No 11 Kiln Lane and others could to some extent be mitigated by conditions, including conditions restricting the number and type of vehicles parked on the site, preventing commercial activities from taking place on the site and controlling the external lighting on the site.

77. If I am to afford weight to the personal circumstances of the appellant and his family, including in relation to the best interests to the children living on the site, then a condition limiting occupation specifically to them in necessary. In the event that a temporary permission is appropriate, a condition requiring the full restoration of the land at the end of that temporary period would be necessary to restore the openness of the Green Belt

Green Belt balancing exercise and conclusion on the ground (a) appeal

78. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. Furthermore, the presence of that mobile home approved under planning permission P15/S/S1878/FUL on its own had a significant adverse effect on the openness of the Green Belt. The fencing, shed and hardstanding that formed part that permission further eroded the openness of the Green Belt in this location.

79. The permanent use of the appeal site as a private gypsy and traveller caravan site in accordance with the terms of planning permission P15/S/S1878/FUL is harmful to the character and appearance of the area, contrary to policies in the development plan.

80. Similarly, the use of the appeal site as a private gypsy and traveller caravan site by Mr McDonagh and his family has unacceptably harmed the living conditions of the occupiers of No 11 Kiln Lane and others. That is also contrary to a policy in the development plan, and therefore subject to the force of Section 38(6) of the 2004 Act. Above and beyond that, I was struck from the evidence given by Mr Mathias of the severity of the harm to his living conditions and those of his family.

81. I am satisfied that the occupation of the appeal site by the appellant does constitute intentional unauthorised development for the purposes of the WMS, a matter to which I attach moderate weight.

82. Against this, it is evident that there is a local need for gypsy and traveller pitches. However, for the reasons set out above, I attach only limited weight to that unmet need. It is also evident there are no suitable and available alternative sites, a consideration to which I attach significant weight. I attach moderate weight to the sustainability of the site.

83. The personal circumstances of the appellant and his family are a matter to which I attach significant weight. The best interests of the children residing on the site are a primary consideration which attracts substantial weight.

Conclusion

84. I conclude that the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify a permanent planning permission do not exist. These harms could not be overcome by the imposition of suitably worded conditions. Given that the protection of the Green Belt is a key strand of national planning policy and in the wider public interest, I am satisfied the interference with the appellant's Article 8 rights would be necessary and proportionate. In reaching this conclusion, I have also taken into account my responsibilities under the PSED.

85. I further conclude that the use of the land as a traveller site would be contrary to policies in the development plan when read as whole. In relation to a permanent planning permission, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

86. My conclusion that a permanent planning permission is not appropriate in this case is reinforced by the findings of the Inspectors in two previous appeals relating to gypsy and traveller sites in Kiln Lane.

87. In relation to Plot 8, the Inspector did not consider that the personal circumstances of the appellant and his family clearly outweighed the permanent harm to the Green Belt that she identified (APP/Q3115/C/12/2173778). Those considerations included the provision of a settled base from which the appellant's children could attend school on a regular basis and the family access medical facilities. The Inspector also found that the lack of alternative sites would force the appellant to return to a roadside existence. The Inspector went on to grant a temporary permission, given that the harm arising would only be for a temporary period.

88. In relation to Plot 9, the Inspector found that the personal need of the appellant and his family attracted significant weight but concluded that they did not justify permanent harm to the Green Belt (APP/Q3115/W/18/3209624). The Inspector again went on to grant a temporary permission.

89. I recognise that there are some differences between the circumstances surrounding those two appeals and the appeal now before me, principally the weight to be afforded to the best interests of the children residing on the site. Nevertheless, the conclusions of both Inspectors and their refusal to grant a permanent permission reflects the importance attached to the protection of the Green Belt in Government planning policy. Consistency is an important element of decision making, and on the evidence before me I see no reason to depart from the approach adopted in those two appeals.

90. The balance does, however, shift when a temporary planning permission is considered. In those circumstances, the harm by reason of inappropriateness and any other harm, although no less severe, would only be for a temporary period. The site would be required to be restored at the end of that temporary period, thereby also repairing the harm to the character and appearance of the surrounding area. The harm to the living conditions of the occupier of No. 11 Kiln Lane and others would potentially be extended for a further period but would be for a finite period and to some extent could be mitigated by the imposition of conditions that were not imposed on planning permission Ref P15/S/S1878/FUL.

91. A temporary planning permission would retain a settled base from which the appellant's children could attend the same school as at present on a regular basis whilst an alternative site is sourced. It would avoid the appellant and his family returning to a roadside existence, with all the disbenefits that would bring, until such time as a suitable alternative site was found. A temporary planning permission would be in the best interests of the children residing on the site.

92. The Council and the Parish Council both favour a temporary planning permission for two years at most. In that context, the Parish Council is concerned about the constant leap frogging of temporary permissions along Kiln Lane: for example, the temporary permission for plot 9 expires in July 2023. I see much merit in that argument.

93. The appellant requests a temporary period of five years. A temporary permission of that duration would provide the stability that the family seeks and needs. A temporary period of five years would also provide time for the Council to complete its work on identifying alternative sites and for those sites to be delivered.

94. The difficulty is that there is no definite timetable for when that work would translate into the identification of suitable pitches and/or when those pitches might become available. The earliest date is speculated to be in four of five years from now, although there can be no guarantee that the timetable would be met or that suitable sites would be forthcoming in any event.

95. The question is finely balanced. However, the determining factor, it seems to me, is the earliest date on which there is a reasonable prospect of a suitable alternative site becoming available. There is no guarantee that a suitable site would become available within the next five years, but equally there seems very little prospect that it would occur within the next two years. There would be no point in a temporary period that expired before a suitable site became available, thereby forcing the appellant to return to a roadside existence. It therefore seems to me that a temporary permission of five years represents the best option in terms of avoiding that outcome.

96. In reaching that conclusion, I remain mindful of the effect that the use of the land as a private gypsy and traveller caravan site has had to date on the living conditions of the occupiers of No 11 Kiln Lane and others, and of the severity of that harm. That harm would potentially continue but a temporary planning permission would enable conditions to be imposed to mitigate that harm which were not imposed on planning permission Ref P15/S/S1878/FUL. That is a benefit arising from granting a temporary permission. Subject to the imposition of those conditions, I am satisfied that a temporary permission of five years would be a proportionate response to the harm caused to the living conditions of the No 11 Kiln Lane and others.

97. I therefore conclude that, in the context of a temporary planning permission of five years, the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations. Very special circumstances would exist, such that a temporary planning permission of five years would be appropriate. I am mindful that planning permission Ref P15/S/S1878/FUL was itself a temporary permission. The Planning Practice Guidance indicates that it will rarely be justifiable to grant a second temporary permission. However, in this case, the personal circumstances of the appellant are such that there is clear justification for doing so.

Conclusion

98. I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I shall grant planning permission on the application deemed to have been made for the change of use previously permitted without complying with the condition enforced against but subject to new conditions. As a consequence, the appeal on ground (g) does not fall to be considered.

Formal Decision

99. The appeal is allowed, the enforcement notice is quashed and planning permission is granted in accordance with section 177(5) and section 177(1)(a) of the 1990 Act subject to the following conditions:

1. The site shall not be occupied other than by Mr Arthur McDonagh and Ms Shirley Winnifred Ward, and their dependants, and shall be limited for a period of five (5) years from the date of this permission. At the expiration of a period of five years, or when the premises cease to be occupied those named above, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition agreed in writing by the local planning authority in accordance with condition 5 below.

2. The development hereby permitted shall be carried out in accordance with the approved drawings – 01299/10 rev 2; 01299/2 rev 3 and 01299/5 rev 1 except as controlled or modified by conditions of this permission.

3. Within three months of this Decision, details of any external lighting shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. Other than that approved in writing by the local planning authority following submission of those details, no external lighting shall be installed unless first approved in writing by the local planning authority.

4. Within three months of this Decision, a foul water drainage scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme. The scheme thereby approved shall be implemented and thereafter maintained in accordance with approved details.

5. Within three (3) months of the date of this decision, a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, shall be submitted in writing to the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the details approved by the local planning authority.

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

7. The touring caravan shown on the approved plan, including any motorhome used in that capacity, shall not be used as separate residential accommodation.

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

9. No more than one commercial vehicle shall be kept on the land and that shall only be for use by the occupiers of the caravans hereby permitted.

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

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Paul Freer

INSPECTOR

APPEARANCES

For the appellant

Mr Alan Masters	Of Counsel

He called:

Mr Arthur McDonagh	Appellant
Dr Angus Murdoch MRTPI	Planning Consultant

For the Local Planning Authority

Mr Robin Green	Of Counsel

He called:

Mr Jeremy Peter MRTPI	Planning Enforcement Consultant, South Oxfordshire District Council

For Garsington Parish Council

Mr Jack Parker	Of Counsel

He called:

Mr Christopher Wright	Chairman, Garsington Parish Council
Mr Roy Mathias	Occupier, No 11 Kiln Lane

Interested Persons

Ms Anne Eastwood	Local resident
Ms E Dain, on behalf of Ms Barbara Engstrom	Local resident
Mr Craig Bell	Local resident
Mrs Elizabeth Gillespie	District Councillor
Mr Gordon Roper	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Opening Statement on behalf of South Oxfordshire District Council.
2. Opening Statement on behalf of Garsington Parish Council.
3. Copy of statement read out on behalf of Ms Barbara Engstrom.
4. Local Planning Authority Position Statement on 5 year supply of Gypsy and Traveller pitches in South Oxfordshire.
5. Copy of the planning permission dated 10 March 2016 in relation to the site known as Land off Sandy Lane, Melton Mowbray (Ref: 16/00164/COU).
6. Copy of Appeal Decision dated 28 February 2018 in relation to Watlings Paddock, Stadhampton, Oxfordshire OX44 7UQ (APP/3115/W/17/3176196).
7. Copy of Officer Report in relation a planning application P19/S1069/FUL, relating to a site known as Newlands, Platt Lane, Northend.
8. Copy of solicitors letter dated 10 May 2022, referencing the transfer of land at sandy Lane, Melton Mowbray, to Mr M McDonagh.
9. Partial extract (of poor resolution) of a letter from a local school confirming the attendance record of the appellant's children.
10. Character reference for Mr McDonagh from a local resident, undated.
11. Photograph showing part of the boundary of the appeal site with No 11 Kiln Lane.
12. Copy of message received by Mr McDonagh from a local resident, unsigned and undated.
13. Copy of the Approved Judgment in *Smith v First Secretary of State and Mid-Bedfordshire District Council* [2005] EWCA 859
14. Three documents all in relation to Appeal Ref: APP/T2405/W/20/3264047, relating to the site at Sycamore Street, Blaby, Leicestershire :(a) Witness Statement of Mr Michael McDonagh; (b) Agenda for the Hearing; (v) Appeal Form.
15. Full, unredacted Proof of Evidence of Mr Roy Mathias
16. Character reference for Mr Arthur McDonagh from a local resident.
17. Closing submissions on behalf of Garsington Parish Council.
18. Closing submissions on behalf of South Oxfordshire District Council.
19. Closing submissions and applications for costs on behalf of the appellant.

The Planning Inspectorate

Costs Decision

Inquiry Held on 10, 11 & 12 May 2022, 30 August 2022, and 1 & 2 September 2022

Site visit made on 10 May 2022 and 2 September 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Costs application in relation to Appeal Ref: APP/Q3115/C/19/3238398
Land at 12 (aka Plot 12), Kiln Lane, Garsington

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Arthur McDonagh for a partial award of costs against Garsington Parish Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging failure to comply with condition No 1 of a planning permission Ref P15/S/S1878/FUL granted on 29 April 2016.

Decision: the application is refused

The submissions for Mr Arthur McDonagh

1. The appellant relies upon the admission made by Counsel acting for Garsington Parish Council to the effect that Mr McDonagh was led to believe that material sought to be put to him in cross-examination was material that had been redacted from Proofs of Evidence originally submitted to the Planning Inspectorate. The Parish Council knew that this was new evidence that had not been disclosed to the appellant in advance. By failing to disclose that fact to the Inquiry, the Parish Council gained a procedural advantage that they were not entitled to.

2. Not correcting the inference that the material was in the unredacted version of Mr Mathias' evidence caused much time to be wasted on the pursuit of disclosure of that document and the need for time to respond. Had the Inquiry been informed that it was entirely new evidence, it is unlikely that the evidence would have been allowed to be cross examined until it had been properly disclosed to the appellant. There is every chance that it would have been excluded as being too late and thereby not necessitated the adjournments and submissions that were made. At least two full days of Inquiry time were wasted by this unreasonable behaviour.

The response by Garsington Parish Council

3. The cause of the appellant's complaints does not originate with the Parish Council. When the Parish Council submitted its Proofs of Evidence to the Planning Inspectorate, it did not expect them to be rejected. Nonetheless, the Parish Council respected that decision and moved forward with the appeal in accordance with it. At the Inquiry, the Inspector made it clear that he wished to determine the appeal on the basis of the documentary evidence submitted

and the oral evidence to be heard at the Inquiry. As such, the Parish Council considered the original Proofs of Evidence submitted to the Planning Inspectorate to be irrelevant. To the extent that the appellant understood that there was material in those original Proofs of Evidence was relevant is his fault and his fault alone.

4. The appellant's renewed request for the originally submitted Proofs of Evidence by way of Freedom of Information (FOI) request was refused by the Planning Inspectorate. A further request when the Inquiry reconvened after the adjournment was also refused. As the Inquiry progressed, the appellant and his team repeatedly and persistently raised the concern that the Parish Council were seeking to hide something from them. The Parish Council was anxious to dispel that misunderstanding and, in the interests of transparency, considered that it was in the public interest for the appellant to have the original versions of the Proofs of Evidence made available to him.

5. It is misleading to say that the original Proofs of Evidence were only disclosed once the appellant no longer had the chance to cross examine Mr Mathias. It was made clear on a number of occasions that Mr Mathias would be prepared to be further cross examined. The appellant declined that opportunity.

6. Contrary to what the appellant has suggested, Counsel acting for the Parish Council did not mislead the Inquiry into believing that the original version of Mr Mathias' Proof of Evidence contained details of the specific matter raised by him. At no point did the Inspector say that he was misled, only that he had assumed that the original Proof of Evidence did contain that material. Insofar as Counsel acting for Parish Council accepts anything, it is to apologise for any part he played in the assumption drawn by the Inspector. The appellant has not pointed to any specific statement made by Counsel acting for the Parish Council to support the inference that he drew as to the content in the original Proofs of Evidence.

7. It is not correct to say that the Parish Council obtained a procedural advantage. The Inspector did not allow the matters to be put to Mr Mathias or given in evidence because they were matters contained in the original Proofs of Evidence. The Inspector repeatedly made it clear that he wished to hear all the evidence of those who wished to speak at the Inquiry and for him to decide what weight to give that evidence. The Inspector allowed the "new" evidence on the basis that any prejudice to the appellant could be remedied by giving him the opportunity to consider those allegations and produce a response.

8. The progress of the Inquiry was not in any way affected by the evidence given by Mr Mathias. The Inquiry would have needed to be adjourned in any event to hear from the remaining witnesses. The adjournment of the Inquiry to enable the appellant to consider Mr Mathias' evidence has not caused the appellant any unnecessary expense. It is striking that, despite the Inquiry being adjourned by the Inspector to enable the appellant to respond to that evidence, the appellant produced precious little by way of further evidence to rebut Mr Mathias' account.

Reasons

9. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur

unnecessary or wasted expense in the appeal process. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice.

10. In order that it could fully participate in the Inquiry proceedings, the Parish Council requested, and was granted, Rule 6 status. The PPG indicates that interested parties who choose to be recognised as Rule 6 parties under the Inquiry procedure rules may be liable to an award of costs if they behave unreasonably. The PPG does not provide any specific examples of unreasonable behaviour which may result in an award of costs against a Rule 6 party, but I draw parallels with the examples of unreasonable behaviour outlined in the PPG in relation to the conduct of appellants and local planning authorities.

11. In the context of this claim for costs, a key event during the Inquiry was the publication on 16 August 2022 of the letter from the Planning Inspectorate in response to the appellant's request that the unredacted version of the Proof of Evidence submitted by the Parish Council be disclosed. The answer that it could not was clear and unequivocal, and was based on advice obtained directly from the Information Commissioner's Office.

12. From that moment on, the Parish Council knew that the Planning Inspectorate would not be releasing the unredacted Proof of Evidence whilst the Inquiry was still in progress and that it would not be eligible for release until after my decision on this appeal was issued. The subsequent decision of the Parish Council to release the unredacted version of the Proof of Evidence must be considered with that firmly in mind.

13. In those circumstances, the decision to release the document was commendable. The Parish Council says that it arrived at that decision in the public interest, and I have no reason to doubt that. I did not detect any ulterior motive at the time, and do not now. The Parish Council does not indicate precisely what public interest lay behind the decision to release the unredacted Proof of Evidence, but it occurs to me that releasing the unredacted Proof of Evidence removed any possibility of a judicial review of my decision on that particular ground. That in itself has to be in the public interest.

14. When the unredacted Proof of Evidence was released to the Inquiry, it immediately became apparent that the differences between the redacted and unredacted versions were minimal. In that respect, it was unfortunate for the progress of the Inquiry that the unredacted version of the Proof of Evidence was not released sooner. I have no doubt that releasing the document sooner would have saved a considerable amount of Inquiry time. The appellant's estimate of at least two full days of Inquiry time is, in my view, a realistic one.

15. But I make no criticism of the Parish Council for not releasing the unredacted Proof of Evidence sooner. The decision to do so was made in the light of the circumstances that prevailed at the time. That is why I consider the publication of the letter from the Planning Inspectorate on 16 August 2022 to be key. Prior to that event, the circumstances were very different. It is therefore not unreasonable for the Parish Council to have considered its position afresh following the publication of that letter. In that context, I draw a parallel with the guidance in the PPG that local planning authorities will be at a risk of an award of costs against them for not reviewing their case as part of sensible on-going case management.

16. The Parish Council did not gain a procedural advantage as a result of the timing of the release of the unredacted Proof of Evidence. There was new evidence contained in the unredacted Proof Evidence, but that was just one word. It transpired that a passage of text had also been inserted into the resubmitted Proof of Evidence that was already before the Inquiry. I accept that there is an argument to the effect that this new evidence ought not to have been accepted and should have been returned by the Planning Inspectorate, but I put it no higher than that. In any event, that passage of text was before the Inquiry from the outset and therefore the appellant had the opportunity to test that evidence through cross-examination of Mr Mathias. The appellant was therefore not prejudiced in any event.

17. Overarching all the above is that, in accordance with the 'Franks' Principles of openness, fairness and impartiality, I afforded the appellant every opportunity to fully consider and respond to the evidence contained in the unredacted Proof of Evidence. Mr Mathias had made it very clear that he would have been prepared to answer questions on the new evidence but the appellant did not ask for Mr Mathias to be recalled. It is no fault of the Parish Council that the appellant did not avail himself of the opportunities available to him to the fullest extent.

18. I conclude that the Parish Council did not act unreasonably by not releasing the unredacted Proof of Evidence sooner. In the absence of unreasonable behaviour on the part of the Parish Council, an award of costs is not justified.

Paul Freer
INSPECTOR

The Planning Inspectorate

Costs Decision

Inquiry Held on 10, 11 & 12 May 2022, 30 August 2022, and 1 & 2 September 2022

Site visit made on 10 May 2022 and 2 September 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Costs application in relation to Appeal Ref: APP/Q3115/C/19/3288398
Land at 12 (aka Plot 12) Kiln Lane, Garsington, Oxfordshire OX44 9AR

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Arthur McDonagh for a partial award of costs against South Oxfordshire District Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging failure to comply with condition No 1 of a planning permission Ref P15/S/S1878/FUL granted on 29 April 2016.

Costs application in relation to Appeal Ref: APP/Q3115/W/20/3263366
7/8 Kiln Lane, Garsington, OX44 9AR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Michael & Ann McDonagh for a partial award of costs against South Oxfordshire District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the material change in use of land to a travellers caravan site consisting of a mobile home, an amenity block, two touring caravans and associated works.

Decision: the application is refused

The submissions for Mr Arthur McDonagh, and Mr & Mrs Michael & Ann McDonagh

1. The delay in making concessions in respect of the need for gypsy and traveller sites set out in the position statement dated 22 April 2022 was unreasonable. The position statement was not served until 3 May 2022, a week before the start of the Inquiry. The bundle of evidence previously submitted by Hannah Guest was extensive, and time and money was wasted in having to read and be prepared to deal with that evidence.

The response by South Oxfordshire District Council

2. The evidence of Hannah Guest dealt with need and supply only. This was a relevant mater for the Council to produce evidence on: indeed, the Council would have been remiss not to have done so. The Proof of Evidence is relatively short. There are nine appendices, the largest of which is the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA). Dr Murdoch also produces the GTAA as an exhibit. The other appendices are each a few pages in length.

3. The Proof of Evidence produced by Hannah Guest was provided in September 2021, before the Inquiry was postponed to May 2022. The Council reviewed its position in April 2022, and a draft position statement was produced on 22 April 2022. That position statement was approved by Hannah Guest on 25 April 2022. Mr Peter, who was coordinating the Council's case, was on annual leave at the time and was not able to review the position statement until 2 May 2022. The position statement was circulated on the following day, one week before the Inquiry opened.

4. Section 1 of the position statement reproduces section 3 of Hannah Guest's Proof of Evidence. Section 2 of the position statement updates section 4 of Hannah Guest's Proof of Evidence. There was only one substantial change. In both Hannah Guest's Proof of Evidence and the position statement, the Council accepted that it could not show a five year supply.

5. In the light of that one substantial change, the Council considered that it would not be a sensible use of Inquiry time to call Hannah Guest to give evidence. The Council commented on that when circulating the position statement.

6. Far from acting unreasonably, the Council reasonably and voluntarily provided an update on the supply position before the Inquiry, as opposed to calling Hannah Guest to update the position by giving evidence in chief. Equally reasonably, doing so reduced the live evidence that the Inquiry had to consider.

7. It is not accepted that the appellants' representatives have spent time on preparing for cross examination that has been wasted. Hannah Guests' evidence has not been withdrawn. It was open to the appellants to challenge whether or not Hannah Guest gave evidence. Given that Hannah Guests' assessment of need is based on the GTAA, which Dr Murdoch produces and deals with at length in his own Proof of Evidence, it is difficult to see what wasted time there could have been. The application is entirely without merit.

Reasons

8. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include not reviewing their case promptly following the lodging of an application to remove or vary one or more conditions, as part of sensible on-going case management.

9. In relation to this claim for costs, the key words in the PPG are "as part of sensible on-going case management". The Council quite properly reviewed its position before the opening of the adjourned Inquiry. In doing so, it identified a substantial change in circumstances that affected the evidence that it intended on rely upon at the Inquiry. It did not completely withdraw that evidence. It amended that evidence by producing a position statement. It did so promptly, allowing for the availability of key staff. The production of that position statement, and thereby not calling Hannah Guest to give evidence, is likely to have saved a considerable amount of Inquiry time.

10. Far from being unreasonable behaviour, to my mind the Council's actions were an exemplar of sensible on-going case management and entirely in keeping with best practice as advocated in the PPG. In the absence of unreasonable behaviour on the part of the Council, an award of costs is not justified.

Paul Freer

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Hearing Held on 13 September 2022

Site visit made on 14 September 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Notice 1: Appeal Refs: APP/V1505/C/20/3265750, 3265751, 3265752 3265753, 3268185, 3268187, 3268188.
Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 1 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation.
- The requirements of the notice are i. Cease the use of the Land for the stationing of caravans for residential occupation; ii. Remove the caravans from the Land; iii. Remove from the land all fencing enclosures and residential paraphernalia and chattels; iv. Remove all associated utility/day rooms, outbuildings, trailers, fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom; v. Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) (Appeal A) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.
No further action is taken in respect of Appeals B to G.

Notice 2: Appeal Refs: APP/V1505/C/20/3265754, 3265755, 3265756, 3265757, 3268203.
Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 2 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the laying of hard-core and associated material onto the Land forming an area of hardstanding.
- The requirements of the notice are i) Break up the hardstanding and remove all resultant debris and materials from the land; ii) Restore the level of the ground to its former natural topography.

- The period for compliance with the requirements is four months.
- The appeals are made on the grounds set out in section 174(2) (a) (Appeal H) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The enforcement notice is quashed.

Notice 3: Appeal Refs: APP/V1505/C/20/3265759, 3265760, 3265761, 3265762, 3267235.
Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 3 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change in use of the Land for the stationing of caravans for storage purposes.
- The requirements of the notice are i. Cease the use of the Land for the stationing of caravans for storage purposes. ii. Remove the caravans from the Land. iii. Remove from the land all fencing enclosures iv. Remove all associated utility/day rooms, outbuildings, trailers, fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom. v. Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is four months.
- The appeals are made on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The enforcement notice is quashed.

Preliminary Matters

1. At the Hearing I was invited by the Council to quash both Notices 2 and 3. The Council explained it considers the removal of the hardstanding, targeted by Notice 2, to be achievable as a requirement of Notice 1, given that it serves to facilitate the residential use the subject of that notice. This was not disputed by the appellants, and I see no reason to take a contrary view.

2. The Council confirmed that Notices 1 and 3 were served in the alternative but, from information that has since come to light, it now accepts that caravans are stationed on the site in connection with the residential use of the land, rather than for storage purposes. The Council therefore seeks to rely on Notice 1 only and regards Notice 3 as superfluous. Again I have no reason to take a contrary view.

3. I therefore propose to quash both Notices 2 and 3, and take no further action in respect of the grounds of appeal therein.

4. The draft Basildon Local Plan was withdrawn by the Council on 3 March 2022. References within Notice 1 to policies therein are therefore disregarded. The Council accepted that it had no Saved policies in relation to gypsy and traveller sites, and as such relies in this case on the application of relevant national policies, as set out within the National Planning Policy Framework (the Framework) and the Government's Planning Policy for Traveller Sites 2015 (PPTS).

5. Though not cited as a reason for serving the notices, the Council referred at the Hearing to the significance of the Essex Coast Recreational Disturbance and Mitigation Strategy Supplementary Planning Document (SPD). The initiative set out within the SPD aims to facilitate strategic mitigation measures to protect birds of the Essex Coast and their habitats from increased visitor pressure associated with new residential development. The strategy is based on a proportionate financial contribution in accordance with the proposed number of residential units. This matter is considered later in my decision.

6. The appeal site adjoins a separate site of traveller pitches, somewhat larger in area, along its eastern boundary. That site is also unauthorised and is subject to separate enforcement appeals. Therefore when considering the impact of the development, as part of the ground (a) appeal, I have considered the impact of the present appeal site both alone and in combination with the adjoining site.

Appeal A on ground (a)

Main Issues

7. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area;
- The effect of the development on sensitive coastal habitats;
- the question of the need for gypsy / traveller sites;
- the question of intentional unauthorised development;
- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

8. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

9. There is no dispute between the parties that the proposal would amount to inappropriate development, indeed the PPTS expressly states that such sites in the Green Belt are inappropriate development.

Openness

10. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.

11. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect[1].

12. The appeal site is broadly rectangular in shape, and orientated north to south. It is subdivided, by close board timber fencing, into six pitches, which are roughly equal in area and accessed via a tarmac road running adjacent to the eastern boundary. The pitches themselves are surfaced either in tarmac or road planings. Close boarded fencing bounds the perimeter of the site.

13. I have been provided with very limited evidence to suggest that the site might reasonably be regarded as having been previously developed. That the site was formerly greenfield land and that the pitches are being used to accommodate various caravans, outbuildings and paraphernalia associated with the residential use, which inevitably take up space is not controversial between the parties. I see no reason to take a contrary view.

14. In terms of visual impact, the site is immediately adjacent to and accessed from the A127 Southend Arterial dual carriageway road. However there is substantial and dense boundary hedging running adjacent to the carriageway, which for the most part serves to effectively screen the site. The continuity of the hedge is only occasionally interrupted and whilst this means the site entrance can be seen and would allow for oblique views of the site perimeter if the adjoining unauthorised site were no longer present, any sightings are only very brief and even more fleeting still for passing motorists. Whilst visibility of the site from the road may increase as a result of seasonal leaf fall, it seems to me that the density of the hedge would ensure that views of the site would continue to remain screened or well filtered.

15. From my visit it appeared that there are few other public vantage points from which clear views of the appeal site may be gained. These points are intermittent gaps in otherwise well-established boundary hedging along Cranfield Park Road to the north-east of the site. Whilst the perimeter fencing along the rear of the site, along with limited views of the upper parts of caravans, are visible in the landscape, and side perimeter fencing and the presence of further caravans would be revealed in the absence of the adjacent unauthorised site, the appeal site is at distance and set against a gently rising land form which serves to assimilate the development to a degree.

16. It is likely that views of the site would be possible at short range from the rear of certain private properties on Honiley Avenue to the west and a nearby

[1] *Turner v SSCLG & East Dorset Council [2016]*

dwelling to the east (were the adjoining unauthorised site not to be present). However it seems to me that the number of properties in question would be few in number. It may also be possible to view the site from the rear of properties on Cranfield Park Road, located near to its junction with the A127 road (were the adjoining unauthorised site not to be present) and also from properties situated on Fairway and Meadow Way to the north of the site. These views however would be at distance, and I consider the sense of impact on the openness of the Green Belt would be limited. I am not persuaded that the hardstanding areas in themselves, owing to their lack of three-dimensional form, impact on Green Belt openness.

17. Drawing the above considerations together, whilst I concur with the view that the development results in a degree of encroachment into the countryside and urban sprawl, and as such is at odds with respective Green Belt purposes as set out in the Framework, I conclude that the development results in only limited visual harm to openness. Furthermore I draw the same conclusion when considering the cumulative visual impact on openness, both of the appeal site and the adjoining traveller site immediately to the east, and which is subject to contemporaneous appeals[2].

Character and Appearance

18. From my visit it was apparent that the appeal site is situated within a relatively flat landscape of agricultural fields, typically bounded by low fences, hedges and trees. In distant views of the site towards the south-west, a modest rise in ground level is evident. The site immediately adjoins a separate traveller site, that is the subject of contemporaneous appeals, but is otherwise separated by open fields from, though still relatively near to, residential properties on established plotlands. The site is not far from substantial infrastructure developments, with the aforementioned A127 road and electricity pylon routes passing nearby. These features have a very strong and imposing physical presence in the landscape. In particular the massive upright framework of the pylons tends to jar with the more horizontal emphasis of hedges and tree belts across the flatness of the landscape. The site is a semi-rural location.

19. I have set out above where I consider the key visual receptors for the development to be located. The appellants raise the point that national policy, in the form of the PPTS, contemplates the development of sites in rural and semi-rural settings, and that the inevitable consequence of this is that some degree of visual impact must be acceptable. I do not dispute this point and I accept that caravans are seen in the countryside, but equally this is not to say that all such development must be acceptable.

20. For the reasons set out above the visibility of the site is generally well concealed from the public domain. For most drivers passing through the area, it seems to me that the development is unlikely to attract attention away from the route of the A127 road. From greater distance, although the upper parts of caravans would be visible above site perimeter fencing, they would be significantly screened by that fencing, which itself tends to be assimilated by the horizontal orientation and background of landscape features.

[2] Appeal refs: APP/V1505/C/19/3243848 & APP/V1505/C/20/3265821

21. It seems to me that there would be scope for some limited tree and /or hedge planting within the pitches adjacent to the site boundaries, that would further assist in mitigating the development, but without resulting in a strong sense of enclosure of the site. I do not agree with the Council that the development results in a sense of visual harm due to urbanisation. Furthermore the scale of the aforementioned pylons tends to draw the eye, more so than the site, as being at odds with the natural characteristics of the landscape. I am not persuaded that the proximity and scale of the appeal site is such that it would result in material visual harm for occupiers of nearby existing plotland properties.

22. I draw the same conclusions when considering the cumulative visual impact, both of the appeal site and an adjoining traveller site immediately to the east and subject to contemporaneous appeals[3]. Drawing these considerations together I am not persuaded that the development results in harm to the character and appearance of the area. Accordingly the development would comply with Saved Policy BAS BE12 of the Basildon District Local Plan 2007 (LP) insofar as this seeks to avoid harm to the character of the surrounding area.

Coastal Habitats

23. The Essex Coast includes several Special Protection Areas which are internationally important for breeding and non-breeding birds and their coastal habitats. There is no dispute between the parties that the appeal site would fall within the so-called zone of influence underpinned by the SPD strategy. It cannot be ruled out that the development, alone or in combination with other plans and projects, would result in a likely significant effect on these sites.

24. Therefore as the appropriate authority, I have a duty to undertake an appropriate assessment to consider whether it would be possible to secure satisfactory mitigation measures. I have had regard to the SPD and have also consulted Natural England, as the statutory nature conservation body. I consider that the provision of the financial contribution towards strategic mitigation measures enables it to be ascertained that the proposal would not adversely affect the integrity of sites protected under the habitat regulations.

25. Accordingly the appellants have submitted a planning obligation, in the form of a unilateral undertaking (UU), which commits to making the aforementioned financial contribution (£137.71 per traveller pitch).

26. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that, subject to monitoring costs, a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 57 of the Framework are as follows:

    a) necessary to make the development acceptable in planning terms;

    b) directly related to the development; and

    c) fairly and reasonably related in scale and kind to the development.

[3] Appeal refs: APP/V1505/C/19/3243848 & APP/V1505/C/20/3265821

27. I am satisfied that the provisions of the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the planning obligation is a material consideration which satisfactorily mitigates harm in this case.

Other Considerations

Need for gypsy and traveller sites

28. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2020 and is undisputed to provide the most up to date published indication of the scale of need for gypsy and traveller pitches in the Borough. The GTAA identified the level of need for those that meet the definition of gypsies and travellers in Annex 1 of the PPTS to be 85 pitches.

29. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. As previously set out, the Council withdrew its emerging Local Plan earlier this year, and with this went any formal allocation of deliverable sites. The Council acknowledged at the Hearing that at present the strategy and timescale for the delivery of gypsy and traveller sites going forward remains uncertain.

30. Not surprisingly it is therefore common ground that immediate unmet need for sites exists within the Borough; also that the Council is unable to identify a five-year supply of deliverable sites. There is no suggestion that available alternative sites exist for the present site occupiers elsewhere within the Borough. I have been provided with no evidence to persuade me away from the conclusion that the Council's policies have failed to address the delivery of gypsy and traveller sites over a significant period of time. That there is also a broader national and regional unmet need for sites is not a matter of contention between the parties.

31. In addition it is undisputed that a large proportion of land in the Borough, some 63 per cent, lies within the Green Belt. It therefore seems to me likely that there will need to be reliance to a degree on the Green Belt in any event for the provision of pitches going forward. Indeed, prior to the emerging Local Plan being withdrawn earlier this year, it appears that a number of the allocated gypsy and traveller sites were in the Green Belt, albeit that the Council said it tried to select sites where the harm was less. There is however no evidence to persuade me that Green Belt harm arising from this site would be greater than from any other site that may be allocated. All of these factors weigh positively in favour of the development.

32. It appears that most of the appellants have now moved away from the site, for reasons which include leaving the area and moving into bricks and mortar accommodation due to personal relationships outside the traveller community. Notwithstanding this, there is no dispute that each of the six pitches are being used by different traveller families, albeit that the occupiers of two of the sites are currently away travelling, with one of those sites being occupied

temporarily by a different family. These considerations do not overcome the above conclusion regarding an acute need for pitches in Basildon.

Intentional unauthorised development (IUD)

33. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given significant adverse weight. At the Hearing, the site occupiers in attendance were able to give a brief insight into their living circumstances prior to moving to the appeal site, which essentially involved either doubling up on existing sites, thus resulting in limited space, or living in bricks and mortar accommodation. When considering that government policy, as expressed within the PPTS, is to facilitate the traditional and nomadic way of life of travellers this would not be consistent with living in bricks and mortar accommodation. The Council confirmed at the Hearing that the traveller status of the site occupiers, in line with Annex 1 of the PPTS, is undisputed.

34. The Council said it would have expected the appellants to have made an informal planning enquiry about the likelihood of planning permission being granted. Notwithstanding the value of pre-application advice, the above simply serves to underline the significant and immediate need for sites in the Borough and I struggle to accept, under the circumstances, that the unauthorised development of the site would not have been an inevitable outcome. Part of the underlying rationale for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. When asked about this at the Hearing, the Council were unable to say clearly how they thought that such prejudice had occurred.

35. I am also mindful that the Act makes provision for a grant of retrospective planning permission, and planning enforcement that is remedial rather than punitive. In light of these considerations I attach only very limited weight to the intentional unauthorised nature of the development.

Personal circumstances

36. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

37. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

38. The appeal site is split into six pitches, one of which is vacant at present with the occupiers said to be away travelling. It appears that there are several young children living on the site, a number of whom are of school age and one of whom has a learning disability; also that some of the adults in occupation are suffering from various physical and / or mental health issues.

39. The occupiers have provided certain official medical documents which support some of the above disability claims. At the Hearing, however, it was evident that the Council was not persuaded as to the severity of the personal circumstances claimed by the site occupiers. Notwithstanding this, it seems to me that there can be no doubt that if the appeal was unsuccessful it would take away a settled base for these households, who may potentially need to resort to living on the roadside, in view of the acknowledged lack of alternatives. This would very likely mean disruption to the children's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. It would also potentially disrupt access to health services for those occupying the site. These considerations weigh positively in favour of the development.

Other Matters

40. The PPTS states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan. Despite the parties seeming to agree that the appeal site is broadly in an edge of settlement location, in relation to Wickford a little way to the north, the Council later said at the Hearing that it did not accept the site as being in a sustainable location, also that it considered the site to be isolated.

41. I note that the sustainability of the location was not given as a reason for the Council issuing the notice. I set out earlier in my decision that I considered the site to be relatively near to residential properties on established plotlands. I concur with the view that the site should be regarded as being located on the edge of, rather than away from, a settlement and not in an isolated location.

42. In terms of access to services and facilities, the appellants referred to the proximity of a shop, regularly used by the site occupiers, associated with a nearby petrol filling station on the A127 road to the west. The Council did not consider that this merited weight in view of the limited range of convenience goods that would be on offer.

43. Having visited the shop, which is likely to be within reasonable walking distance for most people, it seems to me that it would be equipped to cater for a variety of day-to-day food needs. A sustainable travel option would therefore be available to a degree. I am in no doubt, however, that it would be necessary to travel to Wickford in order to access a full range of services and facilities. It would be realistic to conclude that for reasons of convenience, distance and safety during hours of darkness there would be significant reliance on the private car in order to get to and from Wickford.

44. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a very high degree of reliance on the private car, it seems to me that the length and duration of journeys necessary to access

essential services and facilities would be relatively moderate for a rural location. There is also the potential for the various pitch users to make shared trips. The overall distances that would need to be travelled in order to access a range and choice of services are likely to be limited for these reasons. I consider that this weighs in favour of the conclusion that the appeal site should be regarded as in a relatively sustainable location.

45. The PPTS states that local planning authorities should ensure that the scale of sites in rural or semi-rural areas do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure. Whilst at the Hearing the Council stated that concerns had been raised by residents of an over-dominance of traveller sites, I am not provided with any further detail of how any sense of dominance has manifested itself. This consideration does not therefore attract weight.

46. Highway safety was not given as a reason for the enforcement notice being served. Nevertheless concern about dangerous access arrangements, onto and from the A127 road, has been cited by a third party. The speed limit along the dual carriageway as it passes the site is 50mph. Access onto the road, from the site, and to the site from the road is via the aforementioned unauthorised site, with which the access is shared, and is restricted to a left-turn arrangement only.

47. At the time of my visit, during mid-afternoon, the road was evidently very busy, with almost continuous streams of traffic. However there appears to be a good standard of visibility in the direction of oncoming traffic for drivers emerging from the site; also a good standard of forward visibility towards the site access for approaching traffic. I am also mindful that I have not been made aware of any vehicle accidents in the vicinity during the considerable time that the site has been in its current use. On the basis of these findings I conclude that the development would not result in harm to highway safety. I reach the same conclusion when considering the cumulative impact on highway safety, both in terms of the appeal site and the adjoining traveller site immediately to the east.

48. Whilst concern was raised with regard to noise associated with the use of power generators on the site, I was able to observe from my visit that the site is connected into and serviced via the electricity grid. I therefore have no reason to believe that the sustained use of power generators would present ongoing disturbance issues in this case.

Green Belt Balance

49. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal site development is inappropriate in the Green Belt. In addition, the residential use and associated structures, both in present and proposed form, cause a loss of openness and encroachment into the countryside, therefore harm to the purposes of including land in the Green Belt, albeit that I consider the degree of harm in visual terms to be limited. The intentional unauthorised nature of the development attracts very limited weight.

50. I have found that the development would not result in harm to the character and appearance of the area or, subject to the planning obligation, to sensitive coastal habitats. It would not be in a location 'away from' a settlement nor too remote from services and facilities. The development would not result in harm to highway safety. These 'absences of harm' are neutral in the planning balance and do not weigh in favour of the appeals.

51. There are other considerations which support the appeals. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites should not amount to the significant material consideration it may otherwise do in a less strictly controlled area, when considering applications for the grant of temporary planning permission. It also states 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.

52. However an unlikely scenario is distinguishable from one that may never occur. Indeed it seems to me that the Council's undisputed significant and immediate unmet need for pitches (without taking into account need that is likely to exist over a broader geographical area), as manifested in the lack of available alternative sites and the lack of five-year land supply should be a matter that collectively attracts substantial weight. Furthermore the Council's policy failure in this regard over many years, including a lack of assurance as to when the position might be addressed, attracts significant weight.

53. In addition I give moderate weight to the likelihood that when gypsy and traveller sites are allocated, a significant proportion of pitches will be located within the Green Belt in any event. All of this leads me to conclude that such an exception to the probable position, as set out in the PPTS, would be justified in this case.

54. I also attach significant weight to the site occupiers' personal circumstances, when considering, in particular, the benefits of a settled base for the relatively large number of young children present on the site.

55. I have balanced the harm to the Green Belt and any other harm, against the other considerations referred to above. Having regard to the PPTS, I find that they clearly outweigh the harm identified. Furthermore I find this to be the case without the need to rely on the weight that I have afforded the site occupiers' personal circumstances.

56. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently the proposal accords with the strategy for the protection of Green Belt land as set out in the Framework. In this context I do not find conflict with Policy BAS GB1 of the LP which seeks to establish the boundaries of the Green Belt to achieve its stated purposes.

57. I consider that because of the amount of weight attached to need, policy failure and the likely location of future sites, the balance is in favour of granting a permanent planning permission irrespective of the additional weight of personal circumstances.

58. The Council has drawn my attention to a recent appeal decision in relation to a nearby site, where, following an Inquiry, the Inspector upheld an enforcement notice in respect of the material change in the use of the land to the stationing of caravans for residential occupation[4]. Notably the Inspector in that case was not satisfied that any of the appellants wishing to occupy the appeal site had gypsy and traveller status within the PPTS. Furthermore only limited weight was attached to the lack of alternative sites given evidence of alternative accommodation being found and other families appearing to have moved away. The Inspector also observed that none of the appellants were now living on the site.

59. In addition, significant adverse weight was given to intentional unauthorised development in that case, the Inspector commenting "*It is rare in my experience to come across a whole series of proceedings before the Courts which point so firmly to flagrant intentional breaches of planning control which continued in spite of Injunction Orders.*"

60. Each development must be considered on its own individual merits, and it therefore seems to me that there are factors distinguishing that case from the appeals currently before me, and which led to weight being applied differently in terms of the Green Belt balance.

Conditions

61. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. A condition confirming that planning permission is restricted for residential use by gypsies and travellers is required in order to safeguard the supply of the site for this purpose. However in light of the recent Court of Appeal judgment cited below[5], in order to avoid discrimination, the condition should include those gypsies and travellers who have ceased to travel permanently.

62. A condition limiting the number of pitches and caravans stationed is needed in order to protect the character and appearance of the area. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.

63. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, boundary treatments, drainage details, external lighting arrangements and soft landscaping works, including their replacement if necessary, is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers.

64. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will

[4] Appeal Decisions APP/V1505/C/20/3264996 & others
[5] *Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391*

ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

65. Finally a condition withdrawing permitted development rights for domestic structures and enclosures is required in view of the fact that limits to the quantum of development form part of the justification for planning permission in this case.

Conclusions

Notice 1

66. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice subject to conditions. The enforcement notice will be quashed, and it follows that the various appeals on ground (g) do not fall to be considered.

Notice 2

67. For the reasons given above I conclude that the enforcement notice should be quashed.

Notice 3

68. For the reasons given above I conclude that the enforcement notice should be quashed.

Formal Decisions

Notice 1

69. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change in use of the Land for the stationing of caravans for residential occupation at Land west of Hillview, Southend Arterial Road, Wickford, Essex as shown on the plan attached to the notice and subject to the conditions below.

70. I take no further action in respect of appeals B to G.

Notice 2

71. The enforcement notice is quashed.

Notice 3

72. The enforcement notice is quashed.

R Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

1) 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), but including those gypsies and travellers who have ceased to travel permanently.

2) There shall be no more than six pitches on the site; these pitches are indicated nos. 1 to 6 on the attached plan (Plan 1). On each of the six pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan), shall be stationed on the pitch at any time.

3) The residential 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 and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

   (i) Within 3 months of the date of this decision a scheme with details for:
   (a) the internal layout of the site including the extent of the residential pitches, the location of the caravans and vehicle parking, any buildings and hardstandings;
   (b) all boundary treatments and all other means of enclosure (including internal sub-division);
   (c) the means of foul and surface water drainage of the site;
   (d) proposed and existing external lighting on the boundary of and within the site;
   (e) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;
   (hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development 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 site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to 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 site development scheme shall have been approved by the Secretary of State.
   iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved 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.

4) No commercial, industrial or business activities, including the storage of materials and goods, shall take place on any part of the site.

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

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no buildings, structures or means of enclosure other than those approved in accordance with Condition 3 above shall be erected on the site.

END OF SCHEDULE OF CONDITIONS

The Planning Inspectorate

Plan 1

This is the plan referred to in my decision dated:16 November 2022

by R Merrett Bsc(Hons)DipTP MRTPI

Land west of Hillview, Southend Arterial Road, Wickford, Essex

References: APP/V1505/C/20/3265750, 3265751, 3265752, 3265753, 3268185, 3268187, 3268188

Scale: Not to scale



APPEARANCES

FOR THE APPELLANTS:

Dr Angus Murdoch	Planning Consultant
Stephen Stokes	Site Occupier
Martin Stokes	Site Occupier
Patrick McDonagh	Site Occupier
John Cawley	Site Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Ian Cummings	Team Leader, Planning Enforcement
Katie Ellis	Principal Planner
Adeola Pilgrim	Policy Planner

Documents Submitted at the Hearing:

1. Basildon Borough Council - Traveller caravan counts for 2021 and 2022

Documents Submitted following the Hearing:

1. Unilateral Undertaking

Appendix 1

List of those who appealed against Notice 1

1	Mr John McEvoy	Appeal A	APP/V1505/C/20/3265750
2	Ms S & M Baker	Appeal B	APP/V1505/C/20/3265751
3	Mr & Mrs J Harbour	Appeal C	APP/V1505/C/20/3265752
4	Mr & Mrs J Sabine	Appeal D	APP/V1505/C/20/3265753
5	M Baker	Appeal E	APP/V1505/C/20/3268185
6	Mrs Harbour	Appeal F	APP/V1505/C/20/3268187
7	Mrs Sabine	Appeal G	APP/V1505/C/20/3268188

Appendix 2

List of those who appealed against Notice 2

1	Mr John McEvoy	Appeal H	APP/V1505/C/20/3265754
2	Ms S & M Baker	Appeal I	APP/V1505/C/20/3265755
3	Mr J Harbour	Appeal J	APP/V1505/C/20/3265756
4	Mr J Sabine	Appeal K	APP/V1505/C/20/3265757
5	M Baker	Appeal L	APP/V1505/C/20/3268203

Appendix 3

List of those who appealed against Notice 3

1	Mr John McEvoy	Appeal M	APP/V1505/C/20/3265759
2	Ms S & M Baker	Appeal N	APP/V1505/C/20/3265760
3	Mr J Harbour	Appeal O	APP/V1505/C/20/3265761
4	Mr J Sabine	Appeal P	APP/V1505/C/20/3265762
5	M Baker	Appeal Q	APP/V1505/C/20/3267235

The Planning Inspectorate

Appeal Decisions

Hearing Held on 28 July 2021

Site visit made on 29 July 2021

by C Sherratt DipURP MRTPI

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

Decision date: 7 January 2022

Land adjacent Lodge Lane, Little Chalfont

Appeal A - Ref: APP/X0415/C/19/3226415

- 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 Michael Burrows against an enforcement notice issued by Chiltern District Council.
- The enforcement notice, numbered EN/18/2228/EN/1, was issued on 15/03/2019.
- The breach of planning control as alleged in the notice is without planning permission: (1) The material change of use of the Land to use as a caravan site ("the Unauthorised Use").
- The requirements of the notice are to:
  1. Cease the Unauthorised Use of the Land as a caravan site;
  2. Remove all caravans, mobile homes, any associated bases, skirts or screens and all other domestic paraphernalia, including (but not limited to) sceptic tanks and lighting associated with the Unauthorised Use from the Land; and,
  3. Remove from the Land all debris and materials arising as a result of compliance with the steps above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B - Ref: APP/X0415/C/19/3226620

- 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 Michael Burrows against an enforcement notice issued by Chiltern District Council.
- The enforcement notice, numbered EN/18/2228/EN/2, was issued on [ ].
- The breach of planning control as alleged in the notice is:
  Without planning permission (1) The construction of hardstanding in the approximate location shown hatched in black on the Plan; and (2) The construction of a barn in the approximate location shown crosshatched in black on the Plan ("the Unauthorised Development").
- The requirements of the notice are to:
  1. Take up and remove the said hardstanding from the Land;
  2. Rip the soil from the part of the Land where the hardstanding has been removed pursuant to paragraph 5.1, to alleviate compression of the ground;
  3. Demolish or dismantle the barn; and 5.4 Remove from the Land all debris and materials arising as a result of compliance with the paragraphs above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C - Ref: APP/X0415/W/19/3226623

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Michael Burrows against the decision of Chiltern District Council.
- The application Ref PL/18/4115/FA, dated 07 November 2018, was refused by notice dated 1 March 2019.
- The development proposed is change of use of land to a mixed use site, with residential and, equine use, for one Gypsy Traveller family. The site to contain one static caravan, one touring caravan, a barn, parking for two cars, associated hardstanding, fencing, septic tank and infrastructure.

Decisions

Appeal A - Ref: APP/X0415/C/19/3226415

1. It is directed that the enforcement notice be corrected by the addition of the words 'and grazing' in the description of the alleged breach of planning control and varied by the deletion of 6 months and the substitution of 12 months as the period for compliance. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - Ref: APP/X0415/C/19/3226620

2. It is directed that the enforcement notice be varied by the deletion of 6 months and the substitution of 12 months as the period for compliance. Subject to these 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 - Ref: APP/X0415/W/19/3226623

3. The appeal is dismissed.

Reasons

Appeals A & B- ground (a) and Appeal C

4. There is no dispute between the parties that the appellant meets the definition of a gypsy and traveller as set out in Planning Policy for Traveller Sites (PPTS). Accordingly, the PPTS is a material consideration of substantial weight in the determination of these appeals. There is also agreement that the developments to which the appeals relate would constitute inappropriate development in the Green Belt.

5. I therefore consider the main issues are:

   (a) The effect of the operational development on the openness of the Green Belt and the purposes of including land within it;

   (b) The effect of the developments on the character and appearance of the Chilterns Area of Outstanding Natural Beauty (AONB);

   (c) Whether the use of the land is a sustainable form of development particularly in terms of its location;

   (d) The effect of the development on highway safety; and

(e) Whether other considerations exist that would clearly outweigh the harm by reason of inappropriateness in the Green Belt and any other harm, such that very special circumstances may exist to justify the grant of planning permission.

6. It was agreed that I could reach a view on the first four issues set out above on the basis of the written evidence submitted. However, a Hearing remained necessary to discuss 'other considerations'. The appeals proceeded on this basis.

7. The planning application that is the subject of Appeal C was accompanied by two plans, those being a Block Plan (reference: BP01-2018) and Location Plan (reference LP-01-2018). A plan was also submitted showing the floor and elevational details of the barn. What I observed on site was however materially different to the details of the plan. Two additional 'extensions' to provide kennels and runs had been added. If Appeal C were to succeed, planning permission would only be granted for the proposed barn as depicted on the application plans and not that which currently exists.

8. At the time of my site visit both a static and touring caravan were stationed on part of the land. These are occupied by the appellant, his son and adult daughter. Some loose gravel surfacing surrounded the caravans. The site is fenced to the front and fencing has been erected to sub-divide the residential plot internally to provide two pitches. I understand that only one pitch had been formed when the notice was issued. There were no caravans stationed on the second pitch although I heard that a static caravan had been moved off the site shortly before the Hearing with a view to re-placing it. This had, I was told, been occupied by the appellant's son, daughter-in-law and their 3 children, some of whom are school age. The remainder of the land included in the plan attached to the enforcement notice that is the subject of Appeal A remained as grazing land. The description of the alleged breach requires correction to reflect this. No injustice would be caused as a result of such a correction since the requirements of the notice are simply directed at the residential use.

9. The existing barn was being used to provide a domestic utility area (primarily a laundry room and also housing a tall fridge freezer), general storage, and a stable / kennels and run.

10. The only relevant planning policy relating to the provision on gypsy and traveller sites is found within the Core Strategy (CS). CS Policy CS14 confirms that sites will be allocated in a Delivery Development Plan Document (DPD). Site suitability will be assessed against relevant policies in the CS and other relevant guidance and policy. If it is found that no suitable or deliverable sites can be allocated within settlement areas excluded from the Green Belt to meet the identified need for new sites, the Council will allocate sites for additional pitches within the Green Belt. In very special circumstances, consideration may be given to granting permanent planning permission on Green Belt sites which already have an extant temporary permission. No DPD was forthcoming. It offers no criteria against which windfall sites such as this that come forward outside of any LP allocations should be considered. This type of detail would, the Council explained, have also usually followed in a more detailed DPD.

Openness of Green Belt

11. The material change of use of land alleged is a form of development that should not, in accordance with the Framework, be regarded as inappropriate development in the Green Belt provided that it would preserve its openness and would not conflict with the purposes of including land within it. The use of land as a caravan site would diminish openness and result in encroachment into the countryside, contrary to one of the purposes of including land in the Green Belt. The PPTS further confirms that the use of land as a gypsy and traveller site is inappropriate development.

12. The Framework also confirms that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. The barn was not erected for a purpose to which any exceptions to inappropriateness are made. Accordingly, it is also inappropriate development. The introduction of an area of hardstanding, surfacing materials, the erection of close-boarded fencing and presence of other domestic paraphernalia all reduce openness. The developments are therefore contrary to Policy GB2 of the Adopted Chiltern District Local Plan 1997 (adopted 1 September 1997) (including alterations adopted 29 May 2001 (consolidated September 2007 & November 2011) (LP).

13. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless other considerations exist that would clearly outweigh the harm by reason of inappropriateness in the Green Belt and any other harm. The harm by reason of inappropriateness must be afforded substantial weight. The harm to openness as a result of the erection of the barn and associated operational development, is in my view modest.

Character and Appearance

14. The site is situated within the Chilterns AONB where the primary objective is to conserve and enhance the natural beauty of the landscape as set out in Saved LP Policy LSQ1. CS Policy CS22 requires all proposals to conserve and or enhance the AONB and also protect the setting of and views onto and out of the AONB. CS Policy CS20 requires that new development within the District is of a high standard of design which reflects and respects the character of the surrounding area and those features which contribute to local distinctiveness.

15. Whilst PPTS does not direct that gypsy and traveller sites should not be in an AONB, the Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in an AONB, which have the highest status of protection in relation to these issues. A large proportion of the former Chiltern area falls within the AONB.

16. I heard and observed that there are other pitches to either side of the appeal site, also accessed from the same track. However, these are not, I was informed, authorised. Accordingly, I give their presence little weight in my consideration of the character of the surrounding area.

17. The prevailing character of the surrounding area is rural, with open fields and some sporadic farms and agricultural / equestrian buildings. The development has an urbanising impact such that the residential character of the site jars with the surrounding open agricultural land. I acknowledge that the area of the site currently in residential use is relatively well screened from public view

by mature tall trees along the boundary. However, the sub-division of what would have been a larger field to create the caravan site and its containment with planting is in itself incongruous in the surrounding generally open landscape. Landscaping and boundary treatments comprising more appropriate hedge species and fencing type throughout, such as the post and rail rather than the close-boarded fencing would be preferable and maintain some screening of the caravans and associated residential paraphernalia. Similarly, conditions controlling layout, the number of pitches and caravans could also be secured. This would ensure the harm would be reduced. However, the continued use of land as a caravan site and associated building would nevertheless still remain an incongruous form of development that would fail to conserve or enhance the landscape and scenic beauty of the AONB, contrary to national and local policies.

Sustainable development

18. Three overarching objectives are set out in the Framework to achieve sustainable development, those being economic, social and environmental objectives. Paragraph 13 of the PPTS clarifies, albeit for plan making, that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. It sets out a number of criteria that local policies should achieve. CS Policy CS4 sets out a number of sustainable development principles that all new developments are expected to have regard to.

19. The Council's particular concern is that the developments do not contribute to protecting and enhancing the natural environment due to the impact on the AONB and location of the site in relation to services and facilities. I have already found that the development fails to conserve the AONB and as such fails to protect the natural environment. Having in mind the PPTS criteria referred to above, a settled base would ensure access to appropriate health services and education and reduce the need for long-distance travelling and possible environmental damage caused by unauthorised development. These are sustainable benefits.

20. Paragraph 25 of the PPTS states that local planning authorities should "very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan". Lodge Lane joins Burtons Lane / Roughwood Lane to the south of the site, which provides a link to settlements the nearest being Little Chalfont. However, I observed that in the vicinity of the site, there is no street lighting, and no footways present on either side of Lodge Lane. There are currently no carriageway markings present. The location of the appeal site would not provide a safe, convenient and attractive access on foot and by cycle, making suitable connections with existing footways, public footpaths, bridleways, restricted byways and cycle ways, local facilities and public transport so as to maximise opportunities to use these modes. Rather occupiers of the site are likely to be largely dependent on use of the private car. This would be contrary to one of the requirements of Policy CS26.

21. I am mindful however that travelling is part of the nomadic way of life and so vehicle trips associated with travelling will occur in any event and in the context of gypsy and traveller sites, which are less likely to be found within

settlements, the site is located within a reasonable distance of surrounding settlements such as Little Chalfont and Amersham.

22. To conclude, considering sustainability in the round, I find that the development whilst having some sustainable benefits arising from a settled base would nevertheless in terms of its location be an unsustainable form of development overall by reason of the environmental impacts of the use of land. I find conflict with both local and national policy.

Highway Safety

23. The Council's position, supported by the highway authority, is that the intensification in use of the existing access which is of substandard width and visibility would prejudice highway safety. LP Policy TR2 requires that development should accord with a number of principles in respect of highway aspects if planning permission is to be granted. These include that a satisfactory access onto the existing highway network can be provided and that standards of road safety for all users should, at minimum, be maintained and where appropriate, improved.

24. The lawful use of the site comprises an agricultural use, previously used as grazing land and therefore has very little traffic generation potential. I therefore agree that the residential use is likely to result in an increase in traffic using the entrance onto and off Lodge Lane. The appeal site is located to the east of Lodge Lane, a 'C' class road, which in the location of the appeal site access is subject to the National Speed Limit of 60mph. On Lodge Lane there is a speed limit transition point approximately 200m to the north of the site where the speed limit changes from 60mph to 30mph as you enter the residential area to the north. Measurements taken on site also show that the width of Lodge Lane in the vicinity of the site access junction with Lodge Lane is in the region of 5.2m.

25. Paragraph 109 of the Framework states that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

    CS Policy CS26 sets out the requirements that proposals for new development will be expected to meet including that sites are appropriately located to the road network and provide satisfactory vehicular access(es). LP Policy TR2 also requires that proposed development should accord with a number of principles with regard to the highway aspects of developments if planning permission is to be granted. These include a satisfactory access onto the existing highway network.

26. I have also been directed to the current guidance outlined in Manual for Streets (MfS) 1 and 2. In accordance with Table 7.1 of MfS, at locations that are subject to 60mph, visibility splays measuring 2.4m along the centre-line of the access for a distance of 151m to the nearside kerb line of the carriageway on both sides of the access would be required. The 'X' distance of 2.4m is recommended in most situations, as this represents a reasonable maximum distance between the front of the car and the driver's eye.

27. Visibility is measured both horizontally and vertically. MfS states that drivers need to be able to see obstructions 2 metres high down to a point 0.6 metres

above the carriageway. On this basis, unobstructed visibility splays must be available above a height of 0.6 metres above the level of the carriageway. Visibility splays are required to be achieved within the highway or land within the control of the appellant, to ensure that adequate visibility can be provided and maintained for the safety of users of the access and highway users in general. Whilst the appellant invited me to consider visibility when viewed from a higher vehicle such as that I saw driven by the appellant, the access should provide a suitable access for all potential visitors and future occupiers of the site. In addition, it would not be reasonable to impose a condition insisting any occupier or visitor to the site can only use a certain type of vehicle.

28. The evidence demonstrates that there is only a narrow strip adjacent to the eastern side of the carriageway that forms the adopted public highway, the remainder of the land being in private ownership. The highway authority estimate that the highway strip measured in the region of 0.5m in width. Land to both the north and south of the access is therefore in third party ownership and outside the ownership or control of the appellant. It is not therefore possible to impose any planning conditions to secure visibility splays across this land.

29. It is also evident that there is a highway verge of only 0.5m in width that the visibility splays from the access can pass over. Since the Highway Authority commented on the planning application, the vegetation on the land to the north of the access had been cleared and there was a fence erected on the land to the south of the access. The fence now clearly defines the boundary of the highway with the adjacent private land.

30. Measurements recorded on site prior to the Hearing confirmed that the splay achieved to the south is in the region of 2.4m x 10m, which is considerably below the required distance of 2.4m x 151m when taking into account the 60mph speed limit of Lodge Lane. In such circumstances, where only a distance of 10m is available, then in order to stop, vehicles would need to be travelling less than 10mph[1]. However, it was clearly evident from my own visit to the area that vehicles travel well in excess of 10mph along Lodge Lane and therefore it is considered that the visibility splay achievable to the south of the access is inadequate and additional vehicles using the access would clearly increase the chances of conflict to the detriment of highway safety and convenience.

31. Notwithstanding that vegetation that was previously to the north of the access has now been removed, this land is still in the ownership of a third party and not the appellant. There is only a limited area of highway land on which to guarantee the future retention of a visibility splay, and if this is taken into account then it was determined on site by the Highway Authority, that the visibility splay would also measure in the region of 2.4m x 10m. This again is significantly below the visibility splay requirements set out in MfS and is again commensurate with vehicle speed of less than 10mph.

32. Even if the splay to the north of the access was taken over the third party land it would, in accordance with on-site measurements taken by the highway authority, achieve a distance in the region of 2.4m x 52m. This also falls significantly below the requirements set out in MfS.

[1] Table 7 on page 91 of MfS

33. I accept that a residential use of the site, whether for one or two pitches is likely to generate an increase in vehicular movements through an access that does not benefit from adequate visibility. The measurements offered by the highway authority are not challenged by the appellant. Such sub-standard visibility will have the potential to increase the chance of conflict between users of the site and highway users such that there would be an unacceptable impact on highway safety. The proposed development is therefore contrary to local and national policy that aims to protect highway safety.

34. The highway evidence is largely undisputed and compelling. No mechanism has been advanced to secure adequate visibility given the land required to do so is outside the ownership or control of the appellant. No measures that can therefore be required to improve it. The use of land would therefore be contrary to CS Policy CS26 and LP Policy TR2 .

Other Considerations

Need for sites

35. The Aylesbury, Chiltern, South Bucks and Wycombe Gypsy, Travellers and Travelling Showpeople Accommodation Needs Assessment (GTANA) was published in 2017. This Assessment was carried out for the then Buckinghamshire District Councils to provide an assessment of need for gypsy and traveller accommodation. It sought to assess the existing and future need for accommodation of both those gypsies and travellers meeting the definition contained in the PPTS and those who do not. The target is to facilitate the provision of 85 new pitches for gypsies and travellers in the area assessed to 2036.

36. Since the GTANA was carried out, the Council records that nine pitches have been granted planning permission in the Chiltern and South Bucks area. Five of these pitches were at Three Oaks Farm, Roberts Lane, Chalfont St Peter. The other four were in South Bucks (in Iver and Wexham). This would reduce the figure contained in the GTANA from 85 to 76 (over the period to 2036).

37. The Council's Topic Paper refers to 8 existing traveller sites where (subject to very special circumstances being demonstrated) new pitches could help meet the needs for new accommodation for the travelling community. There are three existing traveller sites in Chalfont St Peter and the Topic Paper states that they could, as long as very special circumstances can be demonstrated and other requirements met, accommodate small scale development to help meet these future accommodation needs. Appendix 3 of the Topic Paper shows how the existing traveller sites in the Local Plan area have been tested.

38. The appellant was critical of the GTANA particularly in respect of how information about those occupying pitches as their settled base was gathered. Whilst the robustness of the GTANA was not tested in Chiltern as the LP was withdrawn prior to reaching examination, I heard that the Inspector examining the Aylesbury Local Plan had not raised any concerns at the time of the Hearing in so far as it relates to that authority area. Nevertheless, that plan was still to be found sound and I am not aware of how the provision of gypsy and traveller sites have been addressed. Whilst it is not the role of individual appeals to consider the overall robustness of an accommodation needs assessment, I explored what the parties understood to be the current circumstances on some of the sites identified in the GTANA for the Chiltern area.

39. It was apparent that the rather dated assessment of need for the Chiltern area is, when considered against the position now, likely to be an underestimation of existing need. The Council conceded as much at the Hearing. I would go as far as to suggest, from what I heard, that the underestimation of need is significantly more than was assessed in 2016. For example, the GTANA indicates 8 pitches existed at Green Park whereas now there was broad agreement between the main parties that there are more like some 30 pitches on that site, many of which that will be unauthorised. The appellant referred to other sites he was aware of that had also not been included as well as the appeal site.

40. The appellant was also critical of the lack of any assumption of in-migration to the Buckinghamshire area. However, it is often the case that a GTANA will assume in and out-migration from an area will be broadly similar such that 'zero' is considered appropriate. The appellant was unable to give me any detailed breakdown that might suggest that such an approach was not appropriate here.

41. Whilst I am unable to ascertain whether the occupiers of pitches not identified in the GTANA are gypsies and travellers meeting the PPTS definition, it is reasonable to assume a proportion of them will. Furthermore, and in any event, there can be no certainty that future needs arising from new household formation from households currently not meeting the PPTS definition would also be for gypsies and travellers not meeting that definition. Bearing in mind it is often age and health that prevents travelling, future generations may well still adopt a nomadic way of life. In any event, the needs of all gypsy and travellers will need to be met.

42. Critically, for the purposes of this appeal, there would appear to be a pressing and immediate need for additional pitches which the Council had not appreciated. Furthermore, since the GTANA base date I heard that the Council had sold its public sites. Depending on how these sites are managed going forward, this may reduce the availability of pitches coming forward.

43. I give the immediate and future need for additional pitches to accommodate gypsies and travellers significant weight.

Failure of Policy

44. The appellant suggests there has been a persistent failure of policy as the Council has failed to address the needs of the gypsy and traveller community. The Council has clearly taken measures to carry out an assessment of need for gypsies and travellers, commissioning the GTANA that was subsequently published in 2017.

45. I note that the only policy of direct relevance to the provision of sites is the now dated CS Policy CS14. This policy is strategic in nature. It refers in the explanatory test to a prior assessment of need. It requires sites to be allocated and sets out how the suitability of sites should be assessed including consideration of sites that have temporary permissions. It does not direct how the suitability of windfall sites such as this site should be assessed. No Development Management type policies have been brought forward to address this.

46. The decision of the Council not to pursue the Chiltern LP means the provision of sites for gypsies and travellers and suitable criteria for determining applications remains absent. The Council within its Statement of Case explains that any need will be addressed through the grant of planning permission for sites where very special circumstances can be demonstrated. This is a reflection of the majority of the Council area being situated in the Green Belt. However, whilst need may be a reason advanced to justify the allocation of sites in the Green Belt through the LP process, the government is nevertheless clear that need and personal circumstances will not normally amount to the very special circumstances required to justify the grant of planning permission for gypsy and traveller sites in the Green Belt. I do not therefore share the Council's optimism that even the lower level of overall need identified in the GTANA could be addressed in this way. The Council's approach would not, I consider, reflect one of the Government's aims set out in PPTS that is for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies.

47. Furthermore, the appellant directed me to various applications for gypsy and traveller sites that remain undetermined and have done so for many years. Whether any of these applications is likely to result in the grant of planning permission is therefore unclear but the lack of urgency by the Council appears to contradict a desire to address need through the planning application route.

48. Notwithstanding the assessments of need that have been carried out, I consider there is evidence of a persistent failure of policy to then address the needs of gypsies and travellers on the ground in the former Chiltern Council area. Given the proportion of the former Chiltern area that is covered by Green Belt and AONB designations there is some likelihood that allocations would have been required within those locations such as the sites with temporary permissions. However, that is not to say that this trend of a historic failure to address need will carry on with Buckinghamshire Council. As part of the process of preparing the Buckinghamshire wide LP, I have been informed that since the close of the Hearing, a call for gypsy and traveller sites is now underway.

49. I nevertheless give this historic failure to address the needs of the gypsy and traveller community to date great weight.

The personal circumstances of the appellant

50. A Health Statement relating to both the appellant's late wife and his adult daughter accompanied the appeal documentation. Prior to the Hearing, the appellant had sadly lost his wife. The family want to remain close to her resting place. His daughter continues to need specific and regular medical care. The appellant was I was told not in the best of health. No particular health considerations were advanced in relation to the appellant's son. A settled base ensures that access to both general care for the family and the on-going medical care required by his daughter can be accessed. It also enables the appellant's teenage son to attend school.

51. No alternative sites have been advanced that could offer the family a settled base. The appellant did not know what he would do or where he could go if the appeal fails, and he is required to leave the site. The situation is unlikely to change until such time as the Buckinghamshire LP is adopted. A road-side

existence seems likely with all the environmental consequences that brings. I therefore give the personal needs of the appellant significant weight.

52. I was given very little information about the circumstances relating to the appellant's son, daughter-in-law and their three children who had been occupying the second pitch to be near the appellant after the loss of his wife and their mother. Whilst the best interests of the children are a primary consideration, based on the limited information available, it is not clear what options are available to these family members should the appeal fail. I therefore give their particular personal circumstances very limited weight.

Balancing Exercise

53. In relation to Appeal A, the harm by reason of inappropriateness in the Green Belt must be afforded substantial weight. Added to this is the harm caused to the AONB which carries considerable weight and the lack of adequate visibility which is of detriment to the safety of both the occupiers of the site and other highway users, again a consideration which in my view is of considerable concern and carries substantial weight against the development. Considering sustainability in the round, whilst the provision of a site would avoid environmental damage caused by unauthorised encampments etc, given the harm to the AONB this does not weigh in favour of the development.

54. A number of considerations weigh in favour of the grant of planning permission. The development would contribute towards the immediate need for pitches to accommodate gypsies and travellers, a matter I afford significant weight. Added to this is the personal need of the appellant for a settled base and the lack of alternative options available which also carries significant weight. Furthermore, the failure of policy I have referred to is a consideration of great weight in favour of the development. However, these considerations in favour of the development do not clearly outweigh the harm I have identified. Very special circumstances do not therefore exist to justify the grant of permission in the Green Belt. The use of land (Appeal A) would be contrary to the development plan and no other considerations exist that would otherwise justify the grant of planning permission.

55. Added to the harm in relation to the erection of the barn (Appeal B) is the modest harm caused to openness as a result of the built development. The other considerations referred to above would not clearly outweigh the harm I have identified such that no very special circumstances can exist. The development would be contrary to the development plan as a whole. It follows that the development to which Appeal C relates would also be contrary to the development plan and unacceptable.

56. I recognise that the refusal to grant planning permission would result in the loss of the appellant's home. However, given the harm that would be caused, this is a proportionate response.

57. I have considered whether the grant of a temporary permission may be justified. The Council cannot demonstrate a 5 year supply of pitches. However, as the site is in an AONB, this is not a site where, in accordance with paragraph 27 of PPTS, this should be a significant material consideration in this planning decision when considering the grant of temporary planning permission.

58. Whilst the visual harm to the character and appearance of the AONB and openness of the Green Belt would be temporary, the unacceptable impact on highway safety would persist even if I were to grant planning permission for only a temporary period. A temporary planning permission is not therefore justified.

59. Appeals A and B, made on ground (a) fail. Appeal C is also dismissed.

Appeals A & B, ground (f)

60. As explained at the Hearing most of the points argued for the appellant go to the planning merits of the proposals and thus, I have considered them under ground (a). It is clear that the purpose of both notices is to remedy the breach of planning control. This can only be achieved by ceasing the use and restoring the land and removing the unauthorised building. No lesser steps that would also achieve that purpose have been advanced. The appeals on ground (f) fail.

Appeal A & B, ground (g)

61. I recognise that compliance with the notice will result in the loss of the appellant's home that currently provides a settled base. Given the personal circumstances of the appellant and his children and the lack of alternatives, I consider 6 months is too short a period to comply with the notice, I therefore intend to extend the period for compliance to 12 months. This would be a proportionate approach. As the barn provides a utility room associated with the residential use, I intend to similarly extend the period for compliance to ensure suitable facilities are available throughout the extended compliance period. The appeals of ground (g) succeed.

Overall Conclusions

62. For the reasons given above I conclude that Appeal A and Appeal B do not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

63. For the reasons given above I conclude that Appeal C should be dismissed.

C Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Joseph Jones	Representing the appellant
Mr Michael Burrows	Joined the Hearing via telephone briefly and was present at the site visit

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Pegley	For Buckinghamshire Council
Mr Jarman	Senior Research Executive for Opinion Research Services (ORS)

The Planning Inspectorate

Appeal Decision

Inquiry Held on 12 – 15 & 29 November 2019, 9 & 10 December 2019
Site visit made on 11 December 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/J1915/W/19/3234671
Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire SG11 2AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Timothy Mahoney and Traveller Group against the decision of East Hertfordshire District Council.
- The application Ref 3/19/0893/FUL, dated 29 April 2019, was refused by notice dated 23 July 2019.
- The development proposed is change of use of land to 10 pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings.

Decision

1. The appeal is allowed and planning permission is granted for change of use of land to 10 pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings; and Formation of access road and hardstandings on Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire in accordance with the terms of the application, Ref 3/19/0893/FUL, dated 29 April 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Application for costs

2. At the Inquiry an application for costs was made by Mr Mahoney against the Residents of Little Hadham, a Rule 6 party. This application is the subject of a separate Decision.

3. An application for costs was also made by The Residents of Little Hadham against Mr Mahoney and Traveller Group. This application is the subject of a separate Decision.

Procedural Matters

4. Various alternative access options were before me at the outset of the Inquiry. During the Inquiry, the appellant confirmed that the access as constructed was the one to be considered as per revised drawings TWG/1r1 to TWG/4r1. I have determined the appeal on this basis.

Main Issues

5. The main issues are:

(a) Whether the site provides a suitable location for a gypsy and traveller site in relation to accessibility to services and facilities;

(b) The effect of the proposed development on the character and appearance of the area and surrounding landscape;

(c) The effect of the development on highway safety;

and, should I find conflict with the development plan in respect of any of these issues, whether other considerations would indicate that planning permission should be granted. Other considerations include:

(d) The need for gypsy and traveller sites and whether a 5-year supply of sites exists;

(e) The need for accommodation for the current occupiers and whether suitable alternatives are available;

(f) Whether the intended occupiers meet the definition of a gypsy and traveller for planning purposes; and

(g) Any personal circumstances relevant to those occupiers.

Policy Framework

6. The East Herts District Plan 2018 was adopted in October 2018. The proposed development is for a gypsy and traveller site. Works have been carried out and the site is already occupied. The reason for refusal specifically relates to Policy HOU9 and HOU10 of the plan. These policies seek to provide a framework for the assessment of any applications for gypsy and traveller sites that may come forward on non-allocated, windfall sites.

7. The appellant was clear at the Inquiry that the proposed site and pitches therein are intended for occupation by those meeting the definition of gypsies and travellers as set out Planning Policy for Travellers (PPTS). On this basis, Policy HOU9 is therefore the relevant policy against which to assess the development although in reality, the policy requirements of both HOU9 and HOU10 are the same irrespective of whether the definition is met.

8. The starting point is to consider if the site is suitable for a gypsy and traveller site, having regard to relevant policies in the development plan. Policy HOU9 contains a number of criteria that planning applications for non-allocated sites should satisfy. Of particular relevance to this appeal are whether (a) the site is in a sustainable location in terms of accessibility to existing local services; (b) the site is suitable in terms of vehicular access to the highway, … road safety and servicing arrangements and has access to essential services such as water supply, sewerage, drainage and waste disposal; and that (g) proposals ensure that the occupation and use of the site would not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect.

9. Policy GBR2 concerns the "Rural Area beyond the Green Belt", within which the appeal site sits. It permits certain types of development, including accommodation for gypsies and travellers in accordance with Policy HOU9 (or

HOU10), provided that they are compatible with the character and appearance of the rural area.

10. An existing need for sites is not a pre-requisite of Policy HOU9 or HOU10; the site is either suitable or not, having regard to the criteria set out. It would only be necessary to consider other considerations, including the personal circumstances of the individuals for whom the pitches are intended, if I were to find conflict with the development plan as a matter of principle and other considerations needed to be balanced against that conflict.

Reasons

11. Policy GBR2 accepts that gypsy and traveller sites can be accommodated in the rural area beyond the Green Belt. This is consistent with Planning Policy for Traveller Sites (PPTS) issued by the Government which does not seek to prevent gypsy and traveller sites from being in the countryside but rather that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing any undue pressure on the local infrastructure. The main issues must therefore be considered in this context.

Sustainable Location

12. Policy HOU9 (a) is confined to the consideration of a sustainable location in terms of accessibility to existing local services. Policy TRA1 'Sustainable Transport I' similarly requires that development proposals should, amongst other criteria, primarily be located in places which enable sustainable journeys to be made to key services and facilities to help aid carbon emission reduction.

13. The Council's evidence gives the distances to the hamlet of Westland Green as 200m as the crow flies or 460m by road and 1000m to the village boundary of Hadham Ford. Westland Green contains no facilities. Hadham Ford has limited facilities comprising a part-time post office, part-time Doctor's surgery and a Public House.

14. The nearest Primary School is in Little Hadham some 2.57km away and there is a shop, post office and bakery at Standon about 3.52 km away from the appeal site. There is a convenience store in Much Hadham that is 4.03 km away and a Tesco Superstore at Bishops Stortford some 5.95 km away.

15. A bus operates along Chapel Lane with limited services, operating a single service on Tuesdays and Fridays only. There is also a bus stop by the public house (at the end of Chapel Lane) in Hadham Ford which provides a service to Bishops Stortford approximately 3 times per day, 6 days per week.

16. In the context of a rural setting, the appeal site is not "away from an existing settlement", being close to Westland Green and with Hadham Ford only being some 1km away. Nor is it isolated in that it is quite close the grouping of properties that form Westland Green. Furthermore, it is not remote from services. Other gypsy and traveller sites that form part of the Council's identified existing supply are similarly situated in the rural area beyond the Green Belt in countryside locations. Such distances are not unusual in this context.

17. The walk distance between the appeal site and Little Hadham is circa 15 minutes; a distance regarded as the 'preferred maximum' walking distance[1]. I am mindful, that given the unlit nature of Chapel Lane and lack of pedestrian footpath, in realty, and notwithstanding the availability of bus-stops in a reasonable walking distance if required, the site occupiers will be largely reliant on private vehicles to access services and facilities. However, those services and facilities do not, on a day-to-day basis involve long journeys. As set out in paragraph 103 of the National Planning Policy Framework ('the Framework'), opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

18. The nomadic lifestyle of gypsies and travellers obviously involves travelling for both economic and other purposes, towing their caravan. This involves the use of a private vehicle irrespective of location and so, whilst travelling, the same opportunities for using public transport simply do not apply. When away travelling, it will be necessary to access services and facilities wherever they are, rather than leaving and returning to the site on a daily basis for work. In this sense, and notwithstanding the TRICS data referred to, I would therefore expect overall vehicle trips to be lower than those of the settled community who are working.

19. In terms of other family members (or those that have ceased travelling if Policy HOU10 is to be applied) needing to access services and facilities including schools and medical establishments, the availability of these within a reasonable travelling distance is critical, bearing in mind that land in settlements or edge of settlements considered a suitable and sustainable location for housing for the settled population, is in most circumstances, simply not available to accommodate private gypsy and traveller sites. Opportunities to access regular bus services are therefore also less likely. In this case, the reasonable proximity to local schools, doctors and shops will certainly encourage shorter car journeys.

20. The Council refers to Policy DPS2, within its evidence although it was not referred to in the reason for refusal. This is an overarching policy that sets out the Council's strategy for delivering sustainable development, outlining the hierarchy for the location of development; the lowest tier being limited development in the villages. Whilst two allocations for gypsy sites form part of larger residential allocated sites, on the edge of settlements, prospective land values generally limit the possibility of private sites coming forward within or on the edge of settlements, if there is any prospect they may be suitable now or in the future for bricks and mortar housing. To apply this policy rigidly and out of context with PPTS and policies HOU9 and HOU10 it is likely to prohibit the ability for any sites intended to accommodate gypsies and travellers to come forward as windfalls. I do not therefore consider it a policy of direct relevance to this appeal. Similarly, the requirements of Policy TRA1 which require developments to ensure that a range of sustainable transport options are available to occupants or users, which may involve the improvement of pedestrian links, cycle paths, passenger transport network (including bus and/or rail facilities) and community transport initiatives are of less relevance to gypsy and traveller sites in the countryside.

[1] Appendix A of Mr Russell's proof of evidence – Table 3.1 Reasonable Walking Distances

21. In wider sustainability terms a settled base can reduce incidents of unauthorised encampments, reduce the need for continuous travel and facilitate consistent access to schools and medical services.

22. To conclude the site does provide a sustainable location for a gypsy and traveller site in relation to accessibility to services and facilities. I find that no conflict with criterion (a) of HOU9 and relevant national policy in this regard arises.

Character and appearance

23. In order to satisfy criterion (g) of Policy HOU9 the occupation and use of the site should not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect.

24. The Council also relies upon landscape policies not referred to in the reason for refusal, to support its case; in particular Policies DES2 'Landscape Character', DES3 'Landscaping' and NE3 'Natural Environment'. In addition, the Council refers to a 2007 Supplementary Planning Document (SPD) entitled 'Landscape Character Assessment'. This sets out descriptions and guidance relating to the Landscape Character Areas (LCAs) within the District. The appeal site lies within the western perimeter of the Hadhams Valley LCA 93. To the west of this and bordering the site boundary is the LCA 89, Wareside – Braughing Uplands.

25. The surrounding area comprises open fields punctuated with hedgerows and woodland copses. I concur with the views of both the Council's and appellant's landscape witnesses that the area is not a 'valued landscape' in the sense meant by paragraph 170 of the Framework. The surrounding area has no statutory status and is not identified as being of any particular quality that might differentiate it from other countryside in the development plan. It does however enjoy a tranquil rural landscape.

26. At times, open views are enjoyed across fields from Chapel Lane and in other sections the road is enclosed by vegetation. There are other residential properties relatively nearby at Westland Green, which comprise predominantly detached properties in large plots often set within a mature treed setting. The provision of 10 pitches within the site would be of a much greater density and comprise smaller individual plots set out in a regimented pattern. It would not reflect the dispersed pattern of nearby development. But there is no requirement within Policy HOU9 for it to do so. It is inevitable that a caravan site will have different characteristics to bricks and mortar housing. Any caravan site in the countryside is likely to have some impact.

27. The appeal site is adjacent to a section of the road where, when travelling in a westerly direction, open views are gained across the site and the caravans already in situ are clearly visible for a short time on the approach to the access and when passing the site. The impact is much less when approaching from the west going in an easterly direction, due to existing vegetation to the south west of the site (a Local Nature Reserve) and the existing hedge along the north-west boundary. Open and unfiltered views are also available walking towards the site on footpath 54. I also observed long distance views across the valley from A120 / footpath near Stone House Farm where the white of the caravans can be observed on the ridge. Views of the site are otherwise

relatively well filtered and screened by surrounding vegetation, even during the winter months.

28. The area within the site where the pitches would be situated is set back from Chapel Lane. The proposal is for a sizeable site intended to accommodate 10 pitches. Along with the potential stationing of a mobile home on each pitch, there will be the construction of a utility building, the stationing of a touring caravan for at least some of the time, vehicles and associated residential paraphernalia together with the activity associated with 10 residential pitches. Its size therefore adds to its presence in its tranquil rural surroundings.

29. The assessment to be made is whether it would cause undue harm to the visual amenity and character of the area and whether it is capable of being assimilated into the surrounding landscape without significant adverse effect. The landscape drawings show that the hardstanding areas which would provide a suitable surface for the stationing of a mobile home, touring caravan and utility building, could be restricted to the section of each plot closest to the access thus limiting the area of 'development' to the central areas. This would ensure a buffer of unsurfaced grassed areas at the outer most sections of each plot allowing for additional supplementary planting to that suggested around the perimeter of the site and between pitches. A paddock area is to be retained between the pitches and Chapel Lane. A condition controlling the actual layout of the site, thus ensuring the retention of the paddock area and limiting the extent of hardstanding areas and where caravans can be stationed could be imposed. Extensive landscaping of appropriate species would not appear out of place in this location and there is scope for the creation of hedges along with tree planting both along Chapel Lane, to the rear of the paddock adjacent to some of the pitches and along the access. This could be controlled through a suitably worded condition.

30. Whilst it is not intended that gypsy and traveller sites should be hidden from view, some properties found along Chapel Lane are set back and sit within mature trees and planting. Such measures would not therefore be inconsistent in this particular setting. Along Chapel Lane there are already instances of access drives to properties in addition to agricultural access tracks. Whilst the access would remain visible, it would not be out of keeping.

31. On balance, it is considered that despite the number of pitches sought, whilst the development does cause some harm it is not undue harm and it is capable of being assimilated into the surrounding landscape without significant adverse effect subject to an appropriate scheme of landscaping, that reflects the surrounding area. I therefore find no conflict with Policy HOU9 in this regard.

32. Policy DES2 'Landscape Character' requires development proposals to demonstrate how they conserve, enhance or strengthen the character and distinctive features of the district's landscape. This policy must be considered in the context of policies HOU9 and 10 and cannot be applied in such a way so as to frustrate the granting of planning permission even where it is found that the proposal would not cause undue harm and so would satisfy criterion (g) of those policies specific to gypsies and travellers. In any event, with appropriate landscaping, it is considered that the proposed development would conserve the character of the area.

33. PPTS requires that sites should respect the scale of, and not dominate, the nearest settled community. Westland Green comprises a small dispersed

grouping of dwellings in generous plots. Numerically, ten pitches would result in a substantial increase in the number of residential 'units' that may be associated with the nearest settled community if considered in isolation of Hadham Ford. However, the site is not read visually as being part of Westland Green, and in any event, taking the size of the site as a whole, it respects the overall scale of and does not dominate Westland Green.

34. To conclude, the development would not unduly harm that character and appearance of the surrounding area.

Highway Safety

35. Paragraph 109 of the Framework states that "Development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 108(b) requires that a safe and suitable access to the site can be achieved for all users. Policy HOU9 (and HOU10) of the East Herts District Plan require that the site is suitable in terms of vehicular access to the highway, parking, turning, road safety and servicing arrangements. The Council raised no concerns in relation to highway safety.

36. In the vicinity of the appeal site the national speed limit applies. The access as constructed is situated within the planning application site boundary. The proposed bell mouth incorporates land forming part of the bell mouth of the existing neighbouring access track. Whether or not all of the bell mouth forms part of highway land or encroaches on to private land that is not in the ownership of the appellant was a point of dispute at the Inquiry. From the revised drawings before me, and my observations on site, it appears that the access can be wholly created on land either in the appellant's ownership or on highway land.

37. Due to the proximity of the adjacent access, the highways witness for The Residents of Little Hadham, suggested that the highways authority would not support two accesses in such close proximity and / or that a much greater visibility would be required. I saw photographic evidence that there had been a field gate in the general area of the newly formed access and that a substantial log is used to block the adjacent access when it is not in use. I consider it would be reasonable to describe it as an agricultural access and largely restricted to a vehicle capable of moving the log, notwithstanding that I was told it can provide access to the Farm and other buildings on the holding. These can all be accessed by alternative means and without moving a log.

38. Revised drawings show the swept path analysis for a 4x4 towing a caravan (TWG/2r1), a 7.5 tonne box van (TWG/3 r1) and Fire Tender (TWG/4r1). I am satisfied that these movements can be achieved on land in the appellant's ownership and on highway land. I consider it would be a very infrequent occurrence that a vehicle may be waiting to leave this agricultural access at the same time another vehicle is either waiting in the highway to turn right into the newly formed access or waiting to leave. Any emergency vehicles would naturally be given priority into the site by a vehicle sitting in the adjacent access and waiting to exit. Otherwise a vehicle turning right would simply wait in the carriageway in the same way it would wait for a break in on-coming traffic; much in the same way as must happen when the adjacent access is in use. On exiting the site, a vehicle may have to wait until any vehicle impeding visibility moves. Although the log had been moved to one side on the day of

my visit, I am not persuaded that this is anything other than an infrequently used agricultural access and of very little consequence to the safe operation of the newly created access.

39. The key consideration in my view is whether sufficient visibility can be achieved to ensure the safe operation of the access. The appellant has undertaken a traffic survey by way of an automated traffic count on Chapel Lane which formed the basis of calculating the 85th percentile speed. The 85th percentile speed represents the speed under which 85% of traffic stays at or below and is the accepted value on which design consideration should be based.

40. The highways witness appearing for Residents of Little Hadham was critical of both the location at which the speed survey data was obtained, being some 100m west of the access and the 85th percentile speed used to calculate the necessary visibility splay. In terms of the point at which speeds were recorded, the criticism is that at this point, Chapel Lane narrows and leads around a corner with poor forward visibility. So, it is expected that traffic travelling past the traffic counter approaching the corner would be slowing down and traffic travelling away would be speeding up. In the absence of any evidence to the contrary, I am not persuaded by the evidence before me or from my observations on site that the speeds recorded would be materially different at the location of the access or 100m to the west of it, such that a different conclusion might be reached on this issue.

41. The evidence of the appellant's highways witness was that the measured 85th percentile speed is 30mph and this is commensurate with the Target Maximum Speed for a local distributor road as set out in the Hertfordshire County Council (HCC) Highway Design Guide. This states "at worst, the 85th percentile speed should not be greater than this target maximum speed". Both parties nevertheless agreed that the definitions in the HCC Design Guide do not align well with existing rural roads.

42. The appellant's position changed having accepted the criticisms made by The Residents of Little Hadham in relation to the calculation of the 85th percentile speed[2]. Re-calculating the 85th percentile based on the raw data of measured speeds recorded over a 24-hour period, an 85th percentile speed of 31 mph, instead of 30.3 mph, was derived. Whilst it exceeds the "at worst" position set out in the Design Guide this is only a marginal increase. Referencing Table 7.1 of Manual for Streets 2 (MfS) the Safe Stopping Distance (SSD) for 31 mph is 2m more than it would be for 30 mph. The appellant demonstrated that adequate visibility splays could be achieved in both directions from the newly created access, that being 2.4m x 34m. Indeed, it is the appellant's position that visibility requirements up to a design speed of 37mph may be accommodated (2.4m x 59m) and thus well within the parameters required for a safe access.

43. The highways witness appearing for The Residents of Little Hadham observed traffic travelling between 30 and 40 mph along Chapel Lane. His assessment of speeds was based on following other vehicles along the lane and keeping at the same speeds. He suggests a visibility requirement of either 59m assuming a speed below 37mph or 74m assuming a speed of 40mph. Both 'y' distances

[2] The 85th percentile traffic speeds had been calculated by summing the individual 85th percentile speeds calculated for each hour during the 24-hour period and then dividing by the number of hours to provide an average of the hourly calculated 85th percentile speeds.

are derived from MfS. There is no doubt, from my observations on site, that the latter cannot be achieved. However, the observed speeds were *between* 30 and 40 mph so there is no assessment of the most frequent speeds or the 85th percentile speed derived from this limited assessment.

44. In terms of reliable data, I prefer that derived from the automated traffic count over a 24-hour period. The raw data provided indicates a recorded speed of 40.1 mph and another at 37.9 mph travelling eastbound that were specifically brought to my attention as being the fastest speeds. These are not however typical of most of the speeds recorded over the 24-hour period with the vast majority being between 20 and low-mid 30s. A couple are unusually low being only around 6 mph which it was accepted could perhaps be attributed to cyclists. In a westbound direction a top speed of 41.6mph was noted. This was significantly faster than most which fell in the upper 20's and low 30s bracket and so, again not representative of typical recorded speeds.

45. A number of cars that passed by the access to the site at the time of my site visit were travelling at sufficient speeds for the drivers of vehicles travelling in the opposite direction to sound their horns. This did not appear to be consistent or typical with the speed of traffic or behaviour of drivers I observed earlier and later on the same day along Chapel Lane or from the recorded speeds. I give this little weight, preferring the data recorded over a 24-hour period and unfettered by a group of people standing around the access point.

46. Moreover, there is ample flexibility within the 'y' distances that can be achieved over and above that required for an 85th percentile speed of 31 mph. On site, I observed that a visibility splay of 2.4 x 59 m could be comfortably achieved.

47. To conclude, it is considered that the development would not have an unacceptable impact on highway safety and a suitable access to the site can be achieved. I find no conflict with Policy HOU9 and other transport policies requiring a safe access or national policy in this regard.

Other Material Considerations

48. It seemed to me from the evidence I heard that it is likely that the occupiers were fully aware of the need to secure planning permission but continued to develop and occupy the site in any event. This is further reaffirmed by the decision to not only proceed with the works to the access and areas of hardstanding to be created but to arrange for the arrival of caravans all on the same day and over a Bank Holiday Weekend. This is therefore a case of intentional unauthorised development. That is a material consideration of great weight that weighs against the grant of planning permission.

49. Nevertheless, given that I find that the development accords with the policies of the development plan and national policy, despite the weight to be afforded to this as a material consideration, it would not tip the balance against the grant of planning permission.

50. It is not necessary to consider whether other considerations such as the need for sites or the personal circumstances of the individual occupiers would be other considerations that may justify a grant of pp given that I find in favour of the proposal in any event. For reasons I set out under 'conditions' I do not find it necessary to determine whether occupiers meet the definition of a gypsy or traveller found in PPTS.

Conditions

51. A number of conditions that I might impose should planning permission be forthcoming were discussed at the Inquiry. The appeal was clearly made on the basis of a site for occupation by those meeting the definition of a gypsy and traveller found in PPTS. However, having found no conflict with Policy HOU9, it follows that there is also no conflict with Policy HOU10. The site would thus be acceptable having regard to the development plan, whether the occupiers were gypsies and travellers meeting the definition or not. Accordingly, whilst it would be necessary to restrict the occupation of the site to gypsies and travellers, it would not be appropriate, in light of my findings to also require the occupiers to be able to meet the definition contained in PPTS. Nor is it necessary to restrict occupation of the site to certain individuals as it was not necessary to consider any personal circumstances or the best interests of any children to determine whether planning permission should be granted or not.

52. It will be necessary to limit the number of caravans on each pitch to no more than two, of which only one can be a static to ensure the development does not cause undue visual harm. In addition, to ensure no undue visual harm arises, and critical to the continued use of the site, is the submission and agreement of landscaping details including details of safeguards and / or protective buffers against the Westland Green and Pigs Green Local Wildlife Site; and details of the layout of the site, including the location of hardstandings, utility buildings and the stationing of caravans. Details of the site access, including the provision of appropriate visibility splays will be required to ensure a safe means of access to the site. Other matters to be agreed include the disposal of surface and foul drainage and external lighting. As the development has commenced, the condition requiring the submission of details will need to be worded in such a way that the use should cease in the event of any failure to comply with this requirement.

53. Based on the evidence before me, a condition requiring a programme of archaeological works is not considered to be reasonable or necessary for a development primarily relating to a material change of use.

54. I consider it necessary to restrict vehicles to those not greater than 3.5 tonnes in the interests of the visual amenity of the area. I saw some additional sheds etc that had been erected. For the avoidance of doubt, this permission does not grant or authorise any additional buildings on the site other than the utility buildings, to be constructed in accordance with the elevational details. A condition clarifying that approval would be required for additional structures would be reasonable and the removal of permitted development rights for fences, walls etc to protect the visual amenity of the area.

Overall Conclusion

55. For the reasons given above I conclude that the appeal should be allowed.

C Sherratt

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans, except where details are required to be submitted under condition 5: Location Plan (Dwg no. J003258/CD01); Proposed Site Plan (Dwg no. J003258/CD02).
2. The site shall not be occupied by any persons other than gypsies and travellers.
3. There shall be no more than 10 pitches on the site and on each of the 10 pitches hereby approved no more than 2 caravans, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
5. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 3 months of the date of this decision a scheme for:

   - the means of foul and surface water drainage of the site;
   - proposed and existing external lighting on the boundary of and within the site;
   - the provision of adequate visibility splays at the site access;
   - the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas;
   - a scheme of tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities including details of safeguards and / or protective buffers against the Westland Green and Pigs Green Local Wildlife Site. Unless identified to be removed, all existing trees and hedgerows on the land, shall be retained. The scheme shall set out measures for their protection throughout the course of development;

   (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 scheme specified in this condition, that scheme shall thereafter retained.

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

6. At the same time as the site development scheme required by condition 5 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of (i) the proposed planting beginning at the completion of the final phase of implementation as required by that condition and (ii) the trees and hedgerows to be retained beginning at the practical completion of the development. 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.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

8. No external lighting, other than that approved under Condition 5 shall be provided without the prior written permission of the Local Planning Authority.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:
Mr Meyric Lewis

He called:

Ms Ellis Edmonds BA(Hons) Geography, MA URP MRTPI	Principal Planning Officer (Development Management) at East Herts District Council (EHDC)
Kay Mead BA (Hons) LA DipTPS MRTPI	Principal Planning Officer (Policy) at EHDC
Steve Jarman	Senior Research Executive for Opinion Research Services Ltd
Ann Westover BA (Hons) Dip LA CMLI	Landscape Architect Associate for Place Services, (Essex County Council)

FOR THE APPELLANT:
Mr Alan Masters

He called:

Mr Brian Woods BA (TP) MRTPI	Of WS Planning and Architecture (Planning Witness)
Mr Tom Green BEng CEng MICE	Of SLR (Highways Witness)
Mr Robert Petrow BA (Hons) & PGDipLA CMLI	Managing Director of Petrow Harley Ltd (Landscape Witness)
Mr Timothy Mahoney	Pitch (Plot 1)
Mr Sean Mahoney	Pitch (Plot) 2
Ms Ann O'Driscoll	Pitch (Plot) 3
Mr Clark	For Dena Morgan Pitch (Plots) 4 & 5
Ms Charleene Pryce	Pitch (Plot) 6
Mr Peter Donoghue	Pitch (Plot) 7
Mr T Mahoney	Pitch (Plot) 8
Ms J O'Sullivan	For John O'Sullivan Pitch (Plot) 9

FOR THE RESIDENTS OF LITTLE HADHAM:
Mr Matthew Reed QC
Instructed by Anthony Allen of Allen Planning Ltd

He called:

Mr Anthony Allen BA Hons Dip TP MRTPI	Of Allen Planning Ltd
Mr John Russell B.Eng CMILT MIHT	Thames Valley Regional Director of Motion Ltd (Highways Witness)

DOCUMENTS RECEIVED AT THE INQUIRY

1 Appearances for the Council
2 Appearances on behalf of The Residents of Little Hadham (Rule 6 Party)
3 Correspondence submitted by the Rule 6 Party from Mr Stigwood.
4 Opening Statement on behalf of East Herts District Council.
5 Opening Statement on behalf of The Residents of Little Hadham (Rule 6 Party).
6 Various letters of support submitted by the appellant.
7 Suggested Site Visit Itinerary.
8 Supplementary Evidence of Tom Green
9 Note from Mr Russell on 85th percentile speed calculation.
10 Rebuttal Evidence of Mr Green.
11 Land registry Document.
12 High Court Judgement – East Herts DC v Thomas Docherty and Others [2019] EWHC 2696 (QB).
13 Correspondence between Oliver Sowerby of HCC & Mr Green (Nov and Dec 2019).
14 Suggested Conditions.
15 Costs application on behalf of the Rule 6 Party.
16 Costs application on behalf of the appellant.

Note: Responses to the applications for costs and Closing Submissions for all the parties were submitted in writing after the Inquiry concluded.

The Planning Inspectorate

Costs Decision

Inquiry Held on 12 – 15 & 29 November 2019, 9 & 10 December 2019
Site visit made on 11 December 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Costs application in relation to Appeal Ref: APP/J1915/W/19/3234671
Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire SG11 2AB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by The Residents of Little Hadham (Rule 6 Party) for a partial award of costs against Timothy Mahoney and Traveller Group (the appellant).
- The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of land to 10 pitches accommodating the siting of 10 mobiles homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for The Residents of Little Hadham (Rule 6 Party)

2. The submissions were made in writing and so I need not repeat them in full here. In brief, the application is made on the basis that the appellant's acted unreasonably by its provision in evidence of 4 separate access iterations which led the Rule 6 Party to incur unnecessary expense. There was no reasonable basis for producing separate access proposals and no explanation why the alternatives were produced or abandoned. The lack of any justification establishes the unreasonableness of the appellant's actions.

The response by Timothy Mahoney and Traveller Group

3. The response was made in writing and so need not be repeated in full. In brief, the appellant considers it was not unreasonable to offer alternatives but explains the error arising in terms of land ownership and that clarification saved Inquiry time.

Reasons

4. The Planning Practice Guidance (reference ID: 16-052-20140306) states that "introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen" may lead to a successful application for costs.

5. The various access iterations comprised (1) that contained in the application documentation (using the access within the appeal site); (2) that in the evidence of the highways witness (using part of the appeal site and part of the neighbouring owners land); (3) that in Mr Woods' rebuttal evidence (using the

access track on the neighbouring land entirely and then (4) returning, to the access within the appeal site within supplementary evidence.

6. Given the various options before the Inquiry the Rule 6 Party had to address them all. The first was dealt with in Mr Russell's proof of evidence, the second in his rebuttal; and the third was the subject of preparation before the Inquiry in order to be in a position to respond to it. The appellant clarified the position, returning to the access proposals put forward in the application documentation.

7. It was wholly appropriate for the appellant to offer clarity on which access option was to be pursued rather than waste Inquiry time addressing each. However, to have included various options in the various documents prepared for the Inquiry, only to withdraw them so late in the day, was unreasonable behaviour. By the time the appellant's advocate could clarify the position, the Rule 6 Party had prepared their evidence in order to address and respond to each. This resulted in unnecessary and wasted expense for preparatory work that would not otherwise have arisen.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Timothy Mahoney and Traveller Group shall pay to The Residents of Little Hadham (Rule 6 Party), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparatory work relating to the alternative access options using part of the appeal site and part of the neighbouring owners land; and using the access track on the neighbouring land entirely; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Timothy Mahoney and Traveller Group, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Sherratt

INSPECTOR

The Planning Inspectorate

Costs Decision

Inquiry Held on 12 – 15 & 29 November 2019, 9 & 10 December 2019
Site visit made on 11 December 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

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Decision

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

The submissions for Timothy Mahoney and Traveller Group

2. The submissions were made in writing and so I need not repeat them in full here. In brief, the application is made due to the introduction of two pieces of evidence; one relating to the calculation of the 85th percentile speed and secondly, the submission of a letter purported to be from the owner of the farm. It is submitted that the contents were not true and were known not to be true relating to the construction of the access to the site.

The response by The Residents of Little Hadham (Rule 6 Party)

3. The response was made in writing and so need not be repeated in full. In brief, the Rule 6 Party say in response that it was simply questioning the 85th percentile evidence which was already before the Inquiry. The Rule 6 Party was entitled to take this point without any notice. The real reason that the appellant complained about it, it is suggested, was because Mr Green's evidence came first in the relevant session; but that was due to the appellant's change of position on the access.

4. It was reasonable for the Rule 6 Party to submit the letter in response to the evidence contained in Mr Woods' rebuttal which sought to promote the third access iteration, which used the track entirely on Mr Stigwood's land. This was an entirely new point which could not have been responded to before Mr Woods' rebuttal

Reasons

5. The challenge to how the 85th percentile speed had been calculated did not form part of the case of The Residents of Little Hadham and was first raised during cross examination of Mr Green. Indeed that was the first opportunity to challenge it, other than in the rebuttals where there was no requirement to do so, as it was appended to the appellant's proof of evidence addressing highway matters. The highway concerns were raised by the Rule 6 party rather than the Council.

6. The evidence for the appellant was heard first on this topic so that the position with the access could be made clear to the Inquiry. Accordingly, this point was not raised in the examination in chief of the Rule 6 Party first. Even if that had been the case, I think it probable that the same objections would have been raised by the appellant's advocate. I have considered carefully the application and response and I am inclined to accept that the Rule 6 Party was entitled to challenge and test the evidence from which the visibility splay requirement was derived having first seen the data in the proof of evidence and underpinning the visibility splay requirements put forward by the appellant. No unreasonable behaviour occurred.

7. Added to this, there can certainly be no complaint of any procedural injustice given that the appellant's representative was given time to prepare and produce evidence in response, and the appellant's witness was recalled. Although the appellant's advocate made the case that he would be prejudiced if he could not conduct his cross examination in one chunk, thus resulting in a delay before this occurred, the adjournment was necessary in any event as the estimation of four days was woefully short.

8. I also find no unreasonable behaviour by the Rule 6 Party for submitting the letter from Mr Stigwood in response to the evidence contained in Mr Woods' rebuttal which sought to promote the third access iteration, which used the track entirely on Mr Stigwood's land. This was a new alternative access which the Rule 6 Party could not have been responded to in any way before Mr Woods' produced his rebuttal. Once this alternative was withdrawn the Rule 6 Party did not continue to rely on this letter.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

C Sherratt

INSPECTOR